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Technical Releases

TR 04/2023 - Reporting on covenants

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Preface

This guidance replaces *M36 Firms’ Reports and Duties to Lenders in Connection with Loans and other Facilities to Clients and Related Covenants*, which was withdrawn in December 2023.

This guidance assists firms to report in connection with financial covenants in loan agreements and other facilities. This guidance provides a summary of relevant considerations but should not be regarded as a substitute for the specific legal and professional advice.

Introduction

1.Loan agreements often contain a number of covenants with which the borrower is expected to comply. Compliance with such covenants is intended to help assure the lender of the continuing security for the loan; borrowers are expected to provide periodic reports on their compliance, which may include a requirement for the borrower to provide the lender with certain reports prepared by their auditor. This Technical Release gives guidance to professional accountancy firms and practitioners (hereafter referred to as “firm”) in these situations.

Covenants in agreements for loans and other facilities.

2.Covenant clauses are most commonly encountered in loan facility agreements and debentures. The precise nature of the financial instrument does not affect the applicability of this guidance to a firm’s responsibilities or reports in connection therewith. The principles underlying the guidance are relevant to any report in connection with the assessment of compliance with covenants or conditions contained in a commercial agreement.

3.Covenants contained in loan agreements can pertain to a variety of financial and non-financial information relating to the borrower’s financial condition and actions. These covenants normally comprise a series of general covenants, together with a number of detailed clauses tailored to the specific circumstances of the borrower. Typically, the directors of the borrower are required to prepare a periodic statement, report or representation to the lender confirming compliance with the terms of the loan agreement. Such statements, reports or representations are hereinafter referred to in this Technical Release as ‘Statements of Covenant Compliance’.

4.The more routine non-financial covenants in such agreements record commitments by the borrower as to its future actions. For example:

- to provide information to the lender (e.g. monthly management accounts, audited financial statements etc.) within a specified period;
- to continue to insure assets, to maintain and develop the business, to comply with laws and regulations; and
- not to sell or charge substantial assets or dispose of parts of the business without the lender’s consent.

5.In addition to these non-financial covenants, the lender often will require the borrower to maintain certain financial statement ratios (e.g. gearing, interest cover, etc). The imposition of these financial covenants is intended to provide the lender with some assurance as to the continuing financial condition of the business and its progress in accordance with the information provided to the lender at the time of initial advance.

6.Examples of the more common financial and non-financial covenants for borrowings are set out in [Appendix 5](#). In specialised industries, the scope of such covenants may be extended to the

maintenance of key operating statistics or key performance indicators ("KPIs"), which are derived from management information outside the audited financial statements.

7. The directors will prepare their Statement of Covenant Compliance in accordance with their responsibilities under the loan agreement. The Statement would normally set out the calculations of financial ratios etc. as provided for in the loan agreement. The Statement of Covenant Compliance may deal separately with the non-financial covenants, often in terms of a negative statement (e.g. that there have been no breaches of the covenants set out in Clauses [] to []). Alternatively, the Statement may recite each such covenant individually.

8. Some covenants, such as simple calculations of gearing and interest cover based upon audited financial statements or management accounts, are often self-evident and the lender can recalculate the financial ratios itself. However, the basis of calculation of compliance with KPI-based covenants may not be self-evident from the financial statements, as the underlying information may need to be drawn from sources within the company concerned. In such situations, the lender may require the borrower to engage an independent auditor to perform procedures in relation to the calculation of these ratios.

Lender's requirement for evidence of covenant compliance

9. A lender may include in the loan agreement a provision for a report to be requested from the borrower's auditors relating to the directors' Statement of Covenant Compliance. The requirement for this report and its subject matter is normally negotiated directly between the lender and borrower as part of the facility terms and set out in the loan agreement itself. Typically, this requirement is expressed only in general terms; the nature of the report often is not clearly specified in the agreement but firms may expect it to extend to the calculation or extraction of the financial information which form the basis of the covenant compliance calculations and to the accuracy of the calculations themselves.

10. Firms are not obliged to accept an engagement to report in connection with a client's borrowing facilities, whatever the express provisions of the loan agreement, since they cannot be bound to comply with the terms of an agreement to which they were not party. However, situations where firms find themselves unable to report in the required terms are obviously best avoided if possible. Consequently, if a firm becomes aware that a client is involved in a loan or other facility negotiation, it is good practice for it to enquire into whether the draft loan agreement seeks to place any duties or reporting obligations on it and to advise whether the covenants are capable of subsequently being reported upon.

Reporting framework

11. Before a firm enters into such an engagement to report to a client and lender, it should consider professional guidance in deciding the scope and terms of business of any engagement to report to a client's lenders. Engagements to provide reports to lenders in connection with loans and other facilities would generally take the form of an agreed upon procedures engagement (AUP) and therefore be carried out under **International Standard on Related Services 4400 (Revised) Agreed Upon procedures Engagements (April 2020)**¹ ("ISRS 4400 (Revised)").

12. Where clients request assurance, and therefore AUP and ISRS 4400 (Revised) are not appropriate, the firm should follow the guidance set out in **Technical Release 01/2021 Reporting to Third Parties**² issued by Chartered Accountants Ireland. TR 01/2021 provides guidance on determining the form of an engagement and the appropriate standard to be followed.

13. The firm should also consider its position carefully in the light of relevant ethical requirements, since its responsibilities to the client and the lender could, in certain circumstances, present it with a conflict of interest. The same consideration applies when a loan agreement purports to appoint the firm as agent for, or financial advisers to, the lenders for the purpose of providing services and reports in connection with a loan agreement, facility or drawdown.

14. The loan agreement will usually require the borrower to comply with the covenants at all times. The firm's report will relate to financial covenants by reference to financial information as of specified dates and periods. Firms will not normally accept an engagement in which they are to provide wide-ranging assurance that the borrower has complied or is in compliance with the covenants contained in the agreements or that, based on prospective financial information, the borrower will be in compliance with the covenants for a future period. The scope of their engagement will usually be confined to reporting the results of applying specified, agreed-upon procedures to financial information in the Statement of Covenant Compliance, where such information is objectively ascertainable.

15. This Technical Release is based on the application of ISRS 4400 (Revised) when reporting on loan covenants and provides guidance on the application of the standard to this specific situation.

16. An AUP engagement is not an audit, review or other assurance engagement. As such, the report does not express an opinion or an assurance conclusion in any form. Instead, the firm presents

findings that are the factual results of the agreed-upon procedures performed, and which are capable of being objectively verified.

Engagement acceptance

17. Reports by firms on a directors' Statement of Covenant Compliance are normally provided as an ancillary service to the audit or review of the borrower's financial statements and are conducted under a separate engagement letter and fee arrangements. The engagement could take the form of an assignment to report to the directors to provide them with a report in connection with the discharge of their responsibilities. Such a report might be relevant where there is no requirement from the lender for an independent report. More commonly, however, both the client and lender would engage with the firm and the engagement would require a report to both the client and the lender on the extraction and compilation of the financial information in the Statement of Covenant Compliance. The guidance that follows is on the basis that both the client and lender are engaging parties for the engagement.

18. In deciding whether to accept the engagement, firms need to ensure that the reporting structure reflects an appropriate delineation between the clients' responsibilities to prepare the Statement of Covenant Compliance, including the financial information, and to provide such to the lender; and the firm's responsibility to perform the agreed upon procedures and to report factual findings. It is the directors' responsibility to prepare the financial information supporting their assertion that they have complied with the terms of the loan agreement.

19. Before accepting the engagement, the firm needs to be sure that the matters on which it is asked to report are clear, unambiguous and appropriate in the circumstances. Firms should consider carefully the implications of accepting an engagement to report on a Statement of Covenant Compliance based on financial covenants whose terms are imprecise, require subjective interpretation beyond the scope of recognised accounting expertise or are based upon data extracted from records outside the borrowers' system of internal financial control. Examples of such difficulties are where a firm is required to report on a Statement of Covenant Compliance 'after making such adjustments as they consider necessary' or 'immediately after' the occurrence of an event or transaction which may not coincide with a date at which financial statements are prepared. Where ambiguity, imprecision or subjectivity is capable of being resolved by agreement between the parties, the firm should seek the joint written instructions of its client and the lender as to how the financial covenant concerned is to be interpreted before undertaking the engagement.

The firm's duty of care when reporting on the directors' Statement of Covenant Compliance

20. In accepting an engagement to report to both the client and lenders on the extraction and compilation of the financial covenants, a firm acknowledges a duty of care to both the client and the lender in relation to the subject matter of its report on the directors' Statement of Covenant Compliance.

21. Firms use established risk management techniques to control the duties of care in relation to the subject matter of their report, for example by entering into an engagement letter with the addressees of the intended report, which restricts the use of the report to them, specifies liability limitations and includes a disclaimer of responsibility to any other person.

Engagement letters

22. Firms will need to consider whether the request is a separate engagement, whether directly between the lender and themselves, a further engagement between the client and themselves or a tri-partite agreement with both the lender and client. More usually, a separate tri-partite engagement letter approach would be adopted unless the provision of the report was specifically contemplated in another such engagement letter addressed to the relevant parties. This guidance is based on the scenario that a tri-partite engagement has been agreed. (An example tri-partite engagement letter where a firm acts as statutory auditor is in [Appendix 2](#).)

23. The client and lender are responsible for determining whether the agreed-upon procedures are appropriate for the purposes of the engagement.

24. The firm's responsibility is to perform the agreed-upon procedures on the Statement of Covenant Compliance and to report factual findings, to the extent that it relates to financial matters.

25. The firm needs to consider the form of the request and the procedures they are asked to perform. A condition of accepting an AUP engagement is that the firm has determined that the procedures and findings can be described objectively, in terms that are clear, not misleading, and not subject to varying interpretations. Certain terms used to describe procedures are considered to be unclear, misleading or subject to varying interpretation. Some examples are included in [Appendix 1](#) of this document. Where such terms are included, the firm should seek to modify

the language used or include a definition of the terms in the agreed upon procedures report before agreeing to/commencing the engagement. (Refer to [paragraph 30-33](#))

26. When performing an engagement in accordance with ISRS 4400 (Revised), the firm is required to comply with relevant ethical, independence and quality standards requirements.

27. Relevant ethical requirements ordinarily comprise the International Ethics Standards Board for Accountants' (IESBA) International Code of Ethics for Professional Accountants (including International Independence Standards) (IESBA Code) together with national requirements that are more restrictive. For members, national requirements include the Chartered Accountants Ireland Code of Ethics issued by Chartered Accountants Ireland.

28. ISRS 4400 (Revised) does not require the firm to be independent of the engaging parties in an agreed-upon procedures engagement and the IESBA Code does not contain independence requirements for such engagements. However, the firm may be required to comply with independence requirements, for example when the firm is the statutory auditor of the financial statements of the client or lender. In this case, the firm may be required to be independent in accordance with Section 5 of the Ethical Standard for Auditors (Ireland) 2020 issued by the Irish Auditing and Accounting Supervisory Authority (IAASA) or FRC Ethical Standard 2019 issued by the Financial Reporting Council, as applicable.

29. International Standard on Quality Management 1, Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements (ISQM 1) applies to firms performing agreed-upon procedures engagements in accordance with ISRS 4400 (Revised).

Agreed-upon procedures

30. The precise scope of work will need to be agreed with the client and the lender to reflect the specific circumstances. The client and lender are responsible for determining whether the agreed-upon procedures are sufficient and appropriate for the purposes of the engagement. It is important that the agreed-upon procedures are:

- Clear, specific, and objective, such that they are not misleading or open to varying interpretations and do not create uncertainty as to what the procedures entail;
- Concise in respect of the nature, timing and extent of the procedures; and
- Designed to report on factual findings and do not suggest that they are designed to provide assurance.

31. Example procedures are in [Appendix 6](#) to this document. This list is not intended to be exhaustive or prescriptive.

32. Typically the firm would:

- read the relevant clauses of the loan agreement and understand the operation of the relevant covenants to the extent they pertain to accounting matters;
- read the directors' Statement of Covenant Compliance;
- agree the financial information in the Statement to the sources from which it has been extracted;
- recompute the calculations and ratios set out in the directors' Statement with the objective of checking their mathematical accuracy;
- obtain written representations from the client. An example representation letter is provided in [Appendix 3](#).

33. Normally firms do not undertake procedures to confirm the reliability of financial information in the Statement of Covenant Compliance nor of the sources from which the data has been extracted. Equally, they do not report on non-financial information or on matters primarily involving the exercise of the directors' business judgment, for example explanations of operating trends (to the extent that the directors are required by a covenant to provide such explanations) since these may depend on factors beyond their expertise. Consequently, the firm's report in connection with covenant compliance will normally be confined to the accuracy of the extraction and computation of those financial matters which are the subject of covenants within the facility and only to the extent they are capable of clear definition, relate to accounting matters and are extracted from records within the borrower's system of internal financial control.

Reporting

34. The firm's report should be prepared in accordance with ISRS 4400 (Revised). An illustrative form of report is provided in [Appendix 4](#).

35. The firm will report on accounting, financial and quantitative matters which are within the scope of its professional expertise. It does not provide comment on matters to which its skill or experience has little or no relevance or application.

36. When reporting on the agreed-upon procedures engagement, it is not appropriate to report on judgmental matters, such as fair presentation in accordance with the loan agreement. In view of the limited nature of these procedures, firms would not be expected to report on the extraction

of, or underlying procedures relating to, non-financial information, without undertaking a substantive engagement designed for that purpose, which is beyond the scope of this guidance.

37. An agreed upon-procedures engagement is not an audit, review or other assurance engagement. As such, the report does not express an opinion or an assurance conclusion in any form. Instead, the firm presents findings that are the factual results of the agreed-upon procedures performed, and which are capable of being objectively verified.

38. When a firm reports on a directors' Statement of Covenant Compliance, it will normally disclaim any duty of care to the lender in respect of any audit or review report it has given on the borrower's financial statements. In any event, the period to which a Statement of Covenant Compliance relates will not necessarily correspond with a period for which an audit or review has been performed. If the periods do coincide, and the firm's report on the financial statements has been modified or qualified in respect of matters which could have a material effect on the Statement of Covenant Compliance, the firm will consider its position accordingly.

39. Firms would expect to exclude liability in respect of any loss or damage caused by, or arising from, fraudulent acts, misrepresentation or concealment on the part of the client entity, its directors, employees or agents. They would also exclude liability to third parties. They would expect to agree a limitation of their liability to the lender and the client which was appropriate to the limited scope of the engagement. References to such clauses are contained in the example engagement letter at [Appendix 2](#).

Appendices

Appendix 1 – Some examples of terms that may be unclear, misleading or subject to varying interpretation

(This not intended to be an exhaustive list).

1. As set out in paragraph A34 of ISRS 4400. Terms that may be unclear, misleading, subject to varying interpretations depending on the context in which they are used, may include for example:

- Terms that are associated with assurance under the IAASB standards such as “presents fairly” or “true and fair”, “audit”, “review”, “assurance”, “opinion” or “conclusion”.
- Terms that imply the expression of an assurance opinion or conclusion such as “we certify”, “we verify”, “we have ascertained” or “we have ensured” with regards to findings.
- Unclear or vague phrases such as “we have obtained all the explanations and performed such procedures as we considered necessary”.
- Terms that are subject to varying interpretations such as “material” or “significant”.
- Imprecise descriptions of procedures such as “discuss”, “evaluate”, “test”, “analyse”, “review” or “examine” without specifying the nature and extent and if applicable the timing of the procedure to be performed. For example, using the word “discuss” may be imprecise without specifying with whom the discussion is held or the specific questions asked.
- Terms that suggest the findings do not reflect factual results such as “in our view”, “from our perspective” or “we take the position that”.

Appendix 2 – Example engagement letter for Agreed-upon procedures engagement

This example engagement letter has been drafted in the basis that both the Client and Lender agree to the terms of the engagement letter and that the firm is the statutory auditor of the Client.

This example engagement letter assumes that the firm engaged is also the statutory auditor and that both the client and lender agreed to the terms of the engagement letter.

(Guidance reference: [paragraph 22](#))

[Client plc

Address]

[Lender plc

Address]

[Other addressees as provided for in the second paragraph of the letter]

Dear Directors,

Client plc – Loan Agreement reference [insert reference]

We are writing to confirm the terms of the engagement by [Client plc full company name] (“[Client plc / the Company]”) and [Lender plc full name] (the “Lender”) (collectively and individually “you”) of [Firm name] (“Firm” or “we”) to perform certain agreed upon procedures as required by Clause [x] of [the Loan Agreement dated [date]].

Under the terms of Clause [] of the Loan Agreement dated [] (the 'Loan Agreement') between [Client plc] and [Lender plc], the Directors of Client plc are required to procure that their auditors report to the Lender in connection with the Directors' Statement of Covenant Compliance, (the 'Statement'), prepared in accordance with Clause [] of the Loan Agreement. At the request of the Directors of [Client plc], we are writing to set out our understanding of the work you wish us to perform and the terms and conditions upon which we are prepared to provide such a report for your use.

[This engagement letter is addressed to [Lender plc], as lead manager/arranger of the facility/syndication agreement, and to each of the other lenders participating in the facility/syndication agreement whose names, as set out in Attachment 1, have been notified to us by Lender plc as having validly authorised it to accept this engagement letter on their behalf. By signing and accepting the terms of this engagement letter, [Lender plc] confirms that it will ensure that it receives prima facie authority from each other lender identified in Attachment 1 as participating in the facility/syndication agreement authorising it to enter into this engagement letter on the relevant lender's behalf.]

Scope of services

Our engagement will be performed in accordance with International Standard on Related Services (ISRS) 4400 (Revised), *Agreed-Upon Procedures Engagements*. In performing the agreed procedures, we shall comply with the ethical requirements in the Chartered Accountants Ireland Code of Ethics issued by Chartered Accountants Ireland and the requirements of the International Ethics Standards Board for Accountants' (IESBA) *International Code of Ethics for Professional Accountants* (IESBA Code).

*[If the service is being provided to a **non-audit client** and we are not required to be independent under the terms of the engagement, insert the following wording: For the purpose of this engagement, there are no independence requirements with which we are obliged to comply and our report will contain a statement to this effect.]*

*[If the service is being provided to an **audit client**, insert the following wording: There are no specific independence requirements for this engagement. However, we are the statutory auditor of [Client plc] and are therefore independent from [Client plc] in accordance with the [UK entities insert: *FRC Ethical Standard 2019* issued by the Financial Reporting Council (FRC) ROI entities insert: *Ethical Standard for Auditors (Ireland) 2020* issued by the Irish Auditing and Accounting Supervisory Authority (IAASA)] and our report will contain a statement to this effect.]*

An agreed upon procedures engagement performed under ISRS 4400 (Revised) involves us performing the procedures agreed with you and communicating the findings in the agreed upon procedures report (“Report”). Findings are the factual results of the agreed upon procedures performed. You [and if relevant, [name Other Party]] acknowledge that the procedures are appropriate for the purpose of the engagement. We make no representation regarding the appropriateness of the procedures. This agreed upon procedures engagement will be conducted on the basis that the [Responsible Party] is responsible for the subject matter on which the agreed upon procedures are performed. Further, this agreed-upon procedures engagement is not an assurance engagement. Accordingly, we do not express an opinion or an assurance conclusion.

The procedures that we will perform are solely for the purpose of assisting Client plc in meeting their requirements of Clause [] of the Loan Agreement (the “terms”) and assisting Lender plc’s assessment of Client plc’s compliance with the terms. Accordingly, our report will be addressed to you and our report may not be suitable for another purpose.

We set out [below]/[in Appendix X] details of the agreed upon procedures to be performed by us.

[insert procedures, see [Appendix 6](#) for example procedures]

Respective responsibilities of directors and auditors

The directors of [Client plc] are responsible for ensuring that [Client plc] complies with all of the terms and conditions of the Loan Agreement including each of the Covenants set out in Clauses [] to [] thereof. Under Clause [] thereof, the Directors are responsible for preparing their Statement of Covenant Compliance.

It is [the responsibility of the Company’s Directors / [Client Name]’s executive officers / your responsibility] to make available to us all relevant information and documentation in relation to which our procedures are to be performed. It is also [the Directors’ / the executive officers’ / your] responsibility to determine the sufficiency of these procedures for your own purposes. Our responsibility is to perform the agreed procedures as set out above and to report on our findings.

[Include these paragraphs if work is being carried out for an audited entity and the procedures refer to the audited entity's annual financial statements: In the following two paragraphs we refer to audit work performed on the financial statements of [Client plc / the Company]. The words "we" and "our," denote the auditor, who is (or was) [name of firm].

We are auditors of [Client plc] and have audited the annual financial statements of [Client plc], (the 'audited financial statements') and reported to its members in accordance with our responsibilities to them under the [ROI companies: [Section 391](#) of the [Companies Act 2014](#)]/[UK Companies: Chapter 3 of Part 16 of the [Companies Act 2006](#)] [Other entities insert relevant legislation if entity is not incorporated under [Companies Act 2014](#) or [Companies Act 2006](#)]. Our audit of the financial statements of [Client plc] was not intended to address compliance with financial covenants or other matters in which the addressees of this letter may be primarily interested. In particular, the scope of our audit work was set and our judgments made by reference to our assessment of materiality in the context of the audited financial statements taken as a whole, rather than in the context of the report contemplated in this letter. In these circumstances, to the fullest extent permitted by law, we do not accept or assume any responsibility to anyone other than [Client plc/ the Company] and [Client plc / the Company]'s [members] as a body, for our audit work, for the audit report, or for the opinion we have formed in respect of that audit.

To the fullest extent permitted by law we do not and will not, by virtue of our reports or otherwise under this engagement, assume any responsibility or accept any liability in respect of our work under this letter to [Lender plc] or to any other party, whether in contract, negligence or otherwise in relation to our audits of financial statements.

As regards our audit work on [Client plc's] financial statements for future periods, our work will be carried out in accordance with our statutory and professional obligations and will not be planned or conducted in contemplation of your requirements or any matters which might be set out in the Loan Agreement. In particular, the scope of our audit work will be set and judgments made by reference to our assessment of materiality in the context of the audited financial statements taken as a whole, rather than in the context of your needs. For this reason, our work will not necessarily address or reflect matters in which you may be primarily interested as lenders. Therefore, we cannot accept any responsibility to you in relation to our audit opinions and disclaim all liability to you in connection therewith.]

Basis of report

Having performed the agreed upon procedures, we will report in writing on our findings in the form illustrated in Appendix [] if our findings support reporting in this form. Our report will be addressed to you and will be for you [and your Directors / and your executive officers] alone and will be for your [and your Directors' / and your executive officers'] exclusive use. To the fullest extent permitted by law, we will accept no responsibility or liability in respect of our report to any party other than you [and] [the Company and your Directors / [Client Name] and your executive officers] and our report will contain a statement to this effect.

Attention is drawn to the limitations in the scope of the agreed upon procedures as set out above. The agreed upon procedures do not amount to an audit performed in accordance with any standards applicable to auditing, or a review performed in accordance with any standards applicable to reviews. No audit or review will be performed by us and, as such, no assurance will be expressed. Had we been engaged to perform and did perform additional procedures, an audit or a review, other matters might come to light that would be reported. Any agreed developments in the scope of our work as the engagement progresses will be recorded in writing and will be subject to the terms set out in this letter unless otherwise agreed in writing.

Use of report

Our report will be provided solely for your use in connection with the Loan Agreement and should not be made available to any other party without our written consent. The report is confidential to you and will be provided only for the purpose of assisting you to meet the requirements of Clause [x] of the Loan Agreement. We accept no liability to any other party who is shown or gains access to our report.

Obligations and Liabilities

We undertake that we will exercise reasonable professional skill and care in the performance of our work as set out in this letter in accordance with applicable professional standards. This engagement is undertaken subject to certain terms excluding liability where information is or has been misrepresented to us, or withheld or concealed from us, and providing for our aggregate liability to the addressees of this letter and [Client plc] to be limited to a maximum aggregate amount of [] and subject to that cap, to the part of any loss suffered which is proportional to our responsibility.

It is agreed that the allocation between addressees of the limit of liability specified above will be entirely a matter for the addressees, who shall be under no obligation to inform us of it, provided always that if (for whatever reason) no such allocation is agreed, no addressee shall dispute the validity, enforceability or operation of the limit of liability on the ground that no such allocation was agreed.

Our detailed Terms of Business are set out in the attachment to this letter which shall apply as if set out in full herein.

Acknowledgement and acceptance

We will be grateful if, having considered the provisions of this letter together with the attachments and having concluded that they are reasonable in the context of all the factors relating to our proposed engagement, you will indicate your agreement to these arrangements by signing and returning to us the enclosed copy of this letter.

Yours faithfully

The terms and conditions contained in this letter and the attached Terms of Business (*where appropriate*) are agreed and accepted on behalf of Lender plc by:

.....

Signature of Authorised Person

Authorised and accepted on behalf of Client plc by:

.....

Signature of Authorised Person

Appendices:

- Attachment 1
- Form of Report
- [insert names of other appendices]

Appendix 3 – Example representation letter from client for Agreed-upon procedures engagement

[See [paragraph 32](#)]

[Auditors]

Dear Sirs,

[Loan Agreement Reference]

In connection with your proposed report in accordance with the arrangements set out in your letter of [], we are writing to confirm to the best of our knowledge and belief the following representations we have made to you and on which you need to rely in providing your report on the Statement of Covenant Compliance, (the 'Statement'), to Lender plc.

[insert representations]

We are responsible for the preparation, presentation and overall accuracy of the Statement of Covenant Compliance.

We are not aware of any misstatements or omissions in the Statement of Covenant Compliance.

We have provided to you all relevant information related to the Statement of Covenant Compliance as well as access to personnel, facilities and records as agreed upon in the engagement agreement for you to perform the agreed-upon procedures.

We have disclosed to you (1) all known matters contradicting the Statement of Covenant Compliance and (2) any communications from regulatory agencies, legal counsel or others affecting the Statement of Covenant Compliance, including communications received up to the date of this letter.

We acknowledge that the agreed-upon procedures are appropriate for our purposes.

We understand that your agreed-upon procedures engagement was conducted in accordance with International Standard on Related Services 4400 (Revised). We understand that an agreed-upon procedures engagement is substantially less in scope than an assurance engagement, the objective of which would be the expression of an opinion or conclusion on the Statement of Covenant Compliance.

We also understand that evaluation of the findings in the agreed-upon procedures report (AUP Report) is the responsibility of the users of the AUP Report.

Yours faithfully

.....

Signature of Authorised Person on behalf of Client plc

Appendix 4 – Example report for Agreed-upon procedures engagement

This example report assumes that the firm engaged is also the statutory auditor and that both the client and lender sign up to the terms of the engagement letter.³

[Client plc] (the “Company”)

[Lender plc] (the “Lender”)

[Other addressees as provided for in engagement letter]

Dear Directors,

Agreed-Upon Procedures Report on Loan Agreement reference [insert]

We refer to the above-mentioned loan agreement dated [date] between [Client plc] (the “Company”) and [Lender plc] (the “Lender”) (the ‘Loan Agreement’). Under the terms of Clause [] thereof, [Client plc] is required to comply with specified financial covenants and to supply [Lender plc] with information in connection therewith reported upon by its [auditors].

The directors of [Client plc] have prepared a Statement of Covenant Compliance, (the ‘Statement’), for the [period/year ended] [date] a copy of which is appended to this letter.

This report is provided pursuant to, and must be read in conjunction with, our engagement letter dated [202X] and is subject to the terms and limitations set out therein.

Purpose of this Agreed-Upon Procedures Report

Our report is solely for the purpose of assisting [Client plc] in meeting their requirements of Clause [] of the Loan Agreement (the “terms”) and assisting [Lender plc’s] assessment of [Client plc’s] compliance with the terms. It has been released to the [Client plc] and [Lender plc] on the basis that our report shall not be copied, referred to or disclosed, in whole (save for the Company’s or Lender’s own internal purposes) or in part, unless permitted under the terms of the Engagement Letter or with our prior written consent.

Our report was designed to meet the agreed requirements of the [Client plc] and [Lender plc] determined by the [Client plc’s] and [Lender plc’s] needs at the time. Our report should not therefore be regarded as suitable to be used or relied on by any party wishing to acquire rights against us other than the [Client plc] or [Lender plc] for any purpose or in any context, save to the extent separately agreed upon in writing with [firm name]. Any other party who obtains access to our report or a copy and chooses to rely on our report (or any part of it) will do so at its own risk. To the fullest extent permitted by law, [firm name] will accept no responsibility or liability in respect of our report to any such other party.

Responsibilities of the Engaging Party and the Responsible Party

[The Company and/or Lender] has acknowledged that the agreed-upon procedures are appropriate for the purpose of the engagement.

[Responsible Party], as identified by the [Client plc], is responsible for the subject matter on which the agreed-upon procedures are performed.

Practitioner’s Responsibilities

We have conducted the agreed-upon procedures engagement in accordance with the International Standard on Related Services (ISRS) 4400 (Revised), Agreed-Upon Procedures Engagements. An agreed-upon procedures engagement involves our performing the procedures that have been agreed with the Company and the Lender, and reporting the findings, which are the factual results of the agreed-upon procedures performed. We make no representation regarding the appropriateness of the agreed-upon procedures.

This agreed-upon procedures engagement is not an assurance engagement. Accordingly, we do not express an opinion or an assurance conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported.

Professional Ethics and Quality Management

We have complied with the ethical requirements in the Chartered Accountants Ireland Code of Ethics issued by Chartered Accountants Ireland and the requirements of the International Ethics Standards Board for Accountants’ (IESBA) *International Code of Ethics for Professional Accountants* (IESBA Code).

[If the service is being provided to a non-audit client and we are not required to be independent, insert the following wording: For the purpose of this engagement, there are no independence requirements with which we are obliged to comply.]

[If the service is being provided to an audit client, insert the following wording: There are no specific independence requirements for this engagement. However, we are the statutory auditor of [Client plc] and are therefore independent from [Client plc] in accordance with the [UK entities insert: FRC Ethical Standard 2019 issued by the Financial Reporting Council ROI entities insert: Ethical Standard for Auditors (Ireland) 2020 issued by the Irish Auditing and Accounting Supervisory Authority (IAASA)].

Our firm applies International Standard on Quality Management 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Statements, or Other Assurance or Related Services Engagements* (ISQM 1), which requires the firm to design, implement and operate a system of quality management including policies or procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

Procedures and Findings

We have performed the procedures described below, which were agreed upon with the Company and the Lender and we report our findings below.

[insert procedures and findings. [Appendix 6](#) to this document includes some example procedures]

[We are auditors of Client plc and have audited the annual financial statements of [Client plc], (the ‘audited financial statements’) and reported to its members in accordance with our responsibilities to them under the [ROI companies: [Section 391](#) of the [Companies Act 2014](#)]/[UK Companies: Chapter 3 of Part 16 of the [Companies Act 2006](#)] [Other entities insert relevant legislation if entity is not incorporated under [Companies Act 2014](#) or [Companies Act 2006](#)]. Our audit of the financial statements of [Client plc] was not intended to address compliance with financial covenants or other matters in which the addressees of this letter may be primarily interested. In particular, the scope of our audit work was set and our judgments made by reference to our assessment of materiality in the context of the audited financial statements taken as a whole, rather than in the context of the report contemplated in this letter. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Company and the Company’s members as a body for that audit work, for the audit report, or for the opinions we have formed in respect of that audit.]

Yours faithfully

[Firm name

Address]

[Date]

Appendix 5 – Common covenant restrictions and ratios

Examples of the subject matter of more common financial and non-financial covenants for borrowings are set out below.

Accounting-based	Non-accounting based
Cash flow to total debt service	First charge over specified assets
Dividend cover	Audited annual financial statements within specified period
Minimum share capital and reserves	Cross default clauses
PBIT-based interest cover	Monthly management accounts within specified period
Gearing	Restrictions on changes to ownership
Cash flow-based interest cover	Restrictions on additional borrowings (from other sources)
Other interest cover	Maintenance of adequate fire, theft and other insurances
Net current assets/borrowings	Restrictions in mergers/acquisitions
Proportion of debtors below certain days outstanding	Restrictions on asset disposals
Current ratio	
Quick asset ratio	
EBITDA	

Gross profit margin	No capital expenditure beyond certain limits without approval
Rent roll ratios	Compliance with environmental laws and regulations
	Compliance with other laws and regulations
	No redemption of preference shares while loans outstanding
	Charges over keyman insurance
	Keyman critical illness policy
	Limits on director's remuneration

Appendix 6 – Example procedures for Agreed-upon procedures engagement

We have agreed to perform the following procedures and report to you the findings resulting from our work:

a. We will obtain the Facility Agreement dated DD MM YYYY (reference XXX) between [client name] and [lender name].

b. We will obtain the following from [client name]:

i. The Statement of Covenant Compliance prepared by management for the period ended DD MM YYYY [as set out in the facility agreement].

ii. Covenant calculations (the 'Calculations') which support the details included in the Statement of Covenant Compliance.

iii. Company trial balance as at the financial statement year end (being DD MM YYYY).

iv. [Audited / unaudited] financial statements as at and for the year ended DD MM YYYY.

c. For each Covenant identified in the Statement of Covenant Compliance, [e.g. the cashflow cover ratio, interest cover ratio, leverage ratio, (the "ratios") and capital expenditure], we will perform the following procedures:

i. We will compare the ratios and the capital expenditure in the Statement of Covenant Compliance to the Calculations prepared by the [client name] which support the covenant calculations.

ii. We will compare the amounts used in the Calculations to the trial balance and [audited / unaudited] financial statements.

iii. We will re-calculate the ratios and capital expenditure calculations to check for mathematical accuracy.

¹ <https://www.iaasb.org/standards-pronouncements>

² <https://www.charteredaccountants.ie/knowledge-centre/technical-hub/home>

³ See also ISRS 4400(Revised) [Appendix 2](#).