

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2018

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number: 001-37599

LivaNova

LivaNova PLC

(Exact name of registrant as specified in its charter)

England and Wales

(State or other jurisdiction of
incorporation or organization)

**20 Eastbourne Terrace
London, United Kingdom**

(Address of principal executive offices)

98-1268150

(I.R.S. Employer
Identification No.)

W2 6LG

(Zip Code)

(44) (0) 20 3325 0660

Registrant's telephone number, including area code:

Securities registered pursuant to Section 12(b) of the Act:

Ordinary Shares — £1.00 par value per share

Title of Each Class of Stock

The NASDAQ Stock Market LLC

Name of Each Exchange on Which Registered

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☐

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

Class

Ordinary Shares - £1.00 par value per share

Outstanding at July 26, 2018

48,591,937

LIVANOVA PLC
TABLE OF CONTENTS

	PART I. FINANCIAL INFORMATION	PAGE NO.
	<u>Note About Forward Looking Statements</u>	<u>3</u>
<u>Item 1</u>	<u>Condensed Consolidated Financial Statements</u>	<u>5</u>
	<u>Condensed Consolidated Statements of Income</u>	<u>5</u>
	<u>Condensed Consolidated Statements of Comprehensive Income (Loss)</u>	<u>6</u>
	<u>Condensed Consolidated Balance Sheets</u>	<u>7</u>
	<u>Condensed Consolidated Statements of Cash Flows</u>	<u>8</u>
	<u>Notes to the Condensed Consolidated Financial Statements</u>	<u>9</u>
<u>Item 2</u>	<u>Management’s Discussion and Analysis of Financial Condition and Results of Operations</u>	<u>33</u>
<u>Item 3</u>	<u>Quantitative and Qualitative Disclosures About Market Risk</u>	<u>43</u>
<u>Item 4</u>	<u>Controls and Procedures</u>	<u>44</u>
	PART II. OTHER INFORMATION	
<u>Item 1</u>	<u>Legal Proceedings</u>	<u>45</u>
<u>Item 1A</u>	<u>Risk Factors</u>	<u>45</u>
<u>Item 2</u>	<u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	<u>45</u>
<u>Item 3</u>	<u>Defaults Upon Senior Securities</u>	<u>45</u>
<u>Item 4</u>	<u>Mine Safety Disclosures</u>	<u>45</u>
<u>Item 5</u>	<u>Other Information</u>	<u>45</u>
<u>Item 6</u>	<u>Exhibits</u>	<u>46</u>

In this Quarterly Report on Form 10-Q, “LivaNova,” “the Company,” “we,” “us” and “our” refer to LivaNova PLC and its consolidated subsidiaries.

This report may contain references to our proprietary intellectual property, including among others:

- Trademarks for our VNS therapy systems, the VNS Therapy[®] System, the VITARIA[®] System and our proprietary pulse generator products: Model 102 (Pulse[®]), Model 102R (Pulse Duo[®]), Model 103 (Demipulse[®]), Model 104 (Demipulse Duo[®]), Model 105 (AspireHC[®]), Model 106 (AspireSR[®]) and Model 1000 (SenTiva[™]).
- Trademarks for our perfusion systems and products: Inspire[®], Heartlink[®], Connect[™], XTRA[®], S5[®] and Revolution[®]
- Trademarks for our line of surgical tissue and mechanical valve replacements and repair products: Mitroflow[®], Crown PRT[®], Solo Smart[™], Perceval[®], Top Hat[®], Reduced Series Aortic Valves[™], Carbomedics[®] Carbo-Seal[®], Carbo-Seal Valsalva[®], Carbomedics[®] Standard[™], Orbis[™] and Optiform[®], MEMO 3D[®], MEMO 3D[®] ReChord[™], MEMO 4D[®], MEMO 4D[®] ReChord[™], AnnuloFlo[®], AnnuloFlex[®], Bicarbon Slimline[™], Bicarbon Filtline[™] and Bicarbon Overline[®].

These trademarks and trade names are the property of LivaNova or the property of our consolidated subsidiaries and are protected under applicable intellectual property laws. Solely for convenience, our trademarks and tradenames referred to in this Quarterly Report on Form 10-Q may appear without the ® or ™ symbols, but such references are not intended to indicate in any way that we will not assert, to the fullest extent under applicable law, our rights to these trademarks and tradenames.

NOTE ABOUT FORWARD LOOKING STATEMENTS

Certain statements in this Quarterly Report on Form 10-Q, other than purely historical information, are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933 (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These statements include, but are not limited to, LivaNova’s plans, objectives, strategies, financial performance and outlook, trends, the amount and timing of future cash distributions, prospects or future events and involve known and unknown risks that are difficult to predict. As a result, our actual financial results, performance, achievements or prospects may differ materially from those expressed or implied by these forward-looking statements. In some cases, you can identify forward-looking statements by the use of words such as “may,” “could,” “seek,” “guidance,” “predict,” “potential,” “likely,” “believe,” “will,” “should,” “expect,” “anticipate,” “estimate,” “plan,” “intend,” “forecast,” “foresee” or variations of these terms and similar expressions, or the negative of these terms or similar expressions. Such forward-looking statements are necessarily based on estimates and assumptions that, while considered reasonable by LivaNova and its management based on their knowledge and understanding of the business and industry, are inherently uncertain. These statements are not guarantees of future performance, and stockholders should not place undue reliance on forward-looking statements. There are a number of risks, uncertainties and other important factors, many of which are beyond our control, that could cause our actual results to differ materially from the forward-looking statements contained in this Quarterly Report on Form 10-Q, and include but are not limited to the risks and uncertainties summarized below:

- changes in our common stock price;
- changes in our profitability;
- regulatory activities and announcements, including the failure to obtain regulatory approvals for our new products;
- effectiveness of our internal controls over financial reporting;
- fluctuations in future quarterly operating results;
- failure to comply with, or changes in, laws, regulations or administrative practices affecting government regulation of our products, including, but not limited to, U.S. Food and Drug Administration (“FDA”) laws and regulations;
- failure to establish, expand or maintain market acceptance of our products for the treatment of our approved indications;
- any legislative or administrative reform to the healthcare system, including the U.S. Medicare or Medicaid systems or international reimbursement systems, that significantly reduces reimbursement for our products or procedures or denies coverage for such products or procedures or enhances coverage for competitive products or procedures, as well as adverse decisions by administrators of such systems on coverage or reimbursement issues relating to our products;
- failure to maintain the current regulatory approvals for our products’ approved indications;
- failure to obtain or maintain coverage and reimbursement for our products’ approved indications;
- unfavorable results from clinical studies;
- variations in sales and operating expenses relative to estimates;
- our dependence on certain suppliers and manufacturers to provide certain materials, components and contract services necessary for the production of our products;
- product liability, intellectual property, shareholder-related, environmental-related, income tax and other litigation, disputes, losses and costs;
- protection, expiration and validity of our intellectual property;
- changes in technology, including the development of superior or alternative technology or devices by competitors;
- competition from providers of alternative medical therapies, such as pharmaceutical companies and providers of cannabis;
- failure to comply with applicable U.S. domestic laws and regulations, including federal and state privacy and security laws and regulations;
- failure to comply with non-U.S. law and regulations;
- non-U.S. operational and economic risks and concerns;
- failure to attract or retain key personnel;

- failure of new acquisitions to further our strategic objectives or strengthen our existing businesses;
- losses or costs from pending or future lawsuits and governmental investigations;
- changes in accounting rules that adversely affect the characterization of our consolidated financial position, results of operations or cash flows;
- changes in customer spending patterns;
- continued volatility in the global market and worldwide economic conditions, including volatility caused by the implementation of Brexit and/or changes to existing trade agreements and relationships between the U.S. and other countries;
- changes in tax laws, including changes related to Brexit, or exposure to additional income tax liabilities;
- harsh weather or natural disasters that interrupt our business operations or the business operations of our hospital-customers; and
- failure of the market to adopt new therapies or to adopt new therapies quickly.

Other factors that could cause our actual results to differ from our projected results are described in (1) “Part II, Item 1A. Risk Factors” and elsewhere in this Quarterly Report on Form 10-Q, (2) our Annual Report on Form 10-K for the fiscal year ended December 31, 2017 (“2017 Form 10-K”), (3) our reports and registration statements filed and furnished from time to time with the Securities and Exchange Commission (“SEC”) and (4) other announcements we make from time to time.

Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date hereof. We undertake no obligation to update or revise any forward-looking statements after the date they are made, whether as a result of new information, future events or otherwise. You should read the following discussion and analysis in conjunction with our unaudited condensed consolidated financial statements and related notes included elsewhere in this report. Operating results for the three and six months ended June 30, 2018 are not necessarily indicative of future results, including the full fiscal year. You should also refer to our “Annual Consolidated Financial Statements,” “Notes” thereto, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Risk Factors” contained in our 2017 Form 10-K.

Financial Information and Currency of Financial Statements

All of the financial information included in this quarterly report has been prepared in accordance with generally accepted accounting principles in the United States of America (“U.S.” and such principles, “U.S. GAAP”). The reporting currency of our consolidated financial statements is U.S. dollars.

PART I. FINANCIAL INFORMATION

Item 1. *Financial Statements*

LIVANOVA PLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(UNAUDITED)
(In thousands, except per share amounts)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Net sales	\$ 287,498	\$ 255,843	\$ 537,896	\$ 482,668
Cost of sales	91,993	84,023	176,591	163,991
Product remediation	1,542	1,723	5,257	931
Gross profit	193,963	170,097	356,048	317,746
Operating expenses:				
Selling, general and administrative	123,439	94,264	227,600	181,604
Research and development	34,215	33,833	65,967	54,219
Merger and integration expenses	4,409	3,512	7,369	5,698
Restructuring expenses	476	2,597	2,357	12,627
Amortization of intangibles	9,817	8,116	18,618	16,076
Total operating expenses	172,356	142,322	321,911	270,224
Operating income from continuing operations	21,607	27,775	34,137	47,522
Interest income	232	252	679	525
Interest expense	(3,006)	(1,578)	(5,117)	(3,893)
Gain on acquisitions	—	39,428	11,484	39,428
Foreign exchange and other (losses) gains	(70)	(2,837)	(343)	336
Income from continuing operations before tax	18,763	63,040	40,840	83,918
Income tax (benefit) expense	(1,030)	3,259	2,863	8,914
Losses from equity method investments	(265)	(14,102)	(627)	(16,098)
Net income from continuing operations	19,528	45,679	37,350	58,906
Net (loss) income from discontinued operations	(4,462)	1,819	(9,011)	(137)
Net income	\$ 15,066	\$ 47,498	\$ 28,339	\$ 58,769
Basic income (loss) per share:				
Continuing operations	\$ 0.40	\$ 0.95	\$ 0.77	\$ 1.22
Discontinued operations	(0.09)	0.04	(0.18)	—
	\$ 0.31	\$ 0.99	\$ 0.59	\$ 1.22
Diluted income (loss) per share:				
Continuing operations	\$ 0.40	\$ 0.95	\$ 0.76	\$ 1.22
Discontinued operations	(0.09)	0.03	(0.18)	—
	\$ 0.31	\$ 0.98	\$ 0.58	\$ 1.22
Shares used in computing basic income (loss) per share	48,487	48,140	48,406	48,104
Shares used in computing diluted income (loss) per share	49,338	48,303	49,263	48,241

See accompanying notes to the condensed consolidated financial statements

LIVANOVA PLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(UNAUDITED)
(In thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Net income	\$ 15,066	\$ 47,498	\$ 28,339	\$ 58,769
Other comprehensive (loss) income:				
Net change in unrealized gains (losses) on derivatives	801	(1,310)	(456)	(3,943)
Tax effect	(192)	559	111	1,283
Net of tax	609	(751)	(345)	(2,660)
Foreign currency translation adjustment, net of tax	(58,154)	56,587	(47,601)	72,017
Total other comprehensive (loss) income	(57,545)	55,836	(47,946)	69,357
Total comprehensive (loss) income	<u>\$ (42,479)</u>	<u>\$ 103,334</u>	<u>\$ (19,607)</u>	<u>\$ 128,126</u>

See accompanying notes to the condensed consolidated financial statements

LIVANOVA PLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share amounts)
(UNAUDITED)

	<u>June 30, 2018</u>	<u>December 31, 2017</u>
ASSETS		
<i>Current Assets:</i>		
Cash and cash equivalents	\$ 47,380	\$ 93,615
Accounts receivable, net of allowance of \$9,561 at June 30, 2018 and \$9,418 at December 31, 2017	261,915	282,145
Inventories	157,831	144,470
Prepaid and refundable taxes	51,944	46,274
Assets held for sale	—	13,628
Assets of discontinued operations	—	250,689
Prepaid expenses and other current assets	35,621	39,037
Total Current Assets	554,691	869,858
Property, plant and equipment, net	186,156	192,359
Goodwill	965,697	784,242
Intangible assets, net	798,434	535,397
Investments	21,130	34,492
Deferred tax assets, net	65,539	11,559
Other assets	5,489	75,984
Total Assets	\$ 2,597,136	\$ 2,503,891
LIABILITIES AND STOCKHOLDERS' EQUITY		
<i>Current Liabilities:</i>		
Current debt obligations	\$ 110,588	\$ 84,034
Accounts payable	86,914	85,915
Accrued liabilities and other	86,153	78,942
Taxes payable	23,089	12,826
Accrued employee compensation and related benefits	61,276	66,224
Liabilities of discontinued operations	—	78,075
Total Current Liabilities	368,020	406,016
Long-term debt obligations	50,413	61,958
Contingent consideration	178,449	33,973
Deferred income taxes liability	154,404	123,342
Long-term employee compensation and related benefits	29,328	28,177
Other long-term liabilities	33,488	35,111
Total Liabilities	814,102	688,577
Commitments and contingencies (Note 11)		
<i>Stockholders' Equity:</i>		
Ordinary Shares, £1.00 par value: unlimited shares authorized; 48,661,493 shares issued and 48,584,123 shares outstanding at June 30, 2018; 48,290,276 shares issued and 48,287,346 shares outstanding at December 31, 2017	75,269	74,750
Additional paid-in capital	1,744,262	1,735,048
Accumulated other comprehensive (loss) income	(2,633)	45,313
Accumulated deficit	(33,755)	(39,664)
Treasury stock at cost, 77,370 shares at June 30, 2018 and 2,930 shares at December 31, 2017	(109)	(133)
Total Stockholders' Equity	1,783,034	1,815,314
Total Liabilities and Stockholders' Equity	\$ 2,597,136	\$ 2,503,891

See accompanying notes to the condensed consolidated financial statements

LIVANOVA PLC AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)
(In thousands)

	Six Months Ended June 30,	
	2018	2017
Operating Activities:		
Net income	\$ 28,339	\$ 58,769
Non-cash items included in net income:		
Depreciation	16,624	17,998
Amortization	18,609	23,095
Stock-based compensation	14,220	8,564
Deferred income tax benefit	(9,909)	(19,791)
Losses from equity method investments	1,838	18,482
Gain on acquisitions	(11,484)	(39,428)
Impairment of property, plant and equipment	480	4,581
Amortization of income taxes payable on inter-company transfers of property	5,166	17,770
Remeasurement of contingent consideration to fair value	(5,546)	155
Other	(943)	1,675
Changes in operating assets and liabilities:		
Accounts receivable, net	21,799	(15,912)
Inventories	(11,285)	(6,927)
Other current and non-current assets	(15,786)	(13,904)
Accounts payable and accrued current and non-current liabilities	(3,870)	(12,438)
Restructuring reserve	284	(11,129)
Net cash provided by operating activities	48,536	31,560
Investing Activities:		
Acquisitions, net of cash acquired	(279,863)	(14,194)
Purchases of property, plant and equipment and other	(13,231)	(14,923)
Proceeds from the sale of CRM business franchise	186,682	—
Proceeds from sale of cost-method investment	—	3,192
Loans to equity method investees	—	(6,834)
Proceeds from asset sales	13,222	5,170
Other	—	(145)
Net cash used in investing activities	(93,190)	(27,734)
Financing Activities:		
Change in short-term borrowing, net	(17,971)	(12,812)
Proceeds from short-term borrowing (maturities greater than 90 days)	240,000	20,000
Repayment of short-term borrowing (maturities greater than 90 days)	(190,000)	—
Repayment of long-term debt obligations	(12,240)	(11,306)
Proceeds from exercise of stock options	2,731	2,442
Payment of deferred consideration - acquisition of Caisson Interventional, LLC	(14,073)	—
Shares repurchased from employees for minimum tax withholding	(7,130)	(1,594)
Other	(390)	(97)
Net cash provided by (used in) financing activities	927	(3,367)
Effect of exchange rate changes on cash and cash equivalents	(2,508)	2,442
Net (decrease) increase in cash and cash equivalents	(46,235)	2,901
Cash and cash equivalents at beginning of period	93,615	39,789
Cash and cash equivalents at end of period	\$ 47,380	\$ 42,690

See accompanying notes to the condensed consolidated financial statements

LIVANOVA PLC AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1. Unaudited Condensed Consolidated Financial Statements

Basis of Presentation

The accompanying condensed consolidated financial statements of LivaNova as of, and for the three and six months ended June 30, 2018 and June 30, 2017, have been prepared in accordance with U.S. GAAP for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. The accompanying condensed consolidated balance sheet of LivaNova at December 31, 2017 has been derived from audited financial statements contained in our 2017 Form 10-K, but does not include all of the information and footnotes required by U.S. GAAP for complete financial statements. In the opinion of management, the condensed consolidated financial statements reflect all adjustments (consisting of only normal recurring adjustments) considered necessary for a fair statement of the operating results of LivaNova and its subsidiaries, for the three and six months ended June 30, 2018 and are not necessarily indicative of the results that may be expected for the year ending December 31, 2018. The financial information presented herein should be read in conjunction with the audited consolidated financial statements and notes thereto accompanying our 2017 Form 10-K.

Sale of our Cardiac Rhythm Management Business Franchise

We completed the sale of our Cardiac Rhythm Management (“CRM”) business franchise to MicroPort Cardiac Rhythm B.V. and MicroPort Scientific Corporation (the “CRM Sale”) on April 30, 2018 for total cash proceeds of \$195.9 million, less cash transferred of \$9.2 million, subject to certain closing adjustments. In conjunction with the CRM Sale, we entered into transition services agreements to provide certain support services for generally up to twelve months from the closing date of the sale. We previously concluded that the sale of CRM represents a strategic shift in our business that will have a major effect on future operations and financial results. As a result, we classified the operating results of CRM as discontinued operations in our condensed consolidated statements of income. The assets and liabilities of CRM are presented as assets or liabilities of discontinued operations in the condensed consolidated balance sheet at December 31, 2017.

Reclassification of Prior-Year Comparative Period Presentation

We have reclassified certain prior period amounts for comparative purposes. These reclassifications did not have a material effect on our financial condition, results of operations or cash flows.

To conform the presentation on the condensed consolidated statement of cash flows for the six months ended June 30, 2017, to the presentation for the year ended December 31, 2017 in our 2017 Form 10-K, loans to cost and equity method investees of \$6.8 million was reclassified to Investing Activities from Financing Activities.

We reclassified \$34.0 million to contingent consideration from other long-term liabilities at December 31, 2017 to conform to the presentation on the condensed consolidated balance sheet at June 30, 2018.

Significant Accounting Policies

Our significant accounting policies are detailed in "Note 2: Basis of Presentation, Use of Accounting Estimates and Significant Accounting Policies" of our 2017 Form 10-K.

On January 1, 2018, we adopted ASC Update (“ASU”) No 2014-09, Revenue from Contracts with Customers. Refer to “Note 2. Revenue Recognition.” We elected the cumulative effect transition method; however, we recognized no cumulative effect to the opening balance of retained earnings because the impact on the timing of when revenue is recognized within our Cardiac Surgery segment, specifically related to heart-lung machines and preventative maintenance contracts on cardiopulmonary equipment, was insignificant. The timing of revenue recognition for products and related revenue streams within our Neuromodulation segment and discontinued operations did not change.

Note 2. Revenue Recognition

We generate our revenue through contracts with customers that primarily consist of hospitals, healthcare institutions, distributors and other organizations. Revenue is measured based on consideration specified in a contract with a customer, and excludes amounts collected on behalf of third parties. We measure the consideration based upon the estimated amount to be received. The amount of consideration we ultimately receive varies depending upon the return terms, sales rebates, discounts, and other incentives that we may offer, which are accounted for as variable consideration when estimating the amount of revenue to recognize. The estimate of variable consideration requires significant judgment.

We have historically experienced a low rate of product returns and the total dollar value of product returns has not been significant to our financial statements.

We recognize revenue when a performance obligation is satisfied by transferring the control of a product or providing service to a customer. Some of our contracts include the purchase of multiple products and/or services. In such cases, we allocate the transaction price based upon the relative estimated stand-alone price of each product and/or service sold. We record state and local sales taxes net; that is, we exclude sales tax from revenue. Typically, our contracts do not have a significant financing component.

We incur incremental commission fees paid to the sales force associated with the sale of products. We apply the practical expedient within ASC 606-10-50-22 and have elected to recognize the incremental costs of obtaining a contract as an expense when incurred if the amortization period of the asset the entity would otherwise recognize is one year or less. As a result, no commissions are capitalized as contract costs at June 30, 2018.

The following is a description of the principal activities (separated by reportable segments) from which we generate our revenue. For more detailed information about our reportable segments including disaggregated revenue results by major product line and primary geographic markets, see “Note 16. Geographic and Segment Information”.

Cardiac Surgery Products and Services

The Cardiac Surgery (“CS”) segment has three primary product lines: cardiopulmonary products, heart valves and advanced circulatory support.

Cardiopulmonary products include oxygenators, heart-lung machines, autotransfusion systems, perfusion tubing systems, cannulae and other related accessories. Heart valves include mechanical heart valves, tissue heart valves and related repair products. Technical services include installation, repair and maintenance of cardiopulmonary equipment under service contracts or upon customer request.

Cardiopulmonary products may include performance obligations associated with assembly and installation of equipment. Accordingly, we allocate a portion of the sales prices to installation obligations and recognize that revenue when the service is provided. We recognize revenue for equipment and accessory product sales when control of the equipment or product passes to the customer.

Heart valve revenue is recognized when control passes to the customer, usually at the point of surgery.

Advanced circulatory support revenue, which represents our recently acquired TandemLife business, is principally derived from the sale of temporary life support product kits that can include a combination of pumps, oxygenators, and cannulae. Revenue is recognized when control passes to the customer, usually at the point of shipment.

Technical service agreements generally provide for upfront payments in advance of rendering services or periodic billing over the contract term. Amounts billed in advance are deferred and recognized as revenue when the performance obligation is satisfied. Technical services are not a significant component of CS revenue and have been presented with the related equipment and accessories revenue.

Neuromodulation Products

Our Neuromodulation (“NM”) segment generates its revenue from the sale of neuromodulation therapy systems for the treatment of drug-resistant epilepsy, treatment-resistant depression and obstructive sleep apnea. The NM product line includes the VNS Therapy System, which consists of an implantable pulse generator, a lead that connects the generator to the vagus nerve, and other accessories. The NM product line also includes an implantable device for the treatment of obstructive sleep apnea that stimulates multiple tongue muscles via the hypoglossal nerve, which opens the airway while a patient is sleeping. We recognize revenue for product sales when control passes to the customer.

Discontinued Operations: Cardiac Rhythm Management Products

CRM generated revenue from the sale of products for the diagnosis, treatment, and management of heart rhythm disorders and heart failure. CRM devices include high-voltage defibrillators and low-voltage pacemakers. We recognize revenue for product sales when control passes to the customer.

Contract Balances

Due to the nature of our products and services, revenue producing activities may result in contract assets and contract liabilities which are insignificant to our financial position and results of operations. These activities relate primarily to CS technical services contracts for short-term and multi-year service agreements. Contract assets are primarily comprised of unbilled revenues, which occur when a performance obligation has been completed, but not billed to the customer. Contract

liabilities are made up of deferred revenue, which occurs when a customer pays for a service, before a performance obligation has been completed. Contract assets are included within “Prepaid expenses and other current assets” in the condensed consolidated balance sheets and were insignificant at June 30, 2018 and December 31, 2017. As of June 30, 2018 and December 31, 2017, contract liabilities of \$5.1 million and \$3.8 million, respectively, are included within “Accrued liabilities and other” and “Other long-term liabilities” in the condensed consolidated balance sheets.

Note 3. Business Combinations

Caisson Interventional, LLC

On May 2, 2017, we acquired the remaining 51% equity interests in Caisson Interventional, LLC (“Caisson”) for a purchase price of up to \$72.0 million, net of \$6.3 million of debt forgiveness, consisting of \$18.0 million paid at closing, \$14.4 million paid during the second quarter of 2018, and contingent consideration of up to \$39.6 million to be paid on a schedule driven primarily by regulatory approvals and a sales-based earnout. Caisson is focused on the design, development and clinical evaluation of a novel transcatheter mitral valve replacement (“TMVR”) implant device with a fully transvenous delivery system for the treatment of mitral valve regurgitation. The purchase price allocation was finalized during the second quarter of 2018 and there were no adjustments to the preliminary purchase price allocation during the measurement period.

We performed a quantitative impairment assessment, as of April 1, 2018, for the goodwill and in-process research and development assets arising from the Caisson acquisition. Based upon the assessment performed, we determined that the goodwill and the in-process research and development assets were not impaired. The quantitative impairment assessment was performed using management’s current estimate of future cash flows which are based on the expected timing of future regulatory approvals. A delay in the anticipated timing of these regulatory approvals or a change in management’s estimates could result in a fair value of the in-process research and development that is below its carrying amount. We will continue to monitor any changes in circumstances for indicators of impairment.

ImThera Medical, Inc.

On January 16, 2018, we acquired the remaining 86% outstanding interest in ImThera Medical, Inc. (“ImThera”) for cash consideration of up to \$225 million. Cash of \$78.3 million was paid at closing with the balance to be paid based on achievement of a certain regulatory milestone and a sales-based earnout.

Headquartered in San Diego, California, ImThera manufactures an implantable device for the treatment of obstructive sleep apnea that stimulates multiple tongue muscles via the hypoglossal nerve, which opens the airway while a patient is sleeping. ImThera has a commercial presence on the European market, and an FDA pivotal study is ongoing in the U.S. ImThera is highly aligned with our Neuromodulation Business Franchise.

The following table presents the acquisition date fair value of the consideration transferred and the fair value of our interest in ImThera prior to the acquisition (in thousands):

Cash	\$	78,332
Contingent consideration		112,744
Fair value of our interest in ImThera prior to the acquisition ⁽¹⁾		25,580
Fair value of consideration transferred	\$	216,656

- (1) The fair value of our previously-held interest in ImThera was determined based on the fair value of total consideration transferred and application of a discount for lack of control. As a result, we recognized a gain of \$11.5 million for the fair value in excess of our carrying value of \$14.1 million. The gain is reflected as “Gain on acquisitions” on our condensed consolidated statement of income for the six months ended June 30, 2018.

The following table presents the preliminary purchase price allocation at fair value for the ImThera acquisition including certain measurement period adjustments (in thousands):

	Initial Purchase Price Allocation	Measurement Period Adjustments ⁽¹⁾	Adjusted Purchase Price Allocation
In-process research and development ⁽²⁾	\$ 151,605	\$ 10,677	\$ 162,282
Developed technology	5,661	(5,661)	—
Goodwill	87,063	(4,467)	82,596
Deferred income tax liabilities, net ⁽³⁾	(27,980)	(1,278)	(29,258)
Other assets and liabilities, net	836	200	1,036
Net assets acquired	<u>\$ 217,185</u>	<u>\$ (529)</u>	<u>\$ 216,656</u>

- (1) During the second quarter of 2018, measurement period adjustments were recorded based upon new information obtained about facts and circumstances that existed as of the acquisition date.
- (2) The fair value of in-process research and development ("IPR&D") was determined using the income approach, which is a valuation technique that provides a fair value estimate based on the market participant expectations of cash flows the asset would generate. The cash flows were discounted commensurate with the level of risk associated with the asset. The discount rates were developed after assigning a probability of success to achieving the projected cash flows based on the current stage of development, inherent uncertainty in reaching certain regulatory milestones and risks associated with commercialization of the product. The IPR&D amount is included in "Intangible assets, net" in the condensed consolidated balance sheet at June 30, 2018.
- (3) The amount includes a provisional estimate for deferred tax assets acquired.

Goodwill arising from the ImThera acquisition, which is not deductible for tax purposes, primarily represents the synergies anticipated between ImThera and our existing neuromodulation business. The assets acquired, including goodwill, are recognized in our Neuromodulation segment.

During the second quarter of 2018, we determined that developments in the ImThera clinical trial will result in a minimum 12-month delay of regulatory approval. This delay constituted a triggering event that required evaluation of the in-process research and development asset for impairment. Based on the quantitative impairment evaluation, the in-process research and development asset was not impaired; however, a further delay or a change in management's estimates could result in a fair value that is below the carrying amount for such an asset. We will continue to monitor any changes in circumstances for indicators of impairment.

The results of the ImThera acquisition added \$0.1 million and \$0.2 million in revenue and \$2.6 million and \$3.6 million in operating losses during the three and six months ended June 30, 2018, respectively. Additionally, we recognized ImThera acquisition-related expenses of approximately \$0.2 million and \$0.3 million for legal and valuation expenses during the three and six months ended June 30, 2018, respectively. These expenses are included within "Selling, general and administrative" expenses in the condensed consolidated statement of income. Pro forma financial information assuming the ImThera acquisition had occurred as of the beginning of the calendar year prior to the year of acquisition was not material for disclosure purposes.

The ImThera business combination involved contingent consideration arrangements composed of potential cash payments upon the achievement of a certain regulatory milestone and a sales-based earnout associated with sales of products covered by the purchase agreement. The sales-based earnout was valued using projected sales from our internal strategic plan. Both arrangements are Level 3 fair value measurements and include the following significant unobservable inputs (in thousands):

ImThera Acquisition	Fair value at January 16, 2018	Valuation Technique	Unobservable Input	Ranges
Regulatory milestone-based payment	\$ 50,429	Discounted cash flow	Discount rate	4.3% - 4.7%
			Probability of payment	85% - 95%
			Projected payment years	2020 - 2021
Sales-based earnout	62,315	Monte Carlo simulation	Risk-adjusted discount rate	11.5%
			Credit risk discount rate	4.7% - 5.8%
			Revenue volatility	29.3%
			Probability of payment	85% - 95%
			Projected years of earnout	2020 - 2025
	<u>\$ 112,744</u>			

TandemLife

On April 4, 2018, we acquired CardiacAssist, Inc., doing business as TandemLife ("TandemLife") for cash consideration of up to \$250 million. Cash of \$204 million was paid at closing with up to \$50 million in contingent consideration based on achieving regulatory milestones. TandemLife, headquartered in Pittsburgh, Pennsylvania, is focused on the delivery of leading-edge temporary life support systems, including cardiopulmonary and respiratory support solutions. TandemLife complements our Cardiac Surgery portfolio, and expands our existing line of cardiopulmonary products.

The following table presents the acquisition date fair value of the consideration transferred (in thousands):

Cash	\$ 203,671
Contingent consideration	40,190
Fair value of consideration transferred	<u>\$ 243,861</u>

The following table presents the preliminary purchase price allocation at fair value for the TandemLife acquisition (in thousands):

In-process research and development ^{(1) (2) (3)}	\$ 110,977
Trade names ⁽¹⁾	11,539
Developed technology ⁽¹⁾	6,387
Goodwill	118,917
Inventory	10,296
Other assets and liabilities, net	3,632
Deferred income tax liabilities, net ⁽³⁾	(17,887)
Net assets acquired	<u>\$ 243,861</u>

- (1) The amounts above are included in "Intangible assets, net" in the condensed consolidated balance sheet at June 30, 2018. Trade names and developed technology are amortized over remaining useful lives of 15 and 2 years, respectively.
- (2) The fair value of in-process research and development ("IPR&D") was determined using the income approach, which is a valuation technique that provides a fair value estimate based on the market participant expectations of cash flows the asset would generate. The cash flows were discounted commensurate with the level of risk associated with the asset. The discount rates were developed after assigning a probability of success to achieving the projected cash flows based on the current stage of development, inherent uncertainty in reaching certain regulatory milestones and risks associated with commercialization of the product.
- (3) The amounts include provisional estimates based on the information available as of the acquisition date. The Company is gathering additional information necessary to finalize the estimated fair values for deferred tax assets acquired and IPR&D.

Goodwill arising from the TandemLife acquisition, which is not deductible for tax purposes, primarily represents the synergies anticipated between TandemLife and our existing cardiac surgery business. The assets acquired, including goodwill, are recognized in our Cardiac Surgery segment.

The results of the TandemLife acquisition added \$6.0 million in revenue and \$6.1 million in operating losses during each of the three and six months ended June 30, 2018. Additionally, we recognized TandemLife acquisition-related expenses of approximately \$1.6 million and \$1.9 million for legal and valuation expenses during the three and six months ended June 30, 2018, respectively. These expenses are included within “Selling, general and administrative” expenses in the condensed consolidated statement of income. Pro forma financial information assuming the TandemLife acquisition had occurred as of the beginning of the calendar year prior to the year of acquisition was not material for disclosure purposes.

The TandemLife business combination involved a contingent consideration arrangement composed of potential cash payments upon the achievement of certain regulatory milestones. The arrangement is a Level 3 fair value measurement and includes the following significant unobservable inputs (in thousands):

TandemLife Acquisition	Fair value at April 4, 2018	Valuation Technique	Unobservable Input	Ranges
Regulatory milestone-based payments	\$ 40,190	Discounted cash flow	Discount rate	4.2% - 4.8%
			Probability of payments	75% - 95%
			Projected payment years	2019 - 2020

Note 4. Discontinued Operations

In November 2017, we concluded that the sale of CRM represented a strategic shift in our business that would have a major effect on future operations and financial results. As a result, we classified the operating results of CRM as discontinued operations in our condensed consolidated statements of income for all the periods presented in this Quarterly Report on Form 10-Q. The assets and liabilities of CRM are presented as assets or liabilities of discontinued operations in the condensed consolidated balance sheets at December 31, 2017.

We completed the CRM Sale on April 30, 2018 for total cash proceeds of \$195.9 million, less cash transferred of \$9.2 million, subject to certain customary closing adjustments. In conjunction with the sale, we entered into transition services agreements to provide certain support services for generally up to twelve months from the closing date of the sale. The services include, among others, accounting, information technology, human resources, quality assurance, regulatory affairs, supply chain, clinical affairs and customer support. During the six months ended June 30, 2018, we recognized income of \$0.9 million for providing these services. Income recognized related to the transition services agreements is recorded as a reduction to the related expenses in the associated expense line items in the condensed consolidated statements of income.

The following table represents assets and liabilities of CRM presented as assets and liabilities of discontinued operations in the condensed consolidated balance sheet:

	December 31, 2017
Accounts receivable, net	\$ 64,684
Inventories	54,097
Prepaid taxes	14,725
Prepaid and other assets	3,498
Property, plant and equipment, net	12,104
Deferred tax assets, net	2,517
Investments	6,098
Intangible assets, net	92,966
Assets of discontinued operations	<u>\$ 250,689</u>
Accounts payable	26,501
Accrued liabilities and other	7,669
Taxes payable	5,084
Accrued employee compensation and benefits	30,753
Deferred income taxes liability	8,068
Liabilities of discontinued operations	<u>\$ 78,075</u>

The following table represents the financial results of CRM presented as net (loss) income from discontinued operations in the condensed consolidated statements of income:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018 ⁽¹⁾	2017	2018 ⁽¹⁾	2017
Revenues	\$ 27,206	\$ 65,544	\$ 87,313	\$ 123,824
Cost of sales	10,391	24,800	32,529	46,285
Gross profit	16,815	40,744	54,784	77,539
Selling, general and administrative expenses	15,073	25,960	46,899	50,997
Research and development	5,929	9,118	17,210	18,377
Merger and integration expenses	—	10	—	32
Restructuring expenses	—	(1,479)	651	(1,359)
Amortization of intangibles	—	3,565	—	7,019
Revaluation gain on assets and liabilities held for sale	—	—	(1,213)	—
Loss on sale of CRM	214	—	214	—
Total operating expenses	21,216	37,174	63,761	75,066
Operating (loss) income from discontinued operations	(4,401)	3,570	(8,977)	2,473
Foreign exchange and other (losses) gains	(67)	(402)	12	(172)
(Loss) income from discontinued operations, before tax	(4,468)	3,168	(8,965)	2,301
Income tax (benefit) expense	(6)	54	(1,165)	54
Losses from equity method investments	—	(1,295)	(1,211)	(2,384)
Net (loss) income from discontinued operations ⁽¹⁾	<u>\$ (4,462)</u>	<u>\$ 1,819</u>	<u>\$ (9,011)</u>	<u>\$ (137)</u>

(1) CRM financial results for the three and six month periods ended June 30, 2018 include activity through the close of the sale on April 30, 2018.

Cash flows attributable to our discontinued operations are included in our condensed consolidated statements of cash flows. For the six months ended June 30, 2018 and 2017, CRM's capital expenditures were \$0.9 million and \$2.4 million, respectively

and stock-based compensation expense was \$2.1 million and \$0.3 million, respectively. For the six months ended June 30, 2017 depreciation and amortization was \$9.9 million.

Note 5. Restructuring

Our 2015 and 2016 Reorganization Plans (the “Plans”) were initiated October 2015 and March 2016, respectively, in conjunction with the completion of the merger of Cyberonics, Inc. and Sorin S.p.A. in October 2015. We initiated these plans to leverage economies of scale, streamline distribution and logistics and strengthen operational and administrative effectiveness in order to reduce overall costs. Costs associated with these plans are reported as ‘Restructuring expenses’ in our operating results in the condensed consolidated statements of income.

In March 2017, we committed to a plan to sell our Suzhou Industrial Park facility in Shanghai, China. As a result of this exit plan we recorded an impairment of the building and equipment of \$4.6 million and accrued \$0.5 million of additional costs, primarily related to employee severance, during the six months ended June 30, 2017. The land, building and equipment were recorded as Assets held for sale on the condensed consolidated balance sheet as of December 31, 2017. We completed the sale of the Suzhou facility in April 2018 and received cash proceeds from the sale of \$13.3 million.

The following table presents the Plans’ accruals, inventory obsolescence and other reserves, recorded in connection with the Reorganization Plans including the balances and activity related to the discontinued operations, (in thousands):

	Employee Severance and Other Termination Costs	Other	Total
Balance at December 31, 2017	\$ 3,889	\$ 2,625	\$ 6,514
Charges	2,544	464	3,008
Cash payments and adjustments	(5,431)	(470)	(5,901)
Balance at June 30, 2018	\$ 1,002	\$ 2,619	\$ 3,621

The following table presents restructuring expense by reportable segment, with discontinued operations included (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Cardiac Surgery ⁽¹⁾	\$ 398	\$ 501	\$ 1,739	\$ 6,503
Neuromodulation	11	(233)	17	439
Other	67	2,329	601	5,685
Restructuring expense from continuing operations	476	2,597	2,357	12,627
Discontinued operations	—	(1,479)	651	(1,359)
Total	\$ 476	\$ 1,118	\$ 3,008	\$ 11,268

- (1) Cardiac Surgery restructuring expense for the six months ended June 30, 2017 included building and equipment impairment and additional costs of \$5.1 million related to the Suzhou, China facility exit plan.

Note 6. Product Remediation Liability

On December 29, 2015, we received an FDA Warning Letter (the “Warning Letter”) alleging certain violations of FDA regulations applicable to medical device manufacturing at our Munich, Germany and Arvada, Colorado facilities. On October 13, 2016, the Centers for Disease Control and Prevention (“CDC”) and FDA separately released safety notifications regarding the 3T Heater-Cooler devices in response to which we issued a Field Safety Notice Update for U.S. users of 3T Heater-Cooler devices to proactively and voluntarily contact facilities to facilitate implementation of the CDC and FDA recommendations.

At December 31, 2016, we recognized a liability for a product remediation plan related to our 3T Heater-Cooler device (“3T device”). The remediation plan we developed consists primarily of a modification of the 3T device design to include internal sealing and the addition of a vacuum system to new and existing devices. These changes are intended to address regulatory actions and to reduce further the risk of possible dispersion of aerosols from 3T devices in the operating room. We concluded that it was probable that a liability had been incurred upon management’s approval of the plan and the commitments made by management to various regulatory authorities globally in November and December 2016, and furthermore, the cost associated

with the plan was reasonably estimable. The deployment of this solution for commercially distributed devices has been dependent upon final validation and verification of the design changes and approval or clearance by regulatory authorities worldwide, including FDA clearance in the U.S. It is reasonably possible that our estimate of the remediation liability could materially change in future periods due to the various significant assumptions involved such as customer behavior, market reaction and the timing of approvals or clearance by regulatory authorities worldwide.

In April 2017, we obtained CE Mark in Europe for the design change of the 3T device and in May 2017 we completed our first vacuum and sealing upgrade on a customer-owned device. We are currently implementing the vacuum and sealing upgrade program in as many countries as possible throughout 2018 and beyond until all devices are upgraded. As part of the remediation plan, we also intend to perform a no-charge deep disinfection service (deep cleaning service) for 3T device users as we receive the required regulatory approvals. On April 12, 2018, the FDA agreed to allow us to move forward with the deep cleaning service in the U.S., adding to the growing list of countries around the world in which we offer this service. Finally, we are continuing to offer the loaner program for 3T devices, initiated in the fourth quarter of 2016, to provide existing 3T device users with a new loaner 3T device at no charge pending regulatory approval and implementation of the vacuum system addition and deep disinfection service worldwide. This loaner program began in the U.S. and is being made available progressively on a global basis, prioritizing and allocating devices to 3T device users based on pre-established criteria.

Changes in the carrying amount of the product remediation liability are as follows (in thousands):

Balance at December 31, 2017	\$	27,546
Remediation activity		(7,272)
Effect of changes in foreign currency exchange rates		(557)
Balance at June 30, 2018 ⁽¹⁾	\$	19,717

- (1) At June 30, 2018, the product remediation liability balance is held within 'Accrued liabilities and other' and 'Other long-term liabilities' in the condensed consolidated balance sheet.

For further information, please refer to "Note 11. Commitments and Contingencies." At this stage, we have recognized no liability with respect to any lawsuits related to the 3T device and our related legal costs are expensed as incurred.

Note 7. Investments

Cost-Method Investments

Our cost-method investments are included in "Investments" in the condensed consolidated balance sheets and consist of our equity positions in the following privately-held companies (in thousands):

	June 30, 2018	December 31, 2017
Respicardia Inc. ⁽¹⁾	\$ 17,705	\$ 17,422
ImThera Medical, Inc. ⁽²⁾	—	12,900
Rainbow Medical Ltd. ⁽³⁾	1,140	1,172
MD Start II ⁽⁴⁾	1,164	1,199
Highlife S.A.S. ⁽⁵⁾	1,104	—
Other	17	17
	<u>\$ 21,130</u>	<u>\$ 32,710</u>

- (1) Respicardia Inc. ("Respicardia") is a privately funded U.S. company developing an implantable device designed to restore a more natural breathing pattern during sleep in patients with central sleep apnea ("CSA") by transvenously stimulating the phrenic nerve. We have a loan outstanding to Respicardia with a carrying amount of \$0.5 million, as of June 30, 2018, which is included in "Prepaid expenses and other current assets" in the condensed consolidated balance sheet.
- (2) On January 16, 2018, we acquired the remaining outstanding interests in ImThera. Refer to "Note 3. Business Combinations".
- (3) Rainbow Medical Ltd. is a private Israeli venture capital company that seeds and grows companies developing medical devices in a diverse range of medical fields.
- (4) MD Start II is a private venture capital collaboration for the development of medical device technology in Europe.
- (5) Due to an additional investment by a third party during the three months ended June 30, 2018, our equity interest in Highlife S.A.S. ("Highlife") decreased to 17.5% from 24.6%. We determined that we no longer had significant influence over Highlife and it is now considered a cost method investment. The carrying amount of our equity-method investment in Highlife was \$1.8 million at December 31, 2017.

Note 8. Fair Value Measurements

We review the fair value hierarchy classification on a quarterly basis. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain securities within the fair value hierarchy. There were no transfers between Level 1, Level 2, or Level 3 during the six months ended June 30, 2018.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The following table provides information by level for assets and liabilities that are measured at fair value on a recurring basis (in thousands):

		Fair Value Measurements Using Inputs Considered as:		
	Fair Value as of June 30, 2018	Level 1	Level 2	Level 3
Liabilities:				
Derivative liabilities - designated as cash flow hedges (foreign currency exchange rate "FX")	\$ 1,209	\$ —	\$ 1,209	\$ —
Derivative liabilities - designated as cash flow hedges (interest rate swaps)	1,221	—	1,221	—
Derivative liabilities - freestanding instruments (FX)	827	—	827	—
Contingent consideration ⁽¹⁾	181,133	—	—	181,133
	<u>\$ 184,390</u>	<u>\$ —</u>	<u>\$ 3,257</u>	<u>\$ 181,133</u>
		Fair Value Measurements Using Inputs Considered as:		
	Fair Value as of December 31, 2017	Level 1	Level 2	Level 3
Assets:				
Derivative assets - freestanding instruments (FX)	\$ 519	\$ —	\$ 519	\$ —
	<u>\$ 519</u>	<u>\$ —</u>	<u>\$ 519</u>	<u>\$ —</u>
Liabilities:				
Derivative liabilities - designated as cash flow hedges (FX)	\$ 460	\$ —	\$ 460	\$ —
Derivative liabilities - designated as cash flow hedges (interest rate swaps)	1,585	—	1,585	—
Contingent consideration ⁽¹⁾	33,973	—	—	33,973
	<u>\$ 36,018</u>	<u>\$ —</u>	<u>\$ 2,045</u>	<u>\$ 33,973</u>

- (1) The contingent consideration liability represents contingent payments related to five completed acquisitions: Cellplex PTY Ltd., Inversiones Driltex SAS, Caisson, ImThera and TandemLife. See the table below for additional information.

Our recurring fair value measurements, using significant unobservable inputs (Level 3), relate solely to our contingent consideration liability. The following table provides a reconciliation of the beginning and ending balance of the contingent consideration liability (in thousands):

Total contingent consideration liability at December 31, 2017	\$	33,973
Purchase price - ImThera contingent consideration		112,744
Purchase price - TandemLife contingent consideration		40,190
Payments		(196)
Changes in fair value ⁽¹⁾		(5,546)
Effect of changes in foreign currency exchange rates		(32)
Total contingent consideration liability at June 30, 2018		181,133
Less current portion of contingent consideration liability at June 30, 2018		2,684
Long-term portion of contingent consideration liability at June 30, 2018	\$	178,449

(1) Includes a decrease of \$6.1 million due to the delay in the timing of anticipated regulatory approval for ImThera. See “Note 3. Business Combinations” for additional discussion.

Note 9. Financing Arrangements

The outstanding principal amount of long-term debt (in thousands, except interest rates):

	June 30, 2018	December 31, 2017	Maturity	Interest Rate
European Investment Bank ⁽¹⁾	\$ 58,213	\$ 69,893	June 2021	0.95%
Mediocredito Italiano ⁽²⁾	8,406	9,118	December 2023	0.50% - 3.10%
Banca del Mezzogiorno ⁽³⁾	4,137	5,499	December 2019	0.50% - 3.15%
Region Wallonne	756	845	December 2023 and June 2033	0.00% - 2.45%
Mediocredito Italiano - mortgages and other	536	997	September 2021 and September 2026	0.80% - 1.30%
Bpifrance (ex-Oséo)	—	1,450	—	2.58%
Total long-term facilities	72,048	87,802		
Less current portion of long-term debt	21,635	25,844		
Total long-term debt	\$ 50,413	\$ 61,958		

(1) The European Investment Bank (“EIB”) loan was obtained in July 2014 to support product development projects. The interest rate for the EIB loan is reset by the lender each quarter based on the Euribor. Interest payments are paid quarterly and principal payments are paid semi-annually.

(2) We obtained the Mediocredito Italiano Bank loan in July 2016 as part of the Fondo Innovazione Tecnologica program implemented by the Italian Ministry of Education.

(3) The Banca del Mezzogiorno loan was obtained in January 2015 to support R&D projects as a part of the Large Strategic Project program of the Italian Ministry of Education.

Revolving Credit

The outstanding principal amount of our short-term unsecured revolving credit agreements and other agreements with various banks was \$89.0 million and \$58.2 million, at June 30, 2018 and December 31, 2017, respectively, with interest rates ranging from 0.1% to 9.3% and loan terms ranging from one day to 180 days.

On April 10, 2018, we entered into an amendment and restatement agreement with Barclays Bank PLC amending the revolving facility agreement originally dated October 21, 2016 (the “Amendment”). The Amendment increases the borrowing capacity under the facility from \$40.0 million to \$70.0 million and extends the term of the facility one year, terminating October 20, 2019. Borrowings under the facility bear interest at a rate of LIBOR plus 0.85%. At June 30, 2018 this facility is fully utilized.

In connection with the CRM sale, the borrowing capacity under our June 2017 finance contract with the European Investment Bank decreased from €100.0 million (approximately \$116.4 million) to €90.0 million (approximately \$104.8 million) and the availability for drawdowns was extended through December 31, 2020.

Bridge Facility Agreement

In connection with the April 2018 acquisition of TandemLife, LivaNova entered into a bridge facility agreement (the “Bridge Facility Agreement”) providing a term loan facility with the aggregate principal amount of \$190.0 million. On April 3, 2018, we borrowed \$190.0 million under the Bridge Facility Agreement to facilitate the initial payment for our acquisition of TandemLife. We used the proceeds from the sale of the CRM business franchise to repay the borrowings under the Bridge Facility Agreement in full during the second quarter of 2018.

Note 10. Derivatives and Risk Management

Due to the global nature of our operations, we are exposed to foreign currency exchange rate fluctuations. In addition, due to certain loans with floating interest rates, we are also subject to the impact of changes in interest rates on our interest payments. We enter into foreign currency exchange rate (“FX”) derivative contracts and interest rate swap contracts to reduce the impact of foreign currency rate and interest rate fluctuations on earnings and cash flow. We measure all outstanding derivatives each period end at fair value and report the fair value as either financial assets or liabilities in the condensed consolidated balance sheets. We do not enter into derivative contracts for speculative purposes. At inception of the contract, the derivative is designated as either a freestanding derivative or a hedge. Derivatives that are not designated as hedging instruments are referred to as freestanding derivatives with changes in fair value included in earnings.

If the derivative qualifies for hedge accounting, depending on the nature of the hedge and hedge effectiveness, changes in the fair value of the derivative will either be recognized immediately in earnings or recorded in accumulated other comprehensive income (“AOCI”) until the hedged item is recognized in earnings upon settlement/termination. FX derivative gains and losses in AOCI are reclassified to the condensed consolidated statements of income as shown in the tables below and interest rate swap gains and losses in AOCI are reclassified to interest expense in the condensed consolidated statements of income. We evaluate hedge effectiveness at inception and on an ongoing basis. If a derivative is no longer expected to be highly effective, hedge accounting is discontinued. Hedge ineffectiveness, if any, is recorded in earnings. Cash flows from derivative contracts are reported as operating activities in the condensed consolidated statements of cash flows.

Freestanding Derivative FX Contracts

The gross notional amount of FX derivative contracts, not designated as hedging instruments, outstanding at June 30, 2018 and December 31, 2017 was \$256.0 million and \$231.9 million, respectively. These derivative contracts are designed to offset the FX effects in earnings of various intercompany loans, our EIB loan, and trade receivables. We recorded net losses for these freestanding derivatives of \$4.1 million and \$5.4 million for the three months ended June 30, 2018 and June 30, 2017, respectively and net losses of \$11.7 million and \$7.2 million for the six months ended June 30, 2018 and June 30, 2017, respectively. The net losses are included in “Foreign exchange and other (losses) gains” in the condensed consolidated statements of income.

Cash Flow Hedges

Notional amounts of open derivative contracts designated as cash flow hedges (in thousands):

Description of Derivative Contract	June 30, 2018	December 31, 2017
FX derivative contracts to be exchanged for British Pounds	\$ 11,655	\$ 16,847
FX derivative contracts to be exchanged for Japanese Yen	22,122	32,302
FX derivative contracts to be exchanged for Canadian Dollars	15,779	16,494
FX derivative contracts to be exchanged for Euros	38,581	—
Interest rate swap contracts	46,570	55,965
	<u>\$ 134,707</u>	<u>\$ 121,608</u>

After-tax net loss associated with derivatives designated as cash flow hedges recorded in the ending balance of AOCI and the amount expected to be reclassified to earnings in the next twelve months (in thousands):

Description of Derivative Contract	June 30, 2018	Amount Expected to be
		Reclassified to Earnings in Next 12 Months
FX derivative contracts	\$ (1,011)	\$ (1,011)
Interest rate swap contracts	(253)	(64)
	<u>\$ (1,264)</u>	<u>\$ (1,075)</u>

Pre-tax gains (losses) for derivative contracts designated as cash flow hedges recognized in Other Comprehensive Income (Loss) (“OCI”) and the amount reclassified to earnings from AOCI (in thousands):

		Three Months Ended June 30,			
		2018		2017	
Description of Derivative Contract	Location in Earnings of Reclassified Gain or Loss	Losses Recognized in OCI	(Losses) Gains Reclassified from AOCI to Earnings	Losses Recognized in OCI	(Losses) Gains Reclassified from AOCI to Earnings
FX derivative contracts	Foreign exchange and other gains (losses)	\$ (25)	\$ (1,358)	\$ (755)	\$ (532)
FX derivative contracts	SG&A	—	549	—	544
Interest rate swap contracts	Interest expense	—	(17)	—	543
		<u>\$ (25)</u>	<u>\$ (826)</u>	<u>\$ (755)</u>	<u>\$ 555</u>

		Six Months Ended June 30,			
		2018		2017	
Description of Derivative Contract	Location in Earnings of Reclassified Gain or Loss	Gains Recognized in OCI	(Losses) Gains Reclassified from AOCI to Earnings	Losses Recognized in OCI	(Losses) Gains Reclassified from AOCI to Earnings
FX derivative contracts	Foreign exchange and other gains (losses)	\$ 189	\$ (512)	\$ (7,587)	\$ (5,210)
FX derivative contracts	SG&A	—	1,174	—	1,354
Interest rate swap contracts	Interest expense	—	(17)	—	212
		<u>\$ 189</u>	<u>\$ 645</u>	<u>\$ (7,587)</u>	<u>\$ (3,644)</u>

The following tables present the fair value on a gross basis, and the location of, derivative contracts reported in the condensed consolidated balance sheets (in thousands):

June 30, 2018		Liability Derivatives	
Derivatives Designated as Hedging Instruments	Balance Sheet Location	Fair Value ⁽¹⁾	
Interest rate swap contracts	Accrued liabilities	\$	683
Interest rate swap contracts	Other long-term liabilities		538
FX derivative contracts	Accrued liabilities		1,209
Total derivatives designated as hedging instruments			2,430
Derivatives Not Designated as Hedging Instruments			
FX derivative contracts	Accrued liabilities		827
Total derivatives not designated as hedging instruments			827
Total derivatives		\$	3,257

December 31, 2017		Asset Derivatives		Liability Derivatives	
Derivatives Designated as Hedging Instruments	Balance Sheet Location	Fair Value ⁽¹⁾		Balance Sheet Location	Fair Value ⁽¹⁾
Interest rate swap contracts	Prepaid expenses and other current assets	\$	—	Accrued liabilities	\$ 834
Interest rate swap contracts	Other assets		—	Other long-term liabilities	751
FX derivative contracts	Prepaid expenses and other current assets		—	Accrued liabilities	460
Total derivatives designated as hedging instruments			—		2,045
Derivatives Not Designated as Hedging Instruments					
FX derivative contracts	Prepaid expenses and other current assets		519	Accrued liabilities	—
Total derivatives not designated as hedging instruments			519		—
Total derivatives		\$	519		\$ 2,045

(1) For the classification of inputs used to evaluate the fair value of our derivatives, refer to “Note 8. Fair Value Measurements.”

Note 11. Commitments and Contingencies

FDA Warning Letter

On December 29, 2015, the FDA issued a Warning Letter alleging certain violations of FDA regulations applicable to medical device manufacturers at our Munich, Germany and Arvada, Colorado facilities.

The FDA inspected the Munich facility from August 24, 2015 to August 27, 2015 and the Arvada facility from August 24, 2015 to September 1, 2015. On August 27, 2015, the FDA issued a Form 483 identifying two observed non-conformities with certain regulatory requirements at the Munich facility. We did not receive a Form 483 in connection with the FDA’s inspection of the Arvada facility. Following the receipt of the Form 483, we provided written responses to the FDA describing corrective and preventive actions that were underway or to be taken to address the FDA’s observations at the Munich facility. The Warning Letter responded in part to our responses and identified other alleged violations related to the manufacture of our 3T device that were not previously included in the Form 483.

The Warning Letter further stated that our 3T devices and other devices we manufactured at our Munich facility are subject to refusal of admission into the U.S. until resolution of the issues set forth by the FDA in the Warning Letter. The FDA has informed us that the import alert is limited to the 3T devices, but that the agency reserves the right to expand the scope of the import alert if future circumstances warrant such action. The Warning Letter did not request that existing users cease using the 3T device, and manufacturing and shipment of all of our products other than the 3T device remain unaffected by the import limitation. To help clarify these issues for current customers, we issued an informational Customer Letter in January 2016 and that same month agreed with the FDA on a process for shipping 3T devices to existing U.S. users pursuant to a certificate of medical necessity program.

Finally, the Warning Letter stated that premarket approval applications for Class III devices to which certain Quality System regulation deviations identified in the Warning Letter are reasonably related will not be approved until the violations have been corrected; however, this restriction applies only to the Munich and Arvada facilities, which do not manufacture or design devices subject to Class III premarket approval.

We continue to work diligently to remediate the FDA's inspectional observations for the Munich facility, as well as the additional issues identified in the Warning Letter. We take these matters seriously and intend to respond timely and fully to the FDA's requests.

CDC and FDA Safety Communications and Company Field Safety Notice Update

On October 13, 2016, the CDC and the FDA separately released safety notifications regarding the 3T devices. The CDC's Morbidity and Mortality Weekly Report ("MMWR") and Health Advisory Notice ("HAN") reported that tests conducted by CDC and its affiliates indicate that there appears to be genetic similarity between both patient and 3T device strains of the non-tuberculous mycobacterium ("NTM") bacteria *M. chimaera* isolated in hospitals in Iowa and Pennsylvania. Citing the geographic separation between the two hospitals referenced in the investigation, the report asserts that 3T devices manufactured prior to August 18, 2014 could have been contaminated during the manufacturing process. The CDC's HAN and FDA's Safety Communication, issued contemporaneously with the MMWR report, each assess certain risks associated with 3T devices and provide guidance for providers and patients. The CDC notification states that the decision to use the 3T device during a surgical operation is to be taken by the surgeon based on a risk approach and on patient need. Both the CDC's and FDA's communications confirm that 3T devices are critical medical devices and enable doctors to perform life-saving cardiac surgery procedures.

Also on October 13, 2016, in response to the Warning Letter and CDC's HAN and FDA's Safety Communication, we issued a Field Safety Notice Update for U.S. users of 3T devices to proactively and voluntarily contact facilities to aid in implementation of the CDC and FDA recommendations. In the fourth quarter of 2016, we initiated a program to provide existing 3T device users with a new loaner 3T device at no charge pending regulatory approval and implementation of additional risk mitigation strategies worldwide. This loaner program began in the U.S. and is being made available progressively on a global basis, prioritizing and allocating devices to 3T device users based on pre-established criteria. We anticipate that this program will continue until we are able to address customer needs through a broader solution that includes implementation of one or more of the risk mitigation strategies currently under review with regulatory agencies. We are also currently implementing a vacuum and sealing upgrade program in as many countries as possible throughout 2018 and beyond until all devices are upgraded. Furthermore, we intend to perform a no-charge deep disinfection service (deep cleaning service) for 3T device users as we receive the required regulatory approvals. On April 12, 2018, the FDA agreed to allow us to move forward with the deep cleaning service in the U.S. adding to the growing list of countries around the world in which we offer this service.

On December 31, 2016, we recognized a liability for our product remediation plan related to our 3T device. We concluded that it was probable that a liability had been incurred upon management's approval of the plan and the commitments made by management to various regulatory authorities globally in November and December 2016, and furthermore, the cost associated with the plan was reasonably estimable. At June 30, 2018, the product remediation liability was \$19.7 million. Refer to "Note 6. Product Remediation Liability" for additional information.

Litigation

Product Liability

The Company is currently involved in litigation involving our 3T device. The litigation includes a class action complaint in the U.S. District Court for the Middle District of Pennsylvania, federal multi-district litigation in the U.S. District Court for the Middle District of Pennsylvania, various U.S. state court cases and cases in jurisdictions outside the U.S. As of July 31, 2018, we are involved in approximately 135 claims worldwide, with the majority of the claims in various federal or state courts throughout the United States. The complaints generally seek damages and other relief based on theories of strict liability,

negligence, breach of express and implied warranties, failure to warn, design and manufacturing defect, fraudulent and negligent misrepresentation/concealment, unjust enrichment, and violations of various state consumer protection statutes. The class action consists of all Pennsylvania residents who underwent open heart surgery at WellSpan York Hospital and Penn State Milton S. Hershey Medical Center between 2011 and 2015 and who currently are asymptomatic for NTM infection. Members of the class seek declaratory relief that the 3T devices are defective and unsafe for intended uses, medical monitoring, damages, and attorneys' fees. LivaNova has filed a petition for permission to appeal the class certification order with the U.S. Court of Appeals for the Third Circuit. We have not recognized an expense related to damages in connection with these matters because any potential loss is not currently probable or reasonably estimable. In addition, we cannot reasonably estimate a range of potential loss, if any, that may result from these matters.

Civil Investigative Demand

On May 31, 2017, the Company received a Civil Investigative Demand ("CID") from the US Attorney's Office for the Northern District of Georgia. The CID requested, and we have provided, certain documents relating to the sales and marketing of VNS devices and related products in the State of Georgia. We have not recognized an expense related to this matter because any potential loss is not currently probable or reasonably estimable. In addition we cannot reasonably estimate a range of potential loss, if any, that may result from this matter.

Environmental Liability

SNIA Litigation

Our subsidiary, Sorin S.p.A. ("Sorin") was created as a result of a spin-off (the "Sorin spin-off") from SNIA S.p.A. ("SNIA") in January, 2004. SNIA subsequently became insolvent and the Italian Ministry of the Environment and the Protection of Land and Sea (the "Italian Ministry of the Environment"), sought compensation from SNIA in an aggregate amount of approximately \$4 billion for remediation costs relating to the environmental damage at chemical sites previously operated by SNIA's other subsidiaries.

In September 2011 and July 2014, the Bankruptcy Court of Udine and the Bankruptcy Court of Milan held (in proceedings to which we are not parties) that the Italian Ministry of the Environment and other Italian government agencies (the "Public Administrations") were not creditors of either SNIA or its subsidiaries in connection with their claims in the Italian insolvency proceedings. The Public Administrations appealed and in January 2016, the Court of Udine rejected the appeal. The Public Administrations have also appealed that decision.

In January 2012, SNIA filed a civil action against Sorin in the Civil Court of Milan asserting joint liability of a parent and a spun-off company. On April 1, 2016, the Court of Milan dismissed all legal actions of SNIA and of the Public Administrations further requiring the Public Administrations to pay Sorin approximately \$340,000 for legal fees. The Public Administrations appealed the 2016 Decision to the Court of Appeal of Milan and a final decision is pending.

We have not recognized an expense in connection with this matter because any potential loss is not currently probable or reasonably estimable. In addition, we cannot reasonably estimate a range of potential loss, if any, that may result from this matter.

Environmental Remediation Order

On July 28, 2015, Sorin received an administrative order (the "Remediation Order") from the Italian Ministry of the Environment directing prompt commencement of environmental remediation at the chemical sites previously operated by SNIA's other subsidiaries. We challenged the Remediation Order before the Administrative Court of Lazio in Rome (the "TAR"), and the TAR annulled the Remediation Order. The Italian Ministry of the Environment appealed to the Administrative Court of Appeal. A hearing occurred on June 14, 2018, and a final decision is pending. We have not recognized an expense in connection with this matter because any potential loss is not currently probable or reasonably estimable. In addition, we cannot reasonably estimate a range of potential loss, if any, that may result from this matter.

Opposition to Merger Proceedings

On July 28, 2015, the Public Administrations filed an opposition proceeding to the merger between Sorin and Cyberonics, Inc. (the "Merger"), before the Commercial Courts of Milan. The Court authorized the Merger and the Public Administrations did not appeal this decision. The proceeding then continued as a civil case, with the Public Administration seeking damages. The Commercial Court of Milan delivered a decision in October 2016, fully rejecting the Public Administration's request and awarding us approximately \$480,000 in damages for frivolous litigation and legal fees. The Public Administrations appealed to the Court of Appeal of Milan. On May 15, 2018, the Court of Appeal of Milan confirmed its decision authorizing the Merger, but reduced the penalty of \$480,000 in damages for frivolous litigation and legal fees to \$58,000 for legal fees. The Public

Administrations subsequently filed an appeal with the Supreme Court against the decision of the Court of Appeal of Milan. We have not recognized an expense in connection with this matter because any potential loss is not currently probable or reasonably estimable. In addition, we cannot reasonably estimate a range of potential loss, if any, that may result from this matter.

Patent Litigation

On May 11, 2018, a non-practicing entity (NPE) filed a complaint in the Southern District of Texas asserting that the VNS Therapy System, when used with the SenTiva Model 1000 generator, infringes the claims of a single U.S. patent owned by the NPE. The NPE requests damages that include a royalty, costs, interest, and attorneys' fees. We have not recognized an expense in connection with this matter because any potential loss is not currently probable or reasonably estimable. In addition, we cannot reasonably estimate a range of potential loss, if any, that may result from this matter.

Tax Litigation

In a tax audit report received October 30, 2009, the Regional Internal Revenue Office of Lombardy (the "Internal Revenue Office") informed Sorin Group Italia S.r.l. that, among several issues, it was disallowing in part (for a total of €102.6 million (approximately \$119.5 million), related to tax years 2002 through 2006) a tax-deductible write down of the investment in the U.S. company, Cobe Cardiovascular Inc., which Sorin Group Italia S.r.l. recognized in 2002 and deducted in five equal installments, beginning in 2002. In December 2009, the Internal Revenue Office issued notices of assessment for 2002, 2003 and 2004. The assessments for 2002 and 2003 were automatically voided for lack of merit. In December 2010 and October 2011, the Internal Revenue Office issued notices of assessment for 2005 and 2006, respectively. We challenged all three notices of assessment (for 2004, 2005 and 2006) before the relevant Provincial Tax Courts.

The preliminary challenges filed for 2004, 2005 and 2006 were denied at the first jurisdictional level. We appealed these decisions. The appeal submitted against the first-level decision for 2004 was successful. The Internal Revenue Office appealed this second-level decision to the Italian Supreme Court (Corte di Cassazione) on February 3, 2017. The Italian Supreme Court's decision is pending.

The appeals submitted against the first-level decisions for 2005 and 2006 were rejected. We appealed these adverse decisions to the Italian Supreme Court, where the matters are still pending.

In November 2012, the Internal Revenue Office served a notice of assessment for 2007, and in July 2013, served a notice of assessment for 2008. In these matters the Internal Revenue Office claims an increase in taxable income due to a reduction (similar to the previous notices of assessment for 2004, 2005 and 2006) of the losses reported by Sorin Group Italia S.r.l. for the 2002, 2003 and 2004 tax periods, and subsequently utilized in 2007 and 2008. We challenged both notices of assessment. The Provincial Tax Court of Milan has stayed its decision for years 2007 and 2008 pending resolution of the litigation regarding years 2004, 2005, and 2006. The total amount of losses in dispute is €62.6 million (approximately \$72.9 million). We have continuously reassessed our potential exposure in these matters, taking into account the recent, and generally adverse, trend to Italian taxpayers in this type of litigation. Although we believe that our defensive arguments are strong, noting the adverse trend in some of the court decisions, we have recognized a reserve for an uncertain tax position of €17.0 million (approximately \$19.7 million).

Other Matters

Additionally, we are the subject of various pending or threatened legal actions and proceedings that arise in the ordinary course of our business. These matters are subject to many uncertainties and outcomes that are not predictable and that may not be known for extended periods of time. Since the outcome of these matters cannot be predicted with certainty, the costs associated with them could have a material adverse effect on our consolidated net income, financial position or liquidity.

Note 12. Stockholders' Equity

Comprehensive income

The table below presents the change in each component of AOCI, net of tax, and the reclassifications out of AOCI into net income for the six months ended June 30, 2018 and June 30, 2017 (in thousands):

	Change in Unrealized Gain (Loss) on Derivatives	Foreign Currency Translation Adjustments Gain (Loss) ⁽¹⁾	Total
As of December 31, 2017	\$ (919)	\$ 46,232	\$ 45,313
Other comprehensive income (loss) before reclassifications, before tax	189	(38,590)	(38,401)
Tax expense	(45)	—	(45)
Other comprehensive income (loss) before reclassifications, net of tax	144	(38,590)	(38,446)
Reclassification of gain from accumulated other comprehensive income, before tax	(645)	(9,011) ⁽²⁾	(9,656)
Reclassification of tax expense	156	—	156
Reclassification of gain from accumulated other comprehensive income, after tax	(489)	(9,011)	(9,500)
Net current-period other comprehensive (loss) income, net of tax	(345)	(47,601)	(47,946)
As of June 30, 2018	\$ (1,264)	\$ (1,369)	\$ (2,633)
As of December 31, 2016	\$ 3,619	\$ (72,106)	\$ (68,487)
Other comprehensive (loss) income before reclassifications, before tax	(7,587)	72,017	64,430
Tax benefit	1,821	—	1,821
Other comprehensive (loss) income before reclassifications, net of tax	(5,766)	72,017	66,251
Reclassification of loss from accumulated other comprehensive income, before tax	3,644	—	3,644
Reclassification of tax benefit	(538)	—	(538)
Reclassification of loss from accumulated other comprehensive income, after tax	3,106	—	3,106
Net current-period other comprehensive (loss) income, net of tax	(2,660)	72,017	69,357
As of June 30, 2017	\$ 959	\$ (89)	\$ 870

(1) Taxes are not provided for foreign currency translation adjustments as translation adjustments are related to earnings that are intended to be reinvested in the countries where earned.

(2) Cumulative foreign currency translation adjustments eliminated upon the sale of CRM.

Note 13. Stock-Based Incentive Plans

Stock-based incentive plans compensation expense (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Service-based stock appreciation rights ("SARs")	\$ 2,675	\$ 1,731	\$ 4,023	\$ 3,331
Service-based restricted stock units ("RSUs")	2,634	2,114	4,790	4,318
Market performance-based restricted stock units	959	170	1,305	174
Operating performance-based restricted stock units	1,185	371	2,032	407
Total stock-based compensation expense	<u>\$ 7,453</u>	<u>\$ 4,386</u>	<u>\$ 12,150</u>	<u>\$ 8,230</u>

During the six months ended June 30, 2018, we issued stock-based compensatory awards with contract terms agreed upon by us and the respective individuals, as approved by the Compensation Committee of our Board of Directors. The awards with service conditions generally vest ratably over four years, subject to forfeiture unless service conditions are met. Market

performance-based awards cliff vest after three years subject to the rank of our total shareholder's return for the three-year period ending December 31, 2020 relative to the total shareholder returns for a peer group of companies. Operating performance-based awards cliff vest after three years subject to the achievement of certain thresholds of cumulative adjusted free cash flow for the three year period ending 2020. Compensation expense related to awards granted during 2018 for the three and six months ended June 30, 2018 was \$3.4 million and \$3.9 million, respectively.

Stock-based compensation agreements issued during the six months ended June 30, 2018, representing potential shares and their weighted average grant date fair values by type follows (shares in thousands, fair value in dollars):

	Six Months Ended June 30, 2018	
	Shares	Weighted Average Grant Date Fair Value
Service-based SARs	634	\$ 27.87
Service-based RSUs	227	\$ 91.91
Market performance-based RSUs	41	\$ 99.97
Operating performance-based RSUs	41	\$ 88.38

Note 14. Income Taxes

Our effective income tax rate from continuing operations for the three months ended June 30, 2018 was (5.5)% compared with 5.2% for the three months ended June 30, 2017. For the six months ended June 30, 2018, the effective income tax rate from continuing operations was 7.0% compared with 10.6% for the six months ended June 30, 2017. Our effective income tax rate fluctuates based on, among other factors, changes in pretax income in countries with varying statutory tax rates, changes in valuation allowances, changes in tax credits and incentives, and changes in unrecognized tax benefits associated with uncertain tax positions.

Compared with the three and six months ended June 30, 2017, the lower effective tax rates for the three and six months ended June 30, 2018 were primarily attributable to the impact of the reduction to the U.S. federal statutory tax rate as a result of the U.S. "Tax Cuts and Jobs Act" (the "Tax Act"), the benefit of foreign derived intangible income partially offset by the repeal of the U.S. domestic production activity deduction, certain tax law changes in the UK that occurred during the three months ended December 31, 2017 and the impact of discrete tax items.

During the three months ended June 30, 2018, we entered into an audit settlement impacting one of our uncertain tax positions. This audit settlement resulted in the recognition of an additional of \$1.7 million in income tax expense.

Note 15. Net Income (Loss) Per Share

Reconciliation of the shares used in the basic and diluted earnings per share computations for the three and six months ended June 30, 2018 and June 30, 2017 are as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Basic weighted average shares outstanding	48,487	48,140	48,406	48,104
Add effects of share-based compensation instruments ⁽¹⁾	851	163	857	137
Diluted weighted average shares outstanding	49,338	48,303	49,263	48,241

- (1) Excluded from the computation of diluted earnings per share were stock options, SARs and restricted share units totaling 0.7 million and 1.8 million shares as of June 30, 2018 and June 30, 2017, respectively, because to include them would be anti-dilutive.

Note 16. Geographic and Segment Information

We identify operating segments based on the way we manage, evaluate and internally report our business activities for purposes of allocating resources and assessing performance. We have two reportable segments: Cardiac Surgery and Neuromodulation.

The Cardiac Surgery segment generates its revenue from the development, production and sale of cardiopulmonary products, heart valves and advanced circulatory support. Cardiopulmonary products include oxygenators, heart-lung machines, autotransfusion systems, perfusion tubing systems, cannulae and other related accessories. Heart valves include mechanical

heart valves, tissue heart valves and related repair products. Advanced circulatory support, which represents our recently acquired TandemLife business, includes temporary life support product kits that can include a combination of pumps, oxygenators, and cannulae.

The Neuromodulation segment generates its revenue from the design, development and marketing of neuromodulation therapy systems for the treatment of drug-resistant epilepsy and treatment-resistant depression. Neuromodulation products include the VNS Therapy System, which consists of an implantable pulse generator, a lead that connects the generator to the vagus nerve, and other accessories. On January 16, 2018, we acquired the remaining 86% outstanding interest in ImThera which is also included in our Neuromodulation segment. ImThera manufactures an implantable device for the treatment of obstructive sleep apnea that stimulates multiple tongue muscles via the hypoglossal nerve, which opens the airway while a patient is sleeping.

“Other” includes corporate shared service expenses for finance, legal, human resources and information technology and corporate business development (“New Ventures”). New Ventures is focused on new growth platforms and identification of other opportunities for expansion.

Effective January 1, 2018, we began to include the results of heart failure within the Neuromodulation segment for internal reporting purposes in order to manage and evaluate business activities for purposes of allocating resources and assessing performance. Previously, the results of heart failure were reported within “Other”. Segment results for the three and six months ended June 30, 2017 have been recast to conform to the current period presentation.

Net sales of our reportable segments include revenues from the sale of products they each develop and manufacture or distribute. We define segment income as operating income before merger and integration, restructuring and amortization of intangibles.

We operate under three geographic regions: United States, Europe, and Rest of world. The table below presents net sales by operating segment and geographic region (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Cardiopulmonary				
United States	\$ 42,139	\$ 39,719	\$ 80,584	\$ 71,895
Europe	35,916	33,959	72,786	64,568
Rest of world	58,584	50,467	108,399	94,980
	136,639	124,145	261,769	231,443
Heart Valves				
United States	6,147	6,205	12,683	12,274
Europe	11,863	10,684	23,979	21,031
Rest of world	15,792	17,552	28,182	33,042
	33,802	34,441	64,844	66,347
Advanced Circulatory Support				
United States	5,468	—	5,468	—
Europe	353	—	353	—
Rest of world	194	—	194	—
	6,015	—	6,015	—
Cardiac Surgery				
United States	53,754	45,924	98,735	84,169
Europe	48,132	44,643	97,118	85,599
Rest of world	74,570	68,019	136,775	128,022
	176,456	158,586	332,628	297,790
Neuromodulation				
United States	89,395	81,405	167,387	155,064
Europe	11,943	9,514	22,234	17,443
Rest of world	9,315	6,096	14,876	11,667
	110,653	97,015	204,497	184,174
Other				
	389	242	771	704
Totals				
United States	143,149	127,329	266,122	239,233
Europe ^{(1) (2)}	60,075	54,157	119,352	103,042
Rest of world	84,274	74,357	152,422	140,393
Total ⁽³⁾	\$ 287,498	\$ 255,843	\$ 537,896	\$ 482,668

- (1) Net sales include \$8.4 million and \$9.2 million in the United Kingdom, our country of domicile, for the three months ended June 30, 2018 and June 30, 2017, respectively. Net sales in the United Kingdom were \$16.6 million and \$17.3 million for the six months ended June 30, 2018 and June 30, 2017, respectively.
- (2) Europe sales include those countries in which we have a direct sales presence, whereas European countries in which we sell through distributors are included in Rest of world.
- (3) No single customer represented over 10% of our consolidated net sales and no country's net sales exceeded 10% of our consolidated sales except for the U.S.

Operating income by segment is as follows (in thousands):

Operating Income from Continuing Operations	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Cardiac Surgery	\$ 16,337	\$ 23,773	\$ 26,595	\$ 39,806
Neuromodulation	61,389	51,264	100,123	92,020
Other	(41,417)	(33,037)	(64,237)	(49,903)
Total reportable segment income from continuing operations	36,309	42,000	62,481	81,923
Merger and integration expenses	4,409	3,512	7,369	5,698
Restructuring expenses	476	2,597	2,357	12,627
Amortization of intangibles	9,817	8,116	18,618	16,076
Operating income from continuing operations	\$ 21,607	\$ 27,775	\$ 34,137	\$ 47,522

Assets by reportable segment (in thousands):

Assets	June 30, 2018	December 31, 2017
Cardiac Surgery	\$ 1,535,096	\$ 1,386,032
Neuromodulation	764,348	532,894
Other ⁽¹⁾	297,692	334,276
Discontinued operations	—	250,689
Total assets	\$ 2,597,136	\$ 2,503,891

(1) Other includes the impact of ASU 2016-16. Refer to “Note 18. New Accounting Pronouncements.”

Capital expenditures by segment (in thousands):

Capital expenditures	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Cardiac Surgery	\$ 4,594	\$ 3,957	\$ 7,725	\$ 7,751
Neuromodulation	500	517	847	1,978
Other	1,256	1,148	2,699	2,806
Discontinued operations	—	1,185	925	2,388
Total	\$ 6,350	\$ 6,807	\$ 12,196	\$ 14,923

The changes in the carrying amount of goodwill by reportable segment for the six months ended June 30, 2018 were as follows (in thousands):

	Neuromodulation	Cardiac Surgery	Other	Total
December 31, 2017	\$ 315,943	\$ 425,882	\$ 42,417	\$ 784,242
Goodwill as a result of acquisitions ⁽¹⁾	82,596	118,917	—	201,513
Foreign currency adjustments	—	(20,058)	—	(20,058)
June 30, 2018	\$ 398,539	\$ 524,741	\$ 42,417	\$ 965,697

(1) Goodwill recognized as a result of the ImThera and TandemLife acquisitions. Refer to “Note 3. Business Combinations.”

Property, plant and equipment, net by geography are as follows (in thousands):

PP&E	June 30, 2018	December 31, 2017
United States	\$ 64,298	\$ 62,154
Europe	111,045	119,133
Rest of world	10,813	11,072
Total	<u>\$ 186,156</u>	<u>\$ 192,359</u>

Note 17. Supplemental Financial Information

Inventories consisted of the following (in thousands):

	June 30, 2018	December 31, 2017
Raw materials	\$ 35,509	\$ 39,810
Work-in-process	22,573	18,206
Finished goods	99,749	86,454
	<u>\$ 157,831</u>	<u>\$ 144,470</u>

Inventories are reported net of the provision for obsolescence. The provision, which reflects normal obsolescence and includes components that are phased out or expired, totaled \$9.3 million and \$10.5 million at June 30, 2018 and December 31, 2017, respectively.

Accrued liabilities and other consisted of the following (in thousands):

	June 30, 2018	December 31, 2017
CRM purchase price adjustment payable to MicroPort Scientific Corporation	\$ 14,891	\$ —
Other amounts payable to MicroPort Scientific Corporation	6,419	—
Product remediation ⁽¹⁾	9,296	16,811
Legal and administrative costs	12,619	6,082
Provisions for agents, returns and other	6,236	8,134
Royalty costs	3,162	3,615
Contract liabilities	3,330	2,900
Restructuring related liabilities	3,113	3,560
Derivative contract liabilities ⁽²⁾	2,719	1,294
Contingent consideration ⁽³⁾	2,684	—
Research and development costs	1,172	797
Product warranty obligations	940	1,476
Deferred consideration	—	14,300
Uncertain tax positions	—	2,536
Escrow indemnity liabilities - Caisson	—	2,000
Government grants	—	1,174
Other accrued expenses	19,572	14,263
	<u>\$ 86,153</u>	<u>\$ 78,942</u>

(1) Refer to “Note 6. Product Remediation Liability”

(2) Refer to “Note 10. Derivatives and Risk Management”

(3) Refer to “Note 8. Fair Value Measurements”

Note 18. New Accounting Pronouncements

In January 2016, the FASB issued ASU No. 2016-01, Financial Instruments-Overall (Subtopic 825-10): *Recognition and Measurement of Financial Assets and Financial Liabilities*. Update 2016-01 requires equity investments that do not result in consolidation and are not accounted for under the equity method to be measured at fair value with changes recognized in net

income. However, an entity may elect to measure equity investments that do not have readily determinable fair values at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer. We made this election beginning January 1, 2018, resulting in no material impact to our consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842). This guidance requires lessees to recognize most leases in their balance sheets as lease liabilities with corresponding right-of-use assets and to provide enhanced disclosures. In July 2018, the FASB issued ASU No. 2018-11, Leases (Topic 842): *Targeted Improvements*, which provides certain practical expedients including an option to apply transition provisions of the new standard, including its disclosure requirements, at its adoption date instead of at the beginning of the earliest comparative period presented. We are in the process of assessing available practical expedients, including the transition provision that we have elected to apply, implementing lease accounting software and evaluating the effect this standard will have on our consolidated financial statements and related disclosures. The standard will be effective for us on January 1, 2019.

In June 2016, the FASB issued ASU Update No. 2016-13, Financial Instruments—Credit Losses (Topic 326): The amendments in this update require a financial asset (or a group of financial assets) measured at amortized cost basis to be presented at the net amount expected to be collected. The amendments in this update are effective for annual periods beginning after December 15, 2019, including interim periods within those fiscal years. Early adoption is permitted as of the fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The modified-retrospective approach is generally applicable through a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the guidance is effective. We are currently evaluating the effect this standard will have on our consolidated financial statements and related disclosures.

In August 2016, the FASB issued ASU No. 2016-15, Statement of Cash Flows (Topic 230): *Classification of Certain Cash Receipts and Cash Payments*. Update 2016-15 provides guidance on the presentation and classification of certain cash receipts and cash payments in the statement of cash flows. We adopted this update on January 1, 2018 resulting in no material impact to our consolidated statements of cash flows.

In October 2016, the FASB issued ASU No. 2016-16, Income Taxes (Topic 740): *Intra-Entity Transfers of Assets Other Than Inventory*. This update simplifies the accounting for the income tax consequences of transfers of assets from one unit of a corporation to another unit or subsidiary by eliminating an accounting exception that prevents the recognition of current and deferred income tax consequences for such “intra-entity transfers” until the assets have been sold to an outside party.

We adopted this update on January 1, 2018 and recognized the following balance sheet adjustments (in thousands):

	Balance at December 31, 2017	Adjustment due to ASU No. 2016-16	Balance at January 1, 2018
Assets			
Prepaid expenses and other current assets	\$ 39,037	\$ (12,604)	\$ 26,433
Deferred tax assets, net	11,559	58,301	69,860
Other assets	75,984	(68,127)	7,857
Equity			
Accumulated deficit	\$ (39,664)	\$ (22,430)	\$ (62,094)

In January 2017, the FASB issued ASU No. 2017-04, Intangibles-Goodwill and Other (Topic 350): *Simplifying the Test for Goodwill Impairment*. This update removes step 2 of the goodwill impairment test that compares the implied fair value of goodwill with its carrying amount. Instead, an impairment test is performed by comparing the fair value of a reporting unit with its carrying amount. An impairment charge will be recorded by the amount a reporting unit’s carrying amount exceeds its fair value. The update is effective for annual periods after December 15, 2019, including interim periods within those annual reporting periods with early adoption permitted.

In March 2017, the FASB issued ASU No. 2017-01, Business Combinations (Topic 805): *Clarifying the Definition of a Business*. This update clarifies when a set of assets and activities is a business. We adopted this update on January 1, 2018. The ImThera and TandemLife acquisitions were considered acquisitions of a business. Refer to “Note 3. Business Combinations” for a discussion of our acquisitions of ImThera and TandemLife.

In March 2017, the FASB issued ASU No. 2017-07, Compensation—Retirement Benefits (Topic 715): *Improving the Presentation of Net Periodic Pension Cost and Net Periodic Post Retirement Benefit Cost*. This update requires that an employer report the service cost component in the same line item or items as other compensation costs arising from services

rendered by the pertinent employees during the period. We adopted this update on January 1, 2018, resulting in an immaterial impact to our consolidated financial statements. The condensed consolidated statements of income for the three and six months ended June 30, 2017 have been recast for the adoption of this update.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation—Stock Compensation* (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting. This update simplifies the accounting for nonemployee share-based payment transactions. The amendment specifies that Topic 718 applies to all share-based payment transactions in which a grantor acquires goods or services to be used or consumed in a grantor's own operations by issuing share-based payment awards. The update is effective for annual periods after December 15, 2018, including interim periods within those annual reporting periods with early adoption permitted. We do not expect the adoption of this update to have a material effect on our consolidated financial statements.

Note 19. Subsequent Event

In July 2018, we borrowed \$60.0 million under our June 2017 finance contract with the European Investment Bank to support financing of certain of our R&D projects. Repayment installments, with interest, are due semi-annually, beginning June 30, 2022 and ending June 30, 2026. The interest rate is LIBOR plus 0.966%.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis should be read in conjunction with our condensed consolidated financial statements and related notes which appear elsewhere in this document and with our 2017 Form 10-K. Our discussion and analysis may contain forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including those set forth under "Risk Factors" in Item 1A of our 2017 Form 10-K and elsewhere in this quarterly report.

The capitalized terms used below have been defined in the notes to our condensed consolidated financial statements. In the following text, the terms "LivaNova," "the Company," "we," "us" and "our" refer to LivaNova PLC and its consolidated subsidiaries.

Business Overview

We are a public limited company organized under the laws of England and Wales, headquartered in London, United Kingdom. We are a global medical device company focused on the development and delivery of important therapeutic solutions for the benefit of patients, healthcare professionals and healthcare systems throughout the world. Working closely with medical professionals in the fields of Cardiac Surgery and Neuromodulation, we design, develop, manufacture and sell innovative therapeutic solutions that are consistent with our mission to improve our patients' quality of life, increase the skills and capabilities of healthcare professionals and minimize healthcare costs.

Sale of the CRM Business Franchise

We completed the CRM Sale on April 30, 2018 for total cash proceeds of \$195.9 million, less cash transferred of \$9.2 million, subject to certain customary closing adjustments. In conjunction with the sale, we entered into transition services agreements to provide certain support services for generally up to twelve months from the closing date of the sale. The services include, among others, accounting, information technology, human resources, quality assurance, regulatory affairs, supply chain, clinical affairs and customer support.

The results of operations of CRM are reflected as discontinued operations for all periods presented in this Quarterly Report on Form 10-Q. Discontinued operations for the three and six months ended June 30, 2018 include CRM activity through the date of the sale, April 30, 2018. The assets and liabilities of CRM are presented as assets or liabilities of discontinued operations in the condensed consolidated balance sheets at December 31, 2017. Refer to "Note 4. Discontinued Operations" to the Financial Statements in this Quarterly Report on Form 10-Q.

Business Franchises

LivaNova is comprised of two Business Franchises: Cardiac Surgery and Neuromodulation, corresponding to our main therapeutic areas. Corporate activities include corporate business development ("New Ventures"). New Ventures is focused on new growth platforms and identification of other opportunities for expansion.

For further information regarding our business segments, historical financial information and our methodology for the presentation of financial results, please refer to the condensed consolidated financial statements and accompanying notes of this Quarterly Report on Form 10-Q.

Cardiac Surgery Update

The Cardiac Surgery segment is engaged in the development, production and sale of cardiopulmonary products, heart valves and advanced circulatory support. Cardiopulmonary products include oxygenators, heart-lung machines, autotransfusion systems, perfusion tubing systems, cannulae and other related accessories. Heart valves include mechanical heart valves, tissue heart valves and related repair products. Advanced circulatory support, which represents our recently acquired TandemLife business, includes temporary life support product kits that can include a combination of pumps, oxygenators, and cannulae.

In March 2017, we committed to a plan to sell our Suzhou Industrial Park facility in Shanghai, China, an emerging market greenfield project for the local manufacture of cardiopulmonary disposable products in Suzhou Industrial Park in China. The sale of the Suzhou facility was completed in April 2018.

In April 2018, we acquired TandemLife, headquartered in Pittsburgh, Pennsylvania. TandemLife is focused on the delivery of leading-edge temporary life support products, including cardiopulmonary and respiratory support solutions.

Product Remediation Plan

In response to an FDA Warning Letter, the CDC's Health Alert Network and the FDA's Safety Communication, in the fourth quarter of 2016, we initiated a program to provide existing 3T device users with a new loaner 3T device at no charge pending regulatory approval and implementation of additional risk mitigation strategies worldwide. This loaner program began in the U.S. and is being made available progressively on a global basis, prioritizing and allocating devices to 3T device users based on pre-established criteria. We anticipate that this program will continue until we are able to address customer needs through a broader solution that includes implementation of one or more of the risk mitigation strategies currently under review with regulatory agencies. We are also currently implementing a vacuum and sealing upgrade program in as many countries as possible throughout 2018 and beyond until all devices are upgraded. Furthermore, we intend to perform a no-charge deep disinfection service (deep cleaning service) for 3T device users. On April 12, 2018, the FDA agreed to allow us to move forward with the deep cleaning service in the U.S., adding to the growing list of countries around the world in which we offer the service.

On December 31, 2016, we recognized a liability for our product remediation plan related to our 3T device. We concluded that it was probable that a liability had been incurred upon management's approval of the plan and the commitments made by management to various regulatory authorities globally in November and December 2016, and furthermore, the cost associated with the plan was reasonably estimable.

At June 30, 2018, the product remediation liability was \$19.7 million. For further information, please refer to "Note 6. Product Remediation Liability" in our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

Heart Valves

In January 2018, we announced that we had started enrollment in our BELIEVE study. This study focuses on the overall incidence of reduced leaflet motion identified by CT imaging in patients receiving a LivaNova aortic heart valve. We are planning to enroll approximately 230 patients at 15 sites in the U.S. and Canada.

In March 2018, we announced that we had started enrollment in PERFECT, a Perceval valve clinical study in China. The study is being conducted to demonstrate the safety and effectiveness of Perceval in the Chinese population. We plan to enroll approximately 160 patients at 8 investigational sites.

In June 2018, we announced that Japan's Ministry of Health, Labour and Welfare approved our Perceval sutureless aortic heart valve to treat aortic valve disease, which will enable us to provide patients and clinicians in Japan with a new option for aortic heart valve replacement. We are currently working to obtain reimbursement in Japan.

In June 2018, we announced FDA 510(k) clearance of the MEMO 4D semi-rigid mitral annuloplasty ring and confirmed the first implantation of the device. This next-generation of the MEMO device family offers several innovations, such as broader range of ring sizes, a new ring design and true semi-rigid stability and flexibility that allows us to reach a larger patient population with mitral regurgitation ("MR") for treatment with the potential to improve patient outcomes.

Neuromodulation Update

The Neuromodulation segment designs, develops and markets neuromodulation therapy for the treatment of drug-resistant epilepsy, treatment-resistant depression, obstructive sleep apnea and heart failure. Through this segment, we market our proprietary implantable VNS Therapy Systems that deliver vagus nerve stimulation therapy for the treatment of epilepsy and depression.

Our product development efforts are directed toward improving the VNS Therapy System and developing new products that provide additional features and functionality. We are conducting ongoing product development activities to enhance the VNS Therapy System pulse generator, lead and programming software. We support studies for our product development efforts and to build clinical evidence for the VNS Therapy System. We will be required to obtain appropriate U.S. and international regulatory approvals, and clinical studies may be a prerequisite to regulatory approvals for some products. Our research and development efforts will require significant funding to complete and may not be successful. Even if successful, additional clinical studies may be needed to achieve regulatory approval and to commercialize any or all new or improved products.

Epilepsy

In March 2018, we announced the launch and enrollment of the first patient in a clinical study to examine the use of our VNS Therapy System using Microburst technology. This feasibility study will determine the initial safety and effectiveness of delivering VNS Therapy using high frequency bursts of stimulation in patients who have drug-resistant epilepsy. The study consists of two cohorts, enrolling up to 40 patients at approximately 15 sites in the U.S.

In April 2018, we obtained CE Mark for our SenTiva VNS Therapy System, which followed FDA approval in the U.S., which was received in October 2017. The SenTiva VNS Therapy System consists of the SenTiva implantable generator and the next-generation VNS Therapy Programming System. SenTiva is our smallest and lightest responsive therapy for epilepsy. The new VNS Therapy Programming System features a wireless wand and new user interface on a small tablet. Together, these components offer patients with drug-resistant epilepsy a physician-directed, customizable therapy with smart technology that reduces the number of seizures, lessens the duration of seizures and enables a faster recovery.

Depression

In January 2018, we announced the launch and enrollment of the first patient in our Global RESTORE-LIFE study, which evaluates the use of our VNS Therapy System in patients who have treatment-resistant depression and failed to achieve an adequate response to standard psychiatric management. We expect to enroll a minimum of 500 patients who will be implanted at up to 80 sites outside of the U.S. We are currently enrolling patients in Germany and will expand to other European countries during the year.

In May 2018, the U.S. Centers for Medicare and Medicaid Services (“CMS”) published a tracking sheet to reconsider its National Coverage Determination (“NCD”) of our VNS Therapy System for treatment-resistant depression. The tracking sheet was in response to a letter that we submitted to CMS requesting a formal reconsideration of the NCD. We requested this review after a significant body of new evidence emerged about treatment-resistant depression and the role of VNS Therapy in its treatment. The 30-day public comment period on the NCD closed on June 29, 2018. The process to release a Proposed Decision Memorandum can take up to six months. Once that occurs, CMS will have another 30-day public comment period. By the end of February 2019, the agency will render a final decision.

Heart Failure

We are focused on the development and clinical testing of the VITARIA System for treating heart failure through vagus nerve stimulation.

We received CE Mark approval of the VITARIA System in February 2015 for patients who have moderate to severe heart failure (New York Heart Association Class II/III) with left ventricular dysfunction (ejection fraction < 40%) and who remain symptomatic despite stable, optimal heart failure drug therapy. The VITARIA System provides a specific method of VNS called autonomic regulation therapy (“ART”), and it includes the same elements as the VNS Therapy System. We conducted a pilot study, ANTHEM-HF, outside the United States, which concluded in 2014. The study results support the safety and efficacy of ART delivered by the VITARIA System. The VITARIA System is not approved in the U.S. During 2014, we also initiated a second pilot study, ANTHEM-HFPEF, to study ART in patients experiencing symptomatic heart failure with preserved ejection fraction. This pilot study is currently underway outside the United States.

Obstructive Sleep Apnea

We have invested in ImThera, a privately held, emerging-growth company developing an implantable neurostimulation device system for the treatment of obstructive sleep apnea (“OSA”) since 2011. On January 16, 2018, we acquired the remaining 86% outstanding interests in ImThera, which is highly aligned with our Neuromodulation Business Franchise. ImThera manufactures an implantable device that stimulates multiple tongue muscles via the hypoglossal nerve, which opens the airway while a patient is sleeping. ImThera has a commercial presence in the European market and an FDA pivotal study is ongoing in the U.S.

During the second quarter of 2018, we determined that developments in the ImThera clinical trial will result in a minimum 12-month delay of regulatory approval. This delay constituted a triggering event that required evaluation of the in-process

research and development asset for impairment. Based on the quantitative impairment evaluation, the in-process research and development asset was not impaired; however, a further delay or a change in management's estimates could result in a fair value that is below the carrying amount for such an asset. We will continue to monitor any changes in circumstances for indicators of impairment.

Corporate Activities and New Ventures

Corporate activities include shared services for finance, legal, human resources and information technology and New Ventures. New Ventures is focused on new growth platforms and identification of other opportunities for expansion.

Mitral Valve Regurgitation

Mitral regurgitation ("MR") occurs when the heart's mitral valve does not close tightly, which allows blood to flow backwards in the heart. This reduces the amount of blood that flows to the rest of the body, making the patient feel tired or out of breath. Treatment depends on the nature and the severity of MR. In certain cases, heart surgery may be needed to repair or replace the valve. Left untreated, severe mitral valve regurgitation can cause heart failure or heart rhythm problems (arrhythmias).

In May 2017, we acquired the remaining 51% outstanding equity interest in Caisson in support of our strategic growth initiatives. We are focused on the design, development and clinical evaluation of a novel transcatheter mitral valve replacement ("TMVR") implant device with a fully transvenous delivery system for the treatment of mitral regurgitation. In April 2016, Caisson obtained FDA approval of an Investigational Device Exemption study using its technology for treating mitral regurgitation heart failure with transcatheter mitral valve replacement and we are currently executing against a defined clinical data development plan designed to enable commercialization of the Caisson technology.

We performed a quantitative impairment assessment, as of April 1, 2018, for the goodwill and in-process research and development assets arising from the Caisson acquisition. Based upon the assessment performed, we determined that the goodwill and the in-process research and development assets were not impaired. The quantitative impairment assessment was performed using management's current estimate of future cash flows which are based on the expected timing of future regulatory approvals. A delay in the anticipated timing of these regulatory approvals or management's estimates could result in a fair value of the in-process research and development that is below its carrying amount.

We are also invested in two mitral valve startups, Cardiosolutions Inc. ("Cardiosolutions") and Highlife S.A.S. ("Highlife"). Cardiosolutions, a startup headquartered in the U.S. in which we have held an interest since 2012, is developing an innovative spacer technology for treating mitral regurgitation. Highlife, headquartered in France, is focused on developing devices for treating mitral regurgitation through percutaneous replacement of the native mitral valve.

Significant Accounting Policies and Critical Accounting Estimates

In addition to our critical accounting policies provided in "Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" included in our 2017 Form 10-K, refer to "Note 2. Revenue Recognition" included in this Quarterly Report on Form 10-Q.

The accompanying unaudited condensed consolidated financial statements of LivaNova and its consolidated subsidiaries have been prepared in accordance with U.S. GAAP on an interim basis.

New accounting pronouncements are disclosed in "Note 18. New Accounting Pronouncements" contained in the condensed consolidated financial statements in this Quarterly Report on Form 10-Q.

Other

U.S. Tax Reform

On December 22, 2017, the U.S. enacted the Tax Cuts and Jobs Act (the "Act"). The Act, which is also commonly referred to as "U.S. tax reform", significantly changed U.S. corporate income tax laws by, among other things, reducing the U.S. corporate income tax rate to 21%, which commenced in 2018. In addition, the Act created a one-time mandatory tax, a toll charge, on previously deferred foreign earnings of non-U.S. subsidiaries controlled by a U.S. corporation, or, in our case, a non-U.S. subsidiary controlled by one of our U.S. subsidiaries.

The Act also established various other new U.S. corporate income tax laws that came into effect in 2018, including, but not limited to, (1) elimination of the corporate alternative minimum tax (AMT); (2) the creation of the base erosion anti-abuse tax (BEAT), a new minimum tax; (3) a new provision designed to tax global intangible low-taxed income (GILTI); (4) a new limitation on deductible interest expense; (5) the repeal of the domestic production activity deduction; (6) limitations on the deductibility of certain executive compensation; and (7) limitations on net operating losses (NOLs) generated after December

31, 2017, to 80 percent of taxable income. The extent to which these and other provisions of the Act, or future legislation or regulations, could impact our consolidated effective income tax rate in future periods depends on many factors including, but not limited to, the amount of profit generated by our subsidiaries operating in the U.S., the impact of the Company's current or contemplated tax planning strategies, the impact of new or amended tax laws or regulations by countries outside the U.S., and other factors beyond our control.

Further regulations and notices and state conformity could be issued as a result of U.S. tax reform covering various issues that may affect our tax position including, but not limited to, an increase in the corporate state tax rate and elimination of the interest deduction. The content of any future legislation, the timing for regulations, notices, and state conformity, and the reporting periods that would be impacted cannot be determined at this time. Although we believe the non-cash net charge of \$27.5 million recorded in the fourth quarter of 2017 is a reasonable estimate of the impact of the income tax effects of the Act on LivaNova, the estimate is provisional. Once we finalize certain tax positions for our 2017 U.S. consolidated tax return, we will be able to conclude whether any further adjustments to our tax positions are required. During the six months ended June 30, 2018, the Company did not record any material adjustments to the provisional amount recorded in the fourth quarter of 2017 related to the Tax Cuts and Jobs Act.

Brexit

On June 23, 2016, the UK held a referendum in which voters approved an exit from the EU, commonly referred to as "Brexit." On March 29, 2017, the UK government gave formal notice of its intention to leave the EU, formally commencing the negotiations regarding the terms of withdrawal between the UK and the EU and on March 19, 2018, the UK and the EU released a draft withdrawal agreement highlighting the progress made between the two parties on the terms of a transition period that will usher the UK out of the EU. Unless the deadline is extended, the UK will leave the EU on March 2, 2019. The negotiation process will determine the future terms of the UK's relationship with the EU. The notification does not change the application of existing tax laws, and does not establish a clear framework for what the ultimate outcome of the negotiations and legislative process will be.

Various tax reliefs and exemptions that apply to transactions between EU Member States under existing tax laws may cease to apply to transactions between the UK and EU Member States when the UK ultimately withdraws from the EU. It is unclear at this stage if or when any new tax treaties between the UK and the EU or individual EU Member States will replace those reliefs and exemptions. It is also unclear at this stage what financial, trade and legal implications will ensue from Brexit and how Brexit may affect us, our customers, suppliers, vendors, or our industry.

We and several of our wholly owned subsidiaries that are domiciled either in the UK, various EU Member States, or in the United States, are party to intercompany transactions and agreements under which we receive various tax reliefs and exemptions in accordance with applicable international tax laws, treaties and regulations. If certain treaties applicable to our transactions and agreements are not renegotiated or replaced with new treaties containing terms, conditions and attributes similar to those of the existing treaties, Brexit may have a material adverse impact on our future financial results and results of operations. During the two-year negotiation period, we will monitor and assess the potential impact of this event and explore possible tax-planning strategies that may mitigate or eliminate any such potential adverse impact. We will not account for the impact of Brexit in our income tax provisions until changes in tax laws or treaties between the UK and the EU or individual EU Member States with the UK and/or the U.S. are enacted or the withdrawal becomes effective.

European Union State Aid Challenge

On October 26, 2017, the European Commission ("EC") announced that an investigation will be opened with respect to the UK's controlled foreign company ("CFC") rules. The CFC rules under investigation provide certain tax exceptions to entities controlled by UK parent companies that are subject to lower tax rates if the activities being undertaken by the CFC relate to financing. The EC is investigating whether the exemption is a breach of EU State Aid rules. The investigation is in its early stages and is unlikely to be completed within a twelve month period with an appeal process likely to follow. It is unclear as to whether the UK will be part of the EU once a decision has been finalized due to Brexit and what impact, if any, Brexit will have on the outcome of the investigation or the enforceability of a decision. Due to the many uncertainties related to this matter, including the preliminary state of the investigation, the pending Brexit negotiations and political environment and the unknown outcome of the investigation and resulting appeals, no uncertain tax position reserve has been recognized related to this matter and we are unable to reasonably estimate the potential liability.

Results of Operations

We are reporting, in this Quarterly Report on Form 10-Q, the results for LivaNova and its consolidated subsidiaries for the three and six months ended June 30, 2018, as compared to the three and six months ended June 30, 2017.

The following table summarizes our condensed consolidated results of operations (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2018	2017	2018	2017
Net sales	\$ 287,498	\$ 255,843	\$ 537,896	\$ 482,668
Cost of sales	91,993	84,023	176,591	163,991
Product remediation	1,542	1,723	5,257	931
Gross profit	193,963	170,097	356,048	317,746
Operating expenses:				
Selling, general and administrative	123,439	94,264	227,600	181,604
Research and development	34,215	33,833	65,967	54,219
Merger and integration expenses	4,409	3,512	7,369	5,698
Restructuring expenses	476	2,597	2,357	12,627
Amortization of intangibles	9,817	8,116	18,618	16,076
Total operating expenses	172,356	142,322	321,911	270,224
Operating income from continuing operations	21,607	27,775	34,137	47,522
Interest income	232	252	679	525
Interest expense	(3,006)	(1,578)	(5,117)	(3,893)
Gain on acquisitions	—	39,428	11,484	39,428
Foreign exchange and other (losses) gains	(70)	(2,837)	(343)	336
Income from continuing operations before tax	18,763	63,040	40,840	83,918
Income tax (benefit) expense	(1,030)	3,259	2,863	8,914
Losses from equity method investments	(265)	(14,102)	(627)	(16,098)
Net income from continuing operations	19,528	45,679	37,350	58,906
Net (loss) income from discontinued operations	(4,462)	1,819	(9,011)	(137)
Net income	\$ 15,066	\$ 47,498	\$ 28,339	\$ 58,769

Net Sales

The tables below present net sales by operating segment and geographic region (in thousands, except for percentages):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2018	2017	% Increase (Decrease)	2018	2017	% Increase (Decrease)
Cardiopulmonary						
United States	\$ 42,139	\$ 39,719	6.1 %	\$ 80,584	\$ 71,895	12.1 %
Europe	35,916	33,959	5.8 %	72,786	64,568	12.7 %
Rest of world	58,584	50,467	16.1 %	108,399	94,980	14.1 %
	136,639	124,145	10.1 %	261,769	231,443	13.1 %
Heart Valves						
United States	6,147	6,205	(0.9)%	12,683	12,274	3.3 %
Europe	11,863	10,684	11.0 %	23,979	21,031	14.0 %
Rest of world	15,792	17,552	(10.0)%	28,182	33,042	(14.7)%
	33,802	34,441	(1.9)%	64,844	66,347	(2.3)%
Advanced Circulatory Support						
United States	5,468	—	— %	5,468	—	— %
Europe	353	—	— %	353	—	— %
Rest of world	194	—	— %	194	—	— %
	6,015	—	— %	6,015	—	— %
Cardiac Surgery						
United States	53,754	45,924	17.0 %	98,735	84,169	17.3 %
Europe	48,132	44,643	7.8 %	97,118	85,599	13.5 %
Rest of world	74,570	68,019	9.6 %	136,775	128,022	6.8 %
	176,456	158,586	11.3 %	332,628	297,790	11.7 %
Neuromodulation						
United States	89,395	81,405	9.8 %	167,387	155,064	7.9 %
Europe	11,943	9,514	25.5 %	22,234	17,443	27.5 %
Rest of world	9,315	6,096	52.8 %	14,876	11,667	27.5 %
	110,653	97,015	14.1 %	204,497	184,174	11.0 %
Other						
	389	242	60.7 %	771	704	9.5 %
Totals						
United States	143,149	127,329	12.4 %	266,122	239,233	11.2 %
Europe ⁽¹⁾	60,075	54,157	10.9 %	119,352	103,042	15.8 %
Rest of world	84,274	74,357	13.3 %	152,422	140,393	8.6 %
Total	\$ 287,498	\$ 255,843	12.4 %	\$ 537,896	\$ 482,668	11.4 %

(1) Europe sales include those countries in which we have a direct sales presence, whereas European countries in which we sell through distributors are included in “Rest of world”.

The tables below present segment income from operations (in thousands):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2018	2017	% Change	2018	2017	% Change
Cardiac Surgery	\$ 16,337	\$ 23,773	(31.3)%	\$ 26,595	\$ 39,806	(33.2)%
Neuromodulation	61,389	51,264	19.8 %	100,123	92,020	8.8 %
Other	(41,417)	(33,037)	(25.4)%	(64,237)	(49,903)	(28.7)%
Total reportable segment income from continuing operations ⁽¹⁾	\$ 36,309	\$ 42,000	(13.6)%	\$ 62,481	\$ 81,923	(23.7)%

(1) For a reconciliation of segment operating income to consolidated operating income refer to “Note 16. Geographic and Segment Information” in the condensed consolidated financial statements in this Quarterly Report on Form 10-Q.

Cardiac Surgery

Cardiac Surgery net sales increased for the three and six months ended June 30, 2018 compared to the three and six months ended June 30, 2017, primarily due to strong heart-lung machine sales as customers continue to upgrade from legacy S3 to current S5 devices. Additionally, net sales were positively impacted by \$6.0 million in sales from the acquisition of TandemLife on April 4, 2018 and foreign currency exchange rate fluctuations. With respect to heart valves, the expected termination of a manufacturing contract resulted in a decrease in net sales of \$2.0 million and \$4.6 million for the three and six months ended June 30, 2018, respectively, compared to the comparable prior year periods. Strong demand for the Perceval sutureless aortic heart valve offset continuing global declines in traditional tissue and mechanical heart valves.

Cardiac Surgery operating income decreased for the three and six months ended June 30, 2018 compared to the three and six months ended June 30, 2017 as the positive impact to operating income associated with increases in net sales was more than offset by increased sales and marketing expenses related to our efforts to expand market share in international markets, increased R&D investments in support of the next generation heart-lung machine, a negative impact from foreign currency exchange rate fluctuations and increased legal costs associated with our 3T litigation. Additionally, the inclusion of the operating results of TandemLife resulted in a \$5.1 million decrease in operating income for the three and six months ended June 30, 2018 as compared to the comparable prior year periods.

Neuromodulation

Effective January 1, 2018, we began to include the results of heart failure within the Neuromodulation segment for internal reporting purposes in order to manage and evaluate business activities for purposes of allocating resources and assessing performance. Segment results for the three and six months ended June 30, 2017 have been recast to conform to the current period presentation.

Neuromodulation net sales increased for the three and six months ended June 30, 2018 compared to the three and six months ended June 30, 2017 due to strong adoption of the SenTiva VNS Therapy System in the U.S. and an overall increase in demand internationally. Net sales for the three months ended June 30, 2018 also benefited from increased sales in Europe following the approval and launch of Sentiva, the early success of a business model change in Japan and favorable reimbursement decisions in five additional countries in the Rest of world region.

Neuromodulation operating income increased for the three and six months ended June 30, 2018 compared to the three and six months ended June 30, 2017. The positive impact to operating income associated with increases in sales and the adjustment of the ImThera contingent consideration liability were offset by increased sales and marketing expenses associated with efforts to market direct to consumer, increased R&D expenses for new projects surrounding our Sentiva VNS Therapy System and heart failure and the inclusion of the operating results of ImThera.

Cost of Sales and Expenses

The table below presents our comparative cost of sales and significant expenses as a percentage of sales:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2018	2017	Change	2018	2017	Change
Cost of sales	32.0%	32.8%	(0.8)%	32.8%	34.0%	(1.2)%
Product remediation	0.5%	0.7%	(0.2)%	1.0%	0.2%	0.8 %
Gross profit	67.5%	66.5%	1.0 %	66.2%	65.8%	0.4 %
Operating expenses:						
Selling, general and administrative	42.9%	36.8%	6.1 %	42.3%	37.6%	4.7 %
Research and development	11.9%	13.2%	(1.3)%	12.3%	11.2%	1.1 %
Merger and integration expenses	1.5%	1.4%	0.1 %	1.4%	1.2%	0.2 %
Restructuring expenses	0.2%	1.0%	(0.8)%	0.4%	2.6%	(2.2)%
Amortization of intangibles	3.4%	3.2%	0.2 %	3.5%	3.3%	0.2 %

Sales, General and Administrative (“SG&A”) Expenses

SG&A expenses consisted of sales, marketing, general and administrative activities. SG&A expenses as a percentage of net sales increased for the three and six months ended June 30, 2018 compared to the three and six months ended June 30, 2017 due to key growth driver investments, including efforts to market direct to consumer within our Neuromodulation business, acquisition costs of TandemLife and ImThera and an increase in sales and marketing expenses internationally for general market expansion. Legal costs primarily attributable to litigation related to our 3T devices, the impact of foreign currency exchange rate fluctuations, and the strengthening of organizational capabilities to support growth also contributed to the increase in SG&A expenses as a percentage of net sales.

Research and Development (“R&D”) Expenses

R&D expenses consist of product design and development efforts, clinical study programs and regulatory activities, which are essential to the Company’s strategic portfolio initiatives, including TMVR, Treatment-Resistant Depression, Obstructive Sleep Apnea and Heart Failure.

R&D expenses as a percentage of net sales decreased during the three months ended June 30, 2018 as compared to the three months ended June 30, 2017, primarily due to the acquisition of Caisson during the three months ended June 30, 2017 which resulted in the recognition of \$5.8 million in post-combination compensation expense and \$3.6 million in incremental compensation expense associated with the retention of the employees of Caisson. The three months ended June 30, 2018 includes additional R&D expenses for our development of next generation products, clinical trials and investments in treatment-resistant depression, TMVR and sleep apnea and heart failure.

R&D expenses as a percentage of net sales increased slightly during the six months ended June 30, 2018 as compared to the six months ended June 30, 2017, primarily due to R&D expenses for our development of next generation products, clinical trials and investments in the aforementioned strategic portfolio initiatives. These expenses more than offset R&D expenses for the six months ended June 30, 2017 of \$6.5 million related to the acquisition of Caisson.

Restructuring Expenses

Restructuring expenses were primarily related to our efforts under our Reorganization Plans and the Suzhou, China exit plan, to leverage economies of scale, eliminate duplicate corporate expenses and streamline distributions, logistics and office functions in order to reduce overall costs.

Restructuring expenses decreased as a percentage of net sales over the three and six months ended June 30, 2018, as compared to the three and six months ended June 30, 2017, as our restructuring activities continue to decline.

Gain on Acquisitions

On January 16, 2018, we acquired the remaining outstanding interest of ImThera for cash consideration of up to \$225 million. The fair value of our previously-held interest in ImThera was determined based on the fair value of total consideration transferred and application of a discount for lack of control. As a result, we recognized a pre-tax non-cash gain of \$11.5 million for the fair value in excess of our carrying value of \$14.1 million.

On May 2, 2017, we acquired the remaining 51% equity interest in Caisson. On the acquisition date, we remeasured our notes receivable due from Caisson and our existing investment in Caisson at fair value and recognized a pre-tax non-cash gain of \$1.3 million and \$38.1 million, respectively.

Income Taxes

LivaNova PLC is domiciled and resident in the UK. Our subsidiaries conduct operations and earn income in numerous countries and are subject to the laws of taxing jurisdictions within those countries, and the income tax rates imposed in the tax jurisdictions in which our subsidiaries conduct operations vary. As a result of the changes in the overall level of our income, the deployment of various tax strategies and the changes in tax laws, our consolidated effective income tax rate may vary substantially from one reporting period to another.

Our effective income tax rate from continuing operations for the three months ended June 30, 2018 was (5.5)% compared with 5.2% for the three months ended June 30, 2017. For the six months ended June 30, 2018, the effective income tax rate from continuing operations was 7.0% compared with 10.6% for the six months ended June 30, 2017. Our effective income tax rate fluctuates based on, among other factors, changes in pretax income in countries with varying statutory tax rates, changes in valuation allowances, changes in tax credits and incentives, and changes in unrecognized tax benefits associated with uncertain tax positions.

Compared with the three and six months ended June 30, 2017, the lower effective tax rates for the three and six months ended June 30, 2018 were primarily attributable to the impact of the reduction to the U.S. federal statutory tax rate as a result of the U.S. “Tax Cuts and Jobs Act” (the “Tax Act”), the benefit of foreign derived intangible income partially offset by the repeal of the U.S. domestic production activity deduction, certain tax law changes in the UK that occurred during the three months ended December 31, 2017 and the impact of discrete tax items.

During the three months ended June 30, 2018, we entered into an audit settlement impacting one of our uncertain tax positions. This audit settlement resulted in the recognition of an additional of \$1.7 million in income tax expense.

Losses from Equity Method Investments

Due to an additional investment by a third party during the three months ended June 30, 2018, our equity interest in Highlife decreased to 17.5% from 24.6%. As a result, we determined that we no longer had significant influence over Highlife and transferred the investment from our equity method to our cost method investments during the three months ended June 30, 2018. Losses from equity method investments were \$0.3 million and \$0.6 million for the three and six months ended June 30, 2018, respectively, which were attributable to Highlife, and \$14.1 million and \$16.1 million for the three and six months ended June 30, 2017, respectively, from our share of investee losses at Highlife and Caisson. These losses were primarily due to the impairment of our investment in, and notes receivable from, Highlife of \$13.0 million during the three months ended June 30, 2017.

Liquidity and Capital Resources

Based on our current business plan, we believe that our existing cash and cash equivalents, future cash generated from continuing operations, and available borrowing capacity under our credit facilities will be sufficient to fund our expected operating needs, working capital requirements, R&D opportunities, capital expenditures and debt service requirements over the next 12 months. We regularly review our capital needs and consider various investing and financing alternatives to support our requirements. Refer to “Note 9. Financing Arrangements” in the condensed consolidated financial statements in this Quarterly Report on Form 10-Q for additional information regarding our debt. Our liquidity could be adversely affected by the factors affecting future operating results, including those referred to in “Part II - Item 1A. Risk Factors” in the 2017 Form 10-K.

In connection with the TandemLife acquisition, we entered into a Bridge Facility Agreement providing a term loan facility with the aggregate principal amount of \$190.0 million. On April 3, 2018, we borrowed \$190.0 million under the Bridge Facility Agreement to facilitate the initial payment for our acquisition of TandemLife. We used the proceeds from the sale of the CRM business franchise to repay the borrowings under the Bridge Facility Agreement in full during the three months ended June 30, 2018.

No provision has been made for income taxes on unremitted earnings of our foreign controlled subsidiaries (non-UK subsidiaries) as of June 30, 2018. In the event of the distribution of those earnings in the form of dividends, a sale of the subsidiaries or certain other transactions, we may be liable for income taxes. However, the tax liability on future distributions should not be significant as most jurisdictions with unremitted earnings have various participation exemptions or no withholding tax.

Cash Flows

Net cash and cash equivalents provided by (used in) operating, investing and financing activities and the net (decrease) increase in the balance of cash and cash equivalents were as follows (in thousands):

	Six Months Ended June 30,	
	2018	2017
Operating activities	\$ 48,536	\$ 31,560
Investing activities	(93,190)	(27,734)
Financing activities	927	(3,367)
Effect of exchange rate changes on cash and cash equivalents	(2,508)	2,442
Net (decrease) increase	\$ (46,235)	\$ 2,901

Operating Activities

Cash provided by operating activities during the six months ended June 30, 2018 increased \$17.0 million as compared to the same prior-year period. The increase is primarily due to a \$51.5 million increase in cash from changes in net operating assets and liabilities, partially offset by a decrease in net income excluding non-cash items of \$34.5 million.

Investing Activities

Cash used in investing activities during the six months ended June 30, 2018 increased \$65.5 million as compared to the same prior-year period. The increase primarily resulted from an increase in cash paid for acquisitions of \$265.7 million, partially offset by cash received from the sale of CRM of \$186.7 million and an \$8.1 million increase due to cash received from the sale of assets.

Financing Activities

Cash provided by financing activities during the six months ended June 30, 2018 increased \$4.3 million as compared to the same prior-year period. Changes in net borrowings resulting in an increase of \$23.9 million were partially offset by current year payments of deferred consideration of \$14.1 million and a \$5.2 million decrease associated with share-based compensation arrangements.

Contractual Obligations

We had no material changes in our contractual commitments and obligations from amounts listed under “Part II, Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources” in our Annual Report on Form 10-K for the year ended December 31, 2017.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to certain market risks as part of our ongoing business operations, including risks from foreign currency exchange rates, interest rate risks and concentration of procurement suppliers that could adversely affect our consolidated financial position, results of operations or cash flows. We manage these risks through regular operating and financing activities and, at certain times, derivative financial instruments. Quantitative and qualitative disclosures about these risks are included in this Form 10-Q in “Part I, Note 10. Derivatives and Risk Management”, “Part I, Item 2. Management’s Discussion and Analysis of Financial Conditions and Results of Operations” and “Part II, Item 1A. Risk Factors”, and in our 2017 Form 10-K in “Part II, Item 7A Management’s Discussion and Analysis of Financial Condition and Results of Operations.” and “Part I, Item 1A. Risk Factors”. There have been no material changes from the information provided therein.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

(a) Evaluation of Disclosure Controls and Procedures

We maintain a system of disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act, that are designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. This information is also accumulated and communicated to management, including our Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosure. Our management, under the supervision and with the participation of our CEO and CFO, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the most recent fiscal quarter reported herein. Based on that evaluation, our CEO and CFO concluded that our disclosure controls and procedures were effective as of June 30, 2018.

(b) Changes in Internal Control Over Financial Reporting

No change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-5(f) under the Exchange Act) occurred during the quarter ended June 30, 2018 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. *Legal Proceedings*

For a description of our material pending legal and regulatory proceedings and settlements, refer to “Note 11. Commitments and Contingencies” in our condensed consolidated financial statements included in this Report on Form 10-Q.

Item 1A. *Risk Factors*

There were no material changes to the description of the risk factors associated with our business previously disclosed in Part I, Item 1A “Risk Factors” of our 2017 Form 10-K.

Item 2. *Unregistered Sales of Equity Securities and Use of Proceeds*

None

Item 3. *Defaults Upon Senior Securities*

None.

Item 4. *Mine Safety Disclosures*

Not applicable.

Item 5. *Other Information*

None.

Item 6. Exhibits

The exhibits marked with the asterisk symbol (*) are filed or furnished (in the case of Exhibit 32.1) with this Quarterly Report on Form 10-Q. The exhibits marked with the cross symbol (†) are management contracts or compensatory plans or arrangements filed pursuant to Item 601(b)(10)(iii) of Regulation S-K.

Exhibit Number	Document Description	Report or Registration Statement	SEC File or Registration Number	Exhibit Reference
2.1	Stock and Asset Purchase Agreement, dated as of March 8, 2018, by and among LivaNova PLC, MicroPort Cardiac Rhythm B.V. and MicroPort Scientific Corporation	LivaNova PLC Current Report on Form 8-K, filed on March 8, 2018	001-37599	2.1
3.2	Amended Articles of Association of LivaNova PLC, effective as from 14 June 2017	LivaNova PLC Current Report on Form 8-K, filed on June 15, 2017	001-37599	3.1
10.1*	Amendment and Restatement Agreement related to a Facility Agreement dated 21 October 2016 between LivaNova PLC and Barclays Bank PLC, dated 10 April 2018			
10.2*	Amendment No. 1, dated 17 April 2018, to the Finance Contract entered into by and between the European Investment Bank, LivaNova PLC, Sorin CRM and Sorin Group Italia S.r.l., dated 29 June 2017; and Amendment No. 2, dated 17 April 2018, to the Finance Contract entered into by and between the European Investment Bank, LivaNova PLC, Sorin CRM S.A.S. and Sorin Group Italia S.r.l. on 6 May 2014, as amended and restated on 2 Oct 2015; and Waiver of Articles 4.03A(3), 6.05 and 6.06 of the aforementioned Amendments			
10.3†	2018 Director RSU Agreement	LivaNova PLC Current Report on Form 8-K, filed on June 15, 2018	001-37599	10.1
10.4†*	General Provisions of the LivaNova Global Employee Share Purchase Plan dated 12 June 2018			
10.5†*	Form of Letter of Appointment as Non-Executive Director, dated 18 July 2018			
31.1*	Certification of the Chief Executive Officer of LivaNova PLC pursuant to Section 302 of the Sarbanes-Oxley Act of 2002			
31.2*	Certification of the Chief Financial Officer of LivaNova PLC pursuant to Section 302 of the Sarbanes-Oxley Act of 2002			
32.1*	Certification of the Chief Executive Officer and Chief Financial Officer of LivaNova PLC pursuant to Section 906 of the Sarbanes-Oxley Act of 2002			
101*	Interactive Data Files Pursuant to Rule 405 of Regulation S-T: (i) the Condensed Consolidated Statements of Income for the three and six months ended June 30, 2018 and June 30, 2017, (ii) the Condensed Consolidated Statements of Comprehensive Income for the three and six months ended June 30, 2018 and June 30, 2017, (iii) the Condensed Consolidated Balance Sheet as of June 30, 2018 and December 31, 2017, (iv) the Condensed Consolidated Statements of Cash Flows for the six months ended June 30, 2018 and June 30, 2017, and (vi) the Notes to the Condensed Consolidated Financial Statements.			

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

LIVANOVA PLC

By: /s/ DAMIEN MCDONALD
Damien McDonald
Chief Executive Officer
(Principal Executive Officer)

LIVANOVA PLC

By: /s/ THAD HUSTON
Thad Huston
Chief Financial Officer
(Principal Financial Officer)

Date: August 2, 2018

10 April 2018

LIVANOVA PLC
(as the Borrower)

and

Execution Version

BARCLAYS BANK PLC
(as the Lender)

LATHAM & WATKINS

99 Bishopsgate London EC2M 3XF United Kingdom Tel: +44.20.7710.1000

AMENDMENT AND RESTATEMENT AGREEMENT
related to a facility agreement dated 21 October 2016

CONTENTS

Clause	Page
1. INTERPRETATION	3
2. AMENDMENT AND RESTATEMENT OF THE FACILITY AGREEMENT	3
3. REPRESENTATIONS AND WARRANTIES	4
4. TRANSACTIONS AND AMENDED COSTS	4
5. MISCELLANEOUS	5
6. GOVERNING LAW	5
SCHEDULE 1	6
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE	
SCHEDULE 2	7
AMENDED AND RESTATED FACILITY AGREEMENT	

THIS AMENDMENT AND RESTATEMENT AGREEMENT (this “**Agreement**”) is dated 10 April 2018 and made between:

(1) **LivaNova PLC**, a company incorporated in England and Wales with registered number 09451374 (the “**Borrower**”); and

(2) **Barclays Bank PLC** as lender (the “**Lender**”). **WHEREAS:**

(A) The Borrower entered into a revolving facility agreement dated 21 October 2016 (the “**Facility Agreement**”).

(B) The Borrower and the Lender have agreed to enter into this agreement in order to amend the terms of the Facility Agreement in the manner set out below.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 **Definitions** In this Agreement: “**Effective Date**” means the date upon which:

(a) each party has signed this agreement (whether the same or different counterparts); and

(b) the Lender receives the documents and evidence set out in Schedule 1 (*Conditions Precedent*) to this Agreement each satisfactory in form and substance to the Lender.

1.2 Construction

(a) Terms defined in the Facility Agreement (as amended pursuant to this Agreement) shall have the same meaning when used in this Deed.

(b) Clause 1.2 (*Construction*) of the Facility Agreement will be deemed to be set out in full in this Agreement, but as if references in that clause to the Facility Agreement were references to this Agreement.

1.3 Third Party Rights

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

2. AMENDMENT AND RESTATEMENT OF THE FACILITY AGREEMENT

2.1 The Facility Agreement

With effect from (and including) the Effective Date, the Facility Agreement shall be amended and restated as set out in Schedule 2 (*Amended and Restated Facility Agreement*).

2.2 Continuing Effect

Except as varied by the terms of this agreement, the Facility Agreement will remain in full force and effect and any reference in the amended and restated Facility Agreement or any other Finance Document to the Facility Agreement or to any provision of the Facility

Agreement will be construed as a reference to the amended and restated Facility Agreement, or that provision, as amended and restated by this Agreement.

2.3 Further assurance

The Borrower shall, at the request of the Lender and at its own expense, do all such acts and things necessary or desirable to give effect to the amendments effected or to be effected pursuant to this Agreement.

2.4 Finance Documents

The parties to this Agreement agree that this Agreement is designated as a Finance Document.

2.5 Effective Date

The Lender will notify the Borrower when the Effective Date occurs. If the Effective Date has not occurred by 13 April 2018 (or any later date which the Lender and the Borrower may agree), then this Clause 2 shall lapse and none of the amendments recorded in Clause 2.1 will take effect.

3. REPRESENTATIONS AND WARRANTIES

3.1 Reliance

The Borrower represents and warrants as set out in this Clause 3 to the Lender and acknowledges that the Lender has entered into this Agreement and has agreed to the amendments effected by this Agreement in full reliance on those representations and warranties.

3.2 Repeating Representations

The Borrower represents and warrants that each of the Repeating Representations made by the Borrower under the Facility Agreement are true at the date of this Agreement and on the Effective Date, for the avoidance of doubt, as if each reference to the Finance Documents therein stated includes a reference to this Agreement.

3.3 Repetition

The representations and warranties in this Clause 3 are made on the date of this Agreement and shall be deemed to be repeated on the Effective Date by reference to the facts and circumstances existing on that date.

4. TRANSACTION AND AMENDMENT COSTS

(a) Notwithstanding any of the requirements of clause 16.1 (*Transaction expenses*) or clause 16.2 (*Amendment costs*), the Borrower shall not be liable for any of the Lender's costs and expenses (including legal fees) incurred in connection with this Agreement or the amendments to the Facility Agreement made pursuant to this Agreement and such costs and expenses (including legal fees of the Lender) shall be for the sole account of the Lender.

(b) For the avoidance of doubt, nothing in this clause 4 shall override the requirement for the Borrower to pay to the Lender the waiver fee referred to in paragraph 11.3 (*Waiver fee*) of the Facility Agreement (as amended and restated pursuant to the terms of this Agreement) at the time and in the amount specified therein.

5. MISCELLANEOUS

5.1 Counterparts

This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

5.2 Partial Invalidity

If, any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law the validity, legality or enforceability of the remaining provisions shall not be affected or impaired in any way.

5.3 Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

6. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law and the Borrower submits to the jurisdiction of the English courts in the terms set out in clause 35 (Enforcement) of the Facility Agreement (as if references in that clause 35 to “this Agreement” were references to this “Agreement”).

IN WITNESS whereof this Amendment and Restatement Agreement has been duly executed on the date first above written.

SCHEDULE 1 CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

1. FORMALITIES CERTIFICATE

A certificate in the agreed form from the Borrower:

- (a) confirming that there has been no amendment to its constitutional documents since 21 October 2016 or, if there has been any such amendment, attaching a certified copy of the constitutional documents of the Borrower;
- (b) attaching a copy of the resolution of its board of directors:
- (i) approving the terms of and the transactions contemplated by this Agreement and resolving that it execute this Agreement; and
- (ii) authorising a specified person or persons to execute this Agreement (including, if relevant, any Utilisation Request) and any documents to be signed or delivered under it;
- (c) setting out a specimen signature of each person authorised by the resolution referred to in paragraph (b) above in relation to this Agreement;
- (d) confirming that borrowing or guaranteeing or securing, as appropriate, the Commitment (incurred by this Agreement) would not cause any borrowing, guarantee, security or similar limit binding to be exceeded; and
- (e) certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. LEGAL OPINIONS

A legal opinion of Latham & Watkins, legal advisers to the Lender as to matters of English law

3. OTHER DOCUMENTS AND EVIDENCE

Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) of the Facility Agreement as amended by this Agreement have been paid or will be paid by the Effective Date.

SCHEDULE 2 AMENDED AND RESTATED FACILITY AGREEMENT

Originally dated 21 October 2016

LIVANOVA PLC

(as the Borrower) and

BARCLAYS BANK PLC

(as the Lender)

USD 70,000,000 REVOLVING FACILITY AGREEMENT originally dated 21 October 2016 as amended and restated by
an amendment and restatement agreement dated 10 April 2018

LATHAM & WATKINS

99 Bishopsgate London EC2M 3XF United Kingdom Tel: +44.20.7710.1000

CONTENTS

Clause Page

1. Definitions and Interpretation.....	1
2. The Facility	16
3. Purpose.....	16
4. Conditions of Utilisation.....	16
5. Utilisation.....	17
6. Repayment	18
7. Prepayment and Cancellation	18
8. Interest	22
9. Interest Periods	23
10. Changes to the Calculation of Interest	23
11. Fees	24
12. Tax Gross Up and Indemnities	26
13. Increased Costs	30
14. Other Indemnities.....	32
15. Mitigation by the Lender	33
16. Costs and Expenses.....	33
17. Representations.....	35
18. Information Undertakings.....	40
19. General Undertakings	42
20. Events of Default	48
21. Changes to the Lender	52
22. Assignments and transfer by the Borrower.....	52
23. Conduct of Business by the Lender	52
24. Payment Mechanics	53
25. Set-Off	55
26. Notices	55
27. Calculations and Certificates	57
28. Partial Invalidity.....	57
29. Remedies and Waivers.....	57
30. Amendments and Waivers	57
31. Confidential Information	58

32. Confidentiality of Funding Rates and Reference Bank Quotations	60
33. Counterparts.....	61
34. Governing Law	62
35. Enforcement.....	62
 SCHEDULE 1 CONDITIONS PRECEDENT.....	63
 SCHEDULE 2 UTILISATION REQUEST	64
 SCHEDULE 3 EXISTING SECURITY	65
 SCHEDULE 4 TIMETABLES	66
 SCHEDULE 5 MATERIAL COMPANIES	67
 SCHEDULE 6 FINANCIAL COVENANTS	68
 SCHEDULE 7	70

THIS AGREEMENT is originally dated 21 October 2016 as amended and restated by an amendment and restatement agreement dated 10 April 2018 and made between:

(1) **LivaNova PLC** incorporated in England and Wales with company registration no. 09451374 as borrower (the "**Borrower**"); and

(2) **Barclays Bank PLC** as lender (the "**Lender**"). **IT IS AGREED** as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions In this Agreement:

"**Accounting Date**" means each 30 June and 31 December.

"**Accounting Principles**" means generally accepted accounting principles in the United States of America, being US GAAP.

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Amendment and Restatement Agreement**" means an amendment and restatement agreement dated 10 April 2018, between the Borrower and the Lender, amending and restating the terms of this Agreement.

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"**Availability Period**" means the period from and including the date of this Agreement to and including the date falling one month prior to the Termination Date.

"**Available Commitment**" means the Commitment minus:

(a) the amount of any outstanding Loans; and

(b) in relation to any proposed Utilisation, the amount of any Loans that are due to be made on or before the proposed Utilisation Date,

other than any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

"**Breakage Costs**" means the amount (if any) by which:

(a) the interest (excluding the Margin) which the Lender should have received for the period from the date of receipt of all or any part of a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

(b) the amount which the Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London and New York.

"Code" means the US Internal Revenue Code of 1986.

"Commitment" means USD 70,000,000 to the extent not cancelled or reduced under this Agreement.

"Compliance Certificate" means a certificate substantially in the form set out in Schedule 7 (*Form of Compliance Certificate*).

"Confidential Information" means all information relating to the Borrower, the Group, the Finance Documents or the Facility of which the Lender becomes aware in its capacity as, or for the purpose of becoming, the Lender or which is received by the Lender in relation to, or for the purpose of becoming the Lender under, the Finance Documents or the Facility from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

(a) is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 31 (Confidential Information); or

(b) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or

(c) is known by the Lender before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Group and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"CRM Disposal" means a sale by the Group of its Cardiac Rhythm Management Business Franchise to MicroPort Scientific Corporation or any of its Affiliates.

"CTA" means the Corporation Tax Act 2009.

"Default" means an Event of Default or any event or circumstance specified in Clause 20 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Effective Date" means, in relation to the Amendment and Restatement Agreement, the "Effective Date" as defined therein.

"Environment" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

"Environmental Claim" means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

"Environmental Law" means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

"Environmental Permits" means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the

operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.

"Event of Default" means any event or circumstance specified as such in Clause 20 (*Events of Default*).

"Excluded Guarantee" means:

(a) any counter-indemnity obligation in respect of a performance or similar bond guaranteeing performance by a member of the Group under any public tender or other contract entered into in the ordinary course of trade; or

(b) any guarantee or indemnity granted or arising under legislation relating to tax or corporate law under which any member of the Group assumes general liability for the obligations of another member of the Group.

"Existing Facility Margin" means 0.75 per cent. per annum.

"Facility" means the revolving loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

"Facility Office" means the office or offices notified by the Lender to the Borrower in writing on or before the date it becomes the Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

"FATCA" means:

(a) sections 1471 to 1474 of the Code or any associated regulations;

(b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

(c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

(a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;

(b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or

(c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

"FATCA Deduction" means a deduction or withholding from a payment under a Finance Document required by FATCA.

"FATCA Exempt Party" means a Party that is entitled to receive payments free from any FATCA Deduction.

"Finance Document" means this Agreement and any other document designated as such by the Lender and the Borrower.

"Financial Indebtedness" means any indebtedness for or in respect of:

(a) moneys borrowed;

(b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis, including true sale US GAAP, under an agreement other than a Permitted Receivables Disposal);

(f) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and lease back arrangements and sale and purchase agreements having deferred payment terms longer than terms customary on the market) having the financial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (fair value) shall be taken into account);

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

"French Subsidiary" means Sorin CRM SAS, a company incorporated in France.

"Funding Rate" means any individual rate notified by the Lender to the Borrower pursuant to paragraph (a)(ii) of Clause 10.4 (*Cost of funds*).

"**Group**" means the Borrower and its Subsidiaries for the time being.

"**Holding Company**" means, in relation to a person, any other person in respect of which it is a Subsidiary.

"**Interest Period**" means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

"**Interpolated Screen Rate**" means, in relation to any Loan, the rate which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan, each as of the Specified Time for dollars. "**ITA**" means the Income Tax Act 2007.

"**Italian Subsidiary**" means Sorin Group Italia srl, a company incorporated in Italy. "**Legal Reservations**" means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any jurisdiction in which the Borrower conducts its business; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application specifically referred to in any legal opinion delivered pursuant to clause 4 (*Conditions of Utilisation*).

"**LIBOR**" means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for dollars and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

"**Limitation Acts**" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984;

"**LMA**" means the Loan Market Association.

"**Loan**" means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

"**Margin**" means:

(a) for each Loan made prior to the Effective Date, the Existing Facility Margin; and

(b) for each Loan made on or after the Effective Date, 0.85 per cent. per annum.

"**Material Adverse Effect**" means a material adverse effect on:

(a) the business, operations, property or financial condition of the Group taken as a whole; or

(b) the ability of the Borrower to perform its payment obligations under the Finance Documents and/or its obligations under Schedule 6 (*Financial Covenants*); or

(c) the validity or enforceability of the rights or remedies of the Lender under any of the Finance Documents.

"**Material Subsidiaries**" means, at any time, a Subsidiary of the Borrower which:

(a) is listed in Schedule 5 (*Material Companies*); or

(b) has an operating profit representing 10 per cent. or more of the consolidated operating profit of the Group (determined in accordance with US GAAP) or has turnover (excluding intra-group items) representing 10 per cent., or more of the turnover of the Group, calculated on a consolidated basis.

Compliance with the conditions set out in paragraph (b) above shall be determined by reference to the latest consolidated financial statements of the Group. However, if a Subsidiary has been acquired since the date as at which the latest consolidated financial statements of the Group were prepared, the financial statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary.

"**Month**" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

(a) subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

(c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

"**New Lender**" has the meaning given to that term in Clause 21 (*Changes to the Lender*).

"**Original Financial Statements**" means the audited consolidated financial statements of the Group for the financial year ended 31 December 2015.

"**Participating Member State**" means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"**Party**" means a party to this Agreement.

"**Permitted Acquisition**" means an acquisition for cash consideration of all or the majority of the issued share capital of a limited liability company, but only if:

(a) no Event of Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;

(b) the acquired company, business or undertaking is engaged in a business substantially the same as (or ancillary or related to) that carried on by the Group;

(c) the consideration (including associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability, remaining in the acquired company (or any such business) at the date of acquisition (the "**Individual Purchase Price**") when aggregated with the consideration (including associated costs and expenses) for any other acquisition permitted under this Agreement and any Financial Indebtedness or other assumed actual or contingent liability, remaining in any such acquired companies or businesses at the time of acquisition (the "**Total Purchase Price**") does not exceed USD 280,000,000 or its equivalent in aggregate over the life of the Facility.

"**Permitted Guarantee**" means:

(a) any guarantee comprising a netting or set-off arrangements entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;

(b) any indemnity given in the ordinary course of the documentation of an acquisition which is a Permitted Acquisition which indemnity is in a customary form and subject to customary limitations;

(c) the guarantee of any Financial Indebtedness permitted by this Agreement; or

(d) any Excluded Guarantee.

"Permitted Loan" means any Financial Indebtedness or loan made by a member of the Group:

(a) to another member of the Group; or

(b) to any other entity (i) in which a member of the Group holds a beneficial interest and (ii) which carries on the same or substantially similar business to the Group, provided such Financial Indebtedness or loans are approved by the board of directors of the Borrower and, in aggregate for those made in any financial year, do not exceed USD 50,000,000 or its equivalent.

"Permitted Receivables Disposal" means (i) any factoring programme with recourse (*pro solvendo*) or without recourse (*pro soluto*) of receivables of the Group which is in existence at the date hereof and/or (ii) any securitisation and/or factoring programme of the receivables of the Group consented to by the Lender, such consent not to be unreasonably withheld.

"Permitted Security" means:

(a) any Security listed in Schedule 3 (*Existing Security*) except to the extent the principal amount secured by that Security exceeds the amount stated in that Schedule;

(b) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;

(c) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:

(i) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or

(ii) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,

excluding, in each case, any Security under a credit support arrangement in relation to a hedging transaction;

(d) any lien arising by operation of law and in the ordinary course of trading;

(e) any Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:

(i) the Security was not created in contemplation of the acquisition of that asset by a member of the Group;

(ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and

(iii) the Security is removed or discharged within 2 (two) months of the date of acquisition of such asset;

(f) any Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security is created prior to the date on which that company becomes a member of the Group, if:

(i) the Security was not created in contemplation of the acquisition of that company;

(ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and

(iii) the Security is removed or discharged within 2 (two) months of that company becoming a member of the Group;

(g) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group; or

(h) any Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security given by any member of the Group other than any permitted under paragraphs (a) to (g) above) does not exceed USD 15,000,000 (or its equivalent in another currency or currencies).

"Permitted Transaction" means:

(a) a merger between the Borrower and any Subsidiary that is consolidated within the consolidated financial statements of the Borrower, provided that the Borrower is the surviving entity;

(b) any solvent amalgamation or merger among members of the Group which are not the Borrower; or

(c) the solvent liquidation or reorganisation of any member of the Group which is not the Borrower so long as any payments or assets distributed as a result of such liquidation or reorganization are distributed to other members of the Group.

"Qualifying Lender" has the meaning given to it in Clause 12 (*Tax gross-up and indemnities*).

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period unless market practice differs in the relevant market in which case the Quotation Day will be determined by the Lender in accordance with market practice in the relevant market (and if quotations

would normally be given on more than one day, the Quotation Day will be the last of those days).

"Reference Bank Quotation" means any quotation supplied to the Lender by a Reference Bank.

"Reference Bank Rate" means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lender at its request by the Reference Banks;

(a) (other than where paragraph (b) below applies) as the rate at which the relevant Reference Bank could borrow funds in the London interbank market in dollars for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period; or

(b) if different, as the rate (if any and applied to the relevant Reference Bank and the relevant currency and period) which contributors to the Screen Rate are asked to submit to the relevant administrator.

"Reference Banks" means such banks or financial institutions with a rating for its longterm unsecured and non credit-enhanced debt obligations of BBB-or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency as may be appointed by the Lender in consultation with the Borrower.

"Related Fund" in relation to a fund (the **"first fund"**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

"Relevant Jurisdiction" means, in relation to the Borrower:

(a) England and Wales; and

(b) any jurisdiction where it conducts its business.

"Repeating Representations" means each of the representations set out in clauses 17.1 (*Status*) to 17.6 (*Governing law and enforcement*), 17.10 (*No default*), paragraph (d) and

(e) of clause 17.12 (*Financial statements*), 17.19 (*Good title to assets*), 17.20 (*Legal and beneficial ownership*) and 17.24 (*Centre of main interests and establishments*) to

17.26 (*Sanctions*).

"Representative" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"Restricted Party" means a person that is:

(c) listed on, or owned or controlled by a person listed on, a Sanctions List, or a person acting on behalf of such a person;

(d) located in or organised under the laws of a country or territory that is the subject of country-wide or territory-wide Sanctions, or a person who is owned or controlled by, or acting on behalf of such a person; or

(e) otherwise a subject of Sanctions.

"Rollover Loan" means one or more Loans:

(a) made or to be made on the same day that a maturing Loan is due to be repaid; and

(b) the aggregate amount of which is equal to or less than the amount of the maturing Loan.

"Sanctions" means any trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by a Sanctions Authority.

"Sanctions Authority" means:

(a) the United Nations;

(b) the United States of America;

(c) the European Union;

(d) the United Kingdom of Great Britain and Northern Ireland; and

(e) the governments and official institutions or agencies of any of paragraphs (a) to

(d) above, including OFAC, the US Department of State, and Her Majesty's Treasury.

"Sanctions List" means the Specially Designated Nationals and Blocked Persons list maintained by OFAC, the Consolidated List of Financial Sanctions Targets maintained by Her Majesty's Treasury, or any similar list maintained by, or public announcement of a Sanctions designation made by, a Sanctions Authority, each as amended, supplemented or substituted from time to time.

"Screen Rate" means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for dollars for the relevant period displayed on page LIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Lender may specify another page or service displaying the relevant rate after consultation with the Borrower.

"Security" means a mortgage, pledge, lien, charge, assignment by way of security (*cessione del crediti in garanzia*), hypothecation, title retention, preferential right, priority or trust arrangement or security interest or any other agreement or arrangement having the effect of conferring security.

"Specified Time" means a day or time determined in accordance with Schedule 4 (*Timetables*).

"Subsidiary" means in relation to any company or corporation, a company or corporation:

(a) which is controlled, directly or indirectly, by the first mentioned company or corporation;

(b) more than half the issued share capital (which gives rise to voting rights) of which is beneficially owner, directly or indirectly, by the first mentioned company or corporation; or

(c) with is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs, exercise a dominant influence over it and/or to control the composition of its board of directors or equivalent body and is fully consolidated in the consolidated financial statements on a line-by-line basis for such period.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

"Termination Date" means 20 October 2019.

"Unpaid Sum" means any sum due and payable but unpaid by the Borrower under the Finance Documents.

"US" means the United States of America.

"US GAAP" means generally accepted accounting principles in the United States of America, as promulgated, from time to time, by the Financial Accounting Standards Board.

"USD", "Dollars" or "\$" means the lawful currency for the time being of the United States.

"US GAAP" means generally accepted accounting principles in the United States of America, as promulgated, from time to time, by the Financial Accounting Standards Board.

"Utilisation" means a utilisation of the Facility.

"Utilisation Date" means the date of a Utilisation, being the date on which a Loan is to be made.

"Utilisation Request" means a notice substantially in the form set out in Schedule 2 (*Utilisation Request*).

"**VAT**" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

1.2 Construction

(a) Unless a contrary indication appears, any reference in this Agreement to:

(i) the "**Lender**", the "**Borrower**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;

(ii) "**assets**" includes present and future properties, revenues and rights of every description;

(iii) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

(iv) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(v) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

(vi) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

(vii) a provision of law is a reference to that provision as amended or reenacted; and

(viii) a time of day is a reference to London time.

(b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.

(c) Section, Clause and Schedule headings are for ease of reference only.

(d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance

Document has the same meaning in that Finance Document or notice as in this Agreement.

(e) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been remedied or waived.

1.3 **Third party rights**

(a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.

(b) The consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

SECTION 2 THE FACILITY

2. THE FACILITY

2.1 **The Facility** Subject to the terms of this Agreement, the Lender makes available to the Borrower a dollar revolving loan facility in an aggregate amount equal to the Commitment.

3. PURPOSE

3.1 **Purpose** The Borrower shall apply all amounts borrowed by it under the Facility towards the general corporate and working capital purposes of the Group.

3.2 **Monitoring** The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 **Initial conditions precedent** The Borrower may not deliver a Utilisation Request unless the Lender has received all of the documents and other evidence listed in Schedule 1 (*Conditions precedent*) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied.

4.2 **Further conditions precedent** The Lender will only be obliged to comply with Clause 5.4 (*Lender's participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

(a) in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan and, in the case of any other Loan, no Default is continuing or would result from the proposed Loan; and

(b) the Repeating Representations to be made by the Borrower are true.

4.3 **Maximum number of Loans** The Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation 10 (ten) or more Loans would be outstanding.

SECTION 3 UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request The Borrower may utilise the Facility by delivery to the Lender of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request

(a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

(i) the proposed Utilisation Date is a Business Day within the Availability Period;

(ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and

(iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*).

(b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

(a) The currency specified in a Utilisation Request must be dollars.

(b) The amount of the proposed Loan must be an amount which is not more than the Available Commitment and which is a minimum of USD 2,000,000 or, if less, the Available Commitment.

5.4 Lender's participation If the conditions set out in this Agreement have been met, and subject to Clause 6.1

(*Repayment of Loans*) the Lender shall make each Loan available in dollars by the Utilisation Date through its Facility Office.

5.5 Cancellation of Commitment The Commitment which, at that time, is unutilised shall be immediately cancelled at the end of the Availability Period.

SECTION 4 REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loans

(a) The Borrower shall repay each Loan in dollars on the last day of its Interest Period.

(b) Without prejudice to the Borrower's obligation under paragraph (a) above, if one or more Loans are to be made available to it:

(i) on the same day that a maturing Loan is due to be repaid; and

(ii) in whole or in part for the purpose of refinancing the maturing Loan; and

the aggregate amount of the new Loans shall, unless the Borrower notifies the Lender to the contrary in the relevant Utilisation Request, be treated as if applied in or towards repayment of the maturing Loan so that:

(iii) if the amount of the maturing Loan exceeds the aggregate amount of the new Loans:

(A) the Borrower will only be required to make a payment in an amount in dollars equal to that excess; and

(B) the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of the Lender's maturing Loan and the Lender will not be required to make a payment in respect of the new Loans; and

(iv) if the amount of the maturing Loan is equal to or less than the aggregate amount of the new Loans:

(A) the Borrower will not be required to make a payment; and

(B) the Lender will be required to make a payment in respect of the new Loans only to the extent that the new Loans exceeds the maturing Loan and the remainder of the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of the maturing Loan.

7. PREPAYMENT AND CANCELLATION

7.1 **Illegality** If, in any applicable jurisdiction, it becomes unlawful for the Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain any Loan or it becomes unlawful for any Affiliate of the Lender for the Lender to do so:

(a) the Lender shall promptly notify the Borrower upon becoming aware of that event;

(b) upon the Lender notifying the Borrower, the Available Commitment of the Lender will be immediately cancelled; and

(c) the Borrower shall repay the Loans on the last day of the Interest Period for each Loan occurring after the Lender has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law) and the Commitment shall be cancelled in the amount of the participations repaid.

7.2 Change of control

(a) The Borrower shall promptly inform the Lender if a Change-of-Control Event has occurred. At any time after the occurrence of a Change-of-Control Event, the Lender may, by notice to the Borrower, cancel the Available Commitment and demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Agreement.

(b) The Borrower shall effect payment of the amount demanded on the date specified by the Lender, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this clause 7.2:

(c) a "**Change-of-Control Event**" occurs if:

(i) any person or group of persons acting in concert gains direct or indirect control of the Borrower; or

(ii) the Borrower ceases to be the beneficial owner directly or indirectly, through wholly owned subsidiaries, of more than 50% (fifty per cent.) of the issued share capital of the Italian Subsidiary;

(d) "*acting in concert*" means acting together pursuant to an agreement or understanding (whether formal or informal); and

(e) "*control*" means the power to direct the management and policies of an entity, whether through the ownership of more than 50 per cent of entire voting capital, by contract or otherwise.

7.3 Voluntary cancellation The Borrower may, if it gives the Lender not less than 5 (five) Business Days' (or such shorter period as the Lender may agree) prior notice, cancel the whole or any part (being a minimum amount of USD 2,000,000) of the Available Commitment.

7.4 Voluntary prepayment of Loans The Borrower may, if it gives the Lender not less than 5 (five) Business Days' (or such shorter period as the Lender may agree) prior notice, prepay the whole or any part of a Loan (but if in part, being an amount that reduces the amount of the Loan by a minimum amount of USD 2,000,000).

7.5 Right of replacement or repayment and cancellation

(a) If:

(i) any sum payable to the Lender by the Borrower is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*); or

(ii) the Lender claims indemnification from the Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13.1 (*Increased costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Lender notice of cancellation of the Commitment and its intention to procure the repayment of the Loans.

(b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of the Lender shall immediately be reduced to zero.

(c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Loan.

7.6 Application of Prepayments

(a) A prepayment made under Clause 7.4 (*Voluntary prepayment of Loans*) shall be applied in the following order:

(i) first, in cancellation of Available Commitment; and

(ii) secondly, in prepayment of Utilisations and cancellation of the Commitment.

(b) Subject to no Default continuing, the Borrower may elect that any prepayment under Clause 7.4 (*Voluntary prepayment of Loans*) be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan. If the Borrower makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.

7.7 Restrictions

(a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

(b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Breakage Costs, without premium or penalty.

(c) Unless a contrary indication appears in this Agreement, any part of the Facility which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.

(d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.

(e) No amount of the Commitment cancelled under this Agreement may be subsequently reinstated.

(f) If all or part of the Loan is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of the Commitment (equal to the amount which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

SECTION 5 COSTS OF UTILISATION

8. INTEREST

8.1 **Calculation of interest** The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

(a) Margin; and

(b) LIBOR.

8.2 **Payment of interest** The Borrower shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six monthly intervals after the first day of the Interest Period).

8.3 Default interest

(a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below is 2 (two) per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Lender (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Lender.

(b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

(i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

(ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 2 (two) per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.

(c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.4 **Notification of rates of interest** The Lender shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

9. INTEREST PERIODS

9.1 Selection of Interest Periods

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan.
- (b) Subject to this Clause 9, the Borrower may select an Interest Period of 1, 3 or 6 Months or any other period agreed between the Borrower and the Lender.
- (c) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (d) Each Interest Period for a Loan shall start on the Utilisation Date.
- (e) A Loan has one Interest Period only.

9.2 Non-Business Days If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Unavailability of Screen Rate

(a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.

(b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:

(i) dollars; or

(ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

the applicable LIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of that Loan.

(c) *Cost of funds*: If paragraph (b) above applies but no Reference Bank Rate is available for dollars or the relevant Interest Period there shall be no LIBOR for that Loan and Clause 10.4 (*Cost of funds*) shall apply to that Loan for that Interest Period.

10.2 Calculation of Reference Bank Rate

(a) Subject to paragraph (b) below, if LIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.

(b) If at or about noon on the Quotation Day, none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

10.3 Market disruption If before close of business in London on the Quotation Day for the relevant Interest Period the Lender determines that the cost to it of funding that Loan from whatever source it may reasonably select would be in excess of LIBOR then Clause 10.4 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

10.4 Cost of funds

(a) If this Clause 10.4 applies, the rate of interest on the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:

(i) the Margin; and

(ii) the rate notified by the Lender to the Borrower as soon as practicable and in any event within 5 (five) Business Days of the first day of that Interest Period (or, if earlier, on the date falling 10 (ten) Business Days before the date on which interest is due to be paid in respect of that Interest Period), as reasonably determined by the Lender to be a suitable reference rate for its general lending activities (on an actual or notional basis) from whatever source it may reasonably select.

(b) If this Clause 10.4 applies and the Lender or the Borrower so requires, the Lender and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.

(c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of the Lender and the Borrower, be binding on all Parties.

10.5 Breakage Costs

(a) The Borrower shall, within three Business Days of demand by the Lender, pay to the Lender its Breakage Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

(b) The Lender shall, as soon as reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its Breakage Costs for any Interest Period in which they accrue.

11. FEES

11.1 Commitment fee

(a) The Borrower shall pay to the Lender a fee computed at the rate of 25 per cent. of the Existing Facility Margin per annum on the Lender's Available Commitment for the Availability Period.

(b) The accrued commitment fee is payable in arrears on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the Commitment at the time the cancellation is effective.

11.2 Utilisation fee

(a) The Borrower shall pay to the Lender a utilisation fee computed at the rate of:

(i) 0.10 per cent. on the total outstanding principal amount of each Loan for each day on which the aggregate outstanding amount of all Loans is equal to or greater than 33 per cent. but less than or equal to 66 per cent. of the Commitment; and

(ii) 0.20 per cent. on the outstanding principal amount of each Loan for each day on which the aggregate outstanding amount of all Loans is greater than 66 per cent. of the Commitment.

(b) The accrued utilisation fee is payable quarterly in arrears on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the Commitment at the time the cancellation is effective.

11.3 Waiver fee

The Borrower shall pay to the Lender within 5 Business Days of the Effective Date, a waiver fee computed at the rate of 0.10 per cent. of USD 30,000,000 being USD 30,000.

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS UP AND INDEMNITIES

12.1 Definitions

(a) In this Agreement:

"Qualifying Lender" means a person who is beneficially entitled to interest payable to it in respect of an advance under a Finance Document and is:

(i) a person:

(A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or

(B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or

(ii) a person which is otherwise entitled by law to receive interest payments under the Finance Documents without a Tax Deduction on account of Tax imposed by the United Kingdom.

"Tax Credit" means a credit against, relief or remission for, or repayment of any Tax.

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

"Tax Payment" means either the increase in a payment made by the Borrower to a Lender under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

(b) Unless a contrary indication appears, in this Clause 12 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

(a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly.

(c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from it shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due the payment could have been made to the Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date the Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a lender under this Agreement (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority.

(e) If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lender a statement under section 975 of the ITA or other evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 Tax indemnity

(a) The Borrower shall (within three Business Days of demand by the Lender) pay to the Lender if it is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document.

(b) Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on the Lender:

(A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or

(ii) to the extent a loss, liability or cost:

(A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*);

(B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) but was not so compensated solely because the exclusion in paragraph (d) of Clause 12.2 (*Tax grossup*) applied; or

(C) relates to a FATCA Deduction required to be made by a Party.

(c) If the Lender makes, or intends to make, a claim under paragraph (a) above shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

12.4 Tax Credit If the Borrower makes a Tax Payment and the Lender determines that:

(a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(b) the Lender has obtained and utilised that Tax Credit,

the Lender shall pay an amount to the Borrower which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

12.5 Stamp taxes The Borrower shall pay and, within three Business Days of demand, indemnify the Lender against any cost, loss or liability the Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

12.6 VAT

(a) All amounts expressed to be payable under a Finance Document by the Borrower to the Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly if VAT is or becomes chargeable on any supply made by the Lender to the Borrower under a Finance Document and the Lender is required to account to the relevant tax authority for the VAT, the Borrower must pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and the Lender must promptly provide an appropriate VAT invoice to the Borrower).

(b) Where a Finance Document requires the Borrower to reimburse or indemnify the Lender for any cost or expense, the Borrower shall reimburse or indemnify (as the case may be) the Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Lender

reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

(c) Any reference in this Clause 12.6 to either Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).

(d) In relation to any supply made by the Lender to the Borrower, if reasonably requested by the Lender, the Borrower must promptly provide the Lender with details of the Borrower's VAT registration and such other information as is reasonably requested in connection with the Lender's VAT reporting requirements in relation to such supply.

12.7 FATCA Information

(a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by the other Party:

(i) confirm to that other Party whether it is:

(A) a FATCA Exempt Party; or

(B) not a FATCA Exempt Party;

(ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and

(iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

(b) If a Party confirms to the other Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

(c) Paragraph (a) above shall not oblige the Lender to do anything, and paragraph (a)(iii) above shall not oblige the Borrower to do anything, which would or might in its reasonable opinion constitute a breach of:

(i) any law or regulation;

(ii) any fiduciary duty; or

(iii) any duty of confidentiality.

(d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

12.8 FATCA Deduction

(a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

(b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the other Party.

13. INCREASED COSTS

13.1 Increased costs

(a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Lender, pay the amount of any Increased Costs reasonably incurred by it or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; (ii) compliance with any law or regulation made after the date of this Agreement; or (iii) the implementation of, or compliance with Basel III and/or CRD IV or any law or regulation to the extent that it implements or applies Basel III and/or CRD IV.

(b) In this Agreement "**Increased Costs**" means:

(i) a reduction in the rate of return from the Facility or on the Lender's (or its Affiliate's) overall capital;

(ii) an additional or increased cost; or

(iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lender or any of its Affiliates to the extent that it is attributable to the Lender having entered into the Commitment or funding or performing its obligations under any Finance Document.

(c) In this Agreement

(i) "**Basel III**" means:

(A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel

III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and

(B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement -Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

(C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III"; and

(ii) "**CRD IV**" means the capital requirements specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 and Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

13.2 Increased cost claims If the Lender intends to make a claim pursuant to Clause 13.1 (*Increased costs*), it shall notify, providing documentary evidence, the Borrower of the event giving rise to the claim.

13.3 Exceptions

(a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

(i) attributable to a Tax Deduction required by law to be made by the Borrower;

(ii) attributable to a FATCA Deduction required to be made by a Party;

(iii) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied); or

(iv) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.

(b) In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 12.1 (*Definitions*).

14. OTHER INDEMNITIES

14.1 Currency indemnity

(a) If any sum due from the Borrower under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

(i) making or filing a claim or proof against the Borrower;

(ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other indemnities The Borrower shall, within three Business Days of demand (which demand shall be accompanied by documentary evidence), indemnify the Lender against any cost, loss or liability reasonably incurred by it as a result of:

(a) the occurrence of any Event of Default;

(b) a failure by the Borrower to pay any amount due under a Finance Document on its due date;

(c) funding, or making arrangements to fund, a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone); or

(d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

14.3 Indemnity to the Lender The Borrower shall, promptly following receipt of a demand (which demand shall be accompanied by documentary evidence), indemnify the Lender against any cost, loss or liability reasonably incurred by the Lender as a result of:

(a) investigating any event which it reasonably believes is a Default;

(b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or

- (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

15. **MITIGATION BY THE LENDER**

15.1 **Mitigation** (a) The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

(b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

15.2 **Limitation of liability** (a) The Borrower shall promptly indemnify the Lender for all costs and expenses reasonably incurred by that Lender as a result of steps taken by it under Clause 15.1 (*Mitigation*).

(b) The Lender is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in its opinion (acting reasonably), to do so might be prejudicial to it.

16. **COSTS AND EXPENSES**

16.1 **Transaction expenses** The Borrower shall, subject to any agreed caps, promptly on demand pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing and execution of:

(a) this Agreement and any other documents referred to in this Agreement; and

(b) any other Finance Documents executed after the date of this Agreement (other than the Amendment and Restatement Agreement in respect of which all costs and expenses (including legal fees) shall be for the account of the Lender).

16.2 **Amendment costs** If:

(a) the Borrower requests an amendment, waiver or consent; or

(b) an amendment is required pursuant to Clause 24.7 (*Change of currency*),

the Borrower shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement (other than where incurred in connection with the Amendment and Restatement Agreement in respect of which all costs and expenses (including legal fees) shall be for the account of the Lender).

16.3 Enforcement costs

The Borrower shall, within three Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

SECTION 8 REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

The Borrower makes the representations and warranties set out in this clause 17 to the Lender on the date of this Agreement except for the representations and warranties set out in clause 17.11(a) and 17.11(b) which are made on the date that such information or projections are delivered.

17.1 Status

(a) It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

(b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

17.2 Binding obligations The obligations expressed to be assumed by it in each Finance Document are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

17.3 Non-conflict with other obligations The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

(a) any law or regulation applicable to it;

(b) its or any of its Subsidiaries' constitutional documents; or

(c) any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets.

17.4 Power and authority It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents and the transactions contemplated by those Finance Documents.

17.5 Validity and admissibility in evidence All Authorisations required:

(a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents; and

(b) to make the Finance Documents admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

17.6 Governing law and enforcement

(a) The choice of English law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.

(b) Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

17.7 **Insolvency** No:

(a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 20.7 (*Insolvency proceedings*); or

(b) creditors' process described in Clause 20.8 (*Creditors' process*),

has been taken or, to its knowledge, threatened in relation to a member of the Group; and none of the circumstances described in Clause 20.6 (*Insolvency*) applies to a member of the Group.

17.8 No filing or stamp taxes Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

17.9 Deduction of Tax It is not required to make any Tax Deduction (as defined in Clause 12.1 (*Definitions*)) from any payment it may make under any Finance Document to the Lender.

17.10 **No default**

(a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.

(b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

17.11 **No misleading information**

(a) Any factual information provided by any member of the Group to the Lender was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.

(b) The financial projections provided by the Group to the Lender have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.

(c) Nothing has occurred since the date that any such information was provided or been omitted from such information provided and no information has been given or withheld that results in the information provided being untrue or misleading in any material respect.

The representations and warranties in this clause 17.11 are made by the Borrower only so far as it is aware having made due and careful enquiries.

17.12 Financial statements

(a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied (other than any differences arising between IFRS, as used in the preparation of the Original Financial Statements, and the Accounting Principles).

(b) Its Original Financial Statements fairly represent its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Borrower).

(c) There has been no material adverse change in the business or consolidated financial condition of the Group since 31 December 2016.

(d) Its most recent financial statements delivered pursuant to Clause 18.2(a) (*Financial statements*):

(i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements (other than any differences arising between IFRS, as used in the preparation of the Original Financial Statements, and the Accounting Principles); and

(ii) fairly represent in all material respects its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

(e) Since the date of the most recent financial statements delivered pursuant to Clause 18.2(a) (*Financial statements*) there has been no material adverse change in the business, assets or financial condition of the Group.

17.13 No proceedings pending or threatened No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.

17.14 No breach of laws

(a) It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

(b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

17.15 Environmental laws

(a) Each member of the Group is in compliance with Clause 19.3 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

(b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

(c) The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for.

17.16 **Taxation**

(a) It is not (and none of its Material Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Material Subsidiaries is) overdue in the payment of any material amount in respect of Tax unless and only to the extent that:

(i) such payment is being contested, postponed or compromised in good faith;

(ii) adequate reserves are being maintained for those Taxes and the costs required to contest, postpone or compromise them; and

(iii) such payment can be lawfully withheld and failure to pay those Taxes does not have, or to the Borrower's knowledge, would not reasonably be expected to have a Material Adverse Effect.

(b) No claims or investigations that are not provided for in its latest financial statements are being, or are reasonably likely to be, made or conducted against it (or any of its Material Subsidiaries) with respect to Taxes such that a liability of the Borrower or any Material Subsidiary of USD 20,000,000 (or its equivalent in any other currency) or more is reasonably likely to arise upon a final determination of that claim or investigation.

(c) It is resident for Tax purposes only in England and Wales.

17.17 **Security and Financial Indebtedness**

(a) No Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.

(b) No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.

17.18 Pari passu ranking Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

17.19 Good title to assets It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

17.20 Legal and beneficial ownership It and each of its Subsidiaries is the sole legal and beneficial owner of the assets which are material in the context of its business and which are required by it in order to carry on its business as it is being conducted.

17.21 Intellectual Property It and each of its Subsidiaries:

(a) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted;

(b) does not (nor does any of its Subsidiaries), in carrying on its businesses, infringe any Intellectual Property of any third party in any respect; and

(c) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it.

17.22 Accounting Reference Date The Accounting Reference Date of each member of the Group is 31 December.

17.23 No adverse consequences

(a) It is not necessary under the laws of its Relevant Jurisdictions:

(i) in order to enable the Lender to enforce its rights under any Finance Document; or

(ii) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,

that the Lender should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.

(b) The Lender is not and will not be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdictions by reason only of the execution, performance and/or enforcement of any Finance Document.

17.24 Centre of main interests and establishments For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in England and Wales and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction (other than Italy).

17.25 Anti-corruption law To the best of its knowledge and belief (after due and careful enquiry), each member of the Group has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

17.26 Sanctions

(a) To the best of its knowledge and belief (after due and careful enquiry), neither it nor any of its Subsidiaries, nor any directors, officers or employees of it or any of its Subsidiaries:

(i) is a Restricted Party or is engaging in or has engaged in any transaction or conduct that could result in it becoming a Restricted Party;

(ii) is subject to any claim, proceeding, formal notice or investigation with respect to Sanctions;

(iii) is engaging in any transaction that evades or avoids, or has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions applicable to it; or

(iv) is engaging, directly or indirectly, in any trade, business or other activities with or for the benefit of any Restricted Party where such trade, business or activity is in breach of Sanctions.

(b) No Utilisation, nor the proceeds from any Utilisation, has been used, directly or (knowingly) indirectly, to lend, contribute, provide or has otherwise been made to fund or finance any business activities or transactions:

(i) of or with a Restricted Party; or

(ii) in any other manner which would result in any member of the Group or the Lender being in breach of any Sanctions or becoming a Restricted Party.

17.27 **Repetition** The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request, on each Utilisation Date and the first day of each Interest Period.

18. INFORMATION UNDERTAKINGS

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

18.1 Compliance Certificate

(a) The Borrower shall supply to the Lender with each set of financial statements delivered pursuant to paragraph (a) or (b) of Clause 18.2 (*Financial Statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Schedule 6 (*Financial Covenants*).

(b) Each Compliance Certificate shall be signed by the CEO (Chief Executive Officer) of the Borrower.

18.2 Financial statements The Borrower shall supply to the Lender:

(a) as soon as the same become available, but in any event within 180 days after the end of each of its financial years its audited consolidated financial statements for that financial year; and

(b) as soon as the same become available, but in any event within 90 days after the end of each half of each of its financial years its consolidated financial statements for that financial half year.

18.3 Requirements as to financial statements

(a) Each set of financial statements delivered by the Borrower pursuant to Clause 18.2(a) (*Financial statements*) shall be certified in accordance with applicable laws and the rules of any relevant stock exchange.

(b) The Borrower shall procure that each set of financial statements delivered pursuant to Clause 18.2(a) (*Financial statements*) is prepared using the Accounting Principles.

18.4 Notification of default

(a) The Borrower shall notify the Lender of any Default that occurs and is continuing (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence, provided that such notification requirement shall cease to apply in respect of a Default following the time such Default is no longer continuing.

(b) Promptly upon a request by the Lender, the Borrower shall supply to the Lender a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

18.5 Information: miscellaneous The Borrower shall supply to the Lender:

(a) all material documents dispatched by the Borrower to its shareholders (or any class of them) or its creditors (or any class of them) at the same time as they are dispatched;

(b) promptly upon becoming aware of them, the details of any material litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which if adversely determined, are reasonably likely to have a Material Adverse Effect; and

(c) promptly, such further information regarding the financial condition, assets, business and operations of any member of the Group as the Lender may reasonably request.

18.6 **"Know your customer" checks** If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of the Borrower after the date of this Agreement; or
- (c) a proposed assignment or transfer by the Lender of any of its rights and obligations under this Agreement to a party that is not the Lender prior to such assignment or transfer,

obliges the Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Lender, or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

19. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 **Authorisations** The Borrower shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Lender of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

19.2 **Compliance with laws** The Borrower shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

19.3 **Environmental compliance** The Borrower shall (and it shall ensure that each other member of the Group will):

- (a) comply with all Environmental Law;

(b) obtain, maintain and ensure compliance with all requisite Environmental Permits;

(c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

19.4 Environmental claims The Borrower shall, promptly upon becoming aware of the same, inform the Lender in writing of:

(a) any Environmental Claim against any member of the Group which is current, pending or threatened; and

(b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

19.5 Pari passu ranking The Borrower shall ensure that at all times any unsecured and unsubordinated claims of the Lender against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

19.6 Insurance

(a) The Borrower shall (and it shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

(b) All insurances must be with reputable independent insurance companies or underwriters.

19.7 Intellectual Property The Borrower shall (and it shall procure that each other member of the Group will):

(a) preserve and maintain the subsistence and validity of its material Intellectual Property necessary for the business of the relevant Group member;

(b) use reasonable endeavours to prevent any infringement in any material respect of such Intellectual Property;

(c) make registrations and pay all registration fees and taxes necessary to maintain such Intellectual Property in full force and effect and record its interest in that Intellectual Property;

(d) not use or permit such Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may

materially and adversely affect the existence or value of such Intellectual Property or imperil the right of any member of the Group to use such property; and

(e) not discontinue the use of such Intellectual Property,

where failure to do so, in the case of paragraphs (a) and (b) above, or, in the case of paragraphs (d) and (e) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

19.8 Access If an Event of Default is continuing or the Lender reasonably suspects an Event of Default is continuing, the Borrower shall, and it shall ensure that each member of the Group will permit the Lender and/or its accountants or other professional advisers and contractors free access at all reasonable times and on reasonable notice at the risk and cost of the Borrower (provided such access shall be at the cost of the Lender if such access is granted and it transpires that an Event of Default is not continuing) to (a) the premises, assets, books, accounts and records of each member of the Group and (b) meet and discuss matters with senior management.

19.9 Preservation of assets The Borrower shall (and it shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

19.10 Taxation

(a) The Borrower shall (and it shall ensure that each other member of the Group will) pay and discharge all Taxes of a material amount imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

(i) such payment is being contested in good faith;

(ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Lender under Clause 18.2(a) (*Financial statements*); and

(iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

(b) The Borrower shall not (and it shall ensure that each member of the Group will not) change its residence for Tax purposes.

19.11 Anti-corruption law

(a) The Borrower shall not (and it shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

(b) The Borrower shall (and it shall ensure that each other member of the Group will):

(i) conduct its businesses in compliance with applicable anti-corruption laws; and

(ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

19.12 **Sanctions** The Borrower shall ensure that no member of the Group may:

(a) use, lend, contribute or otherwise make available any part of the proceeds of any Utilisation or other transaction contemplated:

(i) for the purpose of financing any trade, business or other activities involving, or for the benefit of, any Restricted Party; or

(ii) in any other manner that would result in any person being in breach of any Sanctions or becoming a Restricted Party;

(b) engage in any transaction that evades or avoids or breaches directly or indirectly, any Sanctions applicable to it; or

(c) fund all or part of any payment in connection with a Finance Document out of proceeds derived from business or transactions with a Restricted Party, or from any action which is in breach of any Sanctions.

19.13 **Negative pledge**

(a) The Borrower shall not (and it shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

(b) The Borrower shall not (and it shall ensure that no other member of the Group will):

(i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any other member of the Group;

(ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply to any Permitted Security:

19.14 Loans or credit

(a) Except as permitted under paragraph (b) below, the Borrower shall not (and it shall ensure that no other member of the Group will) be a creditor in respect of any Financial Indebtedness.

(b) Paragraph (a) above does not apply to a Permitted Loan.

19.15 Acquisitions

(a) Except as permitted under paragraph (b) below, the Borrower shall not (and it shall ensure that no other member of the Group will) acquire a company or any shares or securities or a business or undertaking (or any interest in any of them).

(b) Paragraph (a) above does not apply to an acquisition that is a Permitted Acquisition.

19.16 Merger

(a) The Borrower shall not (and it shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction.

(b) Paragraph (a) above does not apply to any Permitted Transaction.

19.17 No Guarantees or indemnities

(a) Except as permitted under paragraph (b) below, the Borrower shall not (and it shall ensure that no other member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.

(b) Paragraph (a) does not apply to a guarantee which is a Permitted Guarantee.

19.18 Financial Indebtedness The Borrower shall ensure that the Subsidiary Financial Indebtedness does not exceed at any time 35 per cent. of Group Financial Indebtedness.

For the purposes of this Clause 19.18:

(a) "**Group Financial Indebtedness**" means the Financial Indebtedness of the Group excluding, in each case, Financial Indebtedness of the Group incurred under any Excluded Guarantee;

(b) "**Subsidiary Financial Indebtedness**" means the aggregate Financial Indebtedness of each Subsidiary excluding, in each case, the Financial Indebtedness of the Borrower, any Financial Indebtedness comprising of guarantees of Financial Indebtedness of the Borrower granted by the French Subsidiary or the Italian Subsidiary and the Financial Indebtedness of the Group incurred under any Excluded Guarantee.

For the avoidance of doubt and notwithstanding anything to the contrary, intra-group debt shall not constitute or in any way be included in the definition of Financial Indebtedness or Subsidiary Financial Indebtedness.

19.19 Disposal of assets

(a) Except as permitted under paragraphs (b) or (c) below, the Borrower shall not (and it shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

(b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal for fair market value and at arm's length:

(i) made in the ordinary course of trading of the disposing entity;

(ii) of assets in exchange of other assets comparable or superior as to type, value and quality;

(iii) of obsolete or redundant vehicles, plant and equipment for cash;

(iv) of receivables being part of Permitted Receivables Disposals; or

(v) of assets not falling within paragraphs (i) to (iv) above, provided that over the life of the Facility the aggregate value of the disposed assets and other disposals of assets not falling within paragraphs (i) to (iv) above, shall not exceed 10 per cent. of the total assets of the Group as reports in the latest audited consolidated Financial Statements.

(c) Paragraph (a) above does not apply to the CRM Disposal.

19.20 Change of business The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group from that carried on at the date of this Agreement.

19.21 Arm's length basis The Borrower shall not (and it shall ensure that no other member of the Group will) enter into any material transaction with any person except on arm's length terms and for full market value.

19.22 Amendments

(a) The Borrower shall not (and it shall ensure that no other member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of any document delivered to the Lender pursuant to Clause 4.1 (*Initial conditions precedent*) except in writing:

(i) in accordance with Clause 30 (*Amendments and Waivers*);

(ii) prior to or on the first Utilisation Date, with the prior written consent of the Lender; or

(iii) after the first Utilisation Date, in a way which could not be reasonably expected materially and adversely to affect the interests of the Lender.

(b) The Borrower shall promptly supply to the Lender a copy of any document relating to any of the matters referred to in paragraphs (i) to (iii) above.

19.23 **Accounting practices** The Borrower shall not change its Accounting Reference Date nor its accounting policies.

19.24 **Financial Covenants** The Borrower shall comply with the financial covenants set out in Schedule 6 (*Financial Covenants*) for each Test Period as set out therein.

20. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 20 is an Event of Default (save for Clause 20.17 (*Acceleration*)).

20.1 **Non-payment** The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

(a) its failure to pay is caused by:

(i) administrative or technical error; or

(ii) a Disruption Event; and

(b) payment is made within 5 (five) Business Days of its due date.

20.2 **Information Undertakings and Financial Covenants** Any requirement of Clause 18 (*Information Undertakings*) and Clause 19.24 (*Financial Covenants*) is not satisfied.

20.3 Other obligations

(a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 20.1 (*Non-payment*) and Clause 20.2 (*Information Undertakings and Financial Covenants*)).

(b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 15 (fifteen) Business Days, of the earlier of (A) the Lender giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

20.4 **Misrepresentation** Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on its behalf under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

20.5 Cross default

(a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.

(b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

(c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).

(d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).

(e) No Event of Default will occur under this Clause 20.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than USD 7,500,000 (or its equivalent in any other currency or currencies).

20.6 **Insolvency**

(a) A member of the Group:

(i) is unable or admits inability to pay its debts as they fall due;

(ii) suspends making payments on any of its debts; or

(iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding the Lender) with a view to rescheduling any of its indebtedness.

(b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).

(c) A moratorium is declared in respect of any indebtedness of any member of the Group.

20.7 **Insolvency proceedings**

(a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:

(i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group which is not the Borrower;

(ii) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;

(iii) the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group which is not the Borrower), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the Group or any of its assets; or

(iv) enforcement of any Security over any assets of any member of the Group,

(b) This Clause 20.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 10 (ten) Business Days of commencement.

or any analogous procedure or step is taken in any jurisdiction.

20.8 Creditors' process Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Group and is not discharged within 10 (ten) Business Days of commencement.

20.9 Unlawfulness and invalidity

(a) It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.

(b) Any obligation or obligations of the Borrower under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable.

(c) Any Finance Document ceases to be in full force.

20.10 Cessation of business Any Material Subsidiary suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

20.11 Change of ownership The Borrower ceases to be the beneficial owner directly or indirectly through wholly owned subsidiaries of more than 50% (fifty per cent) of the issued share capital of the French Subsidiary and of the Italian Subsidiary.

20.12 Audit qualification The Borrower's auditors qualify the audited annual consolidated financial statements of the Borrower or the Group on the grounds of inadequate or unreliable information or being unable to prepare the accounts on a going concern basis or otherwise which could reasonably be expected to be materially adverse to the interests of the Lender.

20.13 Expropriation The authority or ability of any Material Subsidiary to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Material Subsidiary or any of its assets.

20.14 Repudiation and rescission of agreements The Borrower rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document.

20.15 Litigation Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents

or against any member of the Group or its assets which have or are reasonably likely to have a Material Adverse Effect.

20.16 **Material adverse change** Any event or circumstance occurs which the Lender reasonably believes has or is reasonably likely to have a Material Adverse Effect.

20.17 **Acceleration** On and at any time after the occurrence of an Event of Default which is continuing the Lender may, by notice to the Borrower:

(a) cancel the Commitment whereupon they shall immediately be cancelled;

(b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or

(c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender.

SECTION 9 CHANGES TO PARTIES

21. CHANGES TO THE LENDER

21.1 **Assignments and transfers by the Lender** Subject to this Clause 21, the Lender may:

(a) assign any of its rights; or

(b) transfer by novation any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets.

21.2 **Conditions of assignment or transfer**

(a) The consent of the Borrower is required for an assignment or transfer by the Lender, unless the assignment or transfer is:

(i) to an Affiliate or Related Fund of the Lender; or

(ii) made at a time when an Event of Default is continuing.

(b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent five Business Days after the Lender has requested it unless consent is expressly refused by the Borrower within that time.

(c) An assignment will only be effective on receipt by the Borrower of written confirmation from the potential assignee that it will assume the same obligations as it would have been under if it was an original party hereto.

22. ASSIGNMENTS AND TRANSFER BY THE BORROWER

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

23. CONDUCT OF BUSINESS BY THE LENDER

No provision of this Agreement will:

(a) interfere with the right of the Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

(b) oblige the Lender to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

(c) oblige the Lender to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

SECTION 11 ADMINISTRATION

24. PAYMENT MECHANICS

24.1 Payments to the Lender

(a) On each date on which the Borrower is required to make a payment under a Finance Document, it shall make the same available to the Lender (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

(b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Lender specifies.

24.2 Distributions to the Borrower The Lender may (with the consent of the Borrower or in accordance with Clause 25 (*Setoff*)) apply any amount received by it in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

24.3 Partial payments

(a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:

(i) **first**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;

(ii) **secondly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and

(iii) **thirdly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

(b) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

24.4 No set-off by the Borrower All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

24.5 Business Days

(a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

(b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

24.6 **Currency of account**

(a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document.

(b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

(c) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

24.7 **Change of currency**

(a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

(i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Borrower); and

(ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).

(b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the relevant market and otherwise to reflect the change in currency.

24.8 Disruption to payment systems etc. If either the Lender determines (in its discretion) that a Disruption Event has occurred or the Lender is notified by the Borrower that a Disruption Event has occurred:

(a) the Lender may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Lender may deem necessary in the circumstances;

(b) the Lender shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes; and

(c) any such changes agreed upon by the Lender and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding

as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 30 (*Amendments and Waivers*).

25. **SET-OFF**

The Lender may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by it) against any matured obligation owed by it to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

26. **NOTICES**

26.1 **Communications in writing** Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

26.2 **Addresses** The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified with its name below or in the Amendment and Restatement Agreement; and
 - (b) in the case of the Lender, that identified with its name below or in the Amendment and Restatement Agreement,
- or any substitute address or fax number or department or officer as one Party may notify to the other by not less than five Business Days' notice.

26.3 **Delivery** (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 26.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below or in the Amendment and Restatement Agreement

(or any substitute department or officer as the Lender shall specify for this purpose).

(c) Any communication or document which becomes effective, in accordance with paragraphs (a) to (b) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

26.4 Notification of address and fax number Promptly upon changing its address or fax number, each Party shall notify the other Party.

26.5 Electronic communication

(a) Any communication to be made between the Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if the Parties:

(i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and

(ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

(b) Any such electronic communication as specified in paragraph (a) above to be made between the Borrower and the Lender may only be made in that way to the extent that they agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

(c) Any such electronic communication as specified in paragraph (a) above made between the Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by the Borrower to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.

(d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

(e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 26.5.

26.6 English language

(a) Any notice given under or in connection with any Finance Document must be in English.

- (b) All other documents provided under Document must be: or in connection with any Finance
- (i) in English; or
- (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

27. **CALCULATIONS AND CERTIFICATES**

- 27.1 **Accounts** In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.
- 27.2 **Certificates and Determinations** Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
- 27.3 **Day count convention** Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days.

28. **PARTIAL INVALIDITY**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

29. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

30. **AMENDMENTS AND WAIVERS**

Any term of the Finance Documents may be amended or waived only with the consent of the Lender and the Borrower.

31. **CONFIDENTIAL INFORMATION**

31.1 **Confidentiality** The Lender agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 31.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

31.2 **Disclosure of Confidential Information** The Lender may disclose:

(a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as it shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

(b) to any person:

(i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

(ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

(iii) appointed by the Lender or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;

(iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b) (i) or (b)(ii) above;

(v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

(vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes; or

(vii) with the consent of the Borrower;

in each case, such Confidential Information as the Lender shall consider appropriate if:

(A) in relation to paragraphs (b)(i), (b)(ii) and b(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

(B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information; and

(C) in relation to paragraphs (b)(v) and (b)(vi) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances.

31.3 Entire agreement This Clause 31 constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

31.4 Inside information The Lender acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and undertakes not to use any Confidential Information for any unlawful purpose.

31.5 Notification of disclosure The Lender agrees (to the extent permitted by law and regulation) to inform the Borrower:

(a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 31.2 (*Disclosure of Confidential Information*); and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 31.

31.6 Continuing obligations The obligations in this Clause 31 are continuing and, in particular, shall survive and remain binding on the Lender for a period of twelve months from the earlier of the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available.

32. CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS

32.1 Confidentiality and disclosure

(a) The Lender and the Borrower agree to keep each Funding Rate (and, in the case of the Lender, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c), (d) and (e) below.

(b) The Borrower may disclose any Funding Rate or Reference Bank Quotation on an average basis to the extent that such information is required to be disclosed by any applicable law or regulation.

(c) The Lender may disclose any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause 8.4 (*Notification of rates of interest*).

(d) The Lender may disclose any Funding Rate or any Reference Bank Quotation, and the Borrower may disclose any Funding Rate, to:

(i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;

(ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender or the Borrower, as the case may be, it is not practicable to do so in the circumstances;

(iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender or the Borrower, as the case may be, it is not practicable to do so in the circumstances; and

(iv) any person with the consent of the Lender or Reference Bank, as the case may be.

(e) The Lender's obligations in this Clause 32 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.4 (*Notification of rates of interest*) **provided that** (other than pursuant to paragraph (b)(i) above) the Lender shall not include the details of any individual Reference Bank Quotation as part of any such notification.

32.2 **Related obligations**

(a) The Lender and the Borrower acknowledge that each Funding Rate (and, in the case of the Lender, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Lender and the Borrower undertake not to use any Funding Rate or, in the case of the Lender, any Reference Bank Quotation for any unlawful purpose.

(b) The Lender and the Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:

(i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 32.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(ii) upon becoming aware that any information has been disclosed in breach of this Clause 32.

32.3 **No Event of Default** No Event of Default will occur under Clause 20.3 (*Other obligations*) by reason only of the Borrower's failure to comply with this Clause 32.

33. **COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 12 GOVERNING LAW

34. GOVERNING LAW

This Agreement is governed by English law.

35. ENFORCEMENT

(a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

(b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1
CONDITIONS PRECEDENT

1. The Borrower

- (a) A copy of the constitutional documents of the Borrower.
- (b) A copy of a resolution of the board of directors of the Borrower:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents and resolving that it execute the Finance Documents;
 - (ii) authorising a specified person or persons to execute the Finance Documents on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate of the Borrower (signed by a director) confirming that borrowing the Commitment would not cause any borrowing or similar limit binding on it to be exceeded.
- (e) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. Legal opinion

A legal opinion of Latham & Watkins, legal advisers to the Lender in England, substantially in the form distributed to the Lender prior to signing this Agreement.

3. Other documents and evidence

- (a) A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (b) The Original Financial Statements of the Group.
- (c) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.

SCHEDULE 2
UTILISATION REQUEST

From: **LivaNova PLC**

To: **Barclays Bank PLC**

Dated:

Dear Sirs **LivaNova Facility Agreement dated [] (the "Agreement")**

1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2 We wish to borrow a Loan in US Dollars on the following terms:

Proposed Utilisation Date: [] (or, if that is not a Business Day, the next

Business Day) Amount: [] or, if less, the Available Commitment Interest Period: []

1 We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.

2 [This Loan is to be made in [whole]/[part] for the purpose of refinancing. [identify maturing Loan]/[The proceeds of this Loan should be credited to [account]].

3 This Utilisation Request is irrevocable.

4 Yours faithfully

authorised signatory for
LivaNova PLC

SCHEDULE 3
EXISTING SECURITY

<i>Name of Borrower</i>	<i>Security</i>	<i>Total</i>	<i>Principal</i>	<i>Amount</i>	<i>of</i>
		<i>Indebtedness Secured</i>			
Sorin CRM SAS	Cash collateral	€150,000			
Sorin Group Italia Srl	Mortgage	€346.296			
Sorin Group Italia Srl	Mortgage	€245.614			

SCHEDULE 4
TIMETABLES

Delivery of a duly completed Utilisation Request (Clause 5.1

(*Delivery of a Utilisation Request*))

U-3

9:30am

LIBOR is fixed

Quotation Day 11:00
a.m.

Reference Bank Rate calculated by reference to available
quotations in accordance with Clause 10.2 (*Calculation of
Reference Bank Rate*)

Noon on the Quotation
Day

“U -X”= X Business Days prior to date of utilisation

SCHEDULE 5
MATERIAL COMPANIES

LivaNova USA, Inc., USA

Sorin Group Italia srl, Italy

LivaNova France SAS, France*

* *Denotes entities to be disposed of.*

SCHEDULE 6 FINANCIAL COVENANTS

The Borrower shall ensure that for the purposes of any Test Period that:

(a) **Consolidated Net Financial Indebtedness to Consolidated EBITDA:** Consolidated Net Financial Indebtedness as at any Accounting Date shall not be more than 2.50 times the Consolidated EBITDA for the Test Period ending on that Accounting Date, provided that for the purposes of determining this ratio as of an Accounting Date falling on 30 June, "**Consolidated EBITDA**" shall mean the "**Consolidated EBITDA**" calculated in respect of the period of twelve months ending on the last day of the first semester of the Borrower's fiscal year.

(b) **Consolidated Net Financial Indebtedness to Consolidated Net Worth:** Consolidated Net Financial Indebtedness as at any Accounting Date shall not be more than 0.50 times the Consolidated Net Worth as at that Accounting Date.

(c) **Consolidated EBITDA to Consolidated Total Net Interest Payable:** Consolidated EBITDA for the Test Period ending on an Accounting Date shall not be lower than 6.30 times the Consolidated Total Net Interest Payable for that Test Period.

(d) **Consolidated Net Worth:** the Consolidated Net Worth shall at no time be lower than USD 725,000,000.

The financial ratios shall be calculated in accordance with the Accounting Principles.

For the purpose of this Schedule:

"**Accounting Date**" means each 30 June and 31 December.

"**Accounting Period**" shall mean a period of one year or six months ending on an Accounting Date for which financial statements are required to be prepared under this Agreement.

"**Consolidated EBITDA**" shall mean in relation to the Group the consolidated profit and loss statement of the Group and determined in accordance with US GAAP: the amount of the consolidated operating income of the Group:

(a) plus depreciation and amortization expenses for plant, property and equipment; and

(b) plus amortization of intangible assets and impairment losses; and

(c) plus restructuring, merger and integration expenses; and

(d) plus litigation expenses; and

(e) plus extraordinary and non-cash items of expense, but only to the extent such items have been deducted in the determination of operating income; and

(f) minus extraordinary and non-cash items of income, but only to the extent such items are included in the operating income.

"**Consolidated Net Financial Indebtedness**" shall mean at any time:

(a) the aggregate at that time of Financial Indebtedness of the members of the Group from sources external to the Group (including guarantees for an aggregate amount exceeding USD 40,000,000.00 (forty million US dollars) at that times); less

(b) the aggregate amount at that time of:

(i) cash;

(ii) debt securities issued or guaranteed by any member state of the OECD;

(iii) debt securities issued by leading entities and listed on national stock exchanges of any member of the European Union;

(iv) receivables from derivative financial instruments; and

(v) deposits or notes purchased in respect of the credit enhancements of securitisation programmes up to an aggregate amount not exceeding USD 40,000,000.00 (forty million US dollars) for each financial year.

"**Consolidated Net Worth**" in respect of the Group shall mean the consolidated net worth of the Group determined in accordance with US GAAP.

"**Consolidated Total Net Interest Payable**" shall mean for a period in relation to Group:

(a) interest accrued during such period as an obligation of any member of the Group (whether or not paid or capitalised during or deferred for payment after such period); less

(b) any interest received or receivable by any member of the Group (after deducting any applicable withholding tax) in such period.

"**Test Period**" shall mean a period of six or, as the case may be, twelve months starting on 1 January or 1 July of a financial year and ending on an Accounting Date in that financial year.

SCHEDULE 7

FORM OF COMPLIANCE CERTIFICATE

To: Barclays Bank plc as Lender

From: LivaNova plc

Dated:

Dear Sirs

LivaNova plc – Facility Agreement originally dated 21 October 2016 as amended from time to time (the “Agreement”)

1 We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

2. We confirm that: [Insert details of covenants to be certified]

3. [We confirm that no Default is continuing.]*

Signed: _____

CEO of

LivaNova plc

*If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

SIGNATORIES

THE BORROWER

LIVANOVA PLC

By: /s/ Maurizio Borelli, Treasurer

Address: 20, Eastbourne Terrace, London, W2 6LG

Attention: General Counsel

[Signature page to the Amended and Restated Agreement]

THE LENDER

BARCLAYS BANK PLC

By: /s/ John Hogarth, Director

Address:

Fax:

Attention:

[Signature page to the Amended and Restated Agreement]

Exhibit 10.2

2

Espone cKa 1,1Hsecn11,1MOHHa 6aHKa Evropska investicni banka
Den Europ.eiske Investeringsbank Europaische Investitionsbank Euroopa Investeerimispank
Eupwna'iKti TpcinE(a EnEv6ucn:ww European Investment Bank
Banco Europeo de Inversiones
Banque europeenne d'investissement An Banc Eorpach Infheistiochta Europska investicijska banka
Banca europea per gli investimenti
Eiropas Investiciju banka Europos investicij4 bankas Eur6pai Beruhazasi Bank
Bank Ewropew tal-Investment Europese Investeringsbank Europejski Bank Inwestycyjny Banco
Europeu de Investimento Banca Europeana de Investitii Eur6pska investicna banka Evropska
investicijska banka Euroopan investointipankki Europeiska investeringsbanken
Espone cKa 1,1Hsecn11,1MOHHa 6aHKa Evropska investicni banka
Den Europ.eiske Investeringsbank Europaische Investitionsbank Euroopa Investeerimispank
Eupwna'iKti TpcinE(a EnEv6ucn:ww European Investment Bank
Banco Europeo de Inversiones
Banque europeenne d'investissement An Banc Eorpach Infheistiochta Europska investicijska banka
Banca europea per gli investimenti
Eiropas Investiciju banka Europos investicij4 bankas Eur6pai Beruhazasi Bank
Bank Ewropew tal-Investment Europese Investeringsbank Europejski Bank Inwestycyjny Banco
Europeu de Investimento Banca Europeana de Investitii Eur6pska investicna banka Evropska
investicijska banka Euroopan investointipankki Europeiska investeringsbanken

Sent by DHL courier/Anticipated by pdf

LivanoVA PLC, Italian Branch

Via Benigno Crespi, 17 I - 20159 Milano

To the attention of: Maurizio Borelli, Director Treasury

Sorin CRM S.A.S.

4 Avenue Reaumur
F - 92140 Clamart Cdx

To the attention of: Marc Foucault, Finance Manager

Sorin Group Italia S.r.l.

Via Benigno Crespi, 17 I - 20159 Milano

To the attention of: Maurizio Borelli, Director

Treasury **EXP BE- EIB C000539 17:APR 18**

Luxembourg, 17 April 2018 JUOPS/SEE/AIA/amc no.
2018-0781 EIB - Corporate
Use

Subject: LIVANOVA R&D

(FI 86.677 - SERAPIS 2016-0607)

Finance Contract entered into by and between the European Investment Bank, LivanoVA PLC, Sorin CRM S.A.S. and Sorin Group Italia S.r.l. on 29 June 2017 (the "Finance Contract 86.677")

GRUPPO SORIN R&D

(FI 83.445 - SERAPIS 2013-0335)

Finance Contract entered into by and between the European Investment Bank, LivanoVA PLC, Sorin CRM S.A.S. and Sorin Group Italia S.r.l. on 6 May 2014 as amended and restated on 2 October 2015 (the "Finance Contract 83.445")

the Finance Contract 86.677 and the Finance Contract 83.445 collectively referred to as the "Finance Contracts"

Amendment No. 1 to the Finance

Contract 86.677

Amendment No. 2 to the Finance

Contract 83.445

**Waiver of Articles 4.03A(3), 6.05 and
6.06 of the Finance Contracts**

Dear Sirs,

reference is made to:

- (i) the Finance Contracts as defined above;
- (ii) the letter dated 22 November 2017 from LivaNova PLC, by which the Bank was informed about the ongoing negotiation for the sale of the French subsidiary Sorin CRM SAS. to MicroPort, a Chinese leading medical device company (the "**Sale**"); and
- (iii) the recent information received by LivaNova PLC that the Sale will be effective on 30 April 2018 (the "Event").

1 INTERPRETATION

Unless otherwise defined, capitalised terms used in this letter have the same meaning attributed to them in the Finance Contracts. References to Articles are references to Articles in the Finance Contracts.

In this letter:

"Effective Date" means the date on which the Bank confirms to LivaNova PLC, Sorin CRM S.A.S. and Sorin Group Italia S.r.l. in writing (including by electronic mail or other electronic means) that the Bank has received in a form and substance satisfactory to it (i) two (2) originals of this letter duly countersigned on behalf of LivaNova PLC, Sorin CRM S.A.S. and Sorin Group Italia S.r.l., together with a certified copy of the relevant authority of signatories, unless otherwise already provided, and copy of any other authorisation or other document, opinion or assurance which the Bank considers to be necessary or desirable (if it has notified LivaNova PLC, Sorin CRM S.A.S. and Sorin Group Italia S.r.l. accordingly) in connection with the entry into and performance of the transaction contemplated by this letter or for the validity and enforceability of this letter; and (ii) evidence of the payment of the waiver fee set out in Paragraph 7 below.

2 AMENDMENT No. 1 TO THE FINANCE CONTRACT 86.677

With effect from the Effective Date, subject to the successful completion of the Sale, the Finance Contract 86.677 shall be amended as follows with reference to the Event:

- 2.1 Any references to Sorin CRM S.A.S. and to "French Subsidiary" shall be deleted wherever they appear in the text of the Finance Contract 86.677 and the definitions of "Borrowers", "Borrower" and Co-debtor under the Finance Contract 86.677 shall be amended to read as follows:

«The Parent and the Italian Subsidiary are collectively referred to herein as the "Borrowers", and each of them a "Borrower".>>; and

«"Co-debtor" means each of the Parent and the Italian Subsidiary acting as co-debtor under Article 1.11 and guarantor under Article 7.01.»

- 2.2 Recitals (1) to (5) of the Finance Contract 86.677 shall be amended to read as follows:

«(1) The Borrowers have stated that they are undertaking a project of research and development (R&D) of various new products and product improvements with a particular focus on i) cardiac surgery (heart valves and cardiopulmonary) and ii) cardiac rhythm management (the "Project") as more particularly described in the technical description (the "Technical Description") set out in Schedule A.1. The Project is covering the entire product development from pre-clinical studies to clinical trials and life cycle engineering. The Project will be managed by the Italian Subsidiary and implemented in France and Italy.

- (2) The total cost of the Project, as estimated by the Bank, is EUR 180,900,000.00 (one hundred eighty million nine hundred thousand euros) and the Borrowers stated that they intend to finance the Project as follows:

Source	Amount (EUR)
Credit from the Bank	90,000,000.00
Other funding sources	90,900,000.00
TOTAL	180,900,000.00

- (3) In order to fulfil the financing plan set out in Recital (2), the Borrowers have requested from the Bank a credit of EUR 90,000,000.00 (ninety million euros).

3

- (4) The Bank, considering that the financing of the Project falls within the scope of its functions, and having regard to the statements and facts cited in these Recitals, has decided to give effect to the Borrowers' request providing to them a credit in an amount of EUR 90,000,000.00 (ninety million euros) under this Finance Contract (the "Contract"), provided that the amount of the Bank's loan shall not, in any case, exceed (i) 50% (fifty per cent) of the total cost of the Project set out in Recital (2) nor (ii) when aggregated with any EU grants available for the Project, 90% (ninety per cent) of the total cost of the Project set out in Recital (2).

- (5) The Borrowers have authorised the borrowing of the sum of EUR 90,000,000.00 (ninety million euros) represented by this credit on the terms and conditions set out in this Contract.>>

2.3 Article 1.01 (Amount of Credit) shall be amended to read as follows:

<<By this Contract the Bank establishes in favour of the Borrowers, and the Borrowers accept, the credit in an amount of EUR 90,000,000.00 (ninety million euros) for the financing of the Project (the "**Credit**").>>

2.4 Schedule A (Project Specification and Reporting) of the Finance Contract 86.677 shall be replaced by the new Schedule A as set out in the annex to the present letter.

3 **AMENDMENT No. 2 TO THE FINANCE CONTRACT 83.445**

With effect from the Effective Date, subject to the successful completion of the Sale, the Finance Contract 83.445 shall be amended as follows with reference to the Event.

Any references to Sorin CRM SAS. and to "French Subsidiary" shall be deleted wherever they appear in the text of the Finance Contract 83.445 and the definitions of "Borrowers", "Borrower" and Co-debtor under the Finance Contract 83.445 shall be amended to read as follows:

«The Parent and the Italian Subsidiary are collectively referred to herein as the "Borrowers", and each of them a "**Borrower**".>>; and

«"**Co-debtor**" means each of the Parent and the Italian Subsidiary acting as co-debtor under Article 1.11 and guarantor under Article 7.01.»

4 **WAIVER OF ARTICLES 4.03A(3), 6.05 AND 6.06 OF THE FINANCE CONTRACTS**

With effect from the Effective Date, subject to the successful completion of the Sale, the Bank hereby confirms its consent to LivaNova PLC, Sorin CRM SAS. and Sorin Group Italia S.r.l. to waive its rights under Articles 4.03A(3) (Change of Control), 6.05 (Continuing Project undertakings) and 6.06 (Disposal of assets) of each of the Finance Contracts, with exclusive reference to the Event.

5 **CONTINUING OBLIGATIONS**

LivaNova PLC, Sorin CRM SAS. and Sorin Group Italia S.r.l. acknowledge and agree that, other than as expressly set out and agreed hereby, this letter does not constitute a waiver granted by the Bank or amendment of any other term or condition of the Finance Contracts. The Bank reserves any and all contractual and legal rights it has under the Finance Contracts and the applicable law.

6 **REPRESENTATIONS**

By countersigning this letter:

6.1 LivaNova PLC, Sorin CRM SAS. and Sorin Group Italia S.r.l. represent that all the representations and warranties which are repeated pursuant to Article 6.15 (General Representation and Warranties) of the Finance Contracts are correct in all respects (by reference to the facts and circumstances then existing) on: (i) the date of this letter; and (ii) the Effective Date.

6.2 LivaNova PLC, Sorin CRM SAS. and Sorin Group Italia S.r.l. represent that no event or circumstance under Article 10.01A of the Finance Contracts has occurred and is continuing unremedied or unwaived.

6.3 LivaNova PLC, Sorin CRM SAS. and Sorin Group Italia S.r.l. represent that they comply with their obligations under Article 7.03 (Pari passu) and Article 7.04 (*Clauses by inclusion*) of the Finance Contracts and they undertake to promptly inform the Bank should they no longer so comply.

7 **WAIVER FEE**

A waiver fee of EUR 8,000 (eight thousand euros) shall be due by LivaNova PLC to the Bank in connection with the execution of this letter. This amount shall be paid within 30 days following the date of the relevant invoice sent by the Bank to LivaNova PLC, indicating the number of the Bank's invoice as reference.

The waiver fee once paid is non-refundable and non-creditable against any other fees payable to the Bank.

8 **GOVERNING LAW AND JURISDICTION**

8.1 This letter and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

8.2 (a) The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with this letter (including a dispute regarding the existence, validity or termination of this letter or the consequences of its nullity) or any non-contractual obligation arising out of or in connection with this letter.

(b) The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

9 **THIRD PARTY RIGHTS**

A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this agreement.

If you are in agreement with the above, please have two (2) originals of this letter returned to the Bank, to the attention of Mrs. Angela Iacomucci (tel. +352 4379 83466, e-mail: a.iacomucci@eib.org), initialled in each page, dated and duly signed in the name and on behalf of LivaNova PLC, Sorin CRM SAS. and Sorin Group Italia S.r.l. together with a certified copy of the relevant authority of signatories, unless otherwise already provided, by and not later than 14 May 2018. After such date, the Bank reserves the right, at its discretion, by notice to LivaNova PLC, Sorin CRM SAS. and Sorin Group Italia S.r.l., to confirm whether acceptance of this letter by the Borrowers is considered as validly given by LivaNova PLC, Sorin CRM SAS. and Sorin Group Italia S.r.l..

Yours faithfully, EUROPEAN INVESTMENT BANK

Massimo NOVO Ferran MINGUELLA

Acknowledged and agreed for and on behalf of, LivaNova PLC
Thad HUSTON Date 20/06/2018
Maurizio BORELLI Date 26/06/2018
Piero VECCHI Date 18/06/2018

Annex to Amendment No. 1 to the Finance Contract 86.677

Schedule A

A.1. TECHNICAL DESCRIPTION

Purpose, Location

The project concerns the company's research and development (R&D) of various new products and product improvements with a particular focus on i) cardiac surgery (heart valves and cardiopulmonary), and ii) cardiac rhythm management. The project is covering the entire product development from pre-clinical studies to clinical trials and life cycle engineering.

The project will be managed from the Italian branch in Milan of LivaNova PLC and implemented on the promoter's R&D sites in France and Italy.

Description

This project concerns developments for i) cardiac surgery and ii) cardiac rhythm management. Cardiac surgery:

The R&D activities within the cardiopulmonary segment will focus on the development of new devices including disposables / accessories and life cycle management of existing flagship devices. Example projects would be major improvements of the SS heart-lung machine (HLM) to bridge the way to next generation S7 HLM, a new Extracorporeal membrane oxygenation (ECMO) line and new Neonatal and pediatric oxygenators (NINO).

For heart valves the promoter will focus on two early clinical stage transcatheter mitral valve repair (TMVR) technologies as well as on the next generation PERCEVAL sutureless valve and different tissue valves.

Cardiac rhythm management:

Within the cardiac rhythm management the promoter will focus on the development of a low cost solution for the KORA pacemaker product line, development of a full body MRI-compatible solution based on the KORA pacemaker and IMRICOR technology lead and the development of various products within the PLATINIUM platform for cardiac resynchronisation therapy (CRT) devices. The promoter intends to further exploit its SonR technology for the development of its CRT devices. This technology consists of a sensor encapsulated inside the tip of an electrostimulation lead, which is implanted in the patient and is used to optimise the delivery of cardiac resynchronisation therapy.

Calendar

The project will be implemented from January 2017 until December 2020, except for ii) cardiac rhythm management : until 30.04.2018.

A.2. Information Duties under Article 8.01(a)

1. Dispatch of information: designation of the person responsible

The information below has to be sent to the Bank under the responsibility of:

	Financial and Technical Contact
Company	<i>LivaNova PLC</i>
Contact person	<i>Mr. Maurizio Borelli</i>
Title	<i>Director</i>
Function / Department	<i>Treasury, Risk Management and Credit</i>
Address	<i>Via Benigno Crespi 17 20159 Milan, Italy</i>
Phone	<i>39 02 699 697 17</i>
Fax	
Email	<i>maurizio.borelli@livanova.com</i>

The above-mentioned contact person(s) is (are) the responsible contact(s) for the time being. The Borrowers shall inform the EIB immediately in case of any change.

2. Information on the project's implementation

The Borrowers shall deliver to the Bank the following information on project progress during implementation at the latest by the deadline indicated below.

Document / information	Deadline	Frequency of reporting
Project Progress Report: <i>A brief update on the Technical Description, explaining the reasons for significant changes vs. initial scope; Update on implementation of each of the main project's components; Update on the cost of the project, explaining reasons for any possible cost variations vs. initial budgeted cost; A description of any major issue with impact on the environment; Update on the relevant demand trends and evolution for LivaNova's business; Any significant issue that has occurred and any significant risk that may affect the project's operation; Any legal action concerning the project that may be on going.</i>	<i>30 June 2018 30 June 2019 30 June 2020</i>	<i>Annual</i>

3. Information on the end of works and first year of operation

The Borrowers shall deliver to the Bank the following information on project completion and initial operation at the latest by the deadline indicated below.

Document / information	Date of delivery to the Bank
<p>Project Completion Report, including:</p> <ul style="list-style-type: none">- A brief description of the technical characteristics of the project as completed, explaining the reasons for any significant change;- The implementation results of each of the main project's components explaining reasons for any variation and/or delay;- The final cost of the project, explaining reasons for any possible cost variations vs. initial budgeted cost;- The number of staff employed in R&D during the implementation of the project (2017-2020) in Italy and France; with breakdown by location;- Update on the market trends for CS (HV and GP), CRM and NV and LivaNova's market share and competitive position;- The number of patent applications and the number of patents granted per year during the period 2017-2020;- The share of LivaNova's sales coming from products introduced in the last 5 years;- LivaNova's ROCE in 2017, 2018, 2019 and 2020;- A description of any major issue with impact on the environment;- Any significant issue that has occurred and any significant risk that may affect the project's operation;- Any legal action concerning the project that may be on-going.	30 May 2021
Language of reports	English

DATED 12 JUNE 2018

LIVANOVA PLC

**GENERAL PROVISIONS OF THE LIVANOVA
GLOBAL EMPLOYEE SHARE PURCHASE PLAN**

Board adoption	19 April 2018
Shareholder approval	12 June 2018
Expiry date	12 June 2028

Squire Patton Boggs (UK) LLP
7 Devonshire Square
London
EC2M 4YH
United Kingdom
DX 136546 Bishopsgate 2

O +44 20 7655 1000
F +44 20 7655 1001

Reference EAP2

CONTENTS

1	DEFINITIONS	2
2	OPERATION OF THE PLAN	7
3	PLAN LIMITS	7
4	FORM OF INVITATION AND APPLICATION	8
5	SCALING BACK	8
6	DIVIDEND SHARES AND DIVIDEND EQUIVALENTS	9
7	EVENTS AFFECTING SHARE CAPITAL	9
8	SHARE RIGHTS	10
9	PERSONAL DATA	11
10	NOTICES AND DIRECTIONS FROM PARTICIPANTS	12
11	TAX	12
12	AMENDMENTS	13
13	GENERAL	13
	SCHEDULE 1 UNITED STATES EMPLOYEES	15
	SCHEDULE 2 UNITED KINGDOM EMPLOYEES	20
	SCHEDULE 3 REST OF WORLD EMPLOYEES	39

1 DEFINITIONS

In these Provisions:

"Acquisition Date" means the date determined by the Nominee in accordance with the Provisions on which it acquires Investment Shares (or, as the case may be, Dividend Shares) on behalf of an Eligible Employee.

"Administrator" means the Equity Compensation Committee (a committee created by the Board of Directors to administer this Plan and other Equity Compensation Plans) or any other person as delegated by the Board of Directors or the Equity Compensation Committee, an example of such person being the Vice President of HR.

"Award" means:

- (a) in relation to Free Shares or Matching Shares, the appropriation of Free Shares or Matching Shares in accordance with the Provisions; and
- (b) in relation to Investment Shares or Dividend Shares, the acquisition of Investment Shares or Dividend Shares on behalf of Participants in accordance with the Provisions;

and reference to Shares being awarded will be construed accordingly.

"Award Date" means the date on which Free Shares and/or Matching Shares are awarded to a Participant under the Plan.

"Board" means the board of directors of the Company or a duly constituted committee of the Board.

"Business Day" means a day on which the Nasdaq or other stock exchange on which the Company's shares are traded is open for the transaction of business.

"Change of Control" shall mean and includes each of the following:

- (a) a Sale; or
- (b) a Takeover.

The Administrator shall have full and final authority, which shall be exercised in its sole discretion, to determine conclusively whether a Change in Control has occurred pursuant to the above definition, the date of the occurrence of such Change in Control and any incidental matters relating thereto; provided that any exercise of authority in conjunction with a determination of whether a Change in Control is a "change in control event" as defined in Treasury Regulation Section 1.409A-3(i)(5) shall be consistent with such regulation.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Company" means LivaNova Plc (company number 09451374) whose registered address is at 20 Eastbourne Terrace, London, W2 6LG.

"Contributions" means (i) except with respect to Schedule 1, deductions from a Participant's Salary or other payment made by the Participant for the purpose of acquiring Investment Shares, and (ii) with respect to Schedule 1, deductions from a Participant's Compensation (as defined in Schedule 1), in accordance with a Participant's election in effect during an Offering Period, for the purpose of acquiring Investment Shares pursuant to the provisions of.

"Corporate Event" means, in relation to the Company:

- (a) any demerger, delisting, distribution (other than an ordinary dividend) or other transaction, which, in the opinion of the Administrator, might affect the current or future value of Plan Shares or any Free Share or Matching Share award; or
- (b) any reverse takeover (not falling within the definition of Change of Control), merger by way of a dual listed company or other significant corporate event, as determined by the Administrator.

"Dealing Restrictions" means the Company's code for dealing in shares by its directors and applicable employees (as amended from time to time) in accordance with relevant legislation or regulation and any other agreement, arrangement, contract or code adopted or entered into by the Company containing provisions similar in purpose and effect.

"Dividend Equivalent" means an amount equal to the ordinary dividends payable on the number of Vested Shares between the Award Date and Vesting.

"Dividend Shares" means Shares acquired through the reinvestment of cash dividends paid on Plan Shares in accordance with section 6 (*Dividend Shares and Dividend Equivalents*) or, in respect of Awards granted under Schedule 2, Part 4 of Schedule 2.

"Eligible Employee" means any person who, on a date or dates determined by the Administrator:

- (a) is an employee of a Participating Company.
- (b) has held employment with a Participating Company at all times during any relevant Qualifying Period.
- (c) is not under notice of termination of employment either given or received (other than notice given by reason of redundancy or, at the discretion of the Administrator, any other reason); and
- (d) satisfies any other conditions specified by the Administrator (if any) in relation to any employee or group of employees; or

"Employment" means employment with a Group Company.

"Free Shares" means an award of shares awarded under Part 1 of Schedule 2 to the Plan and/or a conditional right to acquire Shares awarded under Schedule 3 to the Plan.

"Group Company" means:

- (a) the Company;
- (b) any Subsidiary; or
- (c) any other company which is associated with the Company and is so designated by the Administrator.

"Holding Period" means the period for holding Free Shares; Matching Shares or Dividend Shares in the Plan which must be no more than three years (or such other period as determined by the Administrator) beginning on the Award Date.

"Initial Market Value" means in relation to any Shares, the Market Value of those Shares on the Award Date.

"Investment Shares" means Shares which are allocated to a Participant in respect of their Contributions.

"Market Value" means, as of any given date, if the Shares are:

- (a) listed on any established securities exchange (such as the New York Stock Exchange, the NASDAQ Capital Market, the NASDAQ Global Select Market;
- (b) listed on any national market system; or
- (c) listed quoted or traded on any automated quotation system,

the closing sales price for a Share as quoted on such exchange or system for such date or, if there is no closing sales price for a Share on the date in question, the closing sales price for a Share on the last preceding date for which such quotation exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable.

"Matching Shares" means an award of Shares granted under Part 3 of Schedule 2 and/or a conditional right to acquire Shares granted under Schedule 3.

"Nasdaq" means the Nasdaq Stock Market, a United States stock exchange.

"Nominee" means the registered holder of the Plan Shares appointed by the Company for the purpose of the Plan.

"Offering Period" means a specified period not exceeding 12 months during which a Participant's Contributions are accumulated before being used by the Nominee to acquire Investment Shares or repaying it to that Participant;

"Participant" means any person (including any person acquiring beneficial interest by operation of law) who holds a Conditional Award and/or on whose behalf Investment Shares or other Plan Shares or other securities are held by the Nominee under the Plan.

"Participating Company" means for the purposes of the Plan:

- (a) the Company; and
- (b) any Subsidiary and any associated company which, in both cases, is so designated by the Administrator and which has, for the purposes of Schedule 2, entered into a deed of adherence to the Trust.

"Participating Employee" means an employee (including an executive director) of a Participating Company.

"Performance Measures" means the targets or requirements set by the Administrator from time to time which govern the availability, number or value of Free Shares to be awarded.

"Plan" means the LivaNova Global Employee Share Plan 2018 as set out in these Provisions and, for the purposes of Schedule 2, in the Trust deed both as amended from time to time.

"Plan Shares" mean the Shares awarded or allocated to Participants under the Plan and held by the Nominee.

"Provisions" means the provisions of the LivaNova Global Employee Share Plan 2018 as set out in this document, and "Provision" shall be construed accordingly. Where the context requires, "Provisions" may mean a particular section of the Provisions.

"Qualifying Period" means:

- (a) in the case of Free Shares, such period as may be determined by the Administrator in relation to each Award of Free Shares, such period not to exceed 18 months before the Award is made;
- (b) in the case of Investment Shares and Matching Shares where there is an Offering Period, such period as may be determined by the Administrator in relation to each Award of Investment Shares and Matching Shares, such period not to exceed 6 months before the start of such an Offering Period; and
- (c) in the case of Investment Shares and Matching Shares where there is no Offering Period, such period as may be determined by the Administrator in

relation to each Award of Investment Shares and Matching Shares, such period not to exceed 18 months before the deduction of Partnership Share Money relating to the Award.

"Salary" means basic salary or any such remuneration paid or made available by an employing company as determined by the Administrator generally or on an individual country basis.

"Sale" means the sale of all or substantially all of the assets of the Company.

"Share Capital Variation" means:

- (a) a variation in the equity share capital of the Company, including a capitalisation or rights issue, sub-division, consolidation or reduction of share capital;
- (b) a demerger (in whatever form);
- (c) a special dividend or distribution; or
- (d) any other corporate event which might affect the current or future value of Plan Shares and/or Conditional Awards.

"Shares" means ordinary shares in the capital of the Company.

"Subsidiary" means a company which is a subsidiary of the Company within the meaning of Section 1159 of the Companies Act 2006 or Code Section 424(f), as applicable.

"Takeover" shall mean if any person (or a group of persons acting in concert) the **"Acquiring Person"**:

- (a) obtains Control of the Company as the result of making a general offer to:
 - (i) acquire all of the issued ordinary share capital of the Company, which is made on a condition that, if it is satisfied, the Acquiring Person will have Control of the Company; or
 - (ii) acquire all of the shares in the Company which are of the same class as the Shares; or
- (b) obtains Control of the Company as a result of a compromise or arrangement sanctioned by a court under Section 899 of the Companies Act 2006, or sanctioned under any other similar law of another jurisdiction; or
- (c) becomes bound or entitled under Sections 979 to 985 of the Companies Act 2006 (or similar law of another jurisdiction) to acquire shares of the same class as the Shares; or
- (d) obtains Control of the Company in any other way.

"Treasury Shares" means qualifying Shares held by the Company in treasury under the provisions of section 724 of the Companies Act 2006.

"Trust" means the trust deed dated [] 2018 establishing the LivaNova Global Employee Share Plan to which the Provisions are appended.

"Vesting" means a Participant becoming entitled to have the Shares subject to a Conditional Award transferred to him subject to the Plan, and "Vest" and "Vested" shall be construed accordingly.

2 OPERATION OF THE PLAN

2.1 Time of operation

The Administrator can operate the Plan at any time subject to any applicable Dealing Restrictions.

2.2 Notification to Participating Companies

As soon as practicable after the Administrator has decided to operate the Plan, the Company will notify the relevant Participating Companies of the proposed operation of the Plan.

2.3 Payments by Participating Companies

The Company may notify each Participating Company of an amount it is required to contribute in respect of Free Shares and/or Matching Shares. If it does so, each Participating Company will pay this amount to the Company to be used for the purposes of the Plan.

2.4 Source of funds

A Participating Company may at any time allocate funds for the purposes of the Plan in accordance with the Provisions, provided that it will only pay to the Trustee such sums as are required in connection with the acquisition of Free or Matching Shares by the Trustee for appropriation to ROW Eligible Employees who are for the time being employed by that Participating Company.

3 PLAN LIMITS

3.1 Subject to section 3.2, the aggregate number of Shares which may be issued or transferred pursuant to Awards under the Plan is 2.5 million. Any Shares distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Shares, treasury Shares or Shares purchased on the open market.

3.2 If any Shares subject to an Award are forfeited or expire, are converted to shares of another entity in connection with a Takeover, Sale, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination, exchange of shares or other similar event, the Shares subject to such Award shall, to the extent of such forfeiture, expiration or conversion, again be available for future grants of Awards under the

Plan. The following Shares shall not be added to the Shares authorized for grant under section 3.1 and shall not be available for future grants of Awards:

- (a) Shares tendered by the Participant or withheld by the Company to satisfy any tax withholding obligation with respect to an Award; and
- (b) Shares purchased on the open market with the cash proceeds from the Awards.

3.3 Substitute Awards shall not reduce the Shares authorized for grant under the Plan, except as may be required by reason of Section 422 of the Code. Additionally, in the event that a company acquired by the Company or any Subsidiary or with which the Company or any Subsidiary combines has shares available under a pre-existing plan approved by its stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of shares of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan; provided that Awards using such available Shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not employed by or providing services to the Company or its Subsidiaries immediately prior to such acquisition or combination.

4 FORM OF INVITATION AND APPLICATION

4.1 When invitations to join the Plan are made:

- (a) The invitations and applications to join the Plan must be made in the form determined by the Administrator from time to time. This may include invitations and applications in writing or by e-mail, internet (or other electronic means) and interactive voice response.
- (b) The invitation and the application will, if applicable, specify whether for that or any future operation of the Plan, Free Shares, Investment Shares and/or Matching Shares may be acquired.
- (c) The completed application must be submitted to the Company or any Participating Company within the period specified in the invitation. An Eligible Employee who has not submitted a completed application will not be able to participate in the Plan.
- (d) The application will take effect from such date as is set out in the application and will continue until such time as the Participant ceases to be a Participating Employee or notifies the Company that he wishes to withdraw from the Plan.

- (e) The application must include an undertaking by the Eligible Employee not to sell or dispose of any interest in the Free Shares and Matching Shares until the end of the Holding Period except in the event of a Change of Control, as set out in section 11.2 (*Withholding*) or on cessation of employment as set out in the relevant Schedule.

5 SCALING BACK

If there is a limit on the number of Shares which may be acquired as Investment Shares and the Contributions set out in the application exceed that number, the Administrator will scale down applications by taking any one or more of the following steps:

- (a) reducing the excess of Contributions over any set minimum amount for Contributions proportionately;
- (b) reducing all monthly Contributions to any set minimum amount for Contributions;
- (c) selecting applications to contribute the minimum amount for Contributions by lot; or
- (d) choosing any other method which they deem appropriate.
- (e) The Administrator will notify Participants of the scaling down and their application will be deemed changed or withdrawn accordingly.

6 DIVIDEND SHARES AND DIVIDEND EQUIVALENTS

- 6.1 All dividends payable in respect of a Participant's Plan Shares will belong to the Participant. Unless the Administrator determines otherwise, the Company will procure that any dividends paid will be used to acquire Dividend Shares on behalf of the Participant as the Administrator determines from time to time. Dividend Shares will not be subject to any restrictions or forfeiture and will form part of the Participant's Plan Shares for the purpose of this section 6.1. Dividend Shares will be held by the Nominee on behalf of the Participant unless and until the Participant or the Administrator direct that the Dividend Shares should be transferred to the Participant or his nominee or sold. Where the Administrator determines that dividends will not be reinvested they will be paid in cash to the Participant.
- 6.2 Where the Participant is granted Free Shares or Matching Shares under Schedule 3, the Administrator may at any time determine that the Participant will also be granted the right to receive a Dividend Equivalent which may be paid in cash or in Dividend Shares (as determined from time to time by the Administrator). Dividend Equivalents will be paid to the Participant or their nominee at such time as the Shares subject to the Free Share and/or Matching Share award are issued or transferred to the Participant unless the Administrator decides that any Dividend Shares should be held in accordance with section 6.1.

- 6.3 The Nominee is not required to pay a Participant any interest earned on any dividend to which the Participant is entitled. The Nominee may retain any interest on such terms as the Administrator decides.

7 EVENTS AFFECTING SHARE CAPITAL

7.1 Share Capital Variation

- (a) The Participant (or anyone authorised by him) has the right to direct the Nominee on the appropriate action to take (if any) in relation to any right relating to a Participant's Plan Shares in connection with a Share Capital Variation. The Nominee may not take any action without such a direction. If the Nominee has not received the necessary direction and funds needed to carry out the direction before such time as the Nominee specifies, it will allow the right to lapse. If the Nominee is to be involved in any liability, it may require an indemnity which it considers appropriate from the Participant.
- (b) In the event of a Share Capital Variation, the Administrator may adjust the number or class of Shares or securities subject to any Free Share or Matching Share award.

7.2 Change of Control and Corporate Events

- (a) The Participant (or anyone authorised by him) has the right to direct the Nominee on the appropriate action to take in relation to any offer or right relating to a Participant's Plan Shares in connection with a Change of Control or Corporate Event. The Nominee may not take any action without such a direction. On a Change of Control or Corporate Event, any consideration consisting of new shares or securities will be held by the Nominee as Plan Shares as if they were the original Plan Shares.
- (b) In the event of a Change of Control or, if the Administrator so decides, a Corporate Event, a Participant's Free Shares and/or Matching Shares will Vest at the time of the relevant event.

7.3 Fractional entitlements

Where, following any offer referred to in section 7.1 (Share Capital Variation), the Nominee receives rights or securities in respect of Plan Shares, it will allocate them among the Participants concerned on a proportionate basis, rounding down if necessary. The Nominee will then aggregate any fractions not allocated and sell the unallocated rights and securities. The Nominee will deduct all expenses of sale and applicable tax and social security from the proceeds of sale and distribute the net proceeds of sale proportionately among the Participants whose allocation was rounded down. However, if a Participant's entitlement is less than the transfer costs (wire fees) to be incurred in distributing the entitlement, the Nominee may retain that entitlement and use it to pay the expenses of the Plan.

8 SHARE RIGHTS

8.1 Rights

Except as otherwise provided in the Plan, Plan Shares will receive identical treatment and rank pari passu in all respects with all other shares of common stock of the Company and in particular in respect of each of the following, where applicable:

- (a) the dividend payable (provided that Plan Shares which have been newly issued may receive, in respect of dividends payable by reference to a period beginning before the date on which such Plan Shares were issued, treatment that is less favourable than that accorded to Shares issued before that date) and further provided that the Nominee may award Shares, a proportion of which will rank for dividends or other rights attaching to Shares by reference to a record date preceding the relevant Award Date and a proportion of which will not. If this happens, the Nominee will award the Shares to each Participant as far as practicable in those same proportions.;
- (b) repayment rights;
- (c) restrictions attaching to the Shares; and
- (d) any offer of substituted or additional shares, securities or rights of any description in respect of Shares.

8.2 Voting

- (a) The Nominee may invite Participants to direct it on the exercise of any voting rights attaching to Plan Shares registered in the name of the Nominee. The Nominee may not take any action without such a direction. The Nominee will only be entitled to vote on a show of hands if all directions received from Participants who have given directions in respect of a particular resolution are identical. The Nominee will not be under any obligation to call for a poll. In the event of a poll the Nominee will vote in accordance with the directions of Participants.
- (b) The Nominee must not vote in respect any Shares it holds under the Plan which have not been registered in the name of the Nominee.
- (c) A Participant is not entitled to vote, to receive dividends or to have any other rights of a shareholder in respect of Shares subject to a Free Share or Matching Share award until the Shares are issued or transferred to the Participant or to the Nominee to hold on behalf of the Participant.

8.3 Dealing with Plan Shares

Subject to the Provisions the Nominee will deal with a Participant's Plan Shares at all times in accordance with the lawful directions given by or on behalf of that Participant or any person in whom the beneficial interest in his Plan Shares is for the time being vested. The Nominee will obey any directions given by a Participant in accordance with the Provisions in relation to his Plan Shares and any rights and income relating

to those Shares (but in the absence of any such direction, or provision of the Plan, the Nominee need not seek such direction and will take no action).

8.4 Stamp duty on Plan Shares

Any stamp duty payable on a transfer of a Participant's Plan Shares to him will be paid by the Trustee.

9 PERSONAL DATA

9.1 By participating in the Plan, a Participant consents to the holding and processing of personal data provided by the Participant to any member of the Group, trustee or third party service provider, for all purposes relating to the operation of the Plan. These include, but are not limited to:

- (a) administering and maintaining Participant records;
- (b) providing information to any taxation authority, members of the Group, the trustee of any employee benefit trust, registrars, brokers or third party administrators of the Scheme;
- (c) providing information to future purchasers of the Company or the business in which the Participant works; and
- (d) transferring information about the Participant to a country or territory outside the European Economic Area that may not provide the same statutory protection for the information as the Participant's home country.

9.2 Section 9.1 shall not apply to the processing of data of Eligible Employees based in the European Economic Area and instead the Company and any member of the Group will process the data of such Eligible Employees in accordance with:

- (i) the applicable data privacy policy or policies adopted by the Company or other member of the Group; and
- (ii) the data privacy notice(s) provided to the Eligible Employee covering the processing of the Eligible Employee's data in connection with the Scheme.

10 NOTICES AND DIRECTIONS FROM PARTICIPANTS

10.1 Any direction to the Nominee in respect of a Participant's Plan Shares must be given in writing by or on behalf of the Participant or any person in whom the beneficial interest in his Plan Shares is for the time being vested.

10.2 Any notice or other communication under or in connection with the Plan may be given by electronic mail, personal delivery or by sending the same by first class post, in the case of a company to its registered office, and in the case of an individual to his last known address. Where a notice or other communication is given by first

class post, it will be deemed to have been received 5 Business Days after it was put into the post properly addressed and stamped.

- 10.3 The Company may send to the Participants copies of any documents or notices normally sent to its shareholders.

11 TAX

11.1 Capital receipts and other amounts

When the Nominee receives money in relation to Plan Shares or the proceeds of any disposal, it will make the required deductions for tax and social security and pay the balance to the Participant. The Nominee may, however, retain any amount which is less than the transfer costs (wire fees) to be incurred in distributing the amount and use it for the purposes of the Plan.

11.2 Withholding

The Company or any Subsidiary shall have the authority and the right to deduct or withhold, or require a Participant to remit to the relevant Group Company, an amount sufficient to satisfy any federal, state, local and foreign taxes (including the Holder's FICA, employment tax or other social security contribution obligation) required by law to be withheld or otherwise arising with respect to any taxable event concerning a Participant arising as a result of the Plan or any Award. The Administrator may, in its sole discretion and in satisfaction of the foregoing requirement, satisfy such obligations by any payment means it deems appropriate including without limitation, by withholding Shares otherwise issuable under an Award (or allowing the surrender of Shares). The number of Shares which may be so withheld or surrendered shall be limited to the number of Shares which have a fair market value on the date of withholding or repurchase no greater than the aggregate amount of such liabilities based on the minimum statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such supplemental taxable income (or such other number as would not result in adverse financial accounting consequences for the Company or any of its Subsidiaries).

12 AMENDMENTS

- 12.1 Except as otherwise provided in section 12.3, the Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board; provided that, no amendment, suspension or termination of the Plan shall, without the consent of the holder of the Award, materially and adversely affect any rights or obligations under any Award theretofore granted or awarded, unless the Award itself otherwise expressly so provides.

- 12.2 Notwithstanding section 12.1, the Board may not, except as provided in Provision 7, take any of the following actions without approval of the Company's stockholders given within twelve (12) months before or after such action:

- (a) increase the limit imposed in section 3.1 on the maximum number of Shares which may be issued under the Plan,
or

(b) reduce the price per share of any outstanding Award granted under the Plan.

12.3 Overseas considerations

Notwithstanding any other provision of the Plan, the Board may amend or add to the provisions of the Plan (by way of schedule or otherwise) as they consider necessary or desirable to facilitate the operation of the Plan in any jurisdiction or to enable the Plan to take advantage of any favourable tax or regulatory treatment, provided that any such addition or amendment does not vary the basic features of the Plan.

13 GENERAL

13.1 Relationship between the Plan and employment

The rights and obligations of any individual under the terms of his office or employment with any member of the Group will not be affected by his participation in the Plan or any right which he may have to participate in it and the Plan does not form part of any contract of employment between that individual and any member of the Group. A Participant whose office or employment is terminated for any reason whatsoever (and whether lawful or otherwise) will not be entitled to claim any compensation for or in respect of any consequent diminution or extinction of his rights or benefits (actual or prospective) under any Award then held by him or otherwise in connection with the Plan.

13.2 Administrator's power of interpretation

The Plan will be administered by the Administrator, which may from time to time make and vary Provisions and regulations consistent with the Plan and establish procedures for the administration and implementation of the Plan as it thinks fit, and in the event of any dispute or disagreement as to the interpretation of the Plan, or of any Provision, regulation or procedure, or as to any question or right arising from or related to the Plan, the decision of the Administrator will be final and binding on all persons.

13.3 Change in legislation

Any reference in the Plan to any legislation includes a reference to that legislation as from time to time modified, extended or re-extended.

13.4 Termination of the Plan

The Plan will be terminated at the end of the period of 10 years from the date it is approved by the shareholder of the Company or earlier as determined by the Board and, in respect of Awards granted under Schedule 2, in accordance with a Plan Termination Notice issued by the Company to the Nominee pursuant to paragraph 89 of ITEPA Schedule 2 (as defined in Schedule 2).

13.5 Governing law

The Plan and any Programs and Award Agreements hereunder shall be administered, interpreted and enforced under the internal laws of the State of Delaware without regard to conflicts thereof or of any other jurisdiction.

Schedule 1 United States Employees

1 Purpose of this schedule

- 1.1 The purpose of this Schedule 1 is to provide "Eligible Employees," as such term is defined in this Schedule 1, a convenient opportunity to become shareholders of the Company through payroll deductions.
- 1.2 The Company intends the Plan, as modified by this Schedule 1, to qualify as an employee stock purchase plan under Section 423 of the United States Internal Revenue Code of 1986, as amended (the "**Code**"). Accordingly, the provisions of the Plan, as modified by and provided for in this Schedule 1, shall be construed in a manner consistent with the requirements of Code Section 423; provided, however, that the Company makes no representations to any Eligible Employee of the tax consequences of purchases of Investment Shares.
- 1.3 The provisions of the Plan (including, without limitation, the maximum number of offered Shares and the ten (10) year term of the Plan) shall apply in this Schedule 1 except as varied or replaced by this Schedule 1.
- 1.4 All paragraph references are to paragraphs in this Schedule 1.

2 Definitions.

In this Schedule 1 the terms defined below shall have the following meaning and, where applicable, shall replace the relevant definition in Section 1 of the Plan. Defined terms used in this Schedule 1 but not defined below shall have the meaning in Section 1.

"Applicable Restrictions Period" has the meaning given in paragraph 9.2.

"Compensation" means the base pay (including overtime), commissions and bonus amounts paid in cash to an Eligible Employee by a Participating Company with respect to an Offering Period. Notwithstanding the foregoing, the Company, in its sole discretion, may determine to exclude bonuses and commissions from Compensation for any given Offering Period, provided that any such determination shall apply consistently to all Employees who are granted purchase rights for such Offering Period.

"Eligible Employee" shall mean any person who is customarily employed for more than twenty (20) hours per week and for more than five (5) months during any calendar year, and who is having payroll taxes withheld from his/her Compensation on a regular basis, by a Participating Company; provided, however, to the extent permissible under United States Treasury Regulation Section 1.423-2(f), employees of a Participating Company who are solely citizens or residents of a country other

than the United States are not Eligible Employees; and provided further, that such employee otherwise meets the eligibility requirements of Section 423 of the Code .

"Offering Period" means a time period consisting of the number of months, not in excess of twenty-seven (27) months, determined pursuant to paragraph 4.

"Participant" means an Eligible Employee who elects to participate in the Plan pursuant to this Schedule 1.

"Participating Company" means any Participating Company, as defined in Section 1 of the Plan, that employs Eligible Employees who are resident in the United States.

"Purchase Price" has the meaning given in paragraph 8.

"Shares" means shares of common stock of the Company.

3 Eligibility

- 3.1 Any Eligible Employee may participate in the Plan by completing the appropriate investment election forms specified by the Company, and delivering such forms to the Company by the tenth (10th) day of the month prior to the commencement of an Offering Period. All Participants shall have the same rights and privileges in accordance with Section 423 of the Code.
- 3.2 No Eligible Employee who becomes a Participant shall be entitled to acquire Investment Shares if, immediately after the acquisition, that Participant (together with any other person whose Investment Shares and other shares of the Company and any Subsidiaries would be attributed to such Participant pursuant to Section 424(d) of the Code) would own Shares and other shares or hold outstanding rights to purchase Shares or other shares, or both, possessing five percent (5%) or more of the total combined voting power or value of Shares and other shares in the Company or in any Subsidiaries.
- 3.3 No Participant shall have the right to purchase Shares in excess of the limitations specified in Section 423(b)(8) of the Code. Therefore, the maximum value of the Shares and other shares that a Participant may accrue at a rate or acquire in a calendar year under all employee purchase plans (described in Code Section 423) of the Company and its Subsidiaries, when aggregated, is US \$25,000 of the Market Value of the Shares and other shares determined on the first day of each Offering Period (which is equal to US \$21,250 at 85% of the Market Value).

4 Offering Period

- 4.1 Initially there will be two (2) Offering Periods each calendar year, each for a six- (6-) month period commencing on January 1 and July 1, and ending on June 30 and December 31, respectively. The Board may change the duration, frequency, start and end date of an Offering Period for future calendar years.
- 4.2 A Participant shall cease to be a Participant upon the earliest to occur of:

- (a) the date of a withdrawal under paragraph 10 below, or
- (b) the date the Participant otherwise ceases to be an Eligible Employee.

4.3 The start and end of any Offering Period must be set out in the investment election form completed by the Participant pursuant to paragraph 3.1 before the first Contribution is deducted from a Participant's Compensation. The Offering Period must start on or before the date of the first Contribution.

4.4 If, during an Offering Period, a transaction or other corporate event described in Code Section 424 occurs, then unless the Plan is assumed, the Offering Period will be shortened by the Board setting a new last day of the Offering Period that is prior to the closing date of such transaction; and the new date of purchase of Investment Shares shall be communicated to the Participants.

5 **Making Contributions**

5.1 Contributions will be deducted from the Participant's Compensation on each pay date after the start of the Offering Period.

5.2 All Contributions are made after any payroll deductions for tax and social security contributions.

6 **Holding Contributions**

The Contributions will be held by the Company or a Participating Company in a non-interest bearing notional account until they are used to acquire Investment Shares on the Participant's behalf pursuant to paragraph 8 or returned to the Participant pursuant to the provisions of the Plan.

7 **Varying Contributions**

A Participant may elect to decrease or terminate his rate of Contributions by submitting a notice to the Company on such terms as set by the Company from time to time. The new rate of Contributions will take effect on the date specified by the Company. The Committee may set a limit on the number of times a Participant is permitted to vary his rate of Contributions.

8 **Purchase of Shares**

8.1 Investment Shares shall be acquired for each Participant (with each Participant's Contributions for an Offering Period) automatically on the last day of the Offering Period or, if that is not a Business Day, on the previous Business Day. The Company or applicable Participating Company may make such provisions and take such action as it deems necessary or appropriate for the withholding of taxes (including employment taxes) which may be required under applicable law, including the withholding of such taxes from other compensation payable to the Participant. Each Participant, however, shall be responsible for the payment of all individual tax liabilities of the Participant relating to his or her participation in the Plan.

- 8.2 The number of Investment Shares purchased shall be determined by dividing the Participant's Contributions by the Purchase Price, subject to the adjustments provided for in paragraph 9 below.
- 8.3 The "**Purchase Price**" shall be the lesser of (i) 85% of the Market Value of a Share on the first day of the relevant Offering Period, and (ii) 85% of the Market Value of a Share on the last day of the Offering Period.

9 **Delivery**

- 9.1 Investment Shares acquired for a Participant under paragraph 8 shall, as determined by the Company, either be delivered (in non-certificated or certificated form) to the Participant, a brokerage account established for the Participant at a Company-designated brokerage firm, or to the Nominee to be held on behalf of the Participant.
- 9.2 Unless otherwise determined by the Company, a Participant may not sell, assign, pledge or otherwise transfer any Investment Shares purchased under the Plan for a period of two (2) years after the beginning of an Offering Period or one (1) year from the last day of an Offering Period for which such Shares were acquired (the "**Applicable Restriction Period**") except, pursuant to paragraph 11, upon the death of a Participant. Once any Applicable Restriction Period has expired, a Participant may elect to have the applicable Shares delivered to the Participant or to an account established by the Participant with any brokerage firm.
- 9.3 The cost of any disposition of Shares acquired through participation in the Plan shall be the sole responsibility of the Participant.

10 **Withdrawal**

- 10.1 A Participant whose employment terminates for any reason (including, but not limited to, retirement or death) during an Offering Period and prior to the last day of such Offering Period will be deemed to have withdrawn from the Plan effective immediately upon the date of such termination of employment.
- 10.2 If a Participant withdraws from the Plan under the terms of this paragraph 10, no Shares will be purchased for the Offering Period in which the Participant's employment terminates, as applicable. Any Contributions accumulated for the Participant will be returned to the Participant as soon as practicable.
- 10.3 In the event of the Participant's death, all Contributions and Shares shall be paid to the Participant's beneficiary, estate or other party as provided in paragraph 11 below.

11 **Designation of Beneficiary**

- 11.1 A Participant may file with the Company a written designation of a beneficiary who is to receive any cash to his or her credit under the Plan in the event of the Participant's death before the end of an Offering Period, or any Shares and cash to his or her credit under the Plan in the event of the Participant's death on or after the end of an Offering Period but prior to the delivery of such Shares and cash. A beneficiary may be changed by the Participant at any time by notice in writing to the Company.

- 11.2 Upon the death of a Participant, the Company shall deliver such Shares or cash, or both, to the beneficiary designated under paragraph 11.1. In the event a Participant dies and is not survived by a designated beneficiary, the Company shall deliver such Shares or cash, or both, to the personal representative of the estate of the deceased Participant. If to the knowledge of the Company no personal representative has been appointed within ninety (90) days following the date of the Participant's death, the Company, in its discretion, may deliver such Shares or cash, or both, to the surviving spouse of the deceased Participant, or to any one or more dependents or relatives of the deceased Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.
- 11.3 No designated beneficiary shall, prior to the death of the Participant by whom the beneficiary has been designated, acquire any interest in the Shares or cash credited to the Participant under the Plan.

12 **Waiver**

No liability whatever shall attach to or be incurred by any past present or future shareholders, officers or directors, as such, of the Company or any Subsidiary, under or by reason of any of the terms, conditions or agreements contained in this Plan or implied, and any and all liabilities of, and any and all rights and claims against, the Company or any Subsidiary, or any shareholder, officer or director as such, whether arising at common law or in equity or created by statute or constitution or otherwise, pertaining to this Plan, are hereby expressly waived and released by every Eligible Employee as a part of the consideration for any benefits by the Company under this Plan.

13 **Securities Law Restrictions**

Shares shall not be issued under the Plan unless (a) the exercise of the related purchase right and the issuance and delivery of the shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the United States Securities Act of 1933, as amended, and any rules and regulations promulgated pursuant to such laws and with the requirements of any stock exchange upon which the shares may then be listed; and (b) the express approval of counsel for the Company with respect to such compliance is first obtained. The Company reserves the right to place an appropriate legend on any certificate representing Shares issuable under the Plan with any such legend reflecting restrictions on the transfer of the shares as may be necessary to assure the availability of applicable exemptions under federal and state securities laws.

15 **Shareholder Approval**

In compliance with Code Section 423, the Plan will be submitted to the Company's shareholders for approval within twelve (12) months following its adoption by the Board; and the effectiveness of this Schedule 1 is subject to approval by the shareholders within such twelve (12) month period.

SCHEDULE 2

United Kingdom Employees

1 Purpose of this Schedule

- 1.1 The provisions of this Schedule 2 shall govern invitations made to join the Plan and awards of Free Shares and/or Matching Shares to UK Eligible Employees who are resident in the United Kingdom.
- 1.2 The Plan must not provide benefits to UK Participants otherwise than in accordance with this Schedule 2 and in particular must not provide cash to UK Participants as an alternative to Shares.
- 1.3 Section 1.2 does not prohibit an Eligible Employee receiving a benefit from the Company as a result of any Shares held on his behalf under the Plan where that Eligible Employee would have received the same benefit from the Company had the Shares been acquired by that Eligible Employee otherwise than by virtue of the Plan.
- 1.4 The Company will register the Plan with HM Revenue & Customs in accordance with Part 10 of ITEPA Schedule 2 after it has been adopted by the Board and in any event before the 6 July after the end of the Tax Year in which the first Awards are made.

2 Definitions

In this Schedule the terms defined below shall have the following meaning and, where applicable, shall replace the relevant definition in section 1. Defined terms used in this Schedule but not defined below shall have the meaning in section 1.

"Acquisition Date" means the date determined by the Trustee in accordance with the Provisions on which it acquires Investment Shares (or, as the case may be, Dividend Shares) on behalf of an Eligible Employee.

"Associated Company" has the meaning given to it by paragraph 94 of Schedule 2.

"Connected Company" has the meaning given to it in paragraph 18(3) of ITEPA Schedule 2.

"Contributions" means money deducted from an Eligible Employee's Salary pursuant to a Partnership Share Agreement and held by the Trustee to acquire Investment Shares or to be returned to such a person.

"Free Share Agreement" means an agreement issued in accordance with the terms set out in Part 1 of this Schedule 2 and, where relevant, Part 4 of this Schedule 2;

"IT(EP)A" means the Income Tax (Earnings and Pensions) Act 2003.

"ITEPA Schedule 2" means Schedule 2 to IT(EP)A.

"Market Value" means the closing price of a Share on any day on which the Nasdaq (or other applicable exchange) is open for business or, in respect of any day on which the Nasdaq (or other applicable exchange) is not open for business, the closing price on the preceding day. If more than one price is shown as the closing price the Market Value shall be the lower price plus one half of the difference between the two figures.

"NICs" means National Insurance contributions.

"Partnership Share Agreement" means an agreement issued in accordance with the terms set out in Part 2 of Schedule 2 and, where relevant Parts 3 and 4 of Schedule 2.

"Plan Shares" means Free Shares, Matching Shares, Investment Shares or Dividend Shares subscribed for or purchased by the Nominee under the Plan together with all shares subsequently acquired by the Nominee by virtue of exercising any rights attaching to such Shares and, in respect of Awards made under Schedule 2 together with any new shares (within the meaning of paragraph 87 of ITEPA Schedule 2) (subject always to the provisions contained in paragraph 88 of ITEPA Schedule 2), which remain subject to the Plan.

"Plan Termination Notice" means a notice issued under paragraph 89 of Schedule 2.

"Relevant Employment" means employment by the Company or any Associated Company.

"Salary" has the meaning given to it in paragraph 43(4) of ITEPA Schedule 2.

"Schedule 2 SIP" means a share incentive plan that has been certified by the establishing company as complying with the requirements of ITEPA Schedule 2 and notified to HM Revenue & Customs in accordance with paragraph 81A of ITEPA Schedule 2.

"Surplus Assets" means all other assets being Trust Property of the Trust other than Unawarded Shares, Plan Shares and Partnership Share Money.

"Tax Year" means a period of 12 months beginning on any 6 April and ending on the following 5 April.

"Trustee" means such person or persons who is or are the trustees from time to time of the Plan.

"Trust Property" means any shares, money and other property from time to time in the name of, transferred to or held by the Trustee or under its control and subject to the terms of this deed.

"UK Eligible Employee" means any individual who at the Award Date:

(a) is an employee of a Constituent Company; and

- (b) is in such employment on:
 - (i) the date an Award of Free Shares is made;
 - (ii) where an Award of Investment Shares without an Offering Period (and any related Matching Shares) is made, the date of the deduction of Partnership Share Money; and
 - (iii) where an Award of Investment Shares with an Offering Period (and any related Matching Share Award) is made, the date of the first deduction of Partnership Share Money; and
- (c) has held employment with a "qualifying company" (within the meaning given to it in paragraph 17 of ITEPA Schedule 2) at all times during any relevant Qualifying Period; and
- (d) is a UK-resident tax payer (within the meaning set out at paragraph 8(2) of ITEPA Schedule 2);

"Unawarded Shares" means Shares held by the Trustee that have not been awarded to a Participant pursuant to the Provisions, or having been so awarded, have been forfeited by the Participant in accordance with the Provisions.

3 Eligibility

3.1 Participation in other share incentive plans

For the purposes of Awards granted under this Schedule 2, if a person participates in an Award under the Plan in a Tax Year in which that person has already participated in an award of shares under one or more other plans that are ITEPA Schedule 2 SIPs and established by the Company or a Connected Company then the limits set out in:

- (a) paragraph 35 of ITEPA Schedule 2 (maximum annual award of Free Shares); and
- (b) paragraph 46 of ITEPA Schedule 2 (maximum amount of Partnership Share Money deductions);

will apply as if the Plan and other such plans were a single plan.

3.2 Excluded individuals

An individual is not eligible to participate in an Award where:

- (a) their participation is excluded by paragraphs 18 or 18A of ITEPA Schedule 2 (*maximum participation in other Schedule 2 SIPs or connected Schedule 2 SIPs in a Tax Year*); or
- (b) following the communication from the Administrator in accordance with section 4 (*Form of Invitation and Application*), the individual has notified the

Administrator that he or she does not wish the Trustee to appropriate Shares to him or her.

3.3 Identifying UK Eligible Employees

Whenever the Company intends to offer Plan Shares, the Administrator will identify all individuals who are not then participating in the Plan (and, if applicable, all UK Eligible Employees who have, since the Plan was last operated, revoked under paragraph 3.2(b) any notification previously sent to them) but who are expected to be UK Eligible Employees at the Award Date; and will communicate in writing with each of those individuals asking whether they wish to be a Participant.

4 Allocation of funds for purchase of shares

4.1 Source of funds

A Participating Company may at any time allocate funds for the purposes of the Plan in accordance with the Provisions, provided that it will only pay to the Trustee such sums as are required in connection with the acquisition of Free or Matching Shares by the Trustee for appropriation to UK Eligible Employees who are for the time being employed by that Participating Company.

4.2 Amount of funds

The amount of the funds to be allocated will be such amount (if any) as the Administrator may determine and notify to each Constituent Company save that in the case of any Subsidiary such amount (if any) will be determined by agreement between the Administrator and the directors of the Subsidiary.

4.3 Notification of Trustee

The amount of the funds will be notified in writing to the Trustee as soon as it has been determined and will be paid to the Trustee by the Participating Companies. The Administrator will also notify the Trustee of the number of Shares (if any) that are to be made available for subscription by the Trustee and the price at which those Shares are to be offered for subscription.

4.4 Acquisition of Shares by Trustee

The Trustee will apply the amount paid to it under paragraph 4.1 in the acquisition of Shares if and to the extent that Shares are offered to it and at the price notified to it pursuant to paragraph 4.3 and any balance will be applied in purchasing Shares from existing shareholders (and paying any stamp duty which arises as a result of that purchase, or other expenses of the Trustee incurred in operating the Plan).

5 Determination of initial market value

Before Shares are appropriated by the Trustee on any occasion, the Trustee will determine the Initial Market Value of such Shares in accordance with these Provisions.

6 Making of awards

6.1 Free Share Awards

The Administrator may at any time (subject always to paragraph 7) make an award of Free Shares in accordance with Part 1 of this Schedule 2.

6.2 Partnership Share Awards

The Administrator may at any time (subject always to paragraph 7) make arrangements to put in place Partnership Share Agreements in accordance with Part 2 of this Schedule 2.

6.3 Matching Share Awards

Where Partnership Share Agreements are to be or have been put in place, the Administrator may (subject always to paragraph 7) award Matching Shares in accordance with Part 3 of this Schedule 2.

6.4 Dividends

Each Free Share Agreement and Partnership Share Agreement will make provision (subject always to paragraph 7) in relation to dividends in accordance with Part 4 of this Schedule 2.

7 Obligations of participants

7.1 Contract for Plan Shares

Section 4.1(e) shall not apply to Awards granted under Schedule 2.

Subject to paragraph 7.2 each Participant is bound in contract with the Company:

- (a) to permit his Free Shares, Matching Shares and/or Dividend Shares (as the case may be) to remain in the hands of the Trustee throughout the relevant Holding Period;
- (b) not to assign, charge or otherwise dispose of the beneficial interest in his Plan Shares during the relevant Holding Period; and
- (c) if he directs the Trustee to transfer the ownership of his Plan Shares to him at any time during the Holding Period (or at any other time at which the Participant suffers a liability to income tax or NICs on his Plan Shares as a result of such a transfer), to pay to the Trustee before the transfer takes place a sum equal to such income tax and NICs to enable the Trustee to meet its PAYE obligations pursuant to paragraph 79 of ITEPA Schedule 2.

7.2 Holding Period

For the purposes of paragraph 7.1:

- (a) in relation to each Award of Free Shares or Matching Shares, the Holding Period is a period specified by the Administrator, of not less than 3 years beginning with the Award Date, and will be the same for all Participants who receive an Award at the same time. The Holding Period may not be increased in respect of Free Shares or Matching Shares already awarded under the Plan; and
- (b) in respect of Dividend Shares the Holding Period is the period of 3 years beginning with the relevant Acquisition Date. The Holding Period may not be increased in respect of Dividend Shares already awarded under the Plan.

7.3 Plan Shares and Company events

Section 7 (*Events affecting Share Capital*) shall not apply to Awards granted under Schedule 2.

Paragraph 7.1 does not prevent the Participant from directing the Trustee to:

- (a) accept an offer for any of their Free, Matching or Dividend Shares (in this Provision referred to as 'the Original Shares'), if such acceptance or agreement will result in a new holding, as defined in Section 126(1)(b) of the Taxation of Chargeable Gains Act 1992, being equated with the Original Shares for the purposes of capital gains tax; or
- (b) agree to a transaction affecting their Original Shares or such of them as are of a particular class, if the transactions would be entered into pursuant to a compromise, arrangement or scheme applicable to or affecting:
 - (i) all the ordinary share capital of the Company or, as the case may be, all the shares of the class in question; or
 - (ii) all the shares, or shares of the class in question, which are held by a class of shareholders identified otherwise than by reference to their employment or their participating in a plan that is a Schedule 2 SIP; or
- (c) accept an offer of cash, with or without other assets, for their Original Shares if the offer forms part of a general offer which is made to holders of shares of common stock of the Company and which is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of the Company, within the meaning of section 450 of the Corporation Tax Act 2010; or
- (d) accept an offer of a qualifying corporate bond (as construed in accordance with section 117 of the Taxation of Chargeable Gains Act 1992), whether alone or with cash or other assets or both, for his Original Shares if the offer forms part of a general offer which is made as mentioned in section 7.3(c).

8 Company reconstructions, amalgamations etc.

Section 7.2 (*Change of Control and Corporate Events*) shall not apply to Awards granted under Schedule 2.

In the event of a transaction relating to the Company that falls within the definition of "company reconstruction" in paragraph 86 of ITEPA Schedule 2, Plan Shares will be dealt with in accordance with paragraph 87 of ITEPA Schedule 2.

9 Rights Issues

Sections 7.1 (*Share Capital Variation*) and 7.3 (*Fractional Entitlements*) shall not apply to Awards granted under Schedule 2.

(a) Notification of Participants

In the event of the Company making an offer to its shareholders on a rights basis such offer will be extended to the Trustee in respect of the total number of Plan Shares. The Trustee will notify each Participant concerned of the rights that are attributable to his Plan Shares. A Participant will be at liberty to direct the Trustee to accept such offer in respect of all of his Plan Shares and subject to paragraph (b) any shares subscribed for by the Trustee under this Provision will be treated as Plan Shares in relation to any Participant and any cash arising from the disposal of rights (except insofar as used to accept the offer) will be accounted for to the relevant Participant (subject to deduction of any applicable income tax and NICs).

(b) Excluded events

Paragraph (a) does not apply:

- (i) to shares and securities allotted as the result of taking up a rights issue where the funds to exercise those rights were obtained otherwise than by virtue of the Trustee disposing of rights in accordance with this Provision; or
- (ii) where the rights to a share issue attributed to Plan Shares are different from the rights attributed to other ordinary shares of the Company.

10 Termination of plan

- 10.1 If the Plan is terminated pursuant to section 13.4 (*Termination of the Plan*), the Company will without delay following execution of a Plan Termination Notice provide a copy of the notice to the Trustee, HM Revenue & Customs and each individual who has Plan Shares or who has entered into a Partnership Share Agreement which was in force immediately before the Plan Termination Notice was issued.
- 10.2 On the issue of a Plan Termination Notice or on the expiry of the Trust Period paragraph 90 of ITEPA Schedule 2 will have effect.
- 10.3 If:

- (a) the Plan is no longer to be a Schedule 2 SIP by virtue of paragraph 81H of ITEPA Schedule 2 (*HM Revenue & Customs determining that the Plan does not or has not met the requirements of Schedule 2*) or paragraph 81I of ITEPA Schedule 2 (*the Company failing to pay a fine for less serious non-compliance with ITEPA Schedule 2*); or
- (b) a Plan Termination Notice is issued;

any Partnership Share Money held on behalf of UK Eligible Employees will be repaid to them as soon as practicable after the closure notice or default notice is given by HM Revenue & Customs to the Company or the Plan Termination Notice is notified to the Trustee, subject to deduction of income tax under PAYE and employee's NICs.

Part 1

1 FREE SHARES

1.1 Awarding Free Shares

Where the Administrator decides to offer Free Shares, it will notify the Trustee of the date that is to be the relevant Award Date. Those UK Eligible Employees who wish to participate in the Plan in respect of that offer will within the period of 14 days after receipt of the communication referred to in section 4 (or such further period as the Administrator may allow) enter into a Free Share Agreement in accordance with the provisions of this Part 1.

1.2 Number of Shares in Awards

Subject to paragraph 1.3, the number of Free Shares to be appropriated by the Trustee to each UK Eligible Employee on any Award Date will be determined by the Administrator and the entitlement of each UK Eligible Employee expressed as:

- (a) a fixed number of Shares; and/or
- (b) a fixed number of Shares determined by the Administrator by reference to a proportion of Salary; and/or
- (c) a fixed amount determined by the Administrator (whether by reference to a number of Shares or a number of Shares with a market value equal to a fixed sum).

1.3 Conditions for Awards

In respect of each Award of Free Shares:

- (a) in any year the basis of calculation of the entitlement of each UK Eligible Employee will be the same;
- (b) every UK Eligible Employee will be invited to participate on the same terms and that those who do participate must actually do so on the same terms; and
- (c) the aggregate of the Initial Market Value of the Free Shares appropriated to a UK Eligible Employee in any Tax Year will not exceed £3,600 or such other amount as may be prescribed from time to time for the purposes of paragraph 35 of ITEPA Schedule 2.

1.4 Free Shares to be held by Trustee

The Free Shares to which each UK Eligible Employee is entitled as a result of the determinations described above will be appropriated to the UK Eligible Employee at

the aggregate of their Initial Market Values but will be registered in the name of the Trustee on their behalf.

1.5 **Pro-rating of Shares with different rights**

In the event that the Trustee acquires Shares for appropriation on an Award Date and some of those Shares carry a right of any kind which is not carried by every other Share, then the Shares which carry such right will so far as practicable be appropriated pro rata according to the number of Shares appropriated to each UK Eligible Employee on the Award Date.

1.6 **Awards may be subject to Performance Allowances**

"Performance Allowances" means the criteria for an Award of Free Shares where:

- (a) whether Shares are awarded; or
- (b) the number or value of Shares awarded;

is conditional upon performance targets being met.

The number of Free Shares (if any) to be appropriated to each UK Eligible Employee on a given Award Date may be set by reference to such Performance Allowances as may be determined by the Administrator provided that:

- (a) the Administrator must adopt either Method 1 as set out in paragraph 1.8 or Method 2 as set out in paragraph 1.9 below;
- (c) the Performance Allowances will be determined by reference to such fair and objective criteria (performance targets) relating to business results as the Administrator may determine over such period as the Administrator may specify;
- (d) performance targets must be set for performance units of one or more employees;
- (e) for the purposes of an Award of Free Shares an employee must not be a member of more than one performance unit; and
- (f) all UK Eligible Employees must be subject to the same Performance Allowances determined in accordance with these Provisions.

1.7 **Notice to Participants of Performance Allowances**

Where the Administrator decides to use Performance Allowances in relation to an Award it will, as soon as reasonably practicable:

- (a) notify each UK Eligible Employee participating in the Award of the performance targets and measures which, under the Plan, will be used to determine the number or value of Free Shares awarded to him; and

- (b) notify all UK Eligible Employees of any Constituent Company, in general terms, of the performance targets and measures to be used to determine the number or value of Free Shares to be awarded to each Participant in relation to the Award.

1.8 **Performance Allowances: method 1**

By this method:

- (a) at least 20% of the Free Shares awarded in any performance period will be awarded without reference to performance;
- (b) the remaining Free Shares will be awarded by reference to performance; and
- (c) the highest number of Shares awarded to an individual by reference to performance in accordance with sub-paragraph (b) in any period will be no more than four times the highest number of shares awarded to an individual without reference to performance in accordance with sub-paragraph (a).

If this method 1 is used:

- (i) the Free Shares awarded without reference to performance (sub-paragraph (a)) will be awarded on the same terms mentioned in paragraph 1.2 as qualified by paragraph 1.3; and
- (ii) the Free Shares awarded by reference to performance (sub-paragraph (b)) need not be allocated on the same terms mentioned in paragraph 1.2 as qualified by paragraph 1.3.

1.9 **Performance Allowances: method 2**

By this method:

- (a) some or all Free Shares will be awarded by reference to performance;
- (b) the Award of Free Shares to UK Eligible Employees who are members of the same performance unit (as referred to in paragraph 1.6) will be made on the same terms mentioned in paragraph 1.2 as qualified by paragraph 1.3; and
- (c) Free Shares awarded to each performance unit will be treated as separate Awards.

1.10 **Forfeiture**

For the purposes of this sub-paragraph, "Forfeiture Period" means a period of no more than 3 years beginning with the date on which the relevant Free Shares are awarded to the Participant and specified in the relevant Free Share Agreement.

The Free Shares to be appropriated to each UK Eligible Employee on a given Award Date may at the Administrator's discretion be made subject to forfeiture (meaning that a Participant will cease to be beneficially entitled to them):

- (a) on the Participant ceasing to be in Relevant Employment at any time in the Forfeiture Period; and/or
- (b) on the Participant withdrawing the Free Shares from the Plan during the Forfeiture Period,

otherwise than by reason of death, injury, disability, redundancy, retirement, a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or the employing company of the Participant ceasing to be an Associated Company provided that the forfeiture of Free Shares will not be linked to the performance of any person or persons and the same provision for forfeiture will apply in relation to all Free Shares appropriated at the same award Date.

Part 2

2 INVESTMENT SHARES

2.1 Invitation to acquire Investment Shares

The Administrator may at any time invite every UK Eligible Employee to enter into a Partnership Share Agreement in accordance with the provisions of this Part 2 of Schedule 2 and will specify in the invitation (or other information issued with, or made available to UK Eligible Employees at the same time as, the invitation):

- (a) if the Administrator in its absolute discretion has so decided, the maximum aggregate number of Shares to be included in all Awards of Investment Shares in response to that invitation;
- (b) if the Administrator has so determined, the minimum amount to be deducted under a Partnership Share Agreement on any occasion (provided that the amount must be the same in relation to all Partnership Share Agreements entered into in response to invitations issued on that occasion and must not be greater than £10);
- (c) whether or not there is to be an Offering Period (which must not exceed 12 months) and if so:
 - (i) its length; and
 - (ii) whether the number of Shares acquired on behalf of each Participant will be determined by reference to:
 - (A) the Market Value of the Shares at the beginning of the Offering Period;
 - (B) the Market Value of the Shares on the Acquisition Date; or
 - (C) the lower of the Market Value of the Shares at the beginning of the Offering Period and the Market Value of the Shares on the Acquisition Date.

2.2 Forfeiture

Investment Shares must not be subject to any provision under which they may be forfeited while the Participant is in Relevant Employment.

2.3 Contents of Partnership Share Agreement

Each Partnership Share Agreement must contain:

- (a) a notice as prescribed under paragraph 48 of ITEPA Schedule 2 (*statement as to possible effect on Participant's entitlement to social security benefits, statutory sick pay and statutory maternity pay*);

- (b) an undertaking by the Company to notify each Eligible Employee of any restriction on the number of Shares to be included in an Award, which must be given:
 - (i) if there is no Offering Period, before the deduction of the Contributions relating to the Award; and
 - (ii) if there is an Offering Period, before the beginning of the Offering Period relating to the Award; and
- (c) if there is to be an Offering Period, its length and which Market Value (from the alternatives specified in paragraph 2.1(c)(ii)) will be applied to determine the number of Investment Shares to be acquired.

2.4 Authority for deductions from salary

Subject to the Provisions, the amount of Contributions will be the amount that an Eligible Employee specifies in the Partnership Share Agreement that they are willing to allow to be deducted from Salary (whether paid monthly or at other intervals).

2.5 Limits on deductions

The maximum permitted amount of Contributions deducted from the Participant's Salary may not exceed the lowest of:

- (a) £1,800 in any Tax Year or such other amount as may be prescribed from time to time for the purposes of paragraph 46 of ITEPA Schedule 2;
- (b) where there is an Offering Period, 10% of the total of the payments of Salary made to such employee over that Offering Period or if there is no Offering Period, 10% of the Salary payment from which the deduction is made; and
- (c) such maximum amount (if any) as may have been determined by the Administrator for this purpose and specified in every invitation issued to UK Eligible Employees on that occasion.

Any amount deducted in excess of that allowed by this paragraph 2.5 must be paid over to the relevant Eligible Employee, subject to both deduction of income tax under PAYE and employee's NICs, as soon as practicable.

2.6 Investment of Partnership Share Money

The Company and Participating Companies will, as soon as practicable after deduction from a Participant's Salary, pass Contributions to the Trustee who will place such Contributions into an account with any bank as defined in section 1120 of the Corporation Tax Act 2010, in particular:

- (a) a person following within section 1120(2)(b) of the Corporation Tax Act 2010; or

- (b) a firm falling within section 1120 (2)(c) of the Corporation Tax Act 2010;

until such money is either used to acquire Investment Shares on the relevant Acquisition Date, or, in accordance with the Plan, returned to the Eligible Employee from whose salary such Contributions have been deducted. The Trustee will account for any interest arising on this invested money to the Eligible Employee from whose Salary the Contributions have been deducted.

2.7 Purchasing Investment Shares

- (a) If there is no Offering Period the Trustee will acquire Investment Shares on behalf of an Eligible Employee using the Contributions on the Acquisition Date (which must be within 30 days of the last date on which the relevant deduction of Contributions was made, or such later date as may be allowed by paragraph 50(4) of ITEPA Schedule 2) and the number of Shares awarded to each employee will be determined in accordance with the Market Value of the Shares on that date.
- (b) If there is an Offering Period, the Trustee will acquire Shares on behalf of the Eligible Employee using the Contributions on the Acquisition Date (which must be within 30 days of the end of the Offering Period, or such later date as may be allowed by paragraph 52(5) of ITEPA Schedule 2) and the number of Shares acquired on behalf of each Participant will be determined by reference to the method for setting Market Value of the Shares specified in the relevant invitation (or related information) in accordance with paragraph 2.1(c)(ii).

2.8 Refund of surplus deductions

Any surplus Contributions remaining after the acquisition of Shares by the Trustee:

- (a) may, with the agreement of the Participant, be carried forward to the next Offering Period or the next deduction as the case may be; and
- (b) in any other case, will be paid over to the Participant, subject to deduction of both income tax under PAYE and employee's NICs, as soon as practicable.

2.9 Stopping and re-starting deductions

A Participant may stop and re-start deductions as follows:

- (a) A Participant may at any time give notice in writing to the Company to stop deductions under a Partnership Share Agreement.
- (b) A Participant who has stopped deductions may subsequently give notice in writing to the Company to re-start deductions under a Partnership Share Agreement, but may not make up deductions that have been missed.
- (c) If the Award of Investment Shares is subject to one or more Offering Periods, a Participant may not re-start deductions more than once in any Offering Period.

- (d) Subject to a later date being specified in the notice:
- (i) the Company must within 30 days of receiving a notice under sub-paragraph(a), ensure that no further deductions are made by it under the Partnership Share Agreement; and
 - (ii) the Company must on receiving a notice under sub-paragraph (a) re-start deductions under the Partnership Share Agreement not later than the date of the first deduction due under the Partnership Share Agreement more than 30 days after receipt of the notice under sub-paragraph (a).

2.10 Withdrawing from a Partnership Share Agreement

An Eligible Employee may withdraw from a Partnership Share Agreement at any time by notice in writing to the Company. Unless a later date is specified in the notice, such a notice will take effect 30 days after the Company receives it. Any Contributions then held on behalf of an Eligible Employee will be paid over to that Eligible Employee as soon as practicable. This payment will be subject to deduction of income tax under PAYE and employee's NICs.

2.11 Withdrawal of Investment Shares from the Plan

Once Investment Shares have been awarded to an Eligible Employee, he or she may at any time withdraw any or all Investment Shares from the Plan.

2.12 Participant leaving

If a Participant ceases to be in Relevant Employment for any reason Investment Shares will be withdrawn from the Plan and any Contributions held by the Trustee on his or her behalf will, subject to deduction of income tax under PAYE and employee's NICs, be repaid to the Participant as soon as reasonably practicable.

2.13 Roll-over of Partnership Share Agreement

If a transaction occurs during an Offering Period which results in a new holding of shares being equated for the purposes of capital gains tax with any of the Shares to be acquired under the Partnership Share Agreement, the employee may agree that the Partnership Share Agreement will have effect after that transaction as if it were an agreement for the purchase of shares comprised in the new holding.

Part 3

2 MATCHING SHARES

3.1 Requirements for Matching Shares

Matching Shares must:

- (a) be Shares of the same class and carrying the same rights as the Investment Shares to which they relate;
- (b) subject to paragraph 3.3, be awarded on the same day that the Investment Shares to which they relate are acquired on behalf of the Participant; and

be awarded to all UK Eligible Employees on exactly the same basis.

3.2 Contents of Partnership Share Agreement

Each Partnership Share Agreement will:

- (a) set out the basis on which a Participant is entitled to Matching Shares in accordance with this Part 3 of Schedule 2; and
- (b) specify the ratio of Matching Shares to Investment Shares for the time being offered by the Company (provided that such ratio may not exceed 2:1) and the circumstances and manner in which the ratio may be changed by the Administrator.

The Administrator may vary the ratio before Investment Shares are acquired. Each Participant must be notified of the terms of any such variation before his Investment Shares are awarded under the Partnership Share Agreement.

3.3 No fractions of Matching Shares

If the number of Investment Shares on that day are not sufficient to allow a whole Matching Share to be appropriated, the match will be made when sufficient Investment Shares have been acquired to allow at least one Matching Share to be appropriated.

3.4 Notification of Participants

As soon as practicable after any Matching Shares have been appropriated by the Trustee to a Participant, the Trustee will give the Participant notice of the appropriation specifying the number and description of Matching Shares appropriated, their Initial Market Value, the Award Date and the applicable Holding Period.

3.5 Forfeiture

- (a) For the purposes of this sub-paragraph, "Forfeiture Period" means a period of no more than 3 years beginning with the date on which the relevant Matching Shares are awarded to the Participant and specified in the relevant Partnership Share Agreement.
- (b) Matching Shares to be appropriated to each Eligible Employee on a given Award Date may at the Administrator's discretion be made subject to forfeiture (meaning that a Participant will cease to be beneficially entitled to them) in the circumstances set out at paragraph (c) provided that:
 - (i) the forfeiture of Matching Shares will not be linked to the performance of any person or persons; and
 - (ii) the same provision for forfeiture will apply in relation to all Matching Shares included in the same Award of Matching Shares.
- (c) The circumstances in which the Administrator may determine that Matching Shares may be subject to forfeiture are:
 - (i) on the Participant ceasing to be in Relevant Employment at any time in the Forfeiture Period; and/or
 - (ii) on the Participant withdrawing the Matching Shares from the Plan in the Forfeiture Period; and/or
 - (iii) on the Participant withdrawing the Investment Shares in respect of which those Matching Shares were awarded from the Plan within the Forfeiture Period;

otherwise than by reason of death, injury, disability, redundancy, retirement, a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or the employing company of the Participant ceasing to be an Associated Company.

Part 4

3 DIVIDEND SHARES

Section 6 shall not apply to Awards granted under Schedule 2.

4.1 Rights and obligations of Dividend Shares

Each Free Share Agreement or Partnership Share Agreement as appropriate will set out the rights and obligations of the Participant in respect of dividends paid on Plan Shares.

4.2 How dividends are dealt with

The Administrator may in its absolute discretion:

- (a) direct that the Trustee apply all dividends attributable to Shares awarded to Participants to acquire Dividend Shares;
- (b) direct the Trustee to pay all dividends attributable to Shares awarded to Participants in cash to such Participants;
- (c) offer Participants the choice of either (a) or (b) above; or
- (d) revoke any direction for reinvestment of cash dividends.

4.3 Requirements for Dividend Shares

Dividend Shares must be shares:

- (a) of the same class and carrying the same rights as the Shares in respect of which the dividend is paid; and
- (b) which are not subject to any provision for forfeiture while the Participant is in Relevant Employment.

4.4 Nature of Dividend Shares

For the purposes of this Part 4, Dividend Shares are those acquired under this Plan and those acquired under any other plan established by the Company or any Associated Company that is a Schedule 2 SIP. In exercising its powers in relation to the acquisition of Dividend Shares the Trustee must treat Participants fairly and equally.

4.5 Acquisition of Dividend Shares

Where Dividend Shares are to be acquired the Trustee will apply all of the cash dividend to acquire Shares on behalf of the Participant on the Acquisition Date (which must be within 30 days of the date on which the relevant dividend was received by the Trustee, or such later date as may be allowed by paragraph 66(4) of ITEPA

Schedule 2). The number of Dividend Shares acquired on behalf of each Participant will be determined by the Market Value of the Shares on the relevant Acquisition Date.

4.6 **Carry-forward of excess amounts**

Any amount that is not reinvested:

- (a) because the amount of the cash dividend is insufficient to acquire a whole Share; or
- (b) because there is an amount remaining after acquiring the Dividend Shares;

may be retained by the Trustee and carried forward to be added to the amount of the next cash dividend to be reinvested, but will be held so as to be separately identifiable for the purposes of paragraph 4.7.

4.7 **Repayment of amounts not reinvested**

If:

- (a) the Participant ceases to be in Relevant Employment; or
- (b) a Plan Termination Notice is issued;

any cash dividend that has not been reinvested will be paid to the Participant as soon as practicable after the end of that period or on cessation of Relevant Employment, as applicable. On making such a payment, the Participant will be provided with the information specified in paragraph 80 of ITEPA Schedule 2.

4.8 **Dividend Shares ceasing to be Plan Shares**

Where a Participant is charged to tax in the event of Dividend Shares ceasing to be subject to the Plan, he will be provided with the information specified in paragraph 80(4) of ITEPA Schedule 2.

4.9 **Participant leaving**

If a Participant ceases to be in Relevant Employment for any reason any cash dividend that has not been reinvested will be paid to the Participant as soon as practicable.

SCHEDULE 3

Rest of World Employees

1 Purpose of this Schedule

The provisions of this Schedule 3 shall govern invitations made to join the Plan and awards of Free Shares and/or Matching Shares to ROW Eligible Employees who are not resident in either the United States of America or the United Kingdom.

Defined terms used in this Schedule shall have the meaning in Section 1.

1.1 Non-transferability of Awards

Every Award granted pursuant to this Schedule 3 is personal to the Participant to whom it is granted and must not be transferred, assigned, charged or mortgaged (except on death). If a Participant does or attempts to do any of these things, voluntarily or involuntarily, the Award will lapse.

2 Free Shares

2.1 Awards of Free Shares

The Administrator will award Free Shares to each Participant who is an Eligible Employee on the Award Date on the basis set out paragraph 2.3.

2.2 Limit

If the Plan is operated to provide Free Shares each Participant may be awarded, in any 12-month period, Free Shares with a maximum Initial Market Value of \$10,000, or such other amount as determined by the Administrator in respect of that award of Free Shares.

2.3 Terms relating to Free Shares

Before the award of Free Shares, the Administrator will determine the following:

- (a) the method for calculating the number of Free Shares to be awarded for that operation of the Plan, including any Performance Measures which apply;
- (b) the Holding Period; and
- (c) any forfeiture provisions under paragraph 2.5.

2.4 Notification by the Company

- (a) At the time of, or as soon as practicable after, the award of Free Shares, the Company will notify each Participant of the award. The Company will include in the notification:
 - (i) the number of Free Shares subject to the award; and
 - (ii) the applicable Holding Period.
- (b) If Performance Measures apply to the availability, number or value of Free Shares, the Company will notify Participants of the Performance Measures.

2.5 Forfeiture of Free Shares

Subject to paragraph 5.2(a), the Administrator may decide that an award of Free Shares will be made on the basis that, if Participants cease to be employed by a Group Company for any reason during the Holding Period (other than by reason of paragraph 5.2 or a Change of Control), they will forfeit the award.

3 Investment Shares

3.1 Amount of Contributions

- (a) The Administrator will determine the maximum Contribution which will apply in relation to the operation of the Plan from time to time and any such maximum will be set out in the application or otherwise notified to the Participant. If Contributions exceed these limits, the excess amount will be repaid to the Participant as soon as practicable.
- (b) The Administrator may from time to time set a minimum amount for Contributions on any occasion, irrespective of the intervals at which Contributions are to be made. If there is such a minimum amount, it will be set out in the application or otherwise notified to the Participant.

3.2 Making Contributions

- (a) The Contributions will be deducted from the Participant's Salary on each pay date after the Participant's application has taken effect pursuant to paragraph 3.2(d) or on such other date(s) as the Administrator may decide.
- (b) Where local rules prohibit deductions from Salary, the Participant may be permitted to make regular cash or other payments on such terms as the Administrator determine.
- (c) If the Administrator so decide from time to time, the Participant may be permitted to make a lump sum Contribution on such terms as the Administrator determine. Any lump sum Contribution permitted by the Administrator, when added to the Contributions made under paragraph 3.2(a) or 3.2(b) must not exceed the limits set for the relevant operation of the Plan pursuant to paragraph 3.1(a).

- (d) All Contributions are made after any deductions for tax and social security contributions.
- (e) If a Participant ceases to be a Participating Employee, no further Contributions will be made.

3.3 Holding Contributions

The Contributions will be held by the Nominee, the Company or any relevant Participating Company in a non-interest bearing account until they are used to acquire Investment Shares on the Participant's behalf or returned to the Participant pursuant to the Provisions.

3.4 Use of Contributions on leaving the Plan

Where a Participant:

- (a) gives notice to withdraw from the Plan under paragraph 3.8; or
- (b) ceases to be a Participating Employee,

any Contributions held for the Participant will be used to acquire Investment Shares on the next allocation date, unless local rules require such Contributions to be returned to the Participant.

3.5 Excess Contributions

If so specified in the application, the Company may carry forward and add to the amount of the next Contribution any Contributions, or part thereof, not used to acquire Investment Shares. Alternatively, the Company may pay the excess to the Participant as soon as practicable.

3.6 Stopping and re-starting Contributions

A Participant may give notice to the Company to stop making Contributions. He may also give notice to the Company at any time that he wishes Contributions to re-start. If the Plan is operated with an Offering Period, the Administrator may determine whether Participants can re-start their Contributions more than once in an Offering Period. If such a determination is made, it will be set out in the application form or otherwise notified to the Participant.

The Company will arrange for Contributions to stop within 30 days of receiving the notice, unless a later date is specified. The Company will arrange for Contributions to re-start by the next due date for Contributions which is more than 30 days after receipt of the notice to re-start, unless a later date is specified.

3.7 Varying Contributions

A Participant may vary his rate of Contributions with the agreement of the Administrator on such terms as set by the Administrator from time to time. The new

rate of Contributions will take effect no later than the first pay date following 30 days after receiving the notice, unless a later date is specified. The Administrator may set a limit on the number of times a Participant is permitted to vary his rate of Contributions.

3.8 Withdrawal from agreement to make Contributions

A Participant may at any time withdraw from the agreement to make Contributions made at the time of joining the Plan. The Participant will be treated as having stopped Contributions 30 days after the receipt of the notice, unless a later date is specified. Any Contributions held at the time of withdrawal will be used as set out in paragraph 3.4. Any Investment Shares already allocated will not cease to be subject to the Plan as a result of such a withdrawal.

3.9 Currency conversion

Contributions made in a currency other than US dollars (including any limits which apply to Contributions pursuant to paragraph 3.1) will be converted into US dollars on such date or dates as determined by the Administrator and at the average of the spot buying and selling rates with the relevant currency in comparable amounts by any clearing bank chosen by the Administrator on any date chosen by the Administrator.

3.10 Limit on Investment Shares

The Administration may from time to time set a limit on the number of Shares which may be allocated as Investment Shares. If there is such a limit, it will be set out in the application or otherwise notified to the Participant.

3.11 Offering Periods

The Administrator may determine in relation to any operation of the Plan whether there will be an Offering Period.

The start and end of any Offering Period must be set out in the application or notified to the Participant before the start of the operation of the Plan. The Offering Period must start on or before the date of the first Contribution.

If, during the Offering Period, a transaction occurs in relation to the Shares which results in a new holding of shares being equated with the Shares, the Contributions held may, with the agreement of the Participant, be used at the end of the Offering Period to acquire new shares. By submitting the application form, the Participant agrees to the acquisition of new shares.

3.12 Allocating Investment Shares – Offering Period

- (a) If there is an Offering Period, the Company must allocate Investment Shares to each Participant within 30 days of the end of that period.

- (b) Where Shares are issued for the allocation, the number of Investment Shares allocated to each Participant will be calculated using the Market Value of the Shares on the date of allocation.
- (c) Where the Nominee purchases Shares for allocation, the number of Investment Shares allocated to each Participant will be calculated using the average price actually paid by the Nominee for the Shares.

3.13 Allocating Investment Shares – no Offering Period

- (a) If there is no Offering Period, the Company must allocate Investment Shares to the Participants by a date set by the Company.
- (b) Where Shares are issued for the allocation, the number of Investment Shares allocated to each Participant will be calculated using the Market Value of the Shares on the date of allocation.
- (c) Where the Nominee purchases Shares for allocation, the number of Investment Shares allocated to each Participant will be calculated using the average price actually paid by the Nominee for the Shares.

3.14 Allocation eligibility requirement

The Company will not allocate Investment Shares to an individual who is not a Participating Employee at the following times:

- (a) where there is no Offering Period, at the time the related Contributions are made; and
- (b) where there is an Offering Period, at the time the related first Contribution is made.

3.15 Notification by the Company

As soon as practicable after the allocation of Investment Shares to a Participant, the Company will notify that Participant. The notification will include the number of Investment Shares and the amount of Contributions used to acquire the Investment Shares.

3.16 Holding Investment Shares

The Administrator will determine the basis upon which the Investment Shares will be held on behalf of the Participant and whether the legal ownership of the Investment Shares will be transferred to the Nominee, or whether the share certificate (or other documents of title) of the Investment Shares will be lodged with the Nominee without the need for a change in the registered owner of the Shares. The basis upon which the Investment Shares are held may vary from country to country.

3.17 Access to Investment Shares

Subject to section 11.2 (*Withholding*) and with regard to paragraph 4.4, a Participant may, at any time, direct the Nominee to transfer legal title of Investment Shares to him or as he may direct.

4 Matching Shares

4.1 Ratio of Matching Shares to Investment Shares

The Administrator may determine that a Participant who is allocated Investment Shares will be granted an award of Matching Shares. The Administrator will set the ratio of Matching Shares to Investment Shares from time to time and the applicable ratio will be notified to the Participant. If the Administrator decide to change the ratio, the Participants will be notified.

4.2 Awards of Matching Shares

The Company will award Matching Shares to each Participant on the basis set out in the application or as otherwise notified to the Participant and will award Matching Shares on the same day as the related Investment Shares are allocated to Participants unless the Administrator determine that Matching Shares will be awarded on another day.

However, the Administrator may decide to operate the Plan on the basis that, if any Investment Shares allocated are not sufficient to result in the award of a Matching Share on the same day, the match will be made when sufficient Investment Shares have been allocated.

4.3 Notification by the Company

At the time of, or as soon as practicable after, the award of Matching Shares, the Company will notify each Participant of the award. The Company will include in the notification:

- (a) the number of Matching Shares subject to the award; and
- (b) the applicable Holding Period.

4.4 Forfeiture of Matching Shares

- (a) Subject to paragraph 5.2, the Administrator may decide that an award of Matching Shares will be made on the basis that, if a Participant ceases to be an employee of a Group Company for any reason during the Holding Period applicable to an award of Matching Shares, they will forfeit that Matching Share award.
- (b) The Administrator may also decide that an award of Matching Shares will be made on the basis that a Participant who takes out of the Plan the Investment Shares in respect of which the Matching Shares were awarded (other than by reason of paragraph 5.2(a) or on a Change of Control) during the Holding

Period will forfeit the Matching Share award relating to those Investment Shares.

5 **Transfer of Shares**

5.1 End of Holding Period

Free Shares and/or Matching Shares will, subject to section 5.2 Vest at the end of the Holding Period and the Shares will be issued or transferred to the Participant or his nominee within 30 days of Vesting.

5.2 Leaving Employment

- (a) If a Participant ceases Employment for any of the reasons set out in paragraph 5.2(b) the following will apply:
 - (i) all the Participant's Plan Shares will cease to be subject to the Plan and will be transferred to him or her (or, in the case of death, to the Participant's personal representative) or his or her nominee as soon as practicable: and
 - (ii) Free Shares and/or Matching Shares will Vest and the Shares will be transferred to the Participant or their nominee within 60 days of leaving Employment. In the case of death, the Shares will be transferred to the Participant's personal representative as soon as practicable.
- (b) The reasons are:
 - (i) ill-health, injury or disability (established to the satisfaction of the Participant's employer);
 - (ii) retirement with the agreement of the Participant's employer;
 - (iii) the Participant's employing company ceasing to be a Group Company;
 - (iv) a transfer of the undertaking, or part of the undertaking, in which the Participant works to a person which is not a Group Company;
 - (v) redundancy;
 - (vi) death; and
 - (vii) any other reason, if the Board so decides in any particular case.
- (c) If a Participant ceases Employment for any other reason paragraph 4.2(a) will apply unless the Participant's Free Share and/or Matching Shares are subject to forfeiture in which case the provisions imposed by the Administrator pursuant to paragraphs 2.4 and 4.4 shall apply.

[FORM OF LETTER OF APPOINTMENT]

PRIVATE AND CONFIDENTIAL

[Name of Director]
LivaNova Plc
20 Eastbourne Terrace
London
W2 6LG

18 July 2018

Dear [Name of Director],

Letter of appointment

The Shareholders of LivaNova PLC (the “**Company**”) on 12 June 2018 [elected] / [re-elected] you as a member of the board of directors (the “Board”). In addition, the Board on 18 July 2018 has appointed you as a member of [Name of Committee] / [and as chair of [Name of Committee]]. Your appointment commenced on 12 June 2018 and shall continue until the conclusion of the Company’s 2019 Annual General Meeting, subject to the earlier termination by the Company:

- 1) For disqualification for any of the grounds set out in Article 30.1 of the Company’s articles of association, as amended from time to time; and/or
- 2) On the grounds of the commission by you of any serious or repeated breach or non-observance of your obligations to the Company (which includes an obligation not to breach your statutory, fiduciary or common-law duties).

You will be expected to devote such time as is necessary for the proper performance of your duties

By accepting this appointment, you agree that this letter is a contract for services and is not a contract of employment and you confirm that you are not subject to any restrictions which prevent you from holding office as a director.

Your appointment with the Company and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and you and the Company irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this appointment or its subject matter or formation (including non-contractual disputes or claims).

Please indicate your acceptance of these terms by signing and returning the attached copy of this letter to the Board.

Yours sincerely

For and on behalf of LIVANOVA PLC

Name: Damien McDonald
Title: Director and Chief Executive Officer

I confirm and agree to the terms of my appointment as a non-executive director of LivaNova PLC as set out in this letter.

Name: *[Name of Director]*
Date:

CERTIFICATION

I, Damien McDonald, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the quarterly period ended June 30, 2018, filed by LivaNova PLC and its consolidated subsidiaries;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2018

/s/ DAMIEN MCDONALD

Damien McDonald

Chief Executive Officer

(Principal Executive Officer)

CERTIFICATION

I, Thad Huston, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the quarterly period ended June 30, 2018, filed by LivaNova PLC and its consolidated subsidiaries;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2018

/s/ THAD HUSTON

Thad Huston

Chief Financial Officer

(Principal Financial Officer)

**CERTIFICATION OF THE
CHIEF EXECUTIVE OFFICER AND
CHIEF FINANCIAL OFFICER
OF LIVANOVA PLC
PURSUANT TO 18 U.S.C. SECTION 1350**

Each of Damien McDonald, Chief Executive Officer of LivaNova PLC (the “Company”), and Thad Huston, Chief Financial Officer of the Company, each hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

(a) the Quarterly Report on Form 10-Q of the Company and its consolidated subsidiaries for the quarter ended June 30, 2018, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(b) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 2, 2018

/s/ DAMIEN MCDONALD

Damien McDonald
Chief Executive Officer
(Principal Executive Officer)

/s/ THAD HUSTON

Thad Huston
Chief Financial Officer
(Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as a part of this report or on a separate disclosure document.