Social Housing Current Expenditure Programme (SHCEP)

Guidance Note on the Capital Advance Leasing Facility (CALF) for Approved Housing Bodies and Housing Authorities

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INTRODUCTION

This guidance note replaces the version that accompanied Circular Housing 31/2011 and sets out further details of how the Capital Advance Leasing Facility (CALF) will operate.

The CALF is a facility which is exclusively available to Approved Housing Bodies (AHBs) to assist them in accessing private or Housing Finance Agency (HFA) finance for the purchase, construction or refurbishment of units that will then be made available for social housing purposes under the Social Housing Current Expenditure Programme (SHCEP). Essentially, the facility works by providing AHBs, (where approved) with a small capital advance in the form of a loan, that will be made available by the Department of the Environment, Community and Local Government (DECLG) through local authorities to AHBs. The facility is only available as part of a project where the AHB makes units available under a payment and availability (P&A) agreement to nominees of the housing authority for a set period of time. Repayments on the loan (capital advance) are not required during the term of the P&A agreement but the amount will remain outstanding at the end of the agreement. The purpose of this, and indeed the whole facility, is that the capital advance should assist AHBs in securing finance to purchase/construct units and make projects more viable for AHBs from a liquidity or cash flow perspective, particularly in the initial years.

CALF, together with P&A payments, has become one of the main funding mechanisms for the supply of social housing. The financial parameters within which the State will be operating for the coming years rule out a return to very large capital funded programmes based on 100% capital grants being provided by the State. This means that the use of loan finance (from both commercial lending institutions and the HFA) will need to play an important role in our continued delivery of housing and the continued availability of CALF funding is intended to support the delivery of the targets set out in the Social Housing Strategy.

This document sets out the background and context to the introduction of the CALF, details of the contractual arrangements, the main roles and responsibilities of housing authorities and AHBs and details of the application process. Included in the appendices are the current templates of the two legal agreements referred to in the sections below together with a template for a third supporting document. These templates are also available on the housing manual and updated versions will be uploaded to the manual.
BACKGROUND/CONTEXT

The Social Housing Current Expenditure Programme was extended in November 2009 to allow for the direct provision of dwellings for social housing purposes by approved housing bodies (see circular SHIP N5/09). Under the arrangements AHBs are allowed to procure units in two ways:

1- The AHB can lease units from a private owner/developer and make them available to persons assessed as being in need of social housing support; or

2- The AHB can purchase/construct units using private/HFA finance, which are then made available to meet housing needs in return for an availability payment from the housing authority.

In both cases, where proposals are approved, the housing authority enters into a Payment and Availability (P&A) agreement directly with the approved body to secure the units for social housing purposes. The level of payment in both cases is based on local market rent, in the same way as lease payments are made to local authorities under the general leasing terms. However, for the second option, a payment of 92% of market rent is made to take account of the fact that the AHB has additional responsibilities as the owner of the property. In the case of the acquisition or construction of apartment complexes where there are service charges that would result in a net additional cost to the AHB, the availability payment may be set at up to 95% of market rent subject to approval. Details of the financial arrangements and responsibilities of the AHB under both options are set out in Appendix A.

Both of these mechanisms for delivery are still in place for AHBs. However, concerns were raised by the voluntary and co-operative sector about the viability of making the second model using private finance work in some circumstances. It was envisaged that the availability payment based on market rent should, over the full term of the P&A agreement, cover the repayment in full or the majority of the loan taken out to acquire the properties in the first instance. However, in some cases, it was recognised by the Department that an AHB may not have sufficient financial capacity in the initial years of the loan to service the debt or may require some up front capital to secure the lending in the first place. While it is acknowledged that, at the end of the P&A agreement, the body has an asset which will have a considerable residual value, AHBs, for some projects, dependent on rental levels, acquisitions prices, level of reserves etc. may require extra funding to make projects viable.
In addition, the shift to current expenditure funding models has resulted in a major change in the way that AHBs deliver housing and has involved AHBs taking on more risk in that delivery. The move to current funding and, in particular, to the use of private/HFA finance involves AHBs having to manage a different set of risks. It is for these reasons that the CALF was introduced.

Since the introduction of the CALF funding in 2011, a number of changes have been made to the process, approvals and template agreements. While to date CALF has mainly supported acquisitions it is envisaged that construction projects will play a greater role in the coming years. The purpose of this Guidance document is to set out details of the current arrangements.

**HOW THE CALF WORKS**

The structure for the CALF funding model is as follows;

- An AHB will submit a combined P&A and CALF funding application (form LN008b) to the Department to purchase, construct or refurbish a number of units using private/HFA finance and receive payments available under the current expenditure programme.

- An AHB may, where it has determined that it is necessary, request a capital injection from the Department/housing authority. This should be based on a percentage of the acquisition or construction cost.

- If approved by the Department, the AHB and the housing authority will enter two separate agreements:
  - A payment and availability (P&A) agreement that will cover the conditions under which the properties will be made available for the term of the agreement.
  - A Capital Advance Agreement (CAA) that stipulates the terms and conditions on which the money is being made available from the State and also stipulates the repayment conditions. Capital advanced by the Department through the housing authority will be repayable at the end of the availability agreement plus accrued interest.

The following diagram sets out a summary of the stakeholder relationships and responsibilities.
Assessment of the Level of CALF for Proposed Projects

CALF funding is available for acquisition or construction projects up to a maximum of 30%\(^1\) of eligible capital costs with a minimum of 10% being available for any project found to meet housing need and sustainable community requirements. Part of the decision process by the Department is the assessment of the level of CALF funding that a proposed project can be approved for. AHBs are required to submit a full financial analysis of the project including sources of funding available and any assumptions made in respect of income and expenditure over the term of the proposed P&A agreement. The Irish Council for Social Housing (ICSH) has developed a template financial model for its members, which, if correctly populated, is sufficient to satisfy this requirement.

The CALF assessment is currently carried out by the Housing Agency on behalf of the Department. This assessment involves analysing the income, expenditure and inflation assumptions against a standard set of assumptions agreed with the Department. The appropriate level of CALF is determined by reference to an Internal Rate of Return (IRR) margin above a risk weighted private finance interest rate assumption. This provides a measure of the return to an AHB and allows for an assessment of a scheme’s viability and requirement for CALF.

As part of the assessment, the Housing Agency examines the overall capital cost indicated in the application and, where appropriate, costs that are ineligible for the CALF

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\(^1\) Special arrangements apply to the Mortgage to Rent scheme
assessment are deducted. The following table provides an indicative list of the eligible and ineligible costs:

<table>
<thead>
<tr>
<th>Eligible Costs</th>
<th>Ineligible Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquisition Price</td>
<td>Legal Fees</td>
</tr>
<tr>
<td>Site cost – where incurred</td>
<td>Valuation Fees</td>
</tr>
<tr>
<td>Construction Cost</td>
<td>Structural Insurance</td>
</tr>
<tr>
<td>Planning Fees</td>
<td>Non-accommodation facilities (e.g. community facilities)</td>
</tr>
<tr>
<td>Design Fees</td>
<td></td>
</tr>
<tr>
<td>Site Investigation Costs</td>
<td>Internal administrative costs</td>
</tr>
<tr>
<td>Cost of construction related bridging finance</td>
<td></td>
</tr>
</tbody>
</table>

The Agency’s assessment will result in a recommendation to the Department on the appropriate level of CALF funding. Where a project has a limited requirement for CALF funding (less than 10% as determined by the IRR margin) the Agency may recommend a reduction in the length of the P&A agreement term sought for the project in order to achieve a satisfactory IRR margin on the project.

Projects may require more than a single assessment if costs change, for example, the number of units to be acquired varies. As construction projects progress through various milestone stages, costs are also likely to change. Construction projects, or projects which include a significant construction cost element, will require further assessment at planning approval and tender return stage.

**The approval**

The Department will issue an approval letter directly to the AHB and also send a copy to the local authority. The approval letter will set out the terms and conditions of the funding, the amounts and percentage approved and, in some cases, additional conditions on the timing of payments. Depending on the project, more than one approval letter may be issued. Where this occurs, the revised approval will supersede the previous approval.

**The loan**

The loan (capital advance) differs from the CAS and CLSS loans that have traditionally been provided through housing authorities in that it is for a maximum of 30% of the value of the acquisition or construction of the dwellings and it is repayable. The loan agreement is called the Capital Advance Agreement (CAA) and the main features of the loan are:

1. The loan is unsecured. This means that there will be no mortgage in place as is usual in CAS or CLSS arrangements.
2. A nominal interest rate of 2% per annum will be charged by the authority on the initial capital amount. This will be calculated by way of simple interest, not compound interest, meaning that interest will be paid on the principal alone. For example, the interest charge on an advance of €300,000 is €6,000 per annum. The rate of interest charged is fixed and is set by the Department and, therefore, is not subject to negotiation.

3. Repayments of either the capital or interest are not required during the term, although, where an AHB wants, repayments can be made during the term.

4. The term of the CAA will be from the date that it is signed until the end of the term of the associated P&A agreement. For construction projects, the CAA will normally be signed in advance of a P&A agreement.

5. CALF drawdowns are paid out by the housing authority to the AHB on request and the housing authority can then submit a claim to the Department for a refund of the amount paid out.

NOTE: If CALF drawdowns result in an overpayment of the appropriate CALF amount under the loan agreement to the AHB, the excess amount must be repaid by the AHB to the local authority on demand.

At the end of the term, the outstanding capital amount plus the interest accrued are owed to the housing authority. The AHB and the housing authority will at this stage be able to consider a number of possibilities on how this repayment should occur, including:

1- Repay the outstanding CALF loan and interest outstanding.

2- The AHB may decide to sell the units and repay the monies owed to the housing authority. Given that the asset should have a considerable residual value at this stage, the AHB may wish to use this to invest in stock elsewhere,

3- The AHB may wish to realise some of the residual value of the property and get a further private loan to re-invest in units and repay the housing authority.

4- The AHB and the housing authority may decide to enter into another P&A agreement where the monthly/quarterly payments due from the housing authority would be adjusted to reflect the repayment of the capital and interest outstanding.

The option chosen by the parties will be very much dependent on the circumstances at the time. Issues such as the demand for the units, the quality of the units in comparison with market expectations at the time and the satisfaction of both parties with the service
levels achieved under the previous agreement will need to be considered. These options are not included in the template legal agreements as currently drafted. Given the long-term nature of the contracts, the legal advice is that these are options that may be considered at the end of the agreements and are not relevant to the initial agreement.

Nothing in the above will restrict an AHB from repaying the outstanding monies owed before the end of the term of the CAA agreement. This might arise, for example, if the authority decided that the AHB could sell some of the units to the tenants. The cost of meeting discounted purchase terms under any future tenant purchase arrangements may be met, in whole or in part, out of monies owed to the State under CALF.

It should be noted that the Department will reserve the right to direct the authority on how monies received through repayment should be used either via internal capital receipts or deduction from allocations, as appropriate.

**ACCELERATED CALF PAYMENTS**

When first introduced, CALF funding draw down was limited to the approved percentage of the expenditure incurred (e.g. 30% of expenditure incurred), subject to a maximum of 90% of CALF funding approved being drawn down prior to the signing of the P&A agreement. For construction projects, draw down could only take place after a project had started on site.

From December 2015, in recognition of the shift in investment required by AHBs towards construction and acquisition of new build units, up-front or accelerated CALF payments for expenditure incurred can be facilitated in order to encourage the delivery of social housing.

AHBs can request in their funding applications drawdowns of up to 95% of the CALF amount approved for a specific project. For example; for a project where €1m in CALF was approved (subject to a maximum of 30% of the CALF eligible cost of the project), an AHB could draw down 95% (i.e. €950,000) up-front, subject to the AHB having incurred that amount of legitimate expenditure on the project at the time of claiming. Drawdowns will be permitted as specific milestones are achieved. For construction projects, the milestones are as follows:
1. Planning Approval  
2. Tender Report following tender competition  
3. Employer Representative’s Certificates (subject to any minimum drawdown thresholds agreed with the local authority)

As the total capital cost and the associated CALF funding for a construction project may vary from planning to tender stage, projects with planning stage approval from the Department will be required to be re-assessed at tender stage.

This expenditure would have to be vouched for any drawdown. In all cases however, a portion of CALF funding will be retained until the signing of the P&A agreement to ensure that there is an incentive to get to this stage as quickly as possible – in this case 5%.

The table below sets out an example of how the CALF payments can be claimed for a notional construction project. The percentages used are for the purposes of the example only. Actual percentages/amounts will be determined based on the financial characteristics of the individual projects.

**Accelerated CALF Example – Construction Project**

<table>
<thead>
<tr>
<th>Project Cost</th>
<th>€8,100,000.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>CALF @ 30%</td>
<td>€2,430,000.00</td>
</tr>
<tr>
<td>Private Finance</td>
<td>€5,670,000.00</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Construction</strong></td>
<td>% of CALF</td>
</tr>
<tr>
<td>Planning</td>
<td>15%</td>
</tr>
<tr>
<td>Tender</td>
<td>20%</td>
</tr>
<tr>
<td>Interim Payment 1</td>
<td>25%</td>
</tr>
<tr>
<td>Interim Payment 2</td>
<td>25%</td>
</tr>
<tr>
<td>Interim Payment 3</td>
<td>10%</td>
</tr>
<tr>
<td>Interim Payment 4 onwards</td>
<td></td>
</tr>
<tr>
<td>P&amp;A Signed</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100%</td>
</tr>
</tbody>
</table>
The use of funding in this way will provide more funding certainty to AHBs embarking on a construction programme. The benefit to AHBs of an accelerated draw down is to delay the drawdown of more expensive bridging finance in the early stages of construction projects. In addition, for construction projects, this would mean that design fees could be funded earlier in the process before work commences on site (subject to the project achieving certain milestones), without the need to carry these costs from reserves.

Accelerated CALF payments may also be approved by the Department for certain turnkey acquisition projects where there is large element of construction involved to deliver the properties. In such cases, the milestones may vary depending on the requirements of the project and will be set out by the Department in its approval letter. As with construction projects, all expenditure will have to be vouched.
The Housing Agency has developed template CALF loan and P&A agreements for use with projects approved for CALF funding. An additional third template agreement, the Standard Continuation Agreement, has also been developed following interaction with lending institutions. This agreement sets out what will happen in the event that the AHB is wound up during the term of the P&A agreement. The lending institution retains its right to seek vacant possession of the properties under the terms of the mortgage. The agreement provides, under certain circumstances, for the Local Authority to make payments directly to the receiver appointed by the lending institution for an interim period while a replacement AHB is found to take over the properties and the P&A agreement. A Continuation Agreement may not always be required and the AHB will inform the local authority if a Continuation Agreement is required for individual projects.

Copies of these templates are available on the housing manual – www.housingmanual.ie and the current versions of the P&A, Capital Advance Agreement and Standard Continuation Agreements are included in Appendix B of this guidance.

Each CALF loan is subject to a loan agreement, called the Capital Advance Agreement (CAA) which sets out the terms and conditions of the loan. As the loan being provided is unsecured, the CAA is not a mortgage agreement but a simple contract. Where there is a breach of terms of the contract and/or money is not repaid, the housing authority will have recourse to the courts for breach of contract.

All properties delivered under projects supported with CALF will also be subject to a P&A agreement which sets out the terms and conditions for the availability of the properties for the provision of social housing support, including the payments to be made by the local authority to the AHB. A specific P&A agreement has been drawn up for use where CALF monies have been made available. It follows the same format as the standard P&A agreement but makes reference to the loan being made available.

The following table summarises the two documents that make up the contractual arrangements.
Main Terms and Conditions of the CAA

- The repayment date in each CAA is the end date of the associated P&A agreement.
- Each agreement will document the amount of money which is being advanced and stipulate the purpose for which the money can be used and the interest rate that will be used to calculate the interest charge.
- The template agreement facilitates the payment of CALF funding in a number of tranche payments. The amounts of each drawdown and number of drawdowns are a matter for agreement between the local authority and the AHB, subject to the overall limits approved and funding conditions set down by the Department.
- Where up-front or accelerated CALF payments for expenditure have been approved for a project, AHBs can seek to drawdown up to 95% of the CALF amount approved with 5% retained until the signing of the P&A agreement. Accelerated CALF payments should be reflected in the loan agreement in clause 4.2 and 4.4.
- The capital advance and interest will be repayable upon termination of the P&A agreement. This includes where the P&A has been terminated for breach of contract.
- The AHB, for the period the capital advance remains outstanding, shall not sell, transfer or assign the properties without the prior consent of the housing authority. The intention of this provision in the CAA is to ensure that the housing authority is aware of any proposal that may affect properties for which a loan was made available. It is expected that the AHB will discuss with the housing authority, at the earliest opportunity, if there are issues that may require properties to be sold. From the housing authority’s perspective, it is important to
work proactively with the AHB where such a request arises and to ensure an outcome is achieved that protects the loan and has minimal impact on tenants.

- In the event of a default situation, the capital advance and all monies owing shall immediately become due. Events of default are defined as follows:
  - Failure to Pay
  - Breach of Warranty
  - Insolvency and Dealing with Creditors
  - Cessation of Business
  - Winding Up
  - Cross Default
  - Change of Control
  - Material Adverse Change

If, during the term of the loan, one or more of these events occurs, it is the responsibility of the housing authority to determine how the money outstanding can be best recovered. Options to transfer the loan to another organisation can be considered. However, any settlement should be agreed with the Department in advance.

**Main terms and conditions of the P&A**

All the standard terms and conditions that apply in an ordinary P&A agreement will apply in the P&A to be used for CALF. These include:

- The term must be between 10 and 30 years.

- The rent payable will be based on a percentage of the market rent approved by the Department, typically 92% of market rent. In the case of the acquisition or construction of apartment complexes where there are service charges that would result in a net additional cost to the AHB, the availability payment may be set at up to 95% of market rent subject to approval.

- Units must be maintained in a lettable condition in line with any standards set for the sector, including any requirements of the Housing (Standards for Rented Houses) Regulations 2008, as amended or any replacement for these regulations.

- The P&A agreement provides that the tenant can only be charged a rent determined in accordance with the local authority’s differential scheme.
If the AHB provides utilities that are not charged directly by a utility company, the supply and consumption charges incurred can be charged to the tenant in addition to the differential rent. The AHB must get the written permission of the housing authority if it intends to impose any additional charges on the tenant. This must also be included in the funding application to the Department. If, during the term of the P&A agreement, additional charges are proposed to be levied on tenants, the housing authority must seek confirmation from the Department that the proposed additional charges are permitted.

- Units are only to be made available to eligible nominees for the term of the agreement in accordance with the procedures agreed for nomination within the P&A agreement.

- A minimum level of insurance must be maintained by the AHB for the period of the agreement.

- AHBs will also be required to provide housing authorities with an annual report in relation to the occupancy and conditions of the units.

- The P&A agreement also sets out the process for filling vacancies initially and as they arise during the term of the agreement. The AHB will continue to receive an availability payment for a period of three months from the date that it notifies the housing authority of a vacancy. This period can be extended by one additional month where the housing authority has not provided a nomination within one month of being notified of the vacancy.

- The authority shall be entitled to terminate or suspend the agreement in the case of insolvency or failure to comply with, or be in serious breach of the obligations under the agreement that have not been rectified within a period of 7 days.

**Varying the legal agreements**

It is not intended that the general terms of the template P&A and CAA agreements will be changed, apart from the insertion of the property details, the loan amount, the agreed availability payments to be made to the AHB and the Funding Approval letter from the Department (in the CAA).

However, the AHB or housing authority may wish to alter some of the terms for various reasons, including satisfying other finance provider requirements. The main areas of the P&A agreement that can be altered are in relation to the frequency of payments, the payment review period and the procedure to be followed where vacancies occur. Where any variation to the template agreements is proposed by an AHB, this should be notified
to the housing authority in question. In addition, the Department should be notified where an AHB is seeking non-standard terms or where the change would be in conflict with any approval issued. Where new clauses are proposed in the agreements, it is suggested that these are inserted in a schedule to the agreement rather than amending the agreement, so that they are can be clearly identifiable for all parties.

**Financial and Recoupment arrangements**

**AHB Costs**

1) **Start-up/technical costs** – There are two separate forms of start-up funding available to AHBs under the SHCEP:

- Leasing/P&A start-up funding up to 5% of the value of the first year’s P&A payment on a property and:
- Capital start-up funding up to 1.5% of the capital cost of the acquisition/construction

For properties acquired or constructed using CALF funding, both forms of start-up funding is available subject to the terms set out below

**Leasing/P&A start-up funding**: In order to comply with the Department’s requirements under the SHCEP, an AHB will need to provide to the Department, among other things, a valuation confirming market sale and rental levels for the proposed units and confirmation that a survey has been completed of the property and that it complies with all planning and building regulations. For construction projects, an estimated cost of construction and associated expenditure will be required and will be updated after the tender stage. In order to assist AHB’s with the legal and technical costs incurred, a once off administration fee will be payable for each approved leasing project, which will be payable once agreements have commenced. The fee will be paid out based on either on vouched expenditure or on 5% of the annual lease cost, whichever is the lesser. This funding can be claimed directly from Department once the P&A agreement has been signed with the housing authority using From LN006a.

**Capital start-up funding**: In addition, and to align CALF projects with practice under different funding schemes (i.e. SHIP and CAS), 1.5% of the CALF eligible capital costs of a project will be available to the AHB after the P&A agreement is signed. This start-up funding will be available for both acquisition and construction projects and will be paid as a grant i.e. it will not be added to the CALF loan. This funding will be available for
approvals issued from 1st January 2016. The treatment of this funding will not be applied retrospectively. AHBs must apply for this funding directly to the Department accompanied by appropriate proof of expenditure incurred. Claim forms can be requested from the Department by emailing shcep@environ.ie

In making the case for a CALF capital injection, an AHB will have to provide full disclosure on the costs of acquiring or constructing the dwellings concerned.

2) Availability Payment - The availability payment under the P&A agreement will be set at 92% of market rent. This is calculated at 80% of market rent, plus 12% for maintenance and management (refer also to point 4 below). In the case of the acquisition or construction of apartment complexes where there are service charges that would result in a net additional cost to the AHB, the availability payment may be set at up to 95% of market rent, subject to the approval of the Department. Provision is made for availability payments to be adjusted periodically, where provided for in a rent review within the availability agreement. The issue of rent reviews will be a matter for negotiation on a project by project basis but will follow the market and, therefore, payment may be adjusted upwards or downwards, as appropriate.

The repayment of loans in respect of properties made available under the P&A agreements will be the sole responsibility of the AHB. The Department, via the housing authority, will pay to the AHB an availability payment in respect of the units but this will not be related to the cost of the loan repayments but to discounted rental market value.

3) Management and Maintenance - The AHB has responsibility to meet the costs of management and maintenance of units. It is expected that the income received through the differential rent scheme will contribute to meeting these costs. The differential rent charged by the AHB must be in line with the local differential rent scheme. In the future, it may be possible for an AHB to agree a national differential rents scheme in line with the parameters that will be set out in regulations expected to be made under section 31 of the Housing (Miscellaneous Provisions) Act, 2009.

4) Cyclical/Life Cycle Maintenance Costs - Where properties are purchased/constructed/refurbished, AHBs take responsibility for structural matters and on-going maintenance. The agreements entered into under this model can be for a long period of time, up to 30 years, which may place additional cyclical/life cycle maintenance responsibilities on the AHB. To assist AHBs with these costs, an additional 12% has
been allowed when calculating the availability payment. The availability payment therefore is set at 92% of market rent as set out in point 2 above.

**Local Authority Costs**

1) **Legal and Administration Costs**

Housing authorities will have a number of responsibilities throughout the lifetime of the agreements. These will include executing contracts, reviewing the availability agreement in accordance with the terms of the payment review, monitoring compliance with the terms of the contracts, for example, the inspection of properties. The Department have provided template legal agreements for use between housing authorities and AHBs and, therefore, it is not anticipated that significant legal work will be required to complete the legal agreements. However, in order to assist housing authorities with any costs which they incur, provision has been made for housing authorities to claim 2.5% of the annual availability payment in year one and 1% per annum thereafter from the Department. **Please note, the housing authority shall not be entitled to subtract any amount in respect of legal or other costs from the capital amount approved by the Department for payment to the AHB.**

2) **Recoupment of Capital Advance and availability payment**

In the case of properties acquired with the support of CALF, the Capital Advance should be paid to the AHB to facilitate the closing of the sale of the properties. In the case of construction projects, CALF drawdowns will be linked to milestone payments set out in the approval from the Department. Housing authorities can recoup the expenditure from the Department once the payment has been made to the AHB by submitting the details on form LN200. This form is available from the SHCEP section in the Department.

The availability payment can be claimed quarterly/monthly in advance dependent on the frequency of payment being made to the AHB. Given the nature of the financing of the housing, it is very important that monies are paid to AHBs in a timely manner so as to ensure they do not default on their requirements. Authorities are requested, therefore, to make sure that payments are not delayed to AHBs, provided that they are in compliance the terms of the legal agreements.

**Treatment of the Loan for AHB Accounting Purposes**

The loan should be recorded in the accounts of the AHB under long term liabilities. It is suggested that the interest accruing on the loan each year should be charged in the income statement and capitalised with the loan in long term liabilities. The loan is not required to be registered with the CRO.
ROLES AND RESPONSIBILITIES

The successful delivery and ongoing management of social housing supply depends on a good working relationship between housing authorities and AHBs. It is important that each party understands their respective roles and responsibilities.

Role of the AHB
1. Identify potentially suitable properties
2. Discuss demand and general suitability of the properties with the housing authority.
3. Assess the viability of the project based on social housing needs, market rents and the cost of provision.
4. Identify the potential source of funds.
5. Submit an application as appropriate to the Department.
6. If approved, purchase or build the properties.
7. Draw down the Capital Amount approved from the local authority and provide evidence of incurred expenditure to support same.
8. Sign a P&A and CAA agreement with the housing authority.

Role of the Local Authority
1. Engage with the AHB at an early stage to assess the proposed properties from a housing need, sustainable communities and overall suitability perspective.
2. Support, as appropriate, the AHBs submission to the Department.
3. Return completed Form LN005 to the Department in respect of the proposal.
4. Housing Authorities should download the latest versions of the template P&A and CAA agreements at project approval stage from the Housing Agency’s housing manual. Housing authorities will insert the specific project details and provisions as per the project approval and send these to the AHB.
5. When finalising agreements, housing authorities will need to satisfy themselves that basic due diligence has been completed by the AHB, including that the properties have been inspected by the AHB and comply with the description in the schedule and are in a lettable condition.
6. Sign the CAA agreement in advance of a drawdown request from the AHB and sign the P&A agreement when the properties are being delivered. For an acquisition project, a housing authority may sign the P&A agreement in advance of the closing date to facilitate the AHB securing the required loan finance to complete the purchase.

7. Issue the Capital Advance amount and availability payments to AHBS. This may be completed at the same time as the signing of the P&A and CAA agreements, for acquisition projects. Capital Advance amounts may be paid in tranches over a period of time for construction projects.

8. Nominate tenants to the properties in accordance with the nominations procedures set out in the P&A agreement.

9. Manage and monitor the terms of the P&A and CAA agreements once commenced. This should include:

   **For the CAA:**
   - Ensure CALF draw-downs are in accordance with the terms of the Departments approval letter as amended.
   - Calculate and record yearly interest charge incurred.
   - Issue an annual statement (per project) to the AHB to show total monies now owed and level of interest incurred in relevant year.
   - While repayments are not required during the term, where a repayment is made during the term, the capital amount outstanding should be reduced by the full amount of the payment and the interest should then be charged only on the remaining capital amount outstanding. The Annual statement should also reflect this.
   - Record all correspondence from the AHB and provide a timely response to any requests or any notifications under the contract.

   **For the P&A**
   - Ensure the annual report required under the P&A is submitted by the AHB and that the AHB continues to comply with the terms of the contract, for example, determining that the duration of vacancies has not exceeded the vacancy limit.
   - Satisfy itself that the dwellings are maintained in a lettable condition and are being occupied in accordance with the terms of the contract. Housing authorities may wish to undertake an annual audit to ensure compliance.
- Monitor rent levels to ensure that the rents charged are in accordance with the Differential Rent Scheme.
- Review the availability payments in accordance with the provisions of the Payment Review schedule.
- Pay the availability payment to the AHB in accordance with the terms of the agreement.

**HOW DO AHBs APPLY?**

Applications for CALF funding are made directly to the Department of the Environment, Community and Local Government by the AHB on form LN008b.

The application form requires AHBs to provide details of the proposal including details of the properties, the means of provision (purchase or construction) and the proposed payments required. In addition, information is required on the sustainable communities aspects of the proposal along with an indication of demand for the properties for the provision of social housing support.

There are a number of key criteria that the Department will use when assessing proposals for the capital advance element:

- The ability of the AHB to finance the project. The AHB must be able to demonstrate access to private finance either by being approved for lending from the Housing Finance Agency (HFA) or from another financial institution(s) or investors. This should take the form of a letter from the private finance provider confirming the availability of funding or a letter confirming approval status from the HFA.

- The AHB should demonstrate the need for the level of capital requested, having regard to their own resources, including their reserves or unsecured properties that may be used to leverage finance.

- The amount of the capital injection requested as a proportion of the total value of the units requested. Proposals will be assessed on the basis of maximising the number of units that can be delivered for the amount of capital to be advanced. For example, a project that can be delivered with a 10% capital advance may be deemed more favourable than one that requires 25%, taking account of the comparative need. The Department have set a maximum threshold of 30% of the
overall cost of the acquisition/construction for the level of capital it is prepared to advance.

Applications will also be assessed on the basis of likelihood and timing of delivery.

In addition, as with all P&A agreements, the proposal will need to demonstrate that:

- there is a housing need;
- the properties comply, or will comply with the relevant standards and regulatory requirements;
- the objectives of sustainable communities are being met, including that there is not already an over-concentration of social housing in the area; and
- value for money is being achieved as determined by the payments requested over the term of the agreement.

In general, for all P&A agreements, it is expected that the housing being provided will be self-contained units for households assessed as being in need of social housing support. Where an AHB is considering providing a group housing scheme or housing for households with specific support needs, CAS may continue to be the appropriate funding mechanism for these projects.

A summary of the process and associated documentation is set out in the diagram below.
AHB Applies to DECLG for Funding Approval

DECLG Consults with Local Authority

Funding Approval

No → DECLG Notifies AHB and LA

Yes → DECLG Notifies AHB and Local Authority of Approval

Local Authority agrees terms of CAA and P&A with AHB

CAA / P&A Agreed

No → LA Notifies DECLG – Process Ends

Yes → AHB signs CAA. Drawdown of funding can commence once expenditure has been incurred.

Local Authority pays out CALF drawdown amount to AHB and submits claim to DECLG

DECLG refunds drawdown amount to Local Authority

AHB delivers properties and signs P&A with Local Authority.

DECLG advances first quarter P&A payment to Local Authority

AHB signs Tenancy Agreements with Local Authority Nominees
There are a number of issues that may arise during the process of initiating a CALF project and during the term of the agreement. Support for both housing authorities and AHBs in progressing such projects and dealing with the legal aspects of the capital advance and payment and availability agreements will be available as needed from the Housing Agency.
## Option 1: Direct Leasing - Who pays and for what?

<table>
<thead>
<tr>
<th>Start up/Technical Costs</th>
<th>DECLG Recoupment</th>
<th>Approved Housing Bodies</th>
<th>Owner of Property</th>
<th>AHB Tenant</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Once off payment from DECLG to AHB, 5% of the annual lease cost agreed or vouched expenditure, whichever is lesser.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Lease Payments | Full lease cost paid to AHB on quarterly basis. Approved lease cost must be based of 80% of market rent as per standard lease arrangement. Payment during vacant periods is limited to 3 months | AHB passes DECLG payments to Owner of Property. |

<table>
<thead>
<tr>
<th>Management &amp; Maintenance</th>
<th>No recoupment entitlement</th>
<th>Responsibility of the AHB – Cost to be met from differential rent income</th>
</tr>
</thead>
</table>

| Reinstatement Costs | Paid to AHB: 50% of incurred costs subject to terms and conditions in lease agreement. | |

<table>
<thead>
<tr>
<th>Rent (tenant)</th>
<th></th>
<th></th>
</tr>
</thead>
</table>

| Insurance Responsibilities | No recoupment entitlement | Property, Public Liability, Professional and Employer’s Liability Insurance. | Building Insurance (e.g. Home Bond). |


| Option 2 : Purchase or Construction using Private Finance - Who pays and for what? |
|--------------------------------------------------|-----------------|-----------------|-----------------|
| **Start up/Technical Costs**                     | **DECLG**       | **Approved Housing Bodies** | **AHB Tenant** |
| Once off payment from DECLG to AHB. 5% of the annual lease cost agreed or vouched expenditure, whichever is lesser. |                 |                               |                 |
| Up to 1.5% of the CALF eligible capital cost of the project can be claimed directly from DECLG by the AHB as a grant. The amount paid will be based on vouched expenditure and excludes expense items covered above. |                 |                               |                 |
| **Capital Advance Agreement (CALF)**             | **DECLG**       | **AHB uses CALF payments to supplement private loan or internal funds.** |                 |
| CALF payments made in tranches to AHB through local authority in accordance with terms of Funding Approval from DECLG. |                 |                               |                 |
| **Availability Payments**                        | **AHB**         | **AHB uses DECLG payments to support private loan repayments to Banks or HFA.** |                 |
| Payment made to AHB on quarterly basis. Payment is generally based on 92% of market rent. Where there are service charges that would result in a net cost to the AHB, the availability payment may be set at up to 95% of market rent. |                 |                               |                 |
| **Management & Maintenance**                     | **AHB**         |                               | **Differential rent collected weekly by AHB. (AHB required to use LA differential rent scheme)** |
| An allowance is included in the Availability Payment approved. This payment is included to reflect the responsibilities AHBs have for all maintenance under this option including structural matters and cyclical maintenance. |                 |                               |                 |
| **Rent**                                         | **Ahb**         |                               |                 |
| **Insurance Responsibilities**                   | **AHB**         | **Property, Public Liability, Professional and Employer’s Liability Insurance. Building Insurance (e.g. Home Bond).** |                 |
| No recoupment entitlement                        |                 |                               |                 |
DATED 201_

[LOCAL AUTHORITY]

and

[APPROVED HOUSING BODY]

CAPITAL ADVANCE AGREEMENT
(Payments in Tranches)

This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local authority and approval sought from the Department. Independent legal advice should be sought before entering this agreement.
This Agreement made this day of 201_ BETWEEN

(1) [LOCAL AUTHORITY] having its principal offices at [insert local authority address] (hereinafter called “Local Authority”) of the one part; and

(2) [APPROVED HOUSING BODY] having its principal offices at [insert AHB address] (hereinafter called “the AHB”) of the other part.

BACKGROUND:

The Local Authority has agreed to provide a Capital Advance to the AHB to assist the AHB acquire, construct or refurbish properties for the provision of social housing.

NOW, IT IS AGREED BETWEEN THE PARTIES HERETO as follows:

1. DEFINITIONS

In this Agreement, the following expressions shall have the following meanings:

“Business Days” means Monday to Friday (inclusive) excluding public and bank holidays and days on which banks close for business in Ireland.

“Capital Advance” means the capital amount provided to the AHB by the Local Authority in accordance with the terms of this Agreement.

“Capital Advance Amount” means the total amount drawn down under this agreement, subject to a maximum amount of either the percentage of the vouched capital expenditure incurred or the monetary amount as specified in the Funding Approval, whichever is the lesser.

“Funding Approval” means an approval letter issued by the Department of the Environment, Community and Local Government in respect of the properties that are subject to the Payment and Availability Agreement and appended to the First Schedule of this Agreement which shall include any subsequent approval issued by the Department of the Environment, Community and Local Government to replace any previous Funding Approvals and appended to the First Schedule of this Agreement. For the avoidance of doubt the most recent Funding Approval issued by the Department takes precedence for the purposes of determining the actual Capital Advance payable under this Agreement.

“Payment and Availability Agreement” means the agreement entered into between the AHB and the Local Authority in respect of properties in [insert property addresses] whereby the properties part-funded by a Capital Advance will be made available to the Local Authority for social housing purposes.

“Tranche” means each tranche of the Capital Advance Amount drawn down by the AHB pursuant to Clause Error! Reference source not found..

2. LOAN

The Local Authority hereby agrees to lend to the AHB the Capital Advance Amount.
3. **PURPOSE**

The Capital Advance shall be used by the AHB to assist it purchase, construct or refurbish properties for the provision of social housing.

4. **DRAWDOWN**

4.1 The Capital Advance may be drawn down in tranches until the whole amount of the Capital Advance Amount has been drawn down.

4.2 Each drawdown amount will be for vouched expenditure and, subject to clause 4.6, shall be limited to the extent that the total amount drawn down under this agreement does not exceed the Capital Advance Amount and also, subject to the amount requested being a minimum of €7 as agreed with the Local Authority.

4.3 Tranche payments may only be drawn down by the AHB giving ten [10] Business Days written notice to the Local Authority before the proposed date for drawdown.

4.4 Tranche payments may only be drawn down where specific milestones have been reached to the satisfaction of the Local Authority, where such milestones are set out in the Funding Approval.

4.5 Each notice must be accompanied by appropriate evidence of expenditure incurred, including invoices for design fees, a certificate of payment from the supervising architect or employer’s representative confirming the payments that have been made or, where properties or development lands are purchased by the AHB, evidence by way of a certificate from the AHB’s solicitor which certifies that the purchase of the property has completed and confirming the amount paid by the AHB for the property.

4.6 The final Tranche will be a minimum of 5% of the overall Capital Advance Amount and will only be paid on signing of the Payment and Availability agreement or, where completion works are required and the Payment and Availability agreement is signed in advance of these works being completed, the final Tranche will be paid on completion of these works.

4.7 In the event that the total amount required to be drawn down by the AHB as evidenced by the vouched capital expenditure incurred, is reduced, the Local Authority shall reduce the Capital Advance Amount payable to the AHB.

4.8 In the event that a revised Funding Approval is issued by the Department of the Environment, Community and Local Government after the date of this Agreement, then the revised Capital Advance Amount specified in such revised Funding Approval shall be deemed to be the Capital Advance Amount that applies to this Agreement.

5. **INTEREST**

5.1 Simple interest shall accrue on each Tranche at the rate of 2% per annum calculated annually on each anniversary of the date of drawdown of the first Tranche.

5.2 Interest shall be calculated on the basis of actual days elapsed and on a 365 day year.

6. **DEFAULT INTEREST**

In the event that the AHB fails to pay any amount payable by it under this Agreement on the due date, then without prejudice to any other right or remedy the Local Authority may have, the AHB shall additionally pay to the Local Authority default interest on the principal sum unpaid (but not on unpaid interest) at the rate of 10 per cent per annum (“Default Interest”) compounded annually on each anniversary of the date of drawdown of the first Tranche.
Default Interest shall:

6.1. be payable forthwith upon demand;
6.2. be payable after judgment as well as before; and
6.3. accrue from day to day and be calculated on the basis of actual days elapsed and on a 365 day year.

7. **REPAYMENT**

7.1. The Capital Advance and interest is repayable on demand in the absence of a Payment and Availability Agreement for the properties for which the Capital Advance is provided.

7.2. The Capital Advance and interest is repayable on demand in the event of the termination of the Payment and Availability Agreement but notwithstanding the demand nature of the Capital Advance, the Capital Advance and all other amounts outstanding under this Agreement shall be repaid on the expiry date of the Payment and Availability Agreement on the properties part-funded under this agreement.

7.3. The AHB may repay the Capital Advance, together with accrued interest, at any time without penalty.

7.4. In the event that a unit or units are removed from the Payment and Availability Agreement the AHB must repay the amount of the Capital Advance which has been provided by the Local Authority to assist in the purchase or construction of the particular unit or units which are removed plus the interest accrued on that amount on demand. The amount to be repaid is calculated as follows: the Capital Advance Amount plus the interest accrued at the date of removal of the unit(s) divided by the number of Units covered by this Agreement multiplied by the number of units being removed from this Agreement. The unit or units shall be deemed to be fully removed and discharged from this Agreement on the making of the payment of the amount to be repaid by the AHB to the Council.

7.5. In the event that any overpayment is made by the Local Authority under this Agreement any such amount shall be repayable by the AHB to the Local Authority on demand.

8. **SECURITY**

The Capital Advance will be unsecured.

9. **COVENANTS**

The AHB shall not without the Local Authority’s prior written consent, such consent not to be unreasonably withheld:

9.1. while any part of the Capital Advance remains outstanding, sell, transfer, or otherwise assign the properties in respect of which the Capital Advance was provided or the Payment and Availability Agreement has been entered into.

9.2. assign or transfer any of its obligations under this Agreement or enter into any transaction which would result in any of those obligations passing to another entity or person.

10. **REPRESENTATIONS AND WARRANTIES**

The AHB represents and warrants to the Local Authority as of the date of this Agreement as follows:

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This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local authority and approval sought from the Department. Independent legal advice should be sought before entering this agreement.
10.1. it is duly incorporated and validly existing under Irish law, and has the power and authority to own its assets, and to conduct the business it now conducts and/or proposes to conduct;

10.2. it has the power and has taken all necessary corporate and shareholder action to authorise the entry into, exercise of its rights and performance and compliance with its obligations under this Agreement;

10.3. this Agreement has been duly authorised and executed and constitutes the legal and binding obligations of that party enforceable in accordance with its terms;

10.4. the execution of this Agreement and the performance of any of the transactions contemplated by it do not and shall not contravene or constitute a default under, or cause to be exceeded, any limitation on that party or the powers of its directors imposed by or contained in:

10.4.1 any law by which that party or any of its assets are bound or affected;
10.4.2 any document which contains or establishes that party’s constitution; or
10.4.3 any agreement to which that party is a party or any obligation by which that party or any of its assets are bound;

10.5. the obligations under this Agreement are unconditional and unsubordinated obligations and rank ahead of all its other unsecured and unsubordinated indebtedness;

10.6. No litigation, arbitration or other proceeding is pending against the AHB which may have a material effect on the AHB’s ability to perform its obligations and undertakings under this Agreement.

11. EVENTS OF DEFAULT

11.1. Each of the following describes circumstances which constitute an event of default (“Event of Default”) for the purposes of this Agreement.

11.1.1 Failure to Pay The AHB fails to pay on the due date for payment any sum due from it under this Agreement.

11.1.2 Breach of Warranty Any representation or warranty made in writing by or on behalf of either the AHB proves to have been false or incorrect in any material respect on the date as of which made.

11.1.3 Insolvency and Dealing with Creditors The AHB is deemed to be unable to pay its debts within the meaning of section 214 of the Companies Act 1963, is unable to pay its debts as they fall due, commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or composition with its creditors.

11.1.4 Cessation of Business The AHB ceases carrying on, threatens to cease carrying on, or disposes of its business or a material part of its business.

11.1.5 Winding Up The AHB takes any corporate action or other steps are taken or legal proceedings are started for its winding up, dissolution, examinership or re-organisation or for the appointment of a liquidator, receiver, examiner, conservator, custodian, trustee or similar officer of it or of any or all of its revenues and assets.

11.1.6 Cross Default Any other loan or other indebtedness other than trade debts arising in the ordinary course of business issued or owing by the AHB.
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12.4. **Waivers and Variations:**

12.4.1 A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

12.4.2 No variation of this Agreement shall be effective unless it is made in writing and signed by each of the parties.

12.5. **Notices:**

All notices requests demands approvals consents and other communications hereunder shall be in writing and shall be duly and validly given if:

(i) hand delivered to any party on the date of receipt; and/or
(ii) delivered in writing by facsimile or other electronic means of communication; and/or
(iii) delivered by prepaid registered or recorded delivery mail to a party at its address set forth above or at such other address as such party may specify from time to time by written notice to the other parties on the second working day next following the day of posting.

12.6. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute this Agreement.

12.7. **Further Assurance:** Each party shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing reasonably within its power to implement this Agreement.

12.8. **Governing Law and Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of Ireland, and shall be subject to the exclusive jurisdiction of the Irish courts.
FIRST SCHEDULE

Funding Approval

The Funding Approval or any subsequent revised Funding Approval should be attached under this Schedule.
IN WITNESS whereof this Agreement has been executed as a deed by the parties hereto on the day and year first herein WRITTEN.

PRESENT when the Corporate Seal of the [LOCAL AUTHORITY] affixed hereto:

__________________________________
(Nominated member)

__________________________________
(Chief Executive or Director of Service or Executive Manager)

__________________________________
(County Secretary)

PRESENT when the Common Seal of the [APPROVED HOUSING BODY] was affixed hereto:

__________________________________
Director

__________________________________
Director/Trustee

Version: 16.04.08

This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local authority and approval sought from the Department. Independent legal advice should be sought before entering this agreement.
PAYMENT AND AVAILABILITY AGREEMENT (Acquisition or Construction)
(To be signed in Conjunction with a Capital Advance Agreement)
FOR
PREMISES: [insert address of development(s)]

This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local authority and approval sought from the Department. Independent legal advice should be sought before entering this agreement.
KEY INFORMATION

Parties:  (1) [LOCAL AUTHORITY]

(2) [APPROVED HOUSING BODY]

Units to be made Available: [insert general description, overall number of units and individual addresses of units]

Term of Agreement: [ ] Years from the date of this Agreement.

Payment: The amount payable in accordance with the First Schedule hereto subject to review in accordance with the provisions of the Second Schedule hereto.
THIS AGREEMENT dated the day of 201__

BETWEEN

(1) [LOCAL AUTHORITY] (hereinafter called the “Council”) having its principal offices at [insert local authority address]; and

(2) [APPROVED HOUSING BODY] (hereinafter called the “AHB”) having its principal offices at [insert AHB address].

1. DEFINITIONS

“Agreement”, means this Payment and Availability agreement together with the Schedules hereto;

"Building Regulations" means the Building Control Acts 1990 and 2007 and any statutory extension modification amendment or re-enactment of such Act for the time being in force and any statutory instruments regulations or orders made or issued under any such Act or Acts;

“Capital Advance Agreement” means the agreement entered into between the AHB and the Council in respect of a loan provided by the Council to the AHB to assist the AHB acquire the properties.

“Common Services” means such additional services which are provided by the AHB subject to the written approval of the Council;

“Continuation Agreement” means the agreement entered into between the AHB, the Council and a third party lending institution to whom the AHB have mortgaged their interest in the Units which provides that, in certain circumstances, the third party lending institution can call on the Council to make certain payments.

“Council” means [insert local authority] or any such agent, authorised by [insert local authority] to act on its behalf;

This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local authority and approval sought from the Department. Independent legal advice should be sought before entering this agreement.
“Differential Rent” means the rent payable by the Occupational Tenant as calculated under the Differential Rent Scheme;

“Differential Rent Scheme” refers to the rents scheme established by the Council to determine the level of rent payable by its occupational tenants or a rents scheme established by a national representative body for AHBs that has been approved by the Department of Environment, Community and Local Government for use with this Agreement to determine the level of rents payable by the Occupational Tenants;

“Eligible Nominee” means a person who has qualified under the Council’s social housing assessment and whom the Council have determined their eligibility and need for social housing support;

“Lettable Condition” means in a proper state of structural repair and condition in accordance with the Housing (Standards for Rented Houses) Regulations 2008 and any statutory extension modification amendment or re-enactment of such Regulation;

“Occupational Tenant” means an occupant of the Unit;

“Occupancy Management Services” means the services more particularly outlined in the Third Schedule hereto;

“Payment” means the amount per Unit per annum more particularly defined in the First Schedule hereto being the agreed market rent of [insert market rent] with a percentage discount of [insert % discount] and subject to review in accordance with the provisions of the Second Schedule hereto.

“Planning Acts” means the Planning and Development Acts, 2000 to 2007 and any statutory extension modification
amendment or re-enactment of such Act for the time being in force and any statutory instruments, regulations or orders made or issued under any such Acts;

“Tenancy Agreement” means the tenancy agreement put in place between the AHB and the Occupational Tenant for a Unit;

“Term” means [__] years from the date of this Agreement;

“Unit” means [insert property addresses]

<table>
<thead>
<tr>
<th>Unit Address</th>
<th>Sq.M</th>
</tr>
</thead>
</table>

(and each a “Unit”);

“Utilities” means water, gas, electricity, internal telephone and other communication systems, radio, television, fire fighting and fire prevention systems and equipment which serve each individual Unit.

Save where the context otherwise requires words importing one gender include all other genders and references to the singular include the plural and vice-versa and words importing persons include firms corporations and companies and vice-versa.

2. WHEREAS

A. The AHB holds the Units and has been provided with financial assistance by way of a loan from the Council to assist in the purchase or construction of the Units for the provision of social housing.

B. The AHB has agreed to make the Units available to the Council for the provision of housing to Eligible Nominees for the Term.
C. The Council has agreed subject to the terms and conditions set out herein to procure the Payment to the AHB for the Term.

D. The Council and the AHB have agreed to enter into this Payment and Availability Agreement upon the terms and conditions hereinafter contained.

3 REPRESENTATIONS, INDEMNITY, WARRANTIES and ACKNOWLEDGEMENTS

3.1 AHB Representations

The AHB represents to the Council that as at the date of this Agreement:

3.1.1 It is validly existing under the laws of Ireland and has power to carry on its business and to own its assets and to conduct business and operations which it conducts or proposes to conduct.

3.1.2 It has power and authority to execute, deliver and perform all its obligations under this Agreement.

3.1.3 No litigation, arbitration or administrative proceeding and, without limitation, no dispute with any statutory or governmental authority, is pending or to its knowledge threatened against it or any of its assets which adversely affect the Units.

3.1.4 It is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default is likely to have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement.

3.1.5 No proceedings or other steps have been taken and not discharged nor threatened for the winding-up of the AHB or for the appointment of a receiver, examiner, liquidator, trustee or similar officer in relation to any of its assets or revenues.
3.1.6 It has taken all necessary action to authorise the execution and delivery of this Agreement and the transactions contemplated hereby.

3.1.7 All necessary returns have been delivered by or on behalf of the AHB to the relevant taxation authorities and the AHB is not in default in the payment of any taxes, and no claim is being asserted with respect to taxes which has not been disclosed to the Council.

3.1.8 All written information furnished by or on behalf of the AHB in connection with the negotiation of this Agreement or delivered by or on behalf of the AHB to the Council pursuant to this Agreement was true and accurate in all material respects when given and continues to be true and accurate in all material respects and there are no other facts or matters the omission of which would have made any statement or information contained therein misleading in any material respect and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful enquiry.

3.1.9 It is not aware of any material facts or circumstances that have not been disclosed to the Council and which would be likely to, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Agreement with the AHB.

3.2 AHB Indemnity

The AHB hereby indemnifies and holds harmless the Council, its authorised officers, agents, employees from and against all and any claim and/or loss to the extent that it may arise out of, in the course of, or in connection with the performance or failure to perform any obligation on the AHB’s part under this Agreement save where such loss is caused by the negligence or default of the Council.

3.3 AHB Warrants

The AHB warrants to the Council that:

3.3.1 the Units will be maintained in a good and substantial and workmanlike manner and fit for habitation;
3.3.2 all covenants, obligations, conditions, agreements, restrictions of whatever nature howsoever arising affecting any of the Units, if applicable, have been duly performed and observed and the AHB has not received notice of any outstanding or alleged breach or failure to perform any such covenant, obligation, condition, agreement or restriction;

3.3.3 there are no unusual or onerous provisions in the AHB’s title affecting the intended use of the Units by the AHB for the provision of housing in accordance with all of the terms of this Agreement and, if required, the AHB has the express consent of the superior under the AHB’s title for this purpose.

3.4 **AHB Acknowledgments**

The AHB acknowledges and confirms to the Council that:

3.4.1 it has satisfied itself as to the nature and extent of this Agreement together with the nature and extent of the obligations and risks assumed by it under this Agreement.

3.4.2 the Council shall not be liable to the AHB (whether in contract, tort or otherwise) in respect of any inaccuracy, error, omission, inadequacy or defect of any kind whatsoever in any data disclosed prior to the signing of this Agreement.

3.5 **Council Acknowledgement**

The Council acknowledges and confirms to the AHB that, in the event the AHB have mortgaged their interest in the Units to a third party lending institution, it will agree to enter into a Continuation Agreement in the form approved by the Council with the third party lending institution and that this Agreement will be subject to the covenants and conditions set out in the Continuation Agreement.
NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

1. 4. In consideration of the Payment to the AHB as hereinafter provided and of covenants and agreements on the part of the Council, the AHB COVENANTS AND AGREES:

(a) To make the Units available to the Council for the purposes of providing housing support for Eligible Nominees.

(b) To be responsible for the upkeep, management and maintenance of the Units and to provide or cause to be provided Occupancy Management Services in respect of the Units.

(c) To provide suitably qualified and experienced staff, with sufficient resources to deliver attentive, effective and efficient Occupancy Management Services.

(d) To maintain the Units in a Lettable Condition.

(e) To comply with European Communities (Energy Performance of Buildings) Regulations 2006 and to provide a BER certificate and advisory report for the Units to the Council.

(f) To charge, collect and retain the rent calculated in accordance with the Differential Rent Scheme from the occupants of the Units.

(g) To produce an annual report to the Council in relation to the occupancy and condition of the Units and to certify (in a form to be notified by the Council and subject to change) on an annual basis that the Units are lettable and are being used for the provision of housing for Eligible Nominees.

(h) To take out and maintain during the Term proper and appropriate property insurance for the reinstatement value of the Units and public (minimum €6.5 million) and employer’s liability (minimum €13 million) insurance or in such sums as the Council may reasonably require having regard to industry standards (to be adjusted from time to time as the Council reasonably deems necessary) with a reputable insurance company or reputable underwriter and to pay all premiums necessary for that purpose and when required to produce to the Council the policies for such insurance and the receipt for the current premium.
(i) To comply at all times during the Term at the expense of the AHB with the provisions and requirements of the Planning Acts and of the Building Regulations and of all licences consents permissions approvals certificates and fire safety certificates (if any) granted issued or imposed under the Planning Acts or in connection with the Building Regulations in so far as the same respectively relate to or affect the Units or any part thereof or any operations works acts or things already or in the future to be carried out executed or done on or to the Units or any part thereof.

(j) To ensure payment of all rates taxes assessments impositions duties charges (including management company service charges payable under the Lease if applicable) obligations and outgoings whatsoever (whether statutory parochial local or of any other description) which are now or may at any time during the Term be charged assessed imposed or payable in respect of the Units.

(k) To provide a copy of the Tenancy Agreement to the Council and all persons authorised by the Council on demand.

(l) To produce all reasonable information (including but not limited to the annual report referred to at 4(g)) to the Council and all persons authorised by the Council in relation to the occupancy, condition and/or vacancy of any Unit at all reasonable times and on reasonable notice (being 10 working days in writing or verbally)

(m) Where the AHB is a company, to comply with the provisions of the Companies Acts, 1963 to 2009 (as amended).

2. 5. In consideration of the AHB making available the Units and of covenants and agreements on the part of the AHB, the Council COVENANTS AND AGREES:

(a) To procure the Payment to the AHB Monthly in advance for the Term subject to clause 6.4 (e), 6.4 (g), 6.7, 6.8 and 7.6 below; and

(b) The Payment to the AHB may be revised as may from time to time be ascertained in accordance with the provisions of the Second Schedule hereto.

3. 6. IT IS HEREBY ACKNOWLEDGED AND AGREED BETWEEN THE COUNCIL AND THE AHB that:-

6.1 The AHB shall procure that the Units shall be fitted out/furnished in accordance with the Fourth Schedule hereto.
6.2 The Occupational Tenants shall not, by virtue of this Agreement or otherwise, acquire any interest in the Units.

6.3 The Council and the AHB shall have nomination rights as set out in Clause 6.4 hereof.

6.4 Vacant Units

For the first letting of a Unit and in the event that a Unit becomes vacant (howsoever arising) or the AHB receives notice that a Unit will become vacant the following shall apply:-

(a) The AHB shall notify the Council as soon as it becomes aware of the vacancy that a nomination is required for the vacant Unit.

(b) The Council will provide a nomination for a vacant Unit within one month of being notified by the AHB that the Unit is vacant (the “Nomination Period”).

(c) The AHB shall have three months from the date it becomes aware of the vacancy (the “Vacancy Period”) to have the nominee occupy the vacant Unit on condition that a nomination is provided within the Nomination Period.

(d) The Payment shall continue in relation to a vacant Unit for the Vacancy Period.

(e) If the nomination has been provided within the Nomination Period and the AHB fails to have the vacant Unit occupied within the Vacancy Period then the Payment may be suspended until the Unit is filled. When the Unit is filled the Payment will resume when the new tenancy commences, but for the avoidance of doubt, no Payment will be made to the AHB for the period during which the AHB fails to occupy the vacant Unit after the Vacancy Period.

(f) If the nomination has not been provided within the Nomination Period the AHB and the Council may agree an alternative nomination procedure within one month after the expiry of the Nomination Period;

(g) If the AHB and the Council cannot agree an alternative nomination procedure under clause 6.4(f), the AHB shall be entitled to nominate an occupant for the vacant Unit provided that the nominee is an Eligible Nominee. In these circumstances, the AHB shall have three months commencing at the end of the Nomination Period to fill the Unit and the Payment shall be made to the AHB for the Nomination Period and for the three months commencing at the end of
the Nomination Period. If the AHB fails to have the vacant Unit occupied after three months commencing at the end of the Nomination Period then the Payment may be suspended until the Unit is filled. When the Unit is filled the Payment will resume when the new tenancy commences, but for the avoidance of doubt, no Payment will be made to the AHB for the period during which the AHB fails to occupy the vacant Unit after the Vacancy Period.

(h) In the circumstances that the AHB notifies the Council that a nomination is required for a vacant Unit during the last 12 (twelve) months of the Term and strictly subject to:

I. The AHB and the Council not having agreed to enter into a further Payment and Availability Agreement for the Units and;

II. A vacancy not having existed for more than two weeks prior to notification to the local authority

Then the Payment shall continue in relation to such vacant Unit for the remainder of the Term.

6.5 The Occupational Tenant shall be responsible for discharging the Differential Rent directly to the AHB and for the avoidance of doubt no additional fees, costs, charges, impositions or otherwise shall be payable by the occupants of the Units to the AHB without the prior agreement in writing of the Council save for any such Utilities which are provided by the AHB under this Agreement.

6.6 The Occupational Tenant shall be responsible for payment of the Utilities, Common Services and refuse charges if any.

6.7 Payment may be subject to a satisfactory inspection of the Unit by the Council and the Council being satisfied that the Unit is ready for occupation. If, in the reasonable opinion of the Council the Unit is not ready for occupation then in such circumstances the Payment may be suspended with immediate effect until such time as in the reasonable opinion of the Council the Unit is ready for occupation. For the avoidance of doubt, no Payment will be made to the AHB for the period during which the AHB failed, in the opinion of the Council, to provide a Unit ready for occupation.

6.8 If any Unit becomes uninhabitable or destroyed and the AHB fails to restore or reinstate the Unit or cause to have that Unit restored and reinstated so as to be again fit for use within a period of three months from the date of the destruction or damage
the Payment may be suspended or terminated for the Unit. If the AHB are able to provide a suitable alternative Unit during the three month period, then subject to the Councils approval in writing (such approval not to be unreasonably withheld or delayed), the Payment may recommence but for the avoidance of doubt, after the initial three month period no Payment will be made to the AHB for the period during which the Unit was out of repair uninhabitable or destroyed.

7 GENERAL

7.1 Non-Assignability - This Agreement is personal to both parties and may not be transferred or otherwise disposed of without the prior written agreement of the other.

7.2 Notices - All notices requests demands approvals consents and other communications hereunder shall be in writing and shall be addressed or sent to the addresses appearing at the commencement of this Agreement or any such other address as any party may previously have notified to the other party in writing and shall be duly and validly given if:

(i) hand delivered to any party on the date of receipt; and/or

(ii) delivered in writing by facsimile or other electronic means of communication; and/or

(iii) delivered by prepaid registered or recorded delivery mail to a party on the second working day next following the day of posting.

7.3 Not Partners - This Agreement shall not be deemed to create any partnership or joint venture between the parties hereto.

7.4 Jurisdiction - This Agreement shall be governed by and construed according to the laws of the Republic of Ireland.

7.5 Arbitration - In the event of any dispute arising between the AHB and the Council in relation to any provision of this Agreement which cannot be determined between the parties within a reasonable period such dispute shall be referred for final settlement to an independent arbitrator nominated by agreement between the parties, or, in default of agreement, to be appointed on the application of either party by the president, for the time being, of the Law Society of Ireland. All arbitrations hereunder shall be conducted in accordance with the provisions set forth in the Arbitration Act 2010 and any statutory extension modification amendment or re-enactment of such Act.
7.6 **Termination** – The Council shall be entitled to terminate this Agreement or suspend the Payment with immediate effect on the occurrence of any of the following events:

(a) The occurrence of any act of insolvency in respect of the AHB.

(b) The AHB failing to comply with and/or being in serious breach of any of its obligations under this Agreement which failure has a material adverse effect on any part of this Agreement or on the interests of the Council and which having been informed of the breach the AHB has not rectified within a period of 7 days.

(c) In the event of the Payment being suspended on the occurrence of the events at 7.6 (a) and 7.6 (b) above, the Payment may recommence at a later date should the AHB be compliant with the Agreement, but for the avoidance of doubt, no Payment will be made to the AHB for the period during which the AHB were insolvent and/or were in breach of any of its obligations under this Agreement.

subject to the condition that, where a Continuation Agreement is in place between the AHB, the Council and a third party lending institution in respect of the Units, the Council complies with the provisions of Section 4 of the Continuation Agreement.

7.7 **Removal of a Unit** – Where this agreement pertains to more than one Unit, the Council may remove a Unit or Units from this Agreement strictly subject to the following conditions:

(a) The AHB must seek the prior written consent of the Council (such consent not to be unreasonably withheld) to remove a Unit or Units from the Agreement.

(b) The AHB must set out the reasons why it is seeking to remove the Unit(s), and

(c) If the Council consents to the removal of the Unit(s) from this Agreement, it will notify the AHB in writing of such consent.

In the event that the Council consents to the removal of Unit(s) pursuant to this clause 7.7, such consent shall be strictly subject to the repayment of the appropriate loan amount received from the Council to assist in the purchase or construction of the Unit(s), where such a loan has been advanced under a Capital Advance Agreement, plus the interest accrued on that amount. The amount to be repaid will be calculated in accordance with clause 7.4 of the Capital Advance Agreement. The Payment will cease from the date the Council agrees to the removal of the property from the
Agreement where the property is vacant or on the date that the Tenancy Agreement is terminated.

7.8 Data Protection –

(a) The AHB undertakes that it will comply, and will cause its employees, agents and sub-contractors to comply, with the Data Protection Acts 1988 and 2003 and all applicable data protection laws in connection with the performance of its obligations under this Agreement.

(b) The AHB agrees to indemnify and keep indemnified the Council against any liabilities, costs and expenses that are incurred or arise out of its failure, or the failure of its employees, agents and sub-contractors, to comply with the Data Protection Act 1988 as amended or other applicable data protection laws.

7.9 Inspection –

(a) The Council may at all reasonable times, on giving the AHB reasonable notice, from the date of this Agreement enter the Units in order to inspect and view the state of the Units and the materials used. In exercising this right, the Council will adhere to the reasonable insurance and health and safety requirements of the AHB as made known to the representative or agent and will address any requirement, comment or complaint in writing to the Council.

(b) The Council’s representative or agent on its behalf may at all reasonable times, on giving the AHB reasonable notice, from the date of this Agreement inspect the rent books and other related documents of the tenants of the Units held by the AHB.
FIRST SCHEDULE

Payment Provisions

The following shall be the payments to be made in respect of the Units:

<table>
<thead>
<tr>
<th>Address</th>
<th>Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Units</td>
<td>an amount of € (Euro) per month per Unit being the agreed market rent of € (Euro) with a percentage discount of % and subject to review in accordance with the provisions of the Second Schedule hereto;</td>
</tr>
<tr>
<td>Units</td>
<td>an amount of € (Euro) per month per unit being the agreed market rent of € (Euro) with a percentage discount of % and subject to review in accordance with the provisions of the Second Schedule hereto;</td>
</tr>
</tbody>
</table>

Copy more cell rows for different unit types / rents

Total Payment on the basis all Units are occupied: € per annum payable in monthly instalments of € on the 1st day of each month during the Term subject to review in accordance with the provisions of the Second Schedule hereto;
SECOND SCHEDULE

Payment Review

1. In the first to the _____ year inclusive of the Term the Payment shall be the amount per Unit per annum more particularly defined in the First Schedule. From the commencement of the _____ year of the Term and for the residue of the Term hereby created the Payment shall be determined in accordance with the provisions of this schedule.

2. The Payment to the AHB shall be subject to adjustment at the end of the first period of _____ years and at the end of each successive period of _____ years of the Term in the manner hereinafter provided and after each adjustment the Council shall pay the amount so adjusted (hereinafter called “the Adjusted Sum”) per annum, in respect of the next following _____ year period of the Term.

3. Subject to the provisions of this Schedule, the Adjusted Sum shall be calculated by reference to the change indicated by the Privately Owned Rent Index component of the Consumer Price Index Rental Sub-Indices (2006 base) (hereinafter called “the Index”) issued by the authority of the Central Statistics Office of Ireland and at present officially published in the Irish Statistical Bulletin and shall be made by increasing or decreasing, as the case may be, the yearly Payment on the first payment review and thereafter, by increasing or decreasing the Adjusted Sum in proportion to the rise or fall in the respective Index figures current on the first day of each of the said periods of _____ years compared with the Index figures current on the last day of each of the said periods.

4. For the purpose of this paragraph, the Index figure current on the date aforementioned shall be that published on either of the said dates in the Irish Statistical Bulletin or other official publication or if not published on either of the said days then last published in the said Bulletin or publication immediately before either of them.

5. If during the said periods of _____ years the basis of the Index shall be changed by substituting a new basic or starting figure or otherwise the adjustment of the Payment, on the first payment review and thereafter, the adjustment of the Adjusted Sum to be paid for the period following the expiration of the said periods of _____ years shall in default of agreement between the parties be determined by a professional valuer. The professional valuer is to be nominated by the President or other Senior Officer for the time being of the
Society of Chartered Surveyors Ireland and his determination shall be that of an expert and
not of an arbitrator and shall be binding upon the parties. In making his determination the
said person shall have regard to the level of discount previously agreed under this
Agreement between the Council and the AHB and any official publication relating to the
change in the cost of living during the said periods issued by the authority of the
Government of Ireland or by any responsible organisation. Provided that the adjustment in
the Payment (on the first payment review) or the Adjusted Sum (on each subsequent
payment review) to be made at the end of the said periods of _____ years during which the
basis of any new or revised Index remains unchanged shall continue to be made in
accordance with the provisions of this schedule.

[This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local
authority and approval sought from the Department. Independent legal advice should be sought before entering this
agreement.]
THIRD SCHEDULE

Occupancy Management Services

Occupancy Management Services are the services to be provided by the AHB in relation to tenancy management and the proper management and maintenance of the condition of the Units. The following are the services required - such services to include, but not be limited to:

Tenancy Selection and Management

1. Let the Units in accordance with allocation policy agreed with the Council;
2. Manage vacancies/voids in accordance with the Clause 6 of the Agreement;
3. Make offers of accommodation to Occupational Tenants
4. Complete interviews of proposed Occupational Tenants and carry out reference checks / approvals etc
5. Select Occupational Tenants and consult with the Council in the selection of Occupational Tenants
6. Offer Units to selected Occupational Tenants
7. Explain the Tenancy Agreement to incoming Occupational Tenants
8. Procure that all Occupational Tenants enter into the Tenancy Agreement.
9. Advise the Occupational Tenants to obtain contents insurance for contents in the Units.
10. To immediately notify the Council of the tenancy and to deliver a certified copy of the Tenancy Agreement to the Council within [10] days of it being requested by the Council.
11. Determine rents in accordance with the housing authorities Differential Rents Scheme;
12. To charge, collect and monitor the rent payable by the Occupational Tenants;
13. Carry out regular rent assessments;
14. Comply with the Housing (Rent Books) Regulations 1993 and the Housing (Standards for Rented Houses) Regulations 2008 as amended. Policies and procedures should be put in place to ensure that these aspects of the management and maintenance of the dwellings are adequately dealt with on an ongoing basis, including inspections to check safety standards, etc, particularly in apartment blocks and communal facilities.
15. Carry out all administrative requirements associated with the tenancy and Tenancy Agreement.
16. Run a pre-tenancy course (s) for all incoming Occupational Tenants of the Units before their tenancy commences.
Schedule 3

17. Provide to the Occupational Tenant particulars of the means by which they can, at all reasonable times, contact a member of the AHB;
18. Allow the Occupational Tenant enjoy peaceful and exclusive occupation of the unit;
19. Respond to Occupational Tenant queries within a reasonable time;
20. Operate an efficient and effective housing management and maintenance records and administrative system, recording rents, arrears, repairs, maintenance, etc.;
21. Be vigilant in identifying and dealing with anti-social behaviour in accordance with the Housing Acts 1966 to 2009 as amended and immediately it comes to its notice, making use of tenancy conditions and/or cooperating with the Gardaí where necessary.
22. Ensure adherence to Landlord’s responsibilities and obligations as set out in the Tenancy Agreement
23. Deal with enquiries, complaints and disputes of Occupational Tenants and operate a complaints procedure and use complaints to improve performance.
24. Enforce conditions of Tenancy Agreements;
25. Provide information and advice to Occupational Tenants on rights, duties and welfare matters and their obligations and that of the AHB.
26. Consult and liaise with Occupational Tenants
27. Support Occupational Tenant participation
28. Carry out eviction and forfeiture as appropriate
29. Furnish each incoming Occupational Tenant with a certified copy BER Certificate.
30. Ensure that Occupational Tenants, their families and visitors are reasonably secure in the Units and that they have a sense of confidence in that security.
31. Ensure the maintenance of an effective and secure door entry system to the general satisfaction of the Occupational Tenants at all times.
32. Be compliant with all statutory regulations;
33. Carry out repairs to the interior of the unit and all such repairs and replacement of fittings as are, from time to time, necessary so that that interior and those fittings are maintained in, at least, the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed;
34. Respond to all repair requests within its published response times and to respond to all out of office hours emergency repairs and respond to all repair requests within the following response times:
   (a) Emergency 24 hours
   (b) Urgent 5 Working Days
   (c) Routine 20 Working Days
   (d) General Inspection 20 Working Days
(35) Carry out adequate repairs and maintenance from time to time, and as necessary and ensure that the structure complies with relevant standards;

(36) Make a very clear distinction between the maintenance that it provides or procures (via the Management Company or otherwise) and the maintenance obligations of the Occupational Tenants. Ensure Occupational Tenants’ obligations are set out in the Tenancy Agreement and that they are kept fully briefed on these obligations.

(37) Reimburse the Occupational Tenant in respect of all reasonable and vouched for expenses that may be incurred by the Occupational Tenant in carrying out repairs to the structure or interior of the unit where (i) the AHB has refused or failed to carry out the repairs at the time the Occupational Tenant requests him or her to do so, and (ii) the postponement of the repairs to some subsequent date would have been unreasonable having regard to either— (I) a significant risk the matters calling for repair posed to the health or safety of the Occupational Tenant or other lawful occupants of the dwelling, or (II) a significant reduction that those matters caused in the quality of the Occupational Tenant’s or other such occupants’ living environment,

(38) If the unit is within an apartment complex—(i) forward to the management company, if any, of the complex any complaint notified in writing by the Occupational Tenant to him or her concerning the performance by the company of its functions in relation to the complex,(ii) forward to the Occupational Tenant any initial response by the management company to that complaint, and (iii) forward to the Occupational Tenant any statement in writing made by the management company in relation to that complaint.

Schedule 3 - iii

(This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local authority and approval sought from the Department. Independent legal advice should be sought before entering this agreement.)
FOURTH SCHEDULE

Fit out/Specification

*Generally a description of the fit out will be provided by the AHB*
IN WITNESS hereof the parties hereto have signed their names and affixed their seals the day and year first herein written.

PRESENT when the Corporate Seal of the [LOCAL AUTHORITY] was affixed hereto:

______________________ (Nominated member)
______________________ (Chief Executive or Director of Service or Executive Manager)
______________________ (County Secretary)

PRESENT when the Common Seal of the AHB was affixed hereto:

______________________ Director
______________________ Secretary
DATED THE 201_ DAY OF

[LOCAL AUTHORITY]
and
[AHB]

PAYMENT AND AVAILABILITY AGREEMENT
DRAFT P&A Continuation Agreement

This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local authority and approval sought from the Department. Independent legal advice should be sought before entering this agreement.
THIS AGREEMENT is made the ___ day of ___ 20___

BETWEEN

(1) [Approved Housing Body] having its registered office at [insert AHB address] (“the AHB”)

(2) [Bank] having its registered office at [insert Bank address] (“the Bank”) and

(2) [Local Authority] having its principal place of business at [insert local authority address] (“the Council”)

1. RECITALS

A. The AHB has agreed to make the residential units listed in the Schedule hereto (“the Units” and each a “Unit”) available to the Council for the provision of housing to Eligible Nominees under a Payment and Availability Agreement dated the ___ day of ___ 20___ (“the P & A Agreement”) a copy of which is attached as an Appendix hereto.

B. The Council has agreed, subject to the terms and conditions set out in the P & A Agreement, to procure certain payments to the AHB.

C. The Bank and the AHB have entered into the Loan Agreement dated the ___ day of ___ 20___ (“the Loan Agreement”) to assist the AHB to develop and make the Units available for the provision of housing to Eligible Nominees under the P & A Agreement.

D. One of the conditions of the Bank entering into the Loan Agreement is that the Council will enter into this Agreement to provide that, in certain circumstances, the Bank can call on the Council to make payments as set out in this Agreement.

2. DEFINITIONS AND INTERPRETATION

In this Agreement, where the context so admits defined terms shall have the meaning given to them in the P & A Agreement and the following expressions shall have the following meanings:-

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are generally open for business in Dublin and “Business Days” has a corresponding meaning;

“Loan Agreement” means the facility letter dated the [ ] 201[ ] from [Bank] to the AHB and such additional facilities (if any) as are provided to the AHB;

“New Loan Agreement” means a facility provided by the Bank to an Alternative AHB in respect to the Units.

“P & A Agreement” means the Payment and Availability agreement entered between the AHB and the Council for the Units listed in the Schedule to this agreement;

“Replacement Agreement” means an agreement between the Alternative AHB, the Council and the Bank on the same terms and conditions as this Agreement and intended to replace this Agreement;

“Required Period” means the period starting on the date of the Termination Notice and ending 30 (thirty) Business Days later;

“Step-In Date” has the meaning ascribed to that term in Clause 5;

“Step-In Events” means the events listed in Clause 3 (ii) and “Step-In Event” means any of them;

“Step-In Period” means the period from the Step-In Date and ending on the Step-Out Date;

“Step-Out Date” means the earlier of the following dates (i) the date the P & A Agreement is assigned to an Alternative AHB, (ii) the date a new P & A Agreement is granted to an Alternative AHB; or (iii) the date the P & A Agreement is validly terminated by the Council following compliance by the Council with the terms of this Agreement;

“The Bank” means [insert Bank name]
“Bank Appointed Receiver” means any receiver appointed by the Bank over the assets of the AHB including the units which shall include its successors and assigns;

“Termination Date” means the date upon which the P & A Agreement is terminated in accordance with its terms;

“Termination Notice” means a notice given by the Council to the Bank under Clause 4 (i).
Version 14.10.23

Save to the extent that the context or the express provisions of this Agreement otherwise require:-

- headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- all references to clauses are references to clauses in this Agreement;
- the words “herein”, “hereto” and “hereunder” refer to this Agreement as a whole and not to the particular clause, part, section or paragraph in which such word may be used;
- words importing the singular include the plural and vice versa;
- words importing a particular gender include all genders;
- “person” includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or association;
- references to “parties” mean the parties to this Agreement and references to a “party” mean one of the parties to this Agreement.

3. NOW IT IS HEREBY AGREED as follows:

(i) The Council agrees, (strictly on the undertaking that it assumes no responsibility for compliance with any of the obligations of the AHB under the P & A Agreement which shall be solely a matter for the AHB, its liquidator, receiver and manager or examiner as the case may be), that on receipt of written notice from the Bank in accordance with Clause 5 it will during the Step-In Period:-

(a) pay to the Bank Appointed Receiver the payments due or payable (or that would be due or payable if the Step-In Event or other disability had not occurred) to the AHB under the P & A Agreement;

b) promptly meet and actively engage with the Bank with a view to ensuring continuity of occupation until such time as the P&A Agreement is assigned to an Alternative AHB or the Council terminates the P&A Agreement and, in the event a New Loan Agreement is entered into with an Alternative AHB, to enter into a Replacement Agreement; and

(c) actively assist the Bank to secure an Alternative AHB to take on the role of the AHB under the P&A Agreement.

(ii) The Step-In Events which give rise to the right of the Bank under Clause 5 (i) to give notice to the Council that it must comply with the obligations under Clause 3 (i) above are any of the following:-

(a) The AHB has a winding-up petition presented against it or passes a winding-up resolution (other than in connection with a members’ voluntary
winding-up for the purposes of an amalgamation which need only to be notified to the Bank); or

(b) The AHB resolves to present its own winding-up petition or is wound-up (whether in Ireland or elsewhere); or

(c) A receiver is appointed to the AHB or a receiver or manager is appointed over any of the Units by the Bank. For the avoidance of doubt, a receiver appointed by any other entity save for the Bank would not invoke the rights under Clause 5.

4. No Termination Without Notice

(i) Notwithstanding the termination provisions set out in the P & A Agreement the Council shall not terminate the P & A Agreement without giving to the Bank at least the Required Period of prior written notice stating the proposed Termination Date and the reasons for the termination; and

(ii) A Termination Notice can be revoked (in writing to the Bank) by the Council prior to the expiry of the Required Period. Upon any such revocation, the rights and obligations of the parties to the P & A Agreement shall be construed as if such Termination Notice had not been given.

(iii) The Bank Undertakes to give notice to the Council promptly of any action taken by it resulting in the termination of the Loan Agreement.

(v) This Agreement will terminate once the terms of the Loan Agreement have been satisfied or when the P&A Agreement is terminated.

5. Step-In Date

Without prejudice to the Bank’s rights under the Loan Agreement, the Bank shall give the Council 20 (twenty) Business Days’ prior notice of the date when it shall require the Council to comply with the obligations set out in Clause 3 (i) (the “Step-In Date”) at any time during the term of the Loan Agreement following occurrence of a Step-In Event;

6. Step-In Period

The Council shall deal with the Bank and not the AHB during the Step-In Period.
7. **Step-Out and end of Step-In Period**

On the Step-Out Date, the Council will, subject to performance by the Council of its obligations under this Agreement, be released from all of its obligations under the P & A Agreement arising prior to the Step-Out Date.

8. **Miscellaneous**

(i) The Council shall not during the Step-In Period take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the AHB.

(ii) The AHB joins in this Agreement to acknowledge and consent to the arrangements set out herein and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement. Furthermore, the AHB agrees to take all steps and do all things necessary or desirable to facilitate the enforcement of each party's rights under this Agreement.

(iii) Nothing in this Agreement shall lessen, impact, reduce or prejudice any rights or entitlements the Bank has under the Loan Agreement.

(iv) The obligations of the Council to the Bank under this Agreement shall not be affected by the liquidation of the AHB, the appointment of a receiver or manager to the AHB or its assets, the granting of court protection to the AHB or any other legal disability that may from time to time affect the AHB.

(v) If any dispute shall arise in relation to any provision of this Agreement, which cannot be determined between the parties within a reasonable period, such dispute shall be referred for final settlement to an independent arbitrator nominated by agreement between the parties or in default of agreement to be appointed on the application of either party by the President for the time being of the Law Society of Ireland. All arbitrations hereunder shall be conducted in accordance with the provisions set forth in the Arbitration Act 2010 and any amendments thereto or regulations thereunder.

9. **Notices**

(i) Wherever in this Agreement provision is made for the giving or issuing of any notice, approval or consent by any person ("a Notice"), unless otherwise specified such Notice shall be in writing and the words “notify”, “approve” or “consent” shall be construed accordingly.

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This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local authority and approval sought from the Department. Independent legal advice should be sought before entering this agreement.
Any Notice shall be duly given if signed by or on behalf of a duly authorised officer of the person giving the Notice and left by recorded delivery at, or sent by registered post or email transmission to the following addresses:-

**AHB**

..........................................................
..........................................................
..........................................................
..........................................................

Email: [ ]
Attention: [ ]

**Bank**

..........................................................
..........................................................
..........................................................
..........................................................

Email: [ ]
Attention: [ ]

**Council**

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Email: [ ]
Attention: [ ]

10. **Assignment**

The Bank may not assign or transfer any part of its rights or obligations under this Agreement without the prior written consent of any other party hereto. Neither the AHB nor the Council shall be entitled to assign or transfer any part of its rights or obligations under this Agreement without the prior written consent of the Bank.

11. **Governing Law and No Partnership**
(i) This Agreement shall be governed by and construed in all respects in accordance with the laws of Ireland.

(ii) Nothing in this Agreement shall imply a partnership or joint venture between the parties hereto.

IN WITNESS WHEREOF the parties have affixed their Seals the day and date first hereinbefore written.
This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local authority and approval sought from the Department. Independent legal advice should be sought before entering this agreement.
PRESENT when the COMMON SEAL of [AHB] was affixed to this deed and the deed was delivered:

PRESENT when the COMMON SEAL of [BANK] was affixed to this deed and the deed was delivered:

PRESENT when the COMMON SEAL of [LOCAL AUTHORITY] was affixed to this deed and the deed was delivered:

This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local authority and approval sought from the Department. Independent legal advice should be sought before entering this agreement.
APPENDIX

(Payment and Availability Agreement)
DATED 201

[APPROVED HOUSING BODY]
and
[BANK]
and
[LOCAL AUTHORITY]

DRAFT P&A Continuation Agreement

This is a sample legal template. Any changes to the terms of the agreement should be marked up by the local authority and approval sought from the Department. Independent legal advice should be sought before entering this agreement.