

UPDATE ON AYLESBURY VALE BROADBAND REVIEW

1 Purpose

- 1.1 To update the Audit Committee on the cross party working group established to oversee the recommendations of the Aylesbury Vale Broadband report; and
- 1.2 To review the updated “Guide to Creation and Working with Companies in which AVDC had a Financial Interest” (the “Guide”) and consider whether the recommendations from the AVB review have been appropriately included in accordance with Audit Committee resolutions.

2 Recommendations/for decision

The Committee is asked to:

- 2.1 Note the work of the Cross Party Group.
- 2.2 Approve the amendments to the Guide, which is included as part of the Council’s Constitution at Section G (Codes and Protocols).

3 Supporting information

- 3.1 On 28 June, 2018, Council resolved that:
 - (1) That this Council notes that, at its meeting on 12 June 2018, the Audit Committee of AVDC accepted and agreed the twenty two recommendations of the BDO LLP review into AVB. As such, Council endorses the decision and formally adopts the recommendations which are to be applied to all its current and future commercial ventures. Further, a cross party group will be formed to oversee the implementation of the recommendations, the group to be appointed by the Audit Committee.
 - (2) That in view of concerns about various financial aspects of financial matters reported in the BDO LLP report on the review of Aylesbury Vale Broadband (AVB), the Council as 95% shareholder in AVB, agrees for a detailed examination of the accounts of AVB to be carried out as a matter of urgency by AVDC’s internal audit team and a report of this be delivered to the Audit Committee.
- 3.2 Prior to this Council meeting, on 12 June 2018 the Audit Committee resolved that:
 - (3) That the recommendations identified in the report be reflected in the Council’s “Guide to the Creation and Working with Companies in which AVDC has an interest”.
 - (4) That the Council’s Code of Conduct be affirmed in relation to the divulgence of confidential papers and the Democratic Manager be instructed to take account of the AVB review recommendations in his review of the Councillors Code of Conduct, in particular the section relating to the divulgence of confidential papers.”

Update on work of Cross Party Group

- 3.3 The Cross Party group (Councillors Branston (Chairman), B Chapple, A Cole, S Cole, Christensen, Lambert and Cooper) met on 6 December 2018 to consider the progress made on implementation of recommendations arising from the AVB review report.
- 3.4 A report was presented which included details of how the recommendations had been incorporated into the "Guide to Creation and Working with Companies in which AVDC had a Financial Interest" (the "Guide") together with a draft of the updated Guide.
- 3.5 Members considered the updated table of recommendations, which included details of how the recommendations had been incorporated into the updated Guide. Their attention was drawn, in particular, to Recommendation 17 (Confidentiality requirements and the Code of Conduct). The new Members' Code of Conduct had been drafted taking into account the Audit Committee's request that particular attention be given to the divulgence of confidential papers. The Chairman of the Audit Committee had been closely involved in this process. An updated Code of Conduct had been agreed by the Standards Committee on 3 December 2018 and would now be submitted to full Council in February 2019 for final approval.
- 3.6 The investigation into the 'yellow pages' breaches that had been raised during the review of AVB was ongoing and would be reported to Members in due course.
- 3.7 The Group then considered the AVB Financial Review that had been requested at the last meeting and undertaken by the Corporate Governance Manager.
- 3.8 Members were informed that sample testing of income and expenditure incurred by AVB from inception to 31 March 2018 had been performed. Samples had been selected from the AVB Nominal Ledger. The AVB annual accounts had been prepared by external accountants (Tax Assist) on the basis of the information contained in the nominal ledger. A report was presented detailing the testing performed and the results.
- 3.9 The report concluded that no exceptions had been identified in the sample testing. On the basis of the documentation reviewed and the testing performed no concerns had arisen that would indicate that the financial accounts of AVB did not present an accurate record of the affairs of the company.
- 3.10 Following consideration of the updated actions taken against the 22 recommendations stemming from the BDO LLP report, including the updating of the Guide to Creation and Working with Companies in which AVDC had a Financial Interest, and on the financial review of some areas of the AVB accounts, the Group resolved that:
 - (1) That the Corporate Governance Manager be thanked for the work undertaken and submitted to the AVB Cross Party group.
 - (2) That the 'Guide to Creation and Working with Companies in which AVDC had a Financial Interest' should be updated with regard to information required in support of business cases, as discussed at the meeting.

- (3) That, subject to recommendation (2) above, the AVB Cross Party Group was satisfied that the 22 recommendations stemming from the BDO LLP report on the review of AVB had been actioned.
- (4) That a report of the AVB Cross Party Group's findings should be reported back to the Audit Committee in January 2019.

3.11 It was agreed that the work of the Cross Party Group had been concluded in accordance with Council's resolution and no further meeting was required.

Updated "Guide to Creation and Working with Companies in which AVDC had a Financial Interest"

3.12 The Guide has been update to reflect the recommendations set out in the AVB report.

3.13 Further updates requested by the Cross Party Group to strengthen the information required to support business cases have also been included. This is attached as Appendix 1.

Contact Officer	Kate Mulhearn – Corporate Governance Manager Tel: 01296 585724
Background Documents	None

AVB recommendations and implementation plan – Update December 2018

The majority of recommendations made in the Aylesbury Vale Broadband (AVB) Review (June 2018) will only become applicable when a new company is formed or financial investment made. To ensure that the learnings identified from the review become embedded, our policies, procedures and working practices need to be updated. The “Guide to creation and working with companies in which AVDC has a financial interest” (“the Guide”) sets out the current protocols and is already part of the Council’s Constitution (Section G, Appendix K). For other recommendations, updates to the Code of Conduct are required.

The internal audit plan for 2018/19 includes a review of the governance arrangements for Aylesbury Vale Estates, the only other commercial venture in which the Council has an interest. This will assess whether the recommendations raised from AVB are operating effectively.

The Guide has been updated and the 22 recommendations have been actioned as follows:

Recommendation	Next steps	Update (Dec 18)
<i>When establishing new commercial ventures and overseeing the ongoing business planning cycles (Inception):</i>		
1	Robustly evaluate pilots of new commercial ventures before making further investment a) Update the Guide to reflect the need for and the information requirements to enable robust evaluation of pilots b) Identify appropriate committee to scrutinise and approve further investment c) Provide training for members d) Obtain external expertise where applicable	Guide updated - page 13
2	Sign a Shareholder Agreement requiring permission for wholly or partly owned companies to deviate significantly from agreed business plans a) The Guide currently states that AVDC <i>should</i> appoint a shareholder representative who would normally be an elected member of the Council. Update so that this is a requirement b) Update the Guide to require a Shareholder Agreement, including specific points the agreement should contain such as the requirement for shareholder approval for material changes to business plans	Guide updated - pages 11 & 12
3	Improve scrutiny of business plans to ensure they are realistic a) The Guide already includes the requirements for a business case and the objectives, which must be at least one of : – Reducing Council operating costs by delivering Council	Guide updated - pages 4 & 5

Recommendation	Next steps	Update (Dec 18)
	<p>service at lower cost than the Council is able to do.</p> <ul style="list-style-type: none"> - Delivering services which the Council is not empowered to deliver - Generating cash to the Council through Dividend payments - Generating a cash lump sum by enabling the Council to sell its shares at a point in the future at a significant profit. <p>All business plans should clearly outline the objectives of the investment and report on the achievement of those objectives.</p> <p>b) The Guide sets out the minimum requirements for a business plan. To ensure robust scrutiny, each of these requirements should be considered in turn prior to approval</p> <p>c) The Guide already sets out the minimum reporting & performance monitoring requirements which includes quarterly reporting of:</p> <ul style="list-style-type: none"> - Current cash flow and profit and loss position - Current investment position (including any loan position) - Income and expenditure forecast for the 4 rolling quarters - Current position compared to current business plan - Any expected issues reserved in the companies articles of association that may be need to be reported to AVDC formally over the next 6 months. - High level reporting of planned strategic marketing activities. <p>The business case should include a template for reporting to ensure there is agreement over what will be reported and that this information is captured from the start.</p> <p>d) Updated the Guide to make it clear that the original Business Case and annual Business Plans must include an assessment of risks and any new issues arising. Members should ensure they are satisfied with the way these risks are being addressed.</p> <p>e) Identify appropriate committee to scrutinise and provide training for members</p> <p>f) Obtain external expertise where applicable</p>	

Recommendation		Next steps	Update (Dec 18)
4	Undertake more thorough market research before entering new markets. Future business plans for commercial ventures should include scenario planning and risk assessments	a) Update the Guide to reflect the need for market research and ensure the results are shared with members prior to approval of new business plans.	Guide updated - page 5
5	Structure the business planning cycle to set a clear vision for the future and assess performance against previous plans	Update the Guide to reflect that business plans and reporting need to: a) help the Board and, where relevant the Council, to: – Agree clear direction of travel over the coming year; – Provide a suite of KPIs which allow the Board and the Council to assess performance against that plan; – Review performance against last year’s plan. b) include specific, measurable, assignable, realistic and time bound (SMART) key performance indicators. c) contain forecast cash flow, profit and loss and balance sheet as well as actual financial information from the last year.	Guide updated - page 5
6	Ensure commercial ventures have a clear and consistent strategic direction.	a) The Guide already includes the requirements for a business case and the objectives, which must be at least one of : – Reducing Council operating costs by delivering Council service at lower cost than the Council is able to do. – Delivering services which the Council is not empowered to deliver – Generating cash to the Council through Dividend payments – Generating a cash lump sum by enabling the Council to sell its shares at a point in the future at a significant profit. All business plans should clearly outline the objectives of the investment and report on the achievement of those objectives.	Guide updated - pages 4 & 5
<i>When considering governance arrangements for new commercial ventures (Governance):</i>			
7	Avoid placing Cabinet members	a) Update the Guide to reflect the recommendation to avoid placing	Guide updated - page 10

Recommendation		Next steps	Update (Dec 18)
	on the Boards of commercial ventures unless this can be justified on exceptional grounds such as specific sector knowledge	Cabinet members on the Boards of commercial ventures unless this can be justified on exceptional grounds such as specific sector knowledge	
8	Institute a conflicts of interest policy for all commercial ventures	a) Update the Guide to reflect that Companies should have a conflict of interest policy	Guide updated - page 10
9	Place a Shareholder Representative on the Board of commercial ventures from the outset to avoid potential conflicts of interest	a) The Guide currently says AVDC <i>should</i> appoint a shareholder representative who would normally be an elected member of the Council. Update so that this is a requirement at the outset.	Guide updated - pages 7 & 11
10	Select Board members with sufficient sector knowledge and independent oversight and commission training on Director responsibilities and being an effective Director either shortly before or soon after Directors are appointed	The Guide already sets out the requirements for effective Boards. a) Review and approve all current board memberships. Ensure there is sufficient sector, financial, marketing, governance experience. b) Review any potential conflicts of interest for existing board members. c) Provide training on Director responsibilities for all current, and any new Directors prior to appointment	Guide updated - page 10
11	Undertake a capacity, capability and conflicts assessment of potential Directors to avoid high turnover of Board members	As for 10.	Guide updated - page 10
12	Check Board Members, and key management, have sufficient capacity to discharge their full range of functions, supported by	As for 10.	Guide updated - page 10

Recommendation		Next steps	Update (Dec 18)
	appropriate resilience arrangements		
13	Keep a clear record of meetings to provide a robust audit trail.	a) Update the Guide to reflect the requirement for Board minutes to be maintained b) Include the requirement for minutes in any future Shareholder Agreements	Guide updated - page 12
<i>When developing reporting arrangements at Board level, Council level and to customers of future commercial ventures (Reporting):</i>			
14	Clarify from the outset what company information will be reported to Board and invest in capacity to provide this;	<ul style="list-style-type: none"> • Update the Guide to reflect the requirement for the Board of commercial ventures to agree their reporting requirements, which in turn satisfy the Council's requirements for oversight of performance of the investment, this should be reflected in the Shareholder Agreement. • At a minimum the Board should receive: <ul style="list-style-type: none"> - monthly management accounts showing profit and loss, balance sheet and historic/forecast cash flow. - monthly information on the activity of the business against KPIs - risk register 	Guide updated – pages 5 & 12
15	Agree the format and data sources of information which will be reviewed at Board meetings;	a) As for 14, the Shareholder Agreement must specify the format of Board reporting to ensure accurate, complete and comparable information.	Guide updated - page 12
16	Reporting to Members needs to be more proactive and reflective of the venture's current rather than potential future position whilst still respecting the bounds of commercial confidentiality.	As for Recommendation 3: a) All business plans should clearly outline the objectives of the investment and report on the achievement of those objectives. b) The Guide already sets out the minimum reporting & performance monitoring requirements which includes quarterly reporting of:	Guide updated – pages 5, 12 & 13

Recommendation	Next steps	Update (Dec 18)
<p>The Council's Democratic services team must support this by ensuring that formal minutes of meetings reflect accurately the content of remarks by Members in Council meetings.</p>	<ul style="list-style-type: none"> - Current cash flow and profit and loss position - Current investment position (including any loan position) - Income and expenditure forecast for the 4 rolling quarters - Current position compared to current business plan - Any expected issues reserved in the companies articles of association that may be need to be reported to AVDC formally over the next 6 months. - High level reporting of planned strategic marketing activities. The business case should include a template for reporting to ensure there is agreement over what will be reported and that this information is captured from the start. <p>c) Update the Guide to make it clear that the original Business Case and annual Business Plans must include an assessment of risks and any new issues arising. Members should ensure they are satisfied with the way these risks are being addressed.</p> <p>d) In relation to council minutes, Democratic Services already have a four step checking process in place to ensure accuracy of meeting minutes. The process has been reviewed and no changes are required, however, it is important that the process is supported by Officers and Members reading, checking and commenting on minutes at the appropriate check point.</p>	<p>Process is ongoing</p>
<p>17 If the Council's wider Members are to have greater oversight of the Council's commercial ventures, then the confidentiality requirements of 'yellow papers' must be respected;</p>	<p>a) Councillors Code of Conduct, in particular the section relating to the divulgence of confidential papers to be reviewed and updated.</p> <p>b) The Council's Monitoring Officer to Investigate breaches and take action accordingly</p>	<p>New Code has been drafted taking account of the Audit Committee's request that particular attention is given to the divulgence of confidential papers. The Chairman of AC has been closely involved. The Standards Committee will now</p>

Recommendation		Next steps	Update (Dec 18)
			consider the draft which will then go on to full Council. Investigation into breaches is ongoing.
18	Invest sufficiently in communications and engagement with current and potential customers.	a) Future Council-owned commercial ventures need to ensure they have invested sufficiently in communications platforms to manage customer expectations and avoid 'over promising and under delivering'	No action required
<i>In terms of arrangements for agreement of, and release of funds to new commercial ventures (Investment):</i>			
19	Sign loan agreements prior to loans being issued	Noted	Guide updated - page 15
20	Sign service level agreements to cover Council staff delivering services for a Council-owned commercial venture and charge this time accordingly	a) The Guide already includes a template Service Level Agreement. This should be used for all new Council owned commercial ventures to clearly identify and capture recharges and agree quality of service.	Guide updated – pages 18 & 20
21	Clarify arrangements from the outset for release of funds from the Council to commercial ventures	a) Update the Guide to reflect a clear process for drawdown of funds, including responsibilities approval and sign off. This should be reflected in the Shareholder Agreement.	Guide updated – pages 12 & 15
22	Require Section 151 Officer sign-off for release of funds from the Council to companies owned by the Council.	As for 21	Guide updated - page 15



AYLESBURY VALE DISTRICT COUNCIL

GUIDE TO CREATION AND WORKING WITH COMPANIES IN WHICH AVDC HAS A FINANCIAL INTEREST

December 2018 - DRAFT

REVISED

TABLE OF CONTENTS

1 Background	3
Why governance is important	3
2 Start up	4
Phase 1 – Business Case and Decision Making (approval)	4
Business Case.....	4
Gaining Permission.....	6
Phase 2 – Pre Launch Preparation	6
Articles of Association.....	7
Phase 3 – Post Launch Early Days	7
Start up Support.....	7
3 Governance Arrangements	9
Existing Companies	9
Roles of Members and Staff	9
Normal Company structure	10
Appointment of AVDC Directors to Companies.....	10
Conflicts of interest.....	11
Shareholder Representative	12
Shareholder Agreement	12
4 Reporting & Performance Monitoring	14
Quarterly Reporting to the Shareholder	14
Formal Annual Reporting	14
5 Financial Arrangements	16
Loans	16
Dividends and Extracting Funds from Companies	16
AVDC Annual Accounts.....	17
Banking, Taxation and Accountants.....	17
6 Media and Public Relations	18
7 Use of Council Assets	19
IT	19
Property & Accommodation.....	20
Staff	20
How charges should be made.....	21
8 Data Handling & Protection	22
Freedom of Information.....	23
9 Contracts & Agreements	23
Annexes	24
Annex 1 – State Aid	24
Annex 2 – Data Movement Form.....	27
Annex 3 – FOI Draft Contractual Conditions	28
Annex 4 – Illustrative Service Level Agreement (SLA).....	29
Annex 5 – Model Reserved matters.....	34
Annex 6 – Checklist for Company Set up.....	36

1 BACKGROUND

WHY GOVERNANCE IS IMPORTANT

The governance of any company owned or invested in by AVDC is important as there is a need to:

- Ensure that it is clear for staff, public, members and the company staff who is responsible for what, when and why?
- Ensure that AVDC and the company is clear on its roles and responsibilities
- Ensure that nothing is developed that conflicts with AVDC, or places AVDC in an unlawful position
- Ensure that any and all legal or contractual issues are complied with
- Ensure that the company is operating ethically and transparency is in line with the council's legal responsibilities.

Good corporate governance is aimed at ensuring that the above are adhered to, to maintain and improve the reputation of both the company and AVDC, and overall ensure that the company delivers against the reasons it was created and to its business plan.

It is also important that there is consistency across all companies that AVDC may own or relate to, so that there is a common understanding for all partners involved in oversight and management.

The aim of any company owned or part owned by AVDC is to produce overall benefits for the residents and businesses of the Vale. This may be through investment, commercial opportunity, a host of other reasons or simply by generating cash for the council through divided payments funded from profit. This also may be through purchasing or reselling elements of council services which may result in an overall better position for the council. This overarching aim should be at the heart of all decision making, and that this document seeks to assist in developing.

This document sets out a number of principles that owned (part or whole) companies should deliver. It is recognised that companies created preceding the publication of this guide may not be fully compliant, however where possible those should be moved to align with this guide where practical. It is recognised however that each company and circumstance is different, and hence sometimes departures from these principles can be justified, but the guidance forms a starting point and any departure must be justified and documented and such deviation agreed with as a minimum a Cabinet Member and potentially full Cabinet.

It is assumed that the company will operate legally at all times.

2 START UP

Possibly the most important phase of launching a new company is its start up process. This section of the guide gives a high level set of issues to be considered and the requirements that should be addressed when developing new companies – especially when wholly owned. It is not intended to be a detailed implementation plan, rather the key phases and key issues to consider.

Establishing the most appropriate method of delivery

It is important that there is a solid basis for developing a company.

Developing a company should only be undertaken where there is a clear reason for doing so. A number of options are available for AVDC to gain many of the advantages that a company provides without the need for setting one up, and the running costs that this incurs. Advice **must** be sought from AVDC legal to assist in this decision making.

Principally the main reason AVDC is likely to wish to set up a company is to gain access to something or some activity that as a council it can not. This is likely to be related to making a profit in areas it is prohibited from doing or that it needs some freedom or flexibility from the bureaucratic process in local government that it can't gain in any other way. In general the Council will be setting up companies with a specific aim in mind. This may be that a Company is required in order to create an outcome for the community that the Council is not empowered to deliver itself but in general it is more likely that a Company is being set up either because a company can carry out a Council function better or more efficiently, at lower cost or to generate profit for the council in the form of cash which can be reinvested in Council services or other commercial initiatives. The important point to bear in mind is that the Company must deliver benefit to the Council either through:

- Reducing Council operating costs by delivering Council service at lower cost than the Council is able to do.
- Delivering services which the Council is not empowered to deliver
- Generating cash to the Council through Dividend payments
- Generating a cash lump sum by enabling the Council to sell its shares at a point in the future at a significant profit.

The Business Case must clearly set out which of these objectives is in focus and how the company will deliver them. **The business case should include the performance indicators against which achievement of the objective will be measured and reported.**

Once the decision is made that a company is the right option, there are 3 distinct phases of developing a company in the AVDC environment.

PHASE 1 – BUSINESS CASE AND DECISION MAKING (APPROVAL)

The key activity in this phase of developing the company is to establish the business case behind the company and to gain the necessary decisions to progress. A checklist for company set up is shown in Annex 6.

BUSINESS CASE

Comment [KM1]: Introduction updated to emphasise the need to carefully consider whether a company is the most appropriate vehicle for delivery of the objectives

Comment [KM2]: This is now a requirement rather than a recommendation

Comment [KM3]: Rec 3 and Rec 6 – set out the KPIs in the business case to support improved scrutiny and accountability for performance

A business case needs to be developed. This should ideally take the form of a 'green book'¹ compliant business case (the government standard for business cases).

The business case in support of a new commercial venture must evidence:

- That the proposed venture is supported by a compelling case for change that provides holistic fit with other parts of the Council's objectives (strategic)
- That the venture represents best public value for money, including options appraisal, risk assessment, sensitivity analysis (economic)
- That the proposed venture is attractive to the market place and is commercially viable (for example, using market research and competitor analysis) (commercial)
- That the proposed investment is affordable and sustainable (financial)
- That what is required from all parties is achievable for example, adequate time and resource to deliver, use of Specialist Advisers (management)

Comment [KM4]: Additional guidance provided on business case requirements (Rec 3)

Comment [KM5]: Rec 16

As a minimum the Business Case should clearly set out:

- the objectives of the business
- The investment and other resources required to achieve those objectives.
- the performance indicators against which achievement of the objectives will be measured and reported
- What the alternative options for delivering this are – including benefits and dis-benefits of each
- An assessment of the best option
- What form the company should take
- A consideration of the taxation and potential State Aid issues (see Annex 1)
- How the company will generate cash for reinvestment in the Council rather than just profits for reinvestment in the Company's growth.
- Consideration of AVDCs exit strategy should be included in the initial business case
- Evidence, normally backed by legal opinion, that the option is not ultra vires
- A business plan must be included in the initial Business Case. This should include:
 - Financial projections (ideally no less than 5 years) and a matching financial cash flow forecast including how start up will be funded
 - Assessment of risks the business may face and the significance of these risks
 - Results of market research, competitor analysis, advice from independent/technical experts – this must be a robust assessment e.g. using Porters 5 Forces model of analysis
 - Expected financial results of the business, Return on Investment and projected dividend payments to the Council
 - Any non-financial outcomes that the business is expected to achieve
 - The business case should include a template for reporting to ensure there is agreement over what will be reported and that this information is captured from the start.

Comment [KM6]: Rec 3 and Rec 5

Comment [KM7]: Added at request of Cross Party Group

Comment [KM8]: Rec 4

Comment [KM9]: Added at request of Cross Party Group

Comment [KM10]: Added at request of Cross Party Group

Comment [KM11]: Rec 14

The Business Case for the commercial venture and the initial Business Plan will be rigorously scrutinised and any Business Plan that does not demonstrate a clear understanding of the target

¹ <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

market, costs, opportunities, and the competition, barriers to entry and pricing and profit strategy is likely to be rejected.

The Governance arrangements for the new company should be agreed as part of the initial Business Case. This must include agreement on:

- Composition of company board of directors, this may include the requirement for independent expert
- Scrutiny committee and frequency
- Appointment of shareholder representative

Comment [KM12]: Emphasis on agreeing the governance arrangements at the outset

Comment [KM13]: Rec 9

Further guidance on Governance Arrangements is set out in Section 3.

GAINING PERMISSION

Company set up is a reserved matter for Council. This means as a minimum Cabinet recommendation and Full Council resolution to set up is required. In reality much work prior to these formal stages will need to be undertaken with senior managers, stakeholders and members.

To complete the decision making process in full, a minimum of 3 months is required at the very earliest.

PHASE 2 – PRE LAUNCH PREPARATION

Once agreement to proceed is granted, there is an intensive effort in launching the company. This will include (but not limited to):

- Who and how the company will be staffed – internal staff seconded, cost recovery options, direct employment (if the latter then personnel advice will be required)
- Clear Statement of Cost recovery arrangements to a level that would be expected if the services were being procured from a third party.
- Clear statement of which costs of setup will be funded by AVDC and which will be attributed to the Company.
- Clear explanation of how the company will generate surplus cash to be returned to the Council in the form of dividends or stock splits and what level of reinvestment of profit is expected.
- Explanation of the risks to the Council’s reputation which may arise from the Company’s operation and how they will be managed
- Assets – where will the company operate from, what IT will it use, what data does it need etc. – see using assets section below. What consideration the Company will give to AVDC for their use.
- Financial arrangements – any loan or capital, who the company will bank with, accountancy, VAT and corporation tax considerations, insurances etc.
- Clear statements of the controls that AVDC will require the company to put in place, and any audit processes that AVDC may require in relation to
 - Information Security and Data Protection
 - Financial Controls
 - Intellectual property
- Media & Communications – how will the messages be communicated, how will you get to your customers, how will they contact you etc. The relationship between AVDC Customers

and any other company customers, and a clear role/responsibility understanding between AVDC and the company.

These areas are considered in more detail in the following sections of this guide.

ARTICLES OF ASSOCIATION

One key part of company set up is the articles of association. These govern the way the relationship between AVDC and the company works, and how the company itself runs. These are different for each case, but as a minimum the Articles should cover:

- Business Plan
- Access to information by AVDC regarding the company
- Management of the company
- Board of Directors
- Share Management
- Termination
- Confidentiality
- Reserved Matters – see Annex 5

PHASE 3 – POST LAUNCH EARLY DAYS

Once the initial set up phases are completed and the company starts to operate in a more stable sense there should be every effort made to move the company into an independent state as soon as possible.

START UP SUPPORT

AVDC will help in the start up process where it can but it is limited in what it can provide and when. The guiding principles around start up support are:

- Up to the point of decision – everything can be done by AVDC, it is in the process of developing the business case for a company and that is a legitimate activity it can do as the council.
- Post decision and pre launch – things will start to get less clear. AVDC is still setting up the company and hence can fund most things, however once the company entity exists the distance between the company and AVDC needs to become more distinct. The guiding rule is at this point that any company will pay for itself.
- Best practise is to use the company incorporation date as a dividing line between setup by AVDC and the company existing by itself. At this point technically the company exists and should start to operate separately. This means that by that point all of the issues in this guide should be either agreed or both AVDC and the company should be clear about how they will work. Any council resources used by the company from the point of incorporation will be charged to the company at full cost recovery. If necessary Service Level Agreements (SLA) between AVDC and any company can be entered into on a full cost recovery basis – more of which is explained further on in this guide.

3 GOVERNANCE ARRANGEMENTS

When forming a company we are creating a separate entity from AVDC. As such it has its own rules, roles, finance and purpose. Because it is its own entity we need to ensure that we (staff, members, customers and the public) don't confuse the company with AVDC and vice versa.

This does not mean that two can't and will not work closely together, but it does mean we have to be clear where the dividing line is.

Set out below are some principles around general governance for specific things, people or actions. They are not exhaustive but they are intended to set a minimum level of things that should be addressed.

EXISTING COMPANIES

Our existing companies that pre date the adoption of this document may not be in full compliance with the content set out. There should be an effort made to move the companies to become compliant over the medium term.

ROLES OF MEMBERS AND STAFF

AVDC and the Company need to be aware of which entity Members and staff are working for and under what rules, and what their role is for the company and/or AVDC. We need to operate an element of compartmentalisation or 'Chinese walls' between the different roles that Members and staff play – especially when they are working for both AVDC and the company at any point.

This means that:

- There should be clear governance and transparency to the residents of the Vale.
- When talking to members, the public or customers – clarity and transparency are key, and people need to be able and ready to explain the relationship between the AVDC and the company.
- Staff, the Company and AVDC are clear what data, equipment and resources can be used by the company (see later sections regarding the principles around these issues).
- Information and knowledge that is gained in one role is **NOT** used in the other – for example knowledge obtained by AVDC should not be used in the company and vice versa. There may be exemptions to this where agreements are in place – but the default is **NO** transfer between the two.
- Staff working for the company should be formalised in some way – this could be via rolling secondment, or by buying staff time and ideally under a SLA for clarity. AVDC Staff **can not** do work for the company without this type of arrangement being in place, once the company has moved past the inception stage (i.e. post company incorporation).
- Specific guidance/induction should be given to members and staff before they work for an AVDC company regarding these issues to avoid any accusation of State Aid or procurement/contractual breach.

- Staff should be selected to avoid potential conflicts of interest if they remain in roles with AVDC - this is particularly important when regulatory services are involved - for example when companies may be applying for permissions where AVDC is the decision maker.
- The above also applies to elected members, and as part of member induction/training we need to cover the same issues.
- These messages should be reiterated regularly to members and staff (working for the company or not).

NORMAL COMPANY STRUCTURE

Companies are bound by Company Law, set out in the Companies Act 2006. This defines the duties of the Board of Directors and requires directors to promote the success of the company and act in a way that benefits the shareholders as a whole.

With the exception of the Reserved Matters, the Business and all affairs of the Company shall be managed by the Board. To that end but subject to those exceptions, the Board shall have full and complete authority, power and discretion to direct, manage and control the Business and the affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Business.

To assist in the day to day running of the company AVDC should appoint a shareholder representative. They act in the role of shareholder in making major decisions. This would normally be an elected member of the Council (see further guidance below).

APPOINTMENT OF AVDC DIRECTORS TO COMPANIES

As part of owning companies AVDC will appoint representative directors to the boards of those companies. Notwithstanding public sector responsibilities, all Directors of companies have legal responsibilities, as defined under the Companies Act 2006, and under a wide variety of other laws and regulations such as insolvency and health and safety legislation.

The general duties of directors are set out in Chapter 2 of Part 10 of the Companies Act 2006:

- to act within powers in accordance with the company's constitution and to use those powers only for the purposes for which they were conferred
- to promote the success of the company for the benefit of its members as a whole
- to exercise independent judgement
- to exercise reasonable care, skill and diligence
- to avoid conflicts, or possible conflicts between interests as a Director and the interests of the company
- not to accept benefits from third parties, if they may be regarded as likely to give rise to a conflict of interest
- to declare any direct or indirect interest in a proposed transaction or arrangement.

Directors appointed by a public sector body have the same responsibilities as any other director under the Companies Act 2006. They must also continue to act in accordance with other applicable legislation, relevant civil service and public sector guidelines, including around managing public money and standards for conduct in public life.

When appointing directors the following guiding principles should apply. The current (and periodic updates) of AVDC standing orders or constitution should also be reviewed to ensure no conflicts are present.

Potential Directors :

- must be aware of the ramifications of acting as a director for a company – this includes that the director would be working for in the interests of the company and not the individual or indeed AVDC. They should be able to manage any conflicts that may occur.
- should be selected so that they are sufficiently senior to act at the level required by the role
- should be selected on their ability to demonstrate skills or knowledge pertinent to the operations of the company
- should be insured against liability claims by the company so as to limit their personal liability
- should be informed of the potential risks of acting as a Company Director
- will by default be unremunerated positions
- can be either executive or non executive positions
- should be selected to avoid potential conflicts of interest if they remain in roles with AVDC
- board Members should be provided with letters of appointment which clearly explain both the role and the conditions of the appointment.

AVDC must ensure that there is sufficient sector, financial, marketing and governance experience on the Boards of its companies.

Comment [KM14]: Rec 10

Prior to appointment of new directors, their capacity, capability and potential for conflicts must be assessed to avoid high turnover of Board members. AVDC will provide training on Director responsibilities for any new Directors prior to appointment.

Comment [KM15]: Rec 11 & 12

Comment [KM16]: Rec 10

CONFLICTS OF INTEREST

Companies should have a conflict of interest policy and a process should be in place to periodically review any potential conflicts of interest for existing board members.

Comment [KM17]: Rec 8

Comment [KM18]: Rec 10

To avoid conflict of interest (either real or perceived) and to enable AVDC to hold the company to account, the following roles should not be directors of external companies:

- the Section 151 officer
- the Monitoring Officer
- the Chief Executive
- the Leader.
- Cabinet members, unless this can be justified on exceptional grounds, such as specific sector knowledge

Comment [KM19]: Rec 7

When companies set up their boards, there should be consideration paid to use of external board members. Ideally companies should not be set up solely with AVDC staff and/or members. This is to

ensure the independent operation of the company. External board members can be remunerated if required.

SHAREHOLDER REPRESENTATIVE

The shareholders of a company are effectively the company's financial supporters. They provide finance to a company by purchasing shares in the company, and thus become shareholders – and part owners of the company. A shareholder has certain rights, roles and duties to perform as set out in the Companies Act 2006 and the company's Articles of Association.

When AVDC purchases shares in another company it becomes a 'corporate shareholder'. The rights of a corporate shareholder are exactly the same as the rights of a non-corporate shareholder. They are defined in the prescribed particulars attached to their shares. Most shares provide:

- The right to vote at general meetings.
- The right to receive a portion of business profits as dividends.
- The right to receive capital contribution if the business is wound up.

A corporate shareholder has to appoint a representative to attend general meetings, exercise voting rights on their behalf and represent their needs. The representative will conduct themselves as if they were the shareholder, but they can only act in accordance with the powers granted to them by the corporate shareholder.

AVDC must identify a suitable representative, at the outset of the company formation, to act on its behalf. The role of 'shareholder representative' will, as a minimum, need to be an elected member who is able to action issues that relate to the role. In larger concerns there may also be merit in having an officer level assistant as well, however this would be in addition to, and not in lieu of, the member. The shareholder representative is an important conduit between AVDC and the company, and should serve as both a liaison and reporting.

For ease it is also worth the company identifying its representative(s) at this point. It is for the company to determine who should be this role, but ideally it should not be a director of the company and be more at the operational level.

SHAREHOLDER AGREEMENT

A shareholders' agreement is an agreement between the shareholders of a company. Whilst the company's articles of association and company law provide some safeguards, its purpose is to protect the shareholders' investment in the company, to establish a fair relationship between the shareholders and govern how the company is run, and can help to ensure there is common understanding of all the shareholders' expectations of the business.

A shareholders' agreement between AVDC and the other shareholders should be in place when the company is formed and issues the first shares.

The key provisions that should that should be included in the agreement are those relating to:

Comment [KM20]: Rec 9 – additional guidance provided around the role of Shareholder Representative

Comment [KM21]: Rec 9

Comment [KM22]: New section included to outline the purpose, content and requirements for a Shareholder Agreement

Comment [KM23]: Rec 2

- Regulating the sale, issuing and transferring of shares – including provisions to prevent unwanted third parties acquiring shares, what happens to shares on the death of a shareholder and how a shareholder can sell shares.
- Providing some protection to holders of less than 50% of the shares – including requiring certain decisions to be agreed by all shareholders.
- Paying dividends.
- Competition restrictions.
- Dispute resolution procedures.
- Running the company, including:
 - appointing, removing and paying directors,
 - frequency of board meetings and the standard agenda and format for board meeting minutes
 - deciding on the company's business and the approval of material changes to business plans,
 - making large capital outlays,
 - the format, content and frequency of provision of management information to **Board**. At a minimum this must include:
 - monthly management accounts showing profit and loss, balance sheet and historic/forecast cash flow.
 - monthly information on the activity of the business against KPIs
 - risk register
 - the format, content and frequency of provision of management information to **Shareholder** (see below). This should consider whether information is able to be made publically available or is commercially sensitive and to be treated as confidential.
 - banking arrangements and financing the company, including the arrangements for approval and release of funds from the Council to the company.

Comment [KM24]: Rec 13

Comment [KM25]: Rec 2

Comment [KM26]: Rec 14 & 15

Comment [KM27]: Rec 16

Comment [KM28]: Rec 17

Comment [KM29]: Rec 21

4 REPORTING & PERFORMANCE MONITORING

In its role as shareholder there should be clear and regular performance monitoring of companies that AVDC has shares in. This is to ensure that the investments made in the company are being well managed according to the business plan, and to ensure transparency to members and the electorate. Reporting and performance monitoring requirements should be agreed at the outset, set out in the shareholder agreement, and kept under regular review.

Comment [KM30]: Rec 16

Where the original business case is for a “pilot” business venture, to test the concept and future business viability, the same requirements for reporting and performance monitoring apply. The performance of a pilot commercial venture must be robustly evaluated before making further investment.

Comment [KM31]: Rec 1

QUARTERLY REPORTING TO THE SHAREHOLDER

As a minimum these should include the items below:

- Current cash flow and profit and loss position
- Current investment position (including any loan position)
- Income and expenditure forecast for the 4 rolling quarters
- Current position compared to current business plan and agreed KPIs
- Any expected issues reserved in the company’s articles of association that may be need to be reported to AVDC formally over the next 6 months.
- High level reporting of planned strategic marketing activities.

FORMAL ANNUAL REPORTING

Formal reporting of companies will be annual via Scrutiny and Cabinet. This will become due on or at the end of each financial year. Where Company incorporation occurred within the last quarter of a financial year then the first formal report will be fall due in at the following financial year end.

The approval of the annual business plan for the vehicle is a matter reserved for shareholders’ approval in the form of Cabinet, with the appropriate scrutiny review.

This reporting should be in the form of a narrative suitable for an AVDC member report and an updated business plan. The reporting should include as a minimum:

- Those items listed above for quarterly reporting
- Should cover a retrospective look since the last annual report
- Should set the business and financial targets for the forthcoming years and projections for two further years
- An assessment of risks and any new issues arising
- Any key reporting agreed with the Shareholder Representative
- As a minimum the forward reporting should cover the next 12 months.

Comment [KM32]: Rec 16

Where possible all reporting provided by the company should be able to be made public. Where this is not possible confidential elements should be clearly marked in accordance with AVDCs current information security policy. AVDC and the company will come to a decision regarding what level of

confidentiality should be applied. This will range from 'yellow pages' through redaction to full withholding of the information

As a minimum all reporting should have at the very least a summary commentary of progress and summary financial position able to be made public. For further information see the information security section of this guide.

5 FINANCIAL ARRANGEMENTS

The main reason why AVDC will own shares in company is likely to be due to the need to create new income or to protect its financial interests. As such the financial management of shares and the companies they reside in are of fundamental importance. This section of the guide sets out principles for managing these aspects in relation to AVDC. It does not seek to replicate or substitute the normal legal, tax and financial regimes that exist for any company – it is only concerned with the direct relationship between AVDC and the company.

As with all parts of this guide each ownership or company is different and these are subject to individual negotiation.

LOANS

When setting up companies it is possible that there will be some form of loan to the new company for start up (see start up section).

When loaning to the company AVDC will be guided by:

- The need to loan at a marginal commercial rate – by this we mean that there will be some element of interest payment over and above the cost of borrowing on all loans given to owned or part owned companies. This will be proportionate to the size of loan, term and risk. The guiding principle is that the loan will not be to the detriment of AVDC, and will be made on commercial terms.
- Payback terms, level of interest and level of loan shall be determined in the company set up stage. The level of loan will be clear in any business case prepared to support the investment. The Loan is then to be agreed by resolution by the company once it is set up.
- Where possible, there should be benchmarking evidence that the rate used is commercially comparable.

AVDC and the company must sign a loan agreements setting out the terms and conditions of the loan before any funds are transferred.

Comment [KM33]: Rec 19

Arrangements must be established from the outset for release of funds from the Council to commercial ventures with a clear process for drawdown of funds, including responsibilities approval and sign off. This should be reflected in the Shareholder Agreement.

Comment [KM34]: Rec 21

AVDC's Section 151 Officer is required to sign-off for release of funds from the Council to companies owned by the Council.

Comment [KM35]: Rec 22

DIVIDENDS AND EXTRACTING FUNDS FROM COMPANIES

The key point of investments in companies is to raise general income for the council over the longer term. There are a variety of ways in which these can be extracted and it this guide cannot determine a rigid approach to this issue due to the number of specific and unknown factors facing each set of circumstances.

When extracting/receiving funds from its investments AVDC will:

- Seek to extract funds from the company in a planned and known way
- Seek to not harm the ability for the company to fulfil its purpose or agreed business plan. Business Plans will need to feature how this will be achieved in their forward plans.
- Will do so in the most in a way as to be most advantageous to both AVDC and the company with regard to the ruling financial arrangements at the time.

AVDC ANNUAL ACCOUNTS

Summary accounts suitable for inclusion in the Councils Annual Accounts will be required. These will largely replicate those required for the companies own tax issues. These may however vary from time to time linked to legislative or regulatory changes.

The Company will need to provide draft accounts a maximum of 4 weeks after the close of the financial year, in a format agreed with AVDC.

AVDCs auditors may require further information or access to financial records during this process. If this is required AVDC and their auditors will work with the company to deal with any specific issues.

Articles of Association for companies will need to reflect these issues.

BANKING, TAXATION AND ACCOUNTANTS

As with other areas of new company formation, AVDC is not concerned with the day to day operation of the company. Therefore choices regarding bank suppliers etc. are for the company to decide (within the reputational guidelines set out earlier). Due diligence will be need to ensure that any provider meets the minimum legal requirements required by UK Law.

It is strongly recommended that external accountants are used for companies so that the dividing lines between AVDC and the company are clear and transparent.

During the set up phases of any company there should be due consideration to the best approach to taxation issues, including registration for VAT etc. and advice should be externally sought or verified.

6 MEDIA AND PUBLIC RELATIONS

AVDC investments in companies are created so that the companies can have a clear focus on particular issues and activities. The company is a separate entity and best placed to make day to day operational decisions on all press, marketing and PR activity. To support this there will be an overarching principle that the company makes its own decision regarding these activities, with hands off approach from AVDC.

However the company and its Board should have due regard to the political and community arena that AVDC operates within and should seek to uphold AVDCs broad aims and principles.

In doing so this general guidance applies:

- The Company should do nothing to harm the reputation of AVDC in the general eyes of the electorate, and vice versa.
- It should be clear on key media (such as website and significant marketing material) that the company is owned (part or full) by AVDC.
- An explanation as to the company and AVDC relationship should be on all websites. This helps with transparency to customers and the electorate. This should include reciprocal links to and from AVDCs website.
- It should be clear to the average customer what entity they are transacting with at any time (i.e. the company should not seek to pass itself off as AVDC, there should be a clear understanding by customers of who they are dealing with at any time).
- AVDC may assist in the launch of new companies and at significant events – where these are deemed in the overall public interest and are requested by the company.
- AVDC will limit its activity in the day to day communications and marketing by the company – company activity should be by the company not AVDC.
- In return, AVDC will aim not to influence or interfere in the commercial activities of the company through a politically driven agenda.
- There may however be issues where a co-ordinated approach between AVDC and the company may still be required (for example major launch or crisis). This will need to be addressed preferably in advance but if necessary in a time critical manner depending on the issue.

At times of normal operation the above should suffice to ensure a healthy and clear relationship between companies and AVDC. However where there are reputational risks alternative approaches may be necessary.

It is recommended that planned significant marketing activities form part of the quarterly reporting set out elsewhere in this guide so that both parties are aware.

7 USE OF COUNCIL ASSETS

AVDC wants to ensure that any company it invests in succeeds. As such the council has access to significant assets that may be able to assist in the new company set up or over the longer term; subject to satisfying state aid issues.

However many of the assets have been procured or are contracted in such a way that their use by commercial concerns is limited. This for example may be that procurement has been through government frameworks or license for products are limited to public sector use. In addition the rules around State Aid (see the section of this guide regarding this) may mean that use of such assets may not be possible.

The basic principle is therefore that there should be NO assumption that any asset can be used by the company. Starting from this position means that each request is thoroughly considered before being agreed.

In all circumstances all assets will also be charged at for at a minimum full cost recovery rate. This should include a profit element where legislation allows, and should include the recovery of all costs – including those leading up to the provision of service.

All requests for assistance regarding assets will originate from the company. AVDC will seek to fulfil those requests subject to the issues covered in this guide.

Where fulfilling requests AVDC will need to pay careful regard to balancing the needs of the request and any detriment to existing council service that may occur – e.g. where fulfilling the request may mean that normal day to day council business is impacted on. This does not mean that this can not occur, but it does mean it needs to be explicitly considered.

Set out below are some principles that will apply to specific topics. These are not exhaustive but do give some guidance on the principles. **When a company is using the assets of AVDC the basis for this must be set out in a signed Service Level Agreement (SLA).**

Comment [KM36]: Rec 20

IT

The council has significant IT resources, however in most cases these have been procured or are supplied through public sector restricted contracts.

There should be no assumption that ANY IT resource can be used by or for a company activity. This includes hardware and software. Data protection issues also apply – see other sections of this guide.

Known exemptions to this are:

- Printers – these are able to create auditable charge back codes which can be charged out to the company. This is currently actively managed via the conference centre.
- WiFi – free public WiFi is available through our offices. Any member of the public can use this facility (subject to sign up conditions) and therefore the company can also intermittently

use this same facility. AVDC do however reserve the right to limit access in relation to this facility.

- Some licensed software is only for use by AVDC under the terms of its licence and cannot be used by any company without explicit consent.
- AVDC can generally procure hardware at prices which are more attractive than those available to low volume purchasers. In most cases these prices are available to AVDC related companies.
- Telephony services – AVDC have procured telephony services at attractive rates which can be used by AVDC wholly owned companies.

PROPERTY & ACCOMMODATION

The council has significant property assets. As with other areas these are however funded for by the tax payer for AVDC business, therefore the default position of NON use applies. Known exemptions are:

- Public areas of offices – a number of public areas in our buildings exist. The company would have access to these areas in a similar vein to those of any member of the public and to enjoy any of the facilities in these areas. This excludes full operation of the company from these public areas.

All other property assets will be charged for at the commercial rate. For example this may include use of the conference facilities, meeting rooms or serviced office space. Where only part time use is being considered (for example during start up) there may be a case for linking this to staff recharging (see below).

STAFF

The biggest asset that AVDC has at its disposal is its staff. In many cases and especially during start up, AVDC staff are likely to be used in helping to launch a company (especially where wholly owned).

The use of staff, especially on a flexible basis, in companies is possible but it is likely to be only possible on an agreed voluntary basis. The principle would be that the staff member always remains an AVDC employee on AVDC terms & conditions and is charged out to the company at a full cost recovery rate applicable to their grade.

Two rates are possible to form this type of recharge:

- Staff employment cost (this includes ALL employment costs of staff including employment costs)
- Staff employment cost + operational costs related to employment (for example this would include accommodation overheads) – this may be a viable alternative to separate accommodation costs in start up phases.

These two rates are expressed as hourly rates and hence time recording of activity will be required to determine the charge.

Any other arrangements are likely to require detailed HR input in to the process and may well involve detailed employment law consideration include TUPE. It is not the purpose of this guide to address this issue in any depth and HR input should be sought if long term significant use of AVDC staff is considered. This protects both staff, AVDC and the company.

HOW CHARGES SHOULD BE MADE

Whatever the asset provided, rates, conditions and payment cycles should be clearly set out prior to delivering the service in a signed service level agreement. Normally charges should be recovered on a quarterly basis, to reduce overheads this should be via a combined invoice for all services provided, and they should be subject to AVDC normal terms of payment (i.e. no special favours to the company).

Comment [KM37]: Rec 20

8 DATA HANDLING & PROTECTION

Data and data protection is a key area for consideration when working with AVDC companies. The security of AVDC data has significant security, financial, legal and reputational risks attached to it. As such this guide is only a summary position on these issues. Reference for specific issues should be made to AVDCs current Data Protection Policy and Information Governance Group and this guide is subservient to those policies and groups.

Where any data is to be shared between the Company and AVDC a Data Sharing agreement **MUST** be put in place and agreed by the AVDC Information Governance Group which clearly addresses issues such as

- Data Ownership
- Restrictions that may apply to the use of the data
- Security requirements that the data owner may require
- Restrictions on locations to which data may be transferred
- Retention schedules
- Responsibility for response to Freedom of Information Act requests.

Any transfer of data to a Company which is not covered by a prior Data sharing agreement will be treated by AVDC as an Information Security incident and investigated as such. The outcome could result in a Disciplinary Investigation and Action being taken against individuals involved in the transfer.

Data of any sort normally limited by either legal, contractual, security or probity regulations. The assumption around the movement, transfer or access to around ANY data should be that it can NOT happen unless it is explicitly agreed. This protects AVDC, staff and the company. AVDC will seek to collaborate with any request from its companies but this presumption has to exist to protect AVDCs overall position.

Customer data in particular is highly regulated and has significant implications for individuals and organisations if mishandled. In particular the issue regarding the need to only hold data for the time necessary, and to only use it for the explicitly agreed purpose is a key one for consideration when considering the movement or sharing of data.

In the start up phases of new companies (especially wholly owned) it is likely that employees may be working on a seconded or cost recovery basis. Staff need to be very clear that they may have access to data in their AVDC role which should not be exposed or access when working for the company. This will need to be reinforced in any communications with staff, and staff should be very clear that they can not 'leak' data from ADVC to the company.

If it has been agreed that data can be moved between bodies the following must be adhered to:

- The data being moved should be checked by at least 2 people
- That only the data agreed as being moved should be moved – i.e. some element of redaction may be required
- Movement of data should be accompanied by a data movement form (see Annex 2) which sets out the data being moved, tracks how it is being moved, the people involved in the

process including approvals, the mode of movement, security considerations and the time and date this occurred. This is necessary to it is clear what and how data is being moved.

- Data should be moved in the most secure way available – which should include options around encryption, passwords, destruction of any hard media involved in the process once successful transfer has occurred.
- Once moved any data should be secured to a sufficient and agreed level as set out in the data movement form. This should include the standards of industry accredited protection as well as storage locations.

FREEDOM OF INFORMATION

As a body covered by Freedom of Information (FOI) legislation, AVDC is compelled to make certain data available on request. In line with our public and transparent practises the default is to make data accessible unless there are reasons why not.

Companies will be expected to work with AVDC on responding to data requests. Annex 3 sets out draft contractual positions that may form part of company set up or understand on this issue.

The simple stance to take is that if anything is given to AVDC it should be considered to be able to be made public unless there is a commercial reason why not.

9 CONTRACTS & AGREEMENTS

It is likely that during the life of an ADVC company there will be some form of contractual relationship between the council and the company. These should be treated no differently to those between the council and any other body (except where specific legal exemptions apply – for example teckal). No advantage should be given to an AVDC company over any other who can undertake a similar role and standard procurement rules apply.

Earlier sections of this document have set out a number of issues that will guide the development of any contracts as they come forward, and these should form the basis of the n- going contract development when the need arises.

Exemptions to this may be where a company has been set up for a specific purpose and this results in the company being legally exempt from these standing arrangements.

In some cases a less formal arrangement may be required for lower level activity. Where appropriate a Service Level Agreement (SLA) approach may be appropriate. Annex 4 sets out an example SLA that may be a useful starting point.

As with any contractual arrangement a named AVDC contact should be provided as a liaison point who should serve as the first point of contact, payment information, terms etc. should also be included.

ANNEXES

ANNEX 1 – STATE AID

This is a summary version of the state aid² rules and regulations. If you have ANY query regarding state aid please refer to legal advice. As a first stage you may wish to refer to the government guidance referred to in the footnote.

Definition – “State aid is any advantage granted by public authorities through state resources on a selective basis to any organizations that could potentially distort competition and trade in the European Union (EU)”.

The definition of state aid is very broad because ‘an advantage’ can take many forms. It is anything which an undertaking (an organisation engaged in economic activity) could not get on the open market. Whilst it is unusual for councils at the district level to come near to State Aid issues due to size and scale, when dealing with companies and investments it is more likely and hence you should have an understanding of the principles.

State Aid Rules

State aid rules can (among other things) apply to the following:

- grants
- loans
- tax breaks
- the use or sale of a state asset for free or at less than market price (including intellectual property)

The rules can apply to funding given to charities, public authorities and other non-profit making bodies where they are involved in commercial activities. In principle, state aid is not allowed in the EU. However the state aid rules allow for good aid, which is necessary to deliver growth and other important objectives.

The UK government supports the need for effective state aid rules to prevent distortion of competition and to create an open and competitive market in the EU on which UK firms can fairly compete and grow.

Compliance with the state aid rules

Public authorities are responsible for ensuring their policy measures and projects comply with the rules. *We should think about state aid early and seek advice to avoid problems and save time.*

² Based on the BIS State Aid Assessment form Nov 2010 - see <https://www.gov.uk/government/publications/state-aid-a-beginners-guide-guidance-notes>

The rules can be complex and getting it wrong can mean recovery of state aid and suspension or withdrawal of funds as well as penalties. This might have serious consequences for the recipients of aid and the delivery of policy objectives.

Is the activity state aid?

To ensure that state aid has been considered a screening form will need to be kept (see below). This should be lodged somewhere safely in case any accusations of state aid are lodged.

If your proposal can answer 'yes' to any four questions set out below then it is most likely state aid.

If you are AT ALL concerned about state aid – seek legal advice early.

INITIAL STATE AID ASSESSMENT

1. Is the support provided granted by the State or through State resources?

The definition of state resources is aid that is granted by the state; this includes all public and private bodies controlled by the state to distribute public funds. State resources include, for example, Lottery, tax exemptions, grants, subsidies, provision of service at below market rate, the selling of public land at below market rate, etc. Funds not permanently belonging to the state but which the state may direct, such as European funds like Structural Funds, ERDF.

Yes/No:

If no, please provide an explanation.

2. Does the support confer a selective advantage to an undertaking?

A benefit which is granted for free or on favorable (non-commercial) terms to some selected undertakings (but not others), could be state aid.

Definitions:

Advantage: An advantage can take the form of direct payment of state resources in the form of grants and subsidies as well as indirect benefits that affect the public budget such as tax breaks, rate rebates, low interest loans, sale of public land below market value and the provision of services for free or at below-market rates.

Selectivity: Support that targets particular businesses, regions or types of firm e.g. SMEs or particular sectors and not others is selective.

Undertakings: An undertaking is defined as any entity, regardless of its legal status, which is engaged in economic activity and where there is a market in comparable goods or services. It does not have to be profit-making as long as the activity carried out is one which, in principle, has commercial competitors. It can include voluntary and non-profit-making public or public authorities when they are engaged in economic activity. Charities, universities, research institutions, voluntary entities, social enterprises and public sector bodies may therefore be deemed to be undertakings when they are engaged in economic activity. Support in favour of non-undertakings (i.e. entities which are not involved in economic activity) is not state aid.

Economic activity: Activity which consists of offering goods or services on a given market and which could, at least in principle, be carried out by private actors in order to make profits.

Yes/No

If no, please provide an explanation.

3. Does the support distort or have the potential to distort competition?

If the support has the potential to strengthen the position of the beneficiary relative to other competitors then this criteria is likely to be met. The potential to distort competition does not need to be substantial or significant, and this criterion can apply to relatively small amounts of financial support and firms with little market share.

Yes/No

If no, please provide an explanation.

4. Does the support affect trade between Member States?

Commission's interpretation of this is broad - it is sufficient that a product or service is tradeable between member states, even if the recipient of support does not itself export to other EU markets. This test is not met only in very limited circumstances e.g. where a single, small business is involved in very localised activity e.g. hairdressers.

Yes/No

If no, please provide an explanation.

There are then a number of other conditions that apply – in particular a de minimis rule (€200,000 in any rolling 3 year period – around £140,000 in Dec 2015). There are tight regulations about the use of this and the de minimis regulations will need to be followed, which include record keeping and standard text to be used on notices. Do not anticipate that this is automatic exemption.

ANNEX 2 – DATA MOVEMENT FORM

AVDC Originator	<i>Insert name of officer</i>
Destination	<i>Insert company and staff members name</i>
Description of Data being moved	<i>Set out in detail the data being moved – where it currently exists, what form etc.</i>
What conditions are being applied	<i>Set out any conditions/limits/redaction etc. being made</i>
How will the transfer be made	<i>Email/ftp/shared link etc.</i>
Identify any sensitive data within the transfer	<i>Set out if there is any</i>
How will data security risks be addressed	<i>Describe how this will be managed during the transfer process</i>
Frequency	<i>Is this data transfer a one off or regular – if regular state how and reason</i>
When the data was collected does AVDC have the powers to pass this on	<i>Yes/No</i>
Data Ownership	<i>Who will own the data once transferred</i>
Restrictions on use of data	<i>List any restrictions on it use</i>
Restrictions on Location of end data	<i>Where will this data be stored – system and location</i>
Retention Schedules	<i>What are the retention schedules for the data</i>
Named person for any FOI requests	<i>Named person in the company</i>
Checked by AVDC officer	<i>Second officer agreeing the above</i>
IGG Sign off	<i>Detail IGG meeting that this was agreed to including extract of minute</i>

ANNEX 3 – FOI DRAFT CONTRACTUAL CONDITIONS

FREEDOM OF INFORMATION ACT REQUIREMENTS

The Shareholder and the Company acknowledge that the Shareholder is subject to the requirements of the FOIA and the EIR and the Company shall, where reasonable, assist and co-operate (at its own expense) with the Shareholder to provide information to enable the Shareholder to comply with these information disclosure obligations.

Where the Company receives a request for information under either the FOIA or the EIR in relation to information which it is holding on behalf of the Shareholder in relation to the Company, it shall:

- transfer the request for information to the Shareholder as soon as practicable after receipt and in any event within two Business Days of receiving a request for information;
- provide the Shareholder with a copy of all information in its possession or power in the form that the Shareholder requires within ten Business Days (or such longer period as the Shareholder may specify) of the Shareholder requesting that information; and
- provide all necessary assistance as reasonably requested by the Shareholder to enable the Shareholder to respond to a request for information within the time for compliance set out in the FOIA or the EIR.

Where the Shareholder receives a request under FOIA or EIR which relates to the operations of the Company (a request), it shall notify the Company and afford it an opportunity to make any comments or representations in respect of the disclosure of the information sought. The Company shall respond within five Business Days of receipt of this notification. The Shareholder shall take into account any such comments or representations and shall not respond to the Request until the 5 day response period referred to above has passed.

ANNEX 4 – ILLUSTRATIVE SERVICE LEVEL AGREEMENT (SLA)

Set out below is an example of what an IT based SLA might contain. It is provided as example text to consider when considering developing a SLA for any purpose. This is not an exhaustive example but is provided to illustrate the types of things that would be covered in such a document.

Service Level Agreement (SLA)

for Customer

by

Company name

Effective Date: xx/xx/xxxx

Document Owner:	Company name
------------------------	--------------

Version x.x

Version	Date	Description	Author

Approval

(By signing below, all Approvers agree to all terms and conditions outlined in this Agreement.)

Approvers	Role	Signed	Approval Date
Company name	Service Provider		Xx/xx/xxxx
Customer	Customer		Xx/xx/xxxx

Table of Contents

1.	Agreement Overview	31
2.	Goals & Objectives	31
3.	Stakeholders	31
4.	Periodic Review	32
5.	Service Agreement	32
5.1.	Service Scope	32
5.2.	Customer Requirements	32
5.3.	Service Provider Requirements	32
5.4.	Service Assumptions	33
6.	Service Management	33
6.1.	Service Availability	33
6.2.	Service Requests	33

Agreement Overview

This Agreement represents a Service Level Agreement (“SLA” or “Agreement”) between *Company name*. and Customer for the provisioning of IT services required to support and sustain the Product or service.

This Agreement remains valid until superseded by a revised agreement mutually endorsed by the stakeholders.

This Agreement outlines the parameters of all IT services covered as they are mutually understood by the primary stakeholders. This Agreement does not supersede current processes and procedures unless explicitly stated herein.

Goals & Objectives

The **purpose** of this Agreement is to ensure that the proper elements and commitments are in place to provide consistent IT service support and delivery to the Customer(s) by the Service Provider(s).

The **goal** of this Agreement is to obtain mutual agreement for IT service provision between the Service Provider(s) and Customer(s).

The **objectives** of this Agreement are to:

- Provide clear reference to service ownership, accountability, roles and/or responsibilities.
- Present a clear, concise and measurable description of service provision to the customer.
- Match perceptions of expected service provision with actual service support & delivery.

Stakeholders

The following Service Provider(s) and Customer(s) will be used as the basis of the Agreement and represent the **primary stakeholders** associated with this SLA:

IT Service Provider(s): Company name. (“Provider”)

IT Customer(s): Customer (“Customer”)

Periodic Review

This Agreement is valid from the **Effective Date** outlined herein and is valid until further notice. This Agreement should be reviewed at a minimum once per fiscal year; however, in lieu of a review during any period specified, the current Agreement will remain in effect.

The **Business Relationship Manager** (“Document Owner”) is responsible for facilitating regular reviews of this document. Contents of this document may be amended as required, provided mutual agreement is obtained from the primary stakeholders and communicated to all affected parties. The Document Owner will incorporate all subsequent revisions and obtain mutual agreements / approvals as required.

Business Relationship Manager: Company name

Review Period: Bi-Yearly (6 months)

Previous Review Date: xx/xx/xxxx

Next Review Date: xx/xx/xxxx

Service Agreement

The following detailed service parameters are the responsibility of the Service Provider in the ongoing support of this Agreement.

Service Scope

The following Services are covered by this Agreement;

- ***Manned telephone support***
- ***Monitored email support***
- ***Remote assistance using Remote Desktop and a Virtual Private Network where available***
- Planned or Emergency Onsite assistance (extra costs apply)
- Monthly system health check

Customer Requirements

Customer responsibilities and/or requirements in support of this Agreement include:

- Payment for all support costs at the agreed interval.
- Reasonable availability of customer representative(s) when resolving a service related incident or request.

Service Provider Requirements

Service Provider responsibilities and/or requirements in support of this Agreement include:

- Meeting response times associated with service related incidents.
- Appropriate notification to Customer for all scheduled maintenance.

Service Assumptions

Assumptions related to in-scope services and/or components include:

- Changes to services will be communicated and documented to all stakeholders.

Service Management

Effective support of in-scope services is a result of maintaining consistent service levels. The following sections provide relevant details on service availability, monitoring of in-scope services and related components.

Service Availability

Coverage parameters specific to the service(s) covered in this Agreement are as follows:

- Telephone support : 9:00 A.M. to 5:00 P.M. Monday – Friday
- Calls received out of office hours will be forwarded to a mobile phone and best efforts will be made to answer / action the call, however there will be a backup answer phone service
- Email support: Monitored 9:00 A.M. to 5:00 P.M. Monday – Friday
- Emails received outside of office hours will be collected, however no action can be guaranteed until the next working day
- Onsite assistance guaranteed within 72 hours during the business week

Service Requests

In support of services outlined in this Agreement, the Service Provider will respond to service related incidents and/or requests submitted by the Customer within the following time frames:

- 0-8 hours (during business hours) for issues classified as **High** priority.
- Within 48 hours for issues classified as **Medium** priority.
- Within 5 working days for issues classified as **Low** priority.

Remote assistance will be provided in-line with the above timescales dependent on the priority of the support request.

ANNEX 5 – MODEL RESERVED MATTERS

All Reserved Matters shall only be effective if approved by the Shareholder.

The following matters are Reserved Matters unless (where relevant) they have been approved in advance by the Shareholder under the Business Plan:

Constitution of the Company

1. Varying in any respect the Articles or the rights attaching to any of the shares in the Company.

Officers and Shareholders of the Company

2. Agreeing the appointment and the appointment terms (including any remuneration terms) of all Directors.
3. Agreeing the removal of all Directors (including any terms on which Directors are removed from their office as Directors).
4. Approving the admission of further shareholders to the Company or agreeing any rights or restrictions attaching to any shares allocated to such new shareholders.
5. Agreeing or approving the maximum size of the Board.

Future direction and development of the company

6. Forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).
7. Amalgamating or merging with any other company or business undertaking.
8. Selling or disposing of any part of the Business.
9. Entering into any arrangement, contract or transaction with either a capital value over [£50,000 (fifty thousand pounds)] or otherwise a value of over [£100,000 (one hundred thousand pounds)].
10. Adopting or amending the annual Business Plan and any in-year changes.
11. Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
12. Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market.

Management of the business of the Company

13. Changing the Company's registered office.
14. Changing the Company's name.
15. Creating or agreeing to create a charge, security or Encumbrance over the Company's assets, shares or income.

16. Adopting or agreeing any changes to any remuneration and redundancy policies of employees of the Company.
17. Adopting or agreeing any changes to any pension arrangements of any employees or officers of the Company.
18. Changing the nature of the Business or commencing any new business which is not ancillary or incidental to the Business.
19. Agreeing to enter into or entering into any acquisition or disposal of any material assets by the Company.
20. Selling rights (by license or otherwise) in or over any intellectual property owned or used by the Company.
21. Changing the Company's auditors.
22. Agree to make or making any loan (otherwise than by way of a deposit with a bank or other institution, the normal business of which includes the acceptance of deposits or in the ordinary course of business) or granting any credit (other than in the normal course of trading or giving any guarantee (other than in the normal course of trading) or indemnity.
23. Changing the Financial Year End of the Company to anything other than the other than the Shareholder's financial year end.
24. Increase or reduce the amount of its issued share capital, grant any option or other interest over or in its share capital, redeem or purchase any of its own shares or otherwise alter, or effect any reorganisation of, its share capital.

ANNEX 6 – CHECKLIST FOR COMPANY SET UP

Set out below are the main items that should be completed as a new company is formed. This is in the form of a checklist to facilitate ease of understanding. Certain items may vary depending on the type of company and specifics in each case.

Completed	N/a	Item	Detail
		Business case completed	
		Business case approved	
		Staffing arrangements agreed	
		Naming logos etc. agreed	
		URLs and Domains purchased	
		Cost recovery and recharging agreements (SLAs) in place	
		Loan amount and agreement in place	
		Directors Appointed	
		Company registered	
		Articles of Association filed	
		Bank Account set up	
		Accountants appointed – inc VAT	
		Company secretary appointed	
		Shareholder representative Appointed	
		Company Representative Appointed	
		Shareholder agreement signed	
		Website and email set up	
		Support arrangements from AVDC clarified	
		Accountancy needs clarified	
		First scrutiny scheduled of business plan	
		Launch Media in place and agreed	
		Registration with ICO if required	
		Others?	