

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 March 31, 2019

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)

(44) (0) 20 3325 0660

Registrant's telephone number, including area code:

98-1268150

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

W2 6LG

(Zip Code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Ordinary Shares - £1.00 par value per share	LIVN	NASDAQ Global Market

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 every Interactive Data File required to be submitted 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 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	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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 April 29, 2019
48,320,894

LIVANOVA PLC
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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 Cardiopulmonary product systems: S5[®] heart-lung machine, S3[®] heart-lung machine, Inspire[™], Heartlink[™], XTRA[®] Autotransfusion System, 3T Heater-Cooler[®] Connect[™] 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 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;
- cyber-attacks or other disruptions to our information technology systems;
- failure to comply with applicable U.S. laws and regulations, including federal and state privacy and security laws and regulations;
- failure to comply with applicable non-U.S. laws 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, 2018 (“2018 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 months ended March 31, 2019 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 2018 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 condensed consolidated financial statements is U.S. dollars.

PART I. FINANCIAL INFORMATION

Item 1. *Financial Statements*

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

	Three Months Ended March 31,	
	2019	2018
Net sales	\$ 250,801	\$ 250,398
Costs and expenses:		
Cost of sales - exclusive of amortization	84,254	84,598
Product remediation	2,947	3,715
Selling, general and administrative	125,704	104,161
Research and development	43,575	31,752
Merger and integration expenses	3,251	2,960
Restructuring expenses	2,533	1,881
Amortization of intangibles	9,316	8,801
Operating (loss) income from continuing operations	(20,779)	12,530
Interest income	249	447
Interest expense	(1,662)	(2,111)
Gain on acquisition	—	11,484
Foreign exchange and other gains (losses)	729	(273)
(Loss) income from continuing operations before tax	(21,463)	22,077
Income tax (benefit) expense	(6,614)	3,893
Losses from equity method investments	—	(362)
Net (loss) income from continuing operations	(14,849)	17,822
Net loss from discontinued operations, net of tax	—	(4,549)
Net (loss) income	\$ (14,849)	\$ 13,273
Basic (loss) income per share:		
Continuing operations	\$ (0.31)	\$ 0.37
Discontinued operations	—	(0.10)
	\$ (0.31)	\$ 0.27
Diluted (loss) income per share:		
Continuing operations	\$ (0.31)	\$ 0.36
Discontinued operations	—	(0.09)
	\$ (0.31)	\$ 0.27
Shares used in computing basic (loss) income per share	48,246	48,324
Shares used in computing diluted (loss) income per share	48,246	49,187

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 March 31,	
	2019	2018
Net (loss) income	\$ (14,849)	\$ 13,273
Other comprehensive (loss) income:		
Net change in unrealized loss on derivatives	(10)	(1,257)
Tax effect	2	302
Net of tax	(8)	(955)
Foreign currency translation adjustment, net of tax	(4,229)	10,553
Total other comprehensive (loss) income	(4,237)	9,598
Total comprehensive (loss) income	\$ (19,086)	\$ 22,871

See accompanying notes to the condensed consolidated financial statements

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

	March 31, 2019	December 31, 2018
ASSETS		
<i>Current Assets:</i>		
Cash and cash equivalents	\$ 50,776	\$ 47,204
Accounts receivable, net of allowance of \$11,484 at March 31, 2019 and \$11,598 at December 31, 2018	247,059	256,135
Inventories	161,267	153,535
Prepaid and refundable taxes	47,225	46,852
Prepaid expenses and other current assets	34,275	29,571
Total Current Assets	540,602	533,297
Property, plant and equipment, net	185,947	191,400
Goodwill	952,117	956,815
Intangible assets, net	758,528	770,439
Operating lease assets (Note 10)	57,070	—
Investments	24,762	24,823
Deferred tax assets	74,876	68,146
Other assets	5,642	4,781
Total Assets	\$ 2,599,544	\$ 2,549,701
LIABILITIES AND STOCKHOLDERS' EQUITY		
<i>Current Liabilities:</i>		
Current debt obligations	\$ 39,442	\$ 28,794
Accounts payable	80,199	76,735
Accrued liabilities and other	150,536	124,285
Current litigation provision liability	252,051	161,851
Taxes payable	9,834	22,530
Accrued employee compensation and related benefits	90,248	82,551
Total Current Liabilities	622,310	496,746
Long-term debt obligations	141,850	139,538
Contingent consideration	147,080	161,381
Litigation provision liability	42,000	132,210
Deferred tax liabilities	73,143	68,189
Long-term operating lease liabilities (Note 10)	47,227	—
Long-term employee compensation and related benefits	22,551	25,264
Other long-term liabilities	16,577	22,635
Total Liabilities	1,112,738	1,045,963
Commitments and contingencies (Note 11)		
<i>Stockholders' Equity:</i>		
Ordinary Shares, £1.00 par value: unlimited shares authorized; 49,329,119 shares issued and 48,318,226 shares outstanding at March 31, 2019; 49,323,418 shares issued and 48,205,783 shares outstanding at December 31, 2018	76,151	76,144
Additional paid-in capital	1,707,117	1,705,111
Accumulated other comprehensive loss	(28,713)	(24,476)
Accumulated deficit	(266,428)	(251,579)
Treasury stock at cost, 1,010,893 shares at March 31, 2019 and 1,117,635 shares at December 31, 2018	(1,321)	(1,462)
Total Stockholders' Equity	1,486,806	1,503,738
Total Liabilities and Stockholders' Equity	\$ 2,599,544	\$ 2,549,701

See accompanying notes to the condensed consolidated financial statements

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

	Three Months Ended March 31,	
	2019	2018
Operating Activities:		
Net (loss) income	\$ (14,849)	\$ 13,273
Non-cash items included in net (loss) income:		
Depreciation	7,547	8,334
Amortization	9,316	8,802
Stock-based compensation	6,872	6,680
Deferred tax expense (benefit)	1,993	(922)
Losses from equity method investments	—	1,573
Gain on acquisition	—	(11,484)
Amortization of income taxes payable on inter-company transfers of property	1,411	1,979
Remeasurement of contingent consideration to fair value	9,457	673
Other	3,354	(1,230)
Changes in operating assets and liabilities:		
Accounts receivable, net	7,064	9,109
Inventories	(8,292)	(6,305)
Other current and non-current assets	(23,377)	(16,691)
Accounts payable and accrued current and non-current liabilities	6,384	5,697
Restructuring reserve	(4,906)	905
Net cash provided by operating activities	1,974	20,393
Investing Activities:		
Acquisition, net of cash acquired	—	(77,629)
Purchases of property, plant and equipment and other	(5,741)	(5,846)
Proceeds from asset sales	100	123
Net cash used in investing activities	(5,641)	(83,352)
Financing Activities:		
Change in short-term borrowing, net	11,061	15,503
Proceeds from short-term borrowing (maturities greater than 90 days)	—	20,000
Proceeds from long-term debt obligations	2,973	—
Proceeds from exercise of stock options	119	1,607
Debt issuance costs	(1,750)	—
Shares repurchased from employees for minimum tax withholding	(4,606)	(4,919)
Other	(208)	(144)
Net cash provided by financing activities	7,589	32,047
Effect of exchange rate changes on cash and cash equivalents	(350)	2,261
Net increase (decrease) in cash and cash equivalents	3,572	(28,651)
Cash and cash equivalents at beginning of period	47,204	93,615
Cash and cash equivalents at end of period	\$ 50,776	\$ 64,964

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 months ended March 31, 2019 and March 31, 2018, 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, 2018 has been derived from audited financial statements contained in our 2018 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 months ended March 31, 2019 and are not necessarily indicative of the results that may be expected for the year ending December 31, 2019. The financial information presented herein should be read in conjunction with the audited consolidated financial statements and notes thereto accompanying our 2018 Form 10-K.

The accompanying condensed consolidated financial statements have been prepared on the basis that LivaNova will continue as a going concern. As further discussed in "Note 11. Commitments and Contingencies," the Company recorded a \$294.1 million litigation provision liability as of December 31, 2018 based on management's best estimate, of which \$161.9 million is anticipated to be paid during 2019 and the majority of the remainder is expected to be paid in the first half of 2020. In connection with our assessment of going concern considerations as of the issuance date of our 2018 Form 10-K in accordance with ASU 2014-15, "Disclosures of Uncertainties about an Entity's Ability to Continue as a Going Concern," the Company determined that collectively the payments of the \$294.1 million liability and the \$23.3 million of current debt obligations represented a condition that raised substantial doubt about our ability to continue as a going concern. However, on February 25, 2019, the Company received \$350 million in aggregate financing commitments pursuant to a commitment letter from Bank of America Merrill Lynch International DAC, Barclays Bank PLC, BNP Paribas and Intesa Sanpaolo S.P.A for a debt facility (the "Commitment Letter"). We concluded that the anticipated execution of the debt facility agreement based on the Commitment Letter, when combined with current and anticipated future operating cash flows, alleviated the substantial doubt about the Company's ability to continue as a going concern over the 12-month period beginning from the issuance date of our 2018 Form 10-K. On March 26, 2019, we entered into a facility agreement that provides a multicurrency term loan facility in an aggregate principal amount of \$350 million and terminates on March 26, 2022 (the "Facility Agreement").

Based on our current business plan, we believe that our existing cash and cash equivalents, future cash generated from operations and borrowings will be sufficient to fund our expected operating needs, working capital requirements, R&D opportunities, capital expenditures, obligations anticipated for the litigation involving our 3T device and debt service requirements over the 12-month period beginning from the issuance date of these financial statements. Accordingly, there are no conditions present as of the issuance date of these financial statements that raise substantial doubt about our ability to continue as a going concern. Our liquidity could be adversely affected by a material deterioration of future operating results.

Reclassifications

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.

Gross profit, as previously presented for the three months ended March 31, 2018, excluded amortization of certain intangible assets. For the three months ended March 31, 2018, \$3.1 million of such amortization expense should have been included in cost of sales. The Company has determined that this misclassification error was not material to any prior annual or interim periods. For comparability among periods, the Company no longer presents gross profit within its consolidated statements of income (loss) for all periods.

Significant Accounting Policies

Our significant accounting policies are detailed in "Note 2. Basis of Presentation, Use of Accounting Estimates and Significant Accounting Policies" and "Note 3. Revenue Recognition" of our 2018 Form 10-K. Changes to our accounting policies as a result of adopting the new lease accounting standard are discussed below.

On January 1, 2019, we adopted ASC Update ("ASU") No 2016-02, *Leases*, including subsequent related accounting updates (collectively referred to as "Topic 842"), which supersedes the previous accounting model for leases. We adopted the standard

using the modified retrospective approach with an effective date as of January 1, 2019. Prior year financial statements were not recast under the new standard. In addition, we elected the package of practical expedients permitted under the transition guidance within the new standard, which among other things, allowed us to carry forward our historical assessment of whether contracts are or contain leases and lease classification. We also elected the practical expedient to account for lease and non-lease components together as a single combined lease component, which is applicable to all asset classes. We did not, however, elect the practical expedient related to using hindsight in determining the lease term as this was not relevant following our election of the modified retrospective approach.

In addition, we elected certain practical expedients on an ongoing basis, including the practical expedient for short-term leases pursuant to which a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize a lease liability and operating lease asset for leases with a term of 12 months or less and that do not include an option to purchase the underlying asset that the lessee is reasonably certain to exercise. We have applied this accounting policy to all asset classes in our portfolio, and will recognize the lease payments for such short-term leases within profit and loss on a straight-line basis over the lease term.

Furthermore, from a lessor perspective, certain of our agreements that allow the customer to use, rather than purchase, our medical devices will meet the criteria of being a lease in accordance with the new standard. While the amount of revenue and expenses recognized over the contract term will not be impacted, the timing of revenue and expense recognition will be impacted depending upon lease classification. We enacted appropriate changes to our business processes, systems and internal controls to support recognition and disclosure under the new standard.

We determine if an arrangement is or contains a lease at inception. Operating lease assets and operating lease liabilities are recognized based on the present value of the future minimum lease payments over the lease term at the latter of our lease standard effective date for adoption or the lease commencement date. Variable lease payments, such as common area rent maintenance charges and rent escalations not known upon lease commencement, are not included in determination of the minimum lease payments and will be expensed in the period in which the obligation for those payments is incurred. As most of our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at commencement in determining the present value of future payments. The incremental borrowing rate represents an estimate of the interest rate we would incur at lease commencement to borrow an amount equal to the lease payments on a collateralized basis over the term of a lease within a particular currency environment. We used the incremental borrowing rate available nearest to our adoption date for leases that commenced prior to that date. The operating lease asset also includes any lease payments made in advance and excludes lease incentives. Our lease terms may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense for minimum lease payments is recognized on a straight-line basis over the lease term.

For additional information refer to “Note 10. Leases.”

Note 2. Business Combinations

ImThera Medical, Inc.

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 in the European market, and an FDA pivotal study is ongoing in the U.S.

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 in the amount 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.

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	\$	<u>216,656</u>

- (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 included in gain on acquisition on our condensed consolidated statement of income for the three months ended March 31, 2018.

The purchase price allocation for the ImThera acquisition was finalized during the first quarter of 2019 and is presented in the following table, 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 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 on the condensed consolidated balance sheets at March 31, 2019 and December 31, 2018.
- (3) The amounts are presented net of 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.

The results of the ImThera acquisition added \$0.1 million in revenue and \$1.0 million in operating losses during the three months ended March 31, 2018. Additionally, we recognized ImThera acquisition-related expenses of approximately \$0.2 million for legal and valuation expenses during the three months ended March 31, 2018. 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>			

For a reconciliation of the beginning and ending balance of the contingent consideration refer to "Note 7. Fair Value Measurements."

TandemLife

TandemLife is focused on the delivery of leading-edge temporary life support systems, including cardiopulmonary and respiratory support solutions. TandemLife complements our Cardiovascular portfolio, and expands our existing line of cardiopulmonary products.

On April 4, 2018, we acquired CardiacAssist, Inc., doing business as TandemLife (“TandemLife”) for cash consideration of up to \$254 million. Cash of \$204 million was paid at closing with up to \$50 million in contingent consideration based on achieving regulatory milestones.

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>\$</u>	<u>243,861</u>

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

	Initial Purchase Price Allocation	Measurement Period Adjustments ⁽¹⁾	Adjusted Purchase Price Allocation
In-process research and development ^{(2) (3)}	\$ 110,977	\$ (3,474)	\$ 107,503
Trade names ⁽²⁾	11,539	—	11,539
Developed technology ⁽²⁾	6,387	—	6,387
Goodwill	118,917	(797)	118,120
Inventory	10,296	(140)	10,156
Other assets and liabilities, net	3,632	242	3,874
Deferred tax liabilities, net	(17,887)	4,169	(13,718)
Net assets acquired	<u>\$ 243,861</u>	<u>\$ —</u>	<u>\$ 243,861</u>

- (1) During the third quarter of 2018, measurement period adjustments were recorded based upon new information regarding future estimates of R&D expenses that existed as of the acquisition date. In addition, during the first quarter of 2019, measurement period adjustments related to finalizing our tax attributes were recorded, which resulted in an increase of \$3.3 million in deferred tax assets and a commensurate decrease to goodwill.
- (2) The amounts are included in intangible assets, net in the condensed consolidated balance sheets at March 31, 2019 and December 31, 2018. Trade names and developed technology are amortized over remaining useful lives of 15 and 2 years, respectively.
- (3) The fair value of 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.

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

For a reconciliation of the beginning and ending balance of the contingent consideration refer to “Note 7. Fair Value Measurements.”

Note 3. Discontinued Operations

In November 2017, we concluded that the sale of our Cardiac Rhythm Management (“CRM”) business franchise represented a strategic shift in our business that would have a major effect on future operations and financial results. Accordingly, the operating results of CRM are classified as discontinued operations on our condensed consolidated statements of income (loss) for all the periods presented in this Quarterly Report on Form 10-Q.

We completed the CRM Sale on April 30, 2018 to MicroPort Cardiac Rhythm B.V. and MicroPort Scientific Corporation for total cash proceeds of \$195.9 million, less cash transferred of \$9.2 million, subject to a closing working capital adjustment. In conjunction with the sale, we entered into transition services agreements to provide certain support services generally for 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 three months ended March 31, 2019, we recognized income of \$0.6 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 (loss).

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

	Three Months Ended March 31, 2018
Net sales	\$ 60,107
Costs and expenses:	
Cost of sales	22,138
Selling, general and administrative expenses	31,826
Research and development	11,281
Restructuring expenses	651
Revaluation gain on assets and liabilities held for sale	(1,213)
Operating loss from discontinued operations	(4,576)
Foreign exchange and other gains	79
Loss from discontinued operations, before tax	(4,497)
Income tax benefit	(1,159)
Losses from equity method investments	(1,211)
Net loss from discontinued operations	\$ (4,549)

Cash flows attributable to our discontinued operations are included in our condensed consolidated statements of cash flows. For the three months ended March 31, 2018, CRM’s capital expenditures were \$0.9 million and stock-based compensation expense was \$2.0 million.

Note 4. Restructuring

We initiate restructuring 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 were reported as restructuring expenses in the operating results of our condensed consolidated statements of income (loss).

Our 2015 and 2016 Reorganization Plans (the “Prior 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. The Prior Plans include the closure of the R&D facility in Meylan, France and consolidation of its R&D capabilities into the Clamart, France facility. We completed the Prior Plans during 2018.

In December 2018, we initiated a reorganization plan (the “2018 Plan”) in order to reduce manufacturing and operational costs associated with our Cardiovascular facilities in Saluggia and Mirandola, Italy and Arvada, Colorado. We estimate that the 2018 Plan will result in a net reduction of approximately 75 personnel and is expected to be completed by the end of 2019.

The following table presents the accruals, inventory obsolescence and other reserves, recorded in connection with our reorganization plans (in thousands):

	Employee Severance and Other Termination Costs	Other	Total
Balance at December 31, 2018	\$ 10,195	\$ 3,069	\$ 13,264
Charges	2,480	53	2,533
Cash payments and other	(7,289)	(2,945)	(10,234)
Balance at March 31, 2019	\$ 5,386	\$ 177	\$ 5,563

The following table presents restructuring expense by reportable segment (in thousands):

	Three Months Ended March 31,	
	2019	2018
Cardiovascular	\$ 422	\$ 1,341
Neuromodulation	432	6
Other	1,679	534
Total	\$ 2,533	\$ 1,881

Note 5. 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 CDC and FDA separately released safety notifications regarding 3T Heater-Cooler devices in response to which we issued a Field Safety Notice Update for U.S. users of our 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 canister and internal sealing upgrade on a customer-owned device. We are currently implementing the vacuum canister and internal sealing upgrade program in as many countries as possible until all devices are upgraded. On October 11, 2018, after review of information provided by us, the FDA concluded that we could commence the vacuum canister and internal sealing upgrade program in the U.S.

As part of the remediation plan, we continue to offer 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. Also, 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, 2018	\$	14,745
Adjustments		589
Remediation activity		(3,582)
Effect of changes in foreign currency exchange rates		(231)
Balance at March 31, 2019 ⁽¹⁾	\$	11,521

(1) At March 31, 2019, the product remediation liability balance is included within accrued liabilities and other on the condensed consolidated balance sheet.

We recognized product remediation expenses during the three months ended March 31, 2019, of \$2.9 million and \$3.7 million during the three months ended March 31, 2018. Product remediation expenses include internal labor costs, costs to remediate certain inspectional observations made by the FDA at our Munich facility and costs associated with the incorporation of the modification of the 3T device design into the next generation 3T device. These costs and related legal costs are expensed as incurred and are not included within the product remediation liability presented above. During the fourth quarter of 2018, we recognized a \$294.1 million liability related to the litigation involving the 3T device. Our related legal costs are expensed as incurred. For further information, please refer to “Note 11. Commitments and Contingencies.”

Note 6. Investments

The following table details the carrying value of our investments in equity securities of non-consolidated affiliates without readily determinable fair values for which we do not exert significant influence over the investee. These equity investments are reported at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or similar investment of the same issuer. These equity investments are included in investments on the condensed consolidated balance sheets (in thousands):

	March 31, 2019	December 31, 2018
Respicardia Inc. ⁽¹⁾	\$ 17,706	\$ 17,706
Ceribell, Inc.	3,000	3,000
Rainbow Medical Ltd.	1,099	1,119
MD Start II	1,123	1,144
Highlife S.A.S.	1,064	1,084
Other	770	770
	\$ 24,762	\$ 24,823

(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 by transvenously stimulating the phrenic nerve. We have a loan outstanding to Respicardia, with a carrying amount of \$0.6 million as of March 31, 2019 and December 31, 2018, which is included in prepaid expenses and other current assets in the condensed consolidated balance sheet.

Note 7. 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 three months ended March 31, 2019 and 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 as of March 31, 2019	Fair Value Measurements Using Inputs Considered as:		
		Level 1	Level 2	Level 3
Assets:				
Derivative assets - freestanding instruments (foreign currency exchange rate "FX")	\$ 228	\$ —	\$ 228	\$ —
	<u>\$ 228</u>	<u>\$ —</u>	<u>\$ 228</u>	<u>\$ —</u>
Liabilities:				
Derivative liabilities - designated as cash flow hedges FX	\$ 1,082	\$ —	\$ 1,082	\$ —
Derivative liabilities - designated as cash flow hedges (interest rate swaps)	738	—	738	—
Derivative liabilities - freestanding instruments FX	198	—	198	—
Contingent consideration ⁽¹⁾	189,382	—	—	189,382
	<u>\$ 191,400</u>	<u>\$ —</u>	<u>\$ 2,018</u>	<u>\$ 189,382</u>

	Fair Value as of December 31, 2018	Fair Value Measurements Using Inputs Considered as:		
		Level 1	Level 2	Level 3
Assets:				
Derivative assets - freestanding instruments (foreign currency exchange rate "FX")	\$ 236	\$ —	\$ 236	\$ —
	<u>\$ 236</u>	<u>\$ —</u>	<u>\$ 236</u>	<u>\$ —</u>
Liabilities:				
Derivative liabilities - designated as cash flow hedges (FX)	\$ 1,354	\$ —	\$ 1,354	\$ —
Derivative liabilities - designated as cash flow hedges (interest rate swaps)	865	—	865	—
Derivative liabilities - freestanding instruments (FX)	3,173	—	3,173	—
Contingent consideration ⁽¹⁾	179,911	—	—	179,911
	<u>\$ 185,303</u>	<u>\$ —</u>	<u>\$ 5,392</u>	<u>\$ 179,911</u>

(1) The contingent consideration liability represents contingent payments related to four completed acquisitions: Inversiones Drilltex SAS ("Drillex"), 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, 2018	\$ 179,911
Changes in fair value ⁽¹⁾	9,457
Effect of changes in foreign currency exchange rates	14
Total contingent consideration liability at March 31, 2019	189,382
Less current portion of contingent consideration liability at March 31, 2019	42,302
Long-term portion of contingent consideration liability at March 31, 2019	<u>\$ 147,080</u>

- (1) The change in fair value was primarily due to the impact of decreases in interest rates subsequent to December 31, 2018, which directly impacts the discount rate utilized in the valuation of contingent consideration.

Note 8. Financing Arrangements

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

	March 31, 2019	December 31, 2018	Maturity	Interest Rate
2017 European Investment Bank ⁽¹⁾	\$ 103,570	\$ 103,570	June 2026	3.59%
2014 European Investment Bank ⁽²⁾	46,745	47,606	June 2021	0.97%
Mediocredito Italiano ⁽³⁾	7,502	7,623	December 2023	0.50% - 3.02%
Bank of America, U.S.	2,973	—	January 2021	4.51%
Banca del Mezzogiorno ⁽⁴⁾	2,678	2,718	December 2019	0.50% - 3.07%
Region Wallonne	719	742	December 2023 and June 2033	0.75% - 1.24%
Mediocredito Italiano - mortgages and other	543	582	September 2021 and September 2026	0.77% - 1.27%
Total long-term facilities	164,730	162,841		
Less current portion of long-term debt	22,880	23,303		
Total long-term debt	\$ 141,850	\$ 139,538		

- (1) The 2017 European Investment Bank (“2017 EIB”) loan was obtained to support certain product development projects. The interest rate for the 2017 EIB loan is reset by the lender each principal payment date based on LIBOR. Interest payments are paid quarterly and principal payments are paid semi-annually.
- (2) The 2014 European Investment Bank (“2014 EIB”) loan was obtained in July 2014 to support certain product development projects. The interest rate for the 2014 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.
- (3) We obtained the Mediocredito Italiano Bank loan in July 2016 as part of the Fondo Innovazione Teconologica program implemented by the Italian Ministry of Education.
- (4) 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.

On March 26, 2019, we entered into a Facility Agreement with Bank of America Merrill Lynch International DAC, Barclays Bank PLC, BNP Paribas (London Branch) and Intesa Sanpaolo S.P.A. that provides a multicurrency term loan facility in an aggregate amount of \$350 million and terminates on March 26, 2022. As of March 31, 2019, there have been no borrowings drawn under the facility. Future borrowings under the facility will bear interest at a rate of LIBOR plus 1.6% for borrowings in U.S. dollars and EURIBOR plus 1.4% for euro-denominated borrowings. The proceeds of the facility are intended to be used towards general corporate and working capital purposes, excluding acquisitions, dividends and share buybacks. The facility became available on March 26, 2019, subject to satisfaction of certain customary conditions precedent including payment of certain upfront fees and evidence of cancellation and repayment in full of our \$70.0 million revolving credit facility from Barclays Bank PLC on or before the first utilization date. The Facility Agreement contains financial covenants that require LivaNova to maintain a maximum consolidated net debt to EBITDA ratio, a minimum interest coverage ratio and a maximum consolidated net debt to net worth ratio. LivaNova must also maintain a minimum amount of consolidated net worth. The Facility Agreement also contains customary representations and warranties, covenants, and events of default.

Revolving Credit

The outstanding principal amount of our short-term unsecured revolving credit agreements and other agreements with various banks was \$16.6 million and \$5.5 million, at March 31, 2019 and December 31, 2018, respectively, with interest rates ranging from 0.2% to 9.1% and loan terms ranging from 30 days to 180 days as of March 31, 2019.

Note 9. 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 exchange 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 on 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, changes in the fair value of the derivative will be 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 our condensed consolidated statements of income (loss) as shown in the tables below and interest rate swap gains and losses in AOCI are reclassified to interest expense on our condensed consolidated statements of income (loss). 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 and the gains or losses are reclassified into earnings. Cash flows from derivative contracts are reported as operating activities on our condensed consolidated statements of cash flows.

Freestanding FX Derivative Contracts

The gross notional amount of FX derivative contracts, not designated as hedging instruments, outstanding at March 31, 2019 and December 31, 2018 was \$185.1 million and \$320.2 million, respectively. These derivative contracts are designed to offset the FX effects in earnings of various intercompany loans, our 2014 EIB loan, and trade receivables. We recorded net gains for these freestanding derivatives of \$3.7 million for the three months ended March 31, 2019 and net losses of \$7.6 million for the three months ended March 31, 2018. These gains and losses are included in foreign exchange and other gains (losses) on our condensed consolidated statements of income (loss).

Cash Flow Hedges

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

Description of Derivative Contract	March 31, 2019	December 31, 2018
FX derivative contracts to be exchanged for British Pounds	\$ 7,176	\$ 9,629
FX derivative contracts to be exchanged for Japanese Yen	21,932	23,985
FX derivative contracts to be exchanged for Canadian Dollars	5,301	7,637
FX derivative contracts to be exchanged for Euros	19,574	29,768
Interest rate swap contracts	37,422	38,115
	<u>\$ 91,405</u>	<u>\$ 109,134</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	After-tax net loss in AOCI as of March 31, 2019	Amount Expected to be Reclassified to Earnings in Next 12 Months
FX derivative contracts	\$ (805)	\$ (805)
Interest rate swap contracts	(147)	(66)
	<u>\$ (952)</u>	<u>\$ (871)</u>

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

Description of Derivative Contract	Location in Earnings of Reclassified Gain or Loss	Three Months Ended March 31,			
		2019		2018	
		Gains Recognized in OCI	Gains (Losses) Reclassified from AOCI to Earnings	Gains Recognized in OCI	Gains Reclassified from AOCI to Earnings
FX derivative contracts	Foreign exchange and other gains	\$ 1,309	\$ 1,642	\$ 214	\$ 846
FX derivative contracts	SG&A	—	(310)	—	625
Interest rate swap contracts	Interest expense	—	(13)	—	—
		<u>\$ 1,309</u>	<u>\$ 1,319</u>	<u>\$ 214</u>	<u>\$ 1,471</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):

March 31, 2019	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	\$ 479
Interest rate swap contracts	Other assets	—	Other long-term liabilities	259
FX derivative contracts	Prepaid expenses and other current assets	—	Accrued liabilities	1,082
Total derivatives designated as hedging instruments		—		1,820
Derivatives Not Designated as Hedging Instruments				
FX derivative contracts	Prepaid expenses and other current assets	228	Accrued liabilities	198
Total derivatives not designated as hedging instruments		228		198
Total derivatives		<u>\$ 228</u>		<u>\$ 2,018</u>

December 31, 2018	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	\$ 536
Interest rate swap contracts	Other assets	—	Other long-term liabilities	329
FX derivative contracts	Prepaid expenses and other current assets	—	Accrued liabilities	1,354
Total derivatives designated as hedging instruments		—		2,219
Derivatives Not Designated as Hedging Instruments				
FX derivative contracts	Prepaid expenses and other current assets	236	Accrued liabilities	3,173
Total derivatives not designated as hedging instruments		236		3,173
Total derivatives		<u>\$ 236</u>		<u>\$ 5,392</u>

(1) For the classification of inputs used to evaluate the fair value of our derivatives, refer to “Note 7. Fair Value Measurements.”

Note 10. Leases

We have operating leases primarily for (i) office space, (ii) manufacturing, warehouse and research and development facilities and (iii) vehicles. Our leases have remaining lease terms up to 13 years, some of which include options to extend the leases, and some of which include options to terminate the leases at our sole discretion. The components of operating lease assets, liabilities and costs are as follows (in thousands):

Operating Lease Assets and Liabilities	March 31, 2019
Assets	
Operating lease right-of-use assets	\$ 57,070
Liabilities	
Accrued liabilities and other	\$ 10,779
Long-term operating lease liabilities	47,227
Total lease liabilities	<u>\$ 58,006</u>
Operating Lease Cost	
Operating lease cost	\$ 3,740
Variable lease cost	171
Short-term lease cost	86
Total lease cost	<u>\$ 3,997</u>

Contractual maturities of our lease liabilities as of March 31, 2019, are as follows (in thousands):

2019	\$	8,790
2020		10,428
2021		8,557
2022		7,499
2023		6,463
Thereafter		22,095
Total lease payments		63,832
Less: Amount representing interest		5,826
Present value of lease liabilities	\$	58,006

Lease Term and Discount Rate	March 31, 2019
Weighted Average Remaining Lease Term	7.7
Weighted Average Discount Rate	2.3%

Other Information (in thousands)	Three Months Ended March 31, 2019
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flows for leases	\$ 3,842

Operating lease assets obtained in exchange for lease liabilities	\$	465
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Disclosures Related to Periods Prior to Adoption of Topic 842

On January 1, 2019, we adopted Topic 842 using the modified retrospective adoption approach, as noted in “Note 1. Unaudited Condensed Consolidated Financial Statements.” As required and as previously disclosed in our 2018 Form 10-K, the following table summarizes our future minimum operating lease payments as of December 31, 2018 (in thousands):

Less than one year	\$	11,986
One to three years		21,031
Three to five years		14,998
Thereafter		20,943
Total	\$	68,958

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 Heater-Cooler 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, concurrent with the 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, including a vacuum canister and internal sealing upgrade program and a deep disinfection service. 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 the risk mitigation strategies described above. We are currently implementing the vacuum and sealing upgrade program in as many countries as possible until all devices are upgraded. On October 11, 2018, after review of information provided by us, the FDA concluded that we could commence the vacuum and sealing upgrade program in the U.S. Furthermore, we continue to offer 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 March 31, 2019, the product remediation liability was \$11.5 million. Refer to "Note 5. 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 April 30, 2019, we are aware of approximately 210 filed and unfiled 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 or concealment, unjust enrichment, and violations of various state consumer protection statutes.

The class action, filed in February 2016, 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. On March 29, 2019, we announced a settlement framework that provides for a comprehensive resolution of the personal injury cases pending in the multi-district litigation in U.S. federal court, the related class action pending in federal court, as well as certain cases in state courts across the United States. The agreement, which makes no admission of liability, is subject to certain conditions, including acceptance of the settlement by individual claimants and provides for a total payment of up to \$225 million to resolve the claims covered by the settlement, with up to \$135 million to be paid no earlier than July 2019 and the remainder in January 2020. However, cases in state courts in the U.S. and in jurisdictions outside the U.S. continue to progress. In the fourth quarter of 2018, we recognized a \$294.1 million provision, which represents our best estimate of the Company's liability for these matters. At March 31, 2019, the provision estimate remains unchanged. While the amount accrued represents our best estimate, the actual liability for resolution of these matters remains uncertain and may vary from our estimate.

Total coverage under the Company's product liability insurance policies is \$32.9 million, once the self-retention limit of \$11.0 million is met. While the Company has not currently recorded a receivable for recovery under the insurance policies as of March 31, 2019, the Company intends to pursue recovery under the policies in connection with the settlement of the litigation involving our 3T device.

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 to the Supreme Court. In addition, the Bankruptcy Court of Milan's decision has been appealed.

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 \$328,000 for legal fees. The Public Administrations appealed the 2016 Decision to the Court of Appeal of Milan. On March 5, 2019, the Court of Appeal issued a partial decision on the merits: the Court has declared Sorin/LivaNova jointly liable with SNIA for SNIA's environmental liabilities in an amount up to the fair value of the net worth received by Sorin because of the Sorin spin-off. Additionally the Court issued a separate order, staying the proceeding until a Panel of three experts is appointed to identify the environmental damages and the costs that the Public Administrations already has borne for the clean-up of the Sites to allow the Court to decide on the second claim of the Public Administrations, for a refund for the SNIA environmental liabilities.

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 before the Commercial Courts of Milan to the merger of Sorin and Cyberonics, Inc., the predecessor companies to LivaNova. The Court authorized the merger and the Public Administrations did not appeal that decision. The proceeding then continued as a civil case, with the Public Administrations seeking damages. The Commercial Court of Milan delivered a decision in October 2016, fully rejecting the Public Administrations' request and awarding us approximately €400,000 (approximately \$449,000 as of March 31, 2019) 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 annulled the penalty for frivolous litigation and reduced the overall contribution to legal fees to €84,000 (approximately \$94,000 as of March 31, 2019) for legal fees. The Public Administrations subsequently filed an appeal with the Supreme Court against the decision of the Court of Appeal of

Milan. The proceedings before the Supreme Court are presently pending, and no decision is expected in 2019. 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, Neuro and Cardiac Technologies LLC (“NCT”), a non-practicing entity, filed a complaint in the United States District Court for the Southern District of Texas asserting that the VNS Therapy System, when used with the SenTiva Model 1000 generator, infringes the claims of U.S. Patent No. 7,076,307 owned by NCT. The complaint requests damages that include a royalty, costs, interest, and attorneys’ fees. On September 13, 2018 and November 12, 2018, we petitioned the Patent Trial and Appeal Board of the U. S. Patent and Trademark Office (the “Patent Office”) for an *inter partes review* (“IPR”) of the validity of the ‘307 patent. The Patent Office declined to institute the IPR related to the September 13 petition, but the November 12 IPR is still pending. The Court has stayed the litigation pending the outcome of the remaining IPR proceeding. 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 on 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 \$115.2 million as of March 31, 2019), 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. On November 16, 2018, the Supreme Court returned the decisions for years 2005 and 2006 to the previous-level Court (Regional Tax Court) due to lack of substance of the motivation given in the 2nd level judgments that were appealed.

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 \$70.3 million as of March 31, 2019). 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 €17.3 million (approximately \$19.4 million) as of March 31, 2019.

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

The table below presents the condensed consolidated statement of stockholders' equity as of and for the three months ended March 31, 2019 and March 31, 2018 (in thousands):

	Ordinary Shares	Ordinary Shares - Amount	Additional Paid- In Capital	Treasury Stock	Accumulated Other Comprehensive (Loss) Income	Retained Deficit	Total Stockholders' Equity
December 31, 2018	49,323	\$ 76,144	\$ 1,705,111	\$ (1,462)	\$ (24,476)	\$ (251,579)	\$ 1,503,738
Stock-based compensation plans	6	7	2,006	141	—	—	2,154
Net loss	—	—	—	—	—	(14,849)	(14,849)
Other comprehensive loss	—	—	—	—	(4,237)	—	(4,237)
March 31, 2019	<u>49,329</u>	<u>\$ 76,151</u>	<u>\$ 1,707,117</u>	<u>\$ (1,321)</u>	<u>\$ (28,713)</u>	<u>\$ (266,428)</u>	<u>\$ 1,486,806</u>
December 31, 2017	48,290	\$ 74,750	\$ 1,735,048	\$ (133)	\$ 45,313	\$ (39,664)	\$ 1,815,314
Adoption of ASU No. 2016-16	—	—	—	—	—	(22,430)	(22,430)
Share issuances	300	422	—	(422)	—	—	—
Stock-based compensation plans	38	52	2,996	180	—	—	3,228
Net income	—	—	—	—	—	13,273	13,273
Other comprehensive income	—	—	—	—	9,597	—	9,597
March 31, 2018	<u>48,628</u>	<u>\$ 75,224</u>	<u>\$ 1,738,044</u>	<u>\$ (375)</u>	<u>\$ 54,910</u>	<u>\$ (48,821)</u>	<u>\$ 1,818,982</u>

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 three months ended March 31, 2019 and March 31, 2018 (in thousands):

	Change in Unrealized Gain (Loss) on Derivatives	Foreign Currency Translation Adjustments Gain (Loss) ⁽¹⁾	Total
As of December 31, 2018	\$ (944)	\$ (23,532)	\$ (24,476)
Other comprehensive income (loss) before reclassifications, before tax	1,309	(4,229)	(2,920)
Tax expense	(314)	—	(314)
Other comprehensive income (loss) before reclassifications, net of tax	995	(4,229)	(3,234)
Reclassification of gain from accumulated other comprehensive income (loss), before tax	(1,319)	—	(1,319)
Reclassification of tax expense	316	—	316
Reclassification of gain from accumulated other comprehensive income (loss), after tax	(1,003)	—	(1,003)
Net current-period other comprehensive loss, net of tax	(8)	(4,229)	(4,237)
As of March 31, 2019	\$ (952)	\$ (27,761)	\$ (28,713)
As of December 31, 2017	\$ (919)	\$ 46,232	\$ 45,313
Other comprehensive income before reclassifications, before tax	214	10,552	10,766
Tax benefit	(51)	—	(51)
Other comprehensive income before reclassifications, net of tax	163	10,552	10,715
Reclassification of gain from accumulated other comprehensive income, before tax	(1,471)	—	(1,471)
Reclassification of tax benefit	353	—	353
Reclassification of gain from accumulated other comprehensive income, after tax	(1,118)	—	(1,118)
Net current-period other comprehensive (loss) income, net of tax	(955)	10,552	9,597
As of March 31, 2018	\$ (1,874)	\$ 56,784	\$ 54,910

(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.

Note 13. Stock-Based Incentive Plans

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

	Three Months Ended March 31,	
	2019	2018
Service-based restricted stock units ("RSUs")	\$ 2,970	\$ 2,156
Service-based stock appreciation rights ("SARs")	2,008	1,348
Market performance-based restricted stock units	551	345
Operating performance-based restricted stock units	971	848
Employee stock purchase plan	372	—
Total stock-based compensation expense	\$ 6,872	\$ 4,697

During the three months ended March 31, 2019, 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 return for the three-year period ending December 31, 2021 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 December 31, 2021. Compensation expense related to awards granted during 2019 for the three months ended March 31, 2019 was \$0.1 million.

On January 1, 2019, we initiated the LivaNova Global Employee Share Purchase Plan (“ESPP”). Compensation expense related to the ESPP for the three months ended March 31, 2019 was \$0.4 million.

Stock-based compensation agreements issued during the three months ended March 31, 2019, representing potential shares and their weighted average grant date fair values by type follows (shares in thousands, fair value in dollars):

	Three Months Ended March 31, 2019	
	Shares	Weighted Average Grant Date Fair Value
Service-based SARs	577	\$ 31.40
Service-based RSUs	234	\$ 97.25
Market performance-based RSUs	43	\$ 101.10
Operating performance-based RSUs	43	\$ 97.25

Note 14. Income Taxes

Our effective income tax rate from continuing operations for the three months ended March 31, 2019 was 30.8% compared with 17.6% for the three months ended March 31, 2018. 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 months ended March 31, 2018, the increase in the effective tax rate for the three months ended March 31, 2019 was primarily attributable to a realized benefit from discrete tax items including the release of an uncertain tax position.

We operate in multiple jurisdictions throughout the world, and our tax returns are periodically audited or subjected to review by tax authorities. As a result, there is an uncertainty in income taxes recognized in our financial statements. Tax benefits totaling \$19.1 million and \$22.9 million were unrecognized as of March 31, 2019 and December 31, 2018, respectively. It is reasonably possible that, within the next twelve months, due to the settlement of uncertain tax positions with various tax authorities and the expiration of statutes of limitations, unrecognized tax benefits could decrease by up to approximately \$1.2 million.

We monitor income tax developments in countries where we conduct business. In 2017, the U.S. enacted the “Tax Cuts and Jobs Act” (the “Tax Act”). To determine the full effects of the Tax Act, we are awaiting the finalization of several proposed U.S. Treasury regulations that were issued during 2018, as well as additional regulations to be proposed and finalized pursuant to the U.S. Treasury’s expanded regulatory authority under the Tax Act. It is also possible that technical correction legislation concerning the Tax Act could retroactively affect tax liabilities for 2018. In addition, state legislative changes addressing conformity to the Tax Act are still pending.

Note 15. Net Income Per Share

Reconciliation of the shares used in the basic and diluted earnings per share computations for the three months ended March 31, 2019 and March 31, 2018 are as follows (in thousands):

	Three Months Ended March 31,	
	2019	2018
Basic weighted average shares outstanding	48,246	48,324
Add effects of share-based compensation instruments ⁽¹⁾	—	863
Diluted weighted average shares outstanding	48,246	49,187

(1) Excluded from the computation of diluted earnings per share for the three months ended March 31, 2019 and March 31, 2018 were stock options, SARs and restricted share units totaling 3.3 million and 0.8 million, because to include them would have been anti-dilutive under the treasury stock method.

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: Cardiovascular and Neuromodulation.

The Cardiovascular 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 includes temporary life support product kits that can include a combination of pumps, oxygenators, and cannulae.

Our 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 (“TRD”). 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. Our Neuromodulation segment 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.

“Other” includes corporate shared service expenses for finance, legal, human resources and information technology and corporate business development and New Ventures.

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: U.S., Europe, and Rest of world. The table below presents net sales by operating segment and geographic region (in thousands):

	Three Months Ended March 31,	
	2019	2018
Cardiopulmonary		
United States	\$ 39,123	\$ 38,445
Europe	35,561	36,870
Rest of world	46,886	49,815
	<u>121,570</u>	<u>125,130</u>
Heart Valves		
United States	4,356	6,536
Europe	10,513	12,116
Rest of world	10,804	12,390
	<u>25,673</u>	<u>31,042</u>
Advanced Circulatory Support		
United States	8,033	—
Europe	119	—
Rest of world	96	—
	<u>8,248</u>	<u>—</u>
Cardiovascular		
United States	51,512	44,981
Europe	46,193	48,986
Rest of world	57,786	62,205
	<u>155,491</u>	<u>156,172</u>
Neuromodulation		
United States	76,886	77,992
Europe	10,659	10,291
Rest of world	7,104	5,561
	<u>94,649</u>	<u>93,844</u>
Other		
	661	382
Totals		
United States	128,398	122,973
Europe ⁽¹⁾	56,852	59,277
Rest of world	65,551	68,148
Total ⁽²⁾	<u>\$ 250,801</u>	<u>\$ 250,398</u>

(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.

(2) No single customer represented over 10% of our consolidated net sales. No country's net sales exceeded 10% of our consolidated sales except for the U.S.

The table below presents a reconciliation of segment income from continuing operations to consolidated income from continuing operations before tax (in thousands):

Operating Income from Continuing Operations	Three Months Ended March 31,	
	2019	2018
Cardiovascular	\$ 989	\$ 10,258
Neuromodulation	21,631	38,734
Other	(28,299)	(22,820)
Total reportable segment (loss) income from continuing operations	(5,679)	26,172
Merger and integration expenses	3,251	2,960
Restructuring expenses	2,533	1,881
Amortization of intangibles	9,316	8,801
Operating (loss) income from continuing operations	(20,779)	12,530
Interest income	249	447
Interest expense	(1,662)	(2,111)
Gain on acquisition	—	11,484
Foreign exchange and other gains (losses)	729	(273)
(Loss) income from continuing operations before tax	\$ (21,463)	\$ 22,077

Assets by reportable segment are as follows (in thousands):

Assets	March 31, 2019	December 31, 2018
Cardiovascular	\$ 1,561,813	\$ 1,532,825
Neuromodulation	733,307	731,840
Other	304,424	285,036
Total assets	\$ 2,599,544	\$ 2,549,701

Capital expenditures by segment are as follows (in thousands):

Capital expenditures	Three Months Ended March 31,	
	2019	2018
Cardiovascular	\$ 3,551	\$ 3,131
Neuromodulation	403	347
Other	929	1,443
Discontinued operations	—	925
Total	\$ 4,883	\$ 5,846

The changes in the carrying amount of goodwill by reportable segment for the three months ended March 31, 2019 were as follows (in thousands):

	Neuromodulation	Cardiovascular	Other	Total
December 31, 2018	\$ 398,539	\$ 515,859	\$ 42,417	\$ 956,815
Measurement period adjustments	—	(3,326)	—	(3,326)
Foreign currency adjustments	216	(1,588)	—	(1,372)
March 31, 2019	\$ 398,755	\$ 510,945	\$ 42,417	\$ 952,117

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

PP&E	March 31, 2019	December 31, 2018
United States	\$ 67,611	\$ 68,862
Europe	108,391	112,376
Rest of world	9,945	10,162
Total	\$ 185,947	\$ 191,400

Note 17. Supplemental Financial Information

Inventories consisted of the following (in thousands):

	March 31, 2019	December 31, 2018
Raw materials	\$ 41,662	\$ 40,387
Work-in-process	21,934	15,999
Finished goods	97,671	97,149
	\$ 161,267	\$ 153,535

Inventories are reported net of the provision for obsolescence. This provision, which reflects normal obsolescence and includes components that are phased out or expired, totaled \$12.5 million and \$11.6 million at March 31, 2019 and December 31, 2018, respectively.

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

	March 31, 2019	December 31, 2018
Contingent consideration ⁽¹⁾	\$ 42,302	\$ 18,530
Legal and administrative costs	23,386	9,189
CRM purchase price adjustment payable to MicroPort Scientific Corporation	14,891	14,891
Operating lease liabilities ⁽²⁾	10,779	—
Product remediation ⁽³⁾	11,521	13,945
Other amounts payable to MicroPort Scientific Corporation	5,105	9,319
Restructuring related liabilities ⁽⁴⁾	4,396	9,393
Provisions for agents, returns and other	4,549	4,934
Derivative contract liabilities ⁽⁵⁾	1,759	5,063
Other accrued expenses	31,848	39,021
	\$ 150,536	\$ 124,285

(1) Refer to “Note 7. Fair Value Measurements”

(2) Refer to “Note 10. Leases”

(3) Refer to “Note 5. Product Remediation Liability”

(4) Refer to “Note 4. Restructuring”

(5) Refer to “Note 9. Derivatives and Risk Management”

As of March 31, 2019 and December 31, 2018, contract liabilities of \$5.5 million and \$4.8 million, respectively, are included within accrued liabilities and other and other long-term liabilities on the condensed consolidated balance sheets.

Note 18. New Accounting Pronouncements

Adoption of New Accounting Pronouncements

The following table provides a description of our adoption of new Accounting Standards Updates (“ASUs”) issued by the FASB and the impact of the adoption on our condensed financial statements:

Issue Date & Standard	Description	Date of Adoption	Effect on Financial Statements or Other Significant Matters
<u>February 2016</u> ASU No. 2016-02, <i>Leases (Topic 842)</i> and subsequent amendments	The standard requires lessees to recognize most leases on the balance sheet as lease liabilities with corresponding right-of-use (“ROU”) assets and to provide enhanced disclosures. Furthermore, from a lessor perspective, certain of our agreements that allow the customer to use, rather than purchase, our medical devices met the criteria of being a lease in accordance with the new standard.	January 1, 2019	Adoption of the new standard resulted in the recognition of ROU assets and lease liabilities of approximately \$60 million as of January 1, 2019. Refer to “Note 10. Leases.”
<u>June 2018</u> ASU No. 2018-07, Compensation—Stock Compensation (Topic 718): <i>Improvements to Nonemployee Share-Based Payment Accounting</i>	This update simplifies the accounting for non-employee share-based payment transactions.	January 1, 2019	There was no material impact to our condensed consolidated financial statements as a result of adopting this ASU.

Future Adoption of New Accounting Pronouncements

The following table provides a description of future adoptions of new accounting standards that may have an impact on our financial statements when adopted:

Issue Date & Standard	Description	Projected Date of Adoption	Effect on Financial Statements or Other Significant Matters
<u>June 2016</u> ASU No. 2016-13, <i>Financial Instruments—Credit Losses</i> (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 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. Early adoption is permitted.	January 1, 2020	We are currently evaluating the effect this standard will have on our condensed consolidated financial statements and related disclosures.
<u>January 2017</u> ASU No. 2017-04, <i>Intangibles-Goodwill and Other</i> (Topic 350): <i>Simplifying the Test for Goodwill Impairment</i>	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. Early adoption is permitted.	January 1, 2020	We are currently evaluating the effect this standard will have on our condensed consolidated financial statements and related disclosures.
<u>August 2018</u> ASU No. 2018-13, <i>Fair Value Measurement</i> (Topic 820): <i>Changes to the Disclosure Requirements for Fair Value Measurement</i>	This update removes, modifies and adds certain disclosure requirements related to fair value measurements. Early adoption is permitted.	January 1, 2020	We do not expect the adoption of this update to have a material effect on our condensed consolidated financial statement disclosures.
<u>August 2018</u> ASU No. 2018-14, <i>Compensation—Retirement Benefits—Defined Benefit Plans—General</i> (Subtopic 715-20): <i>Changes to the Disclosure Requirements for Defined Benefit Plans</i>	This update adds and removes certain disclosure requirements related to defined benefit plans. This ASU is to be implemented on a retrospective basis for all periods presented with early adoption permitted.	January 1, 2021	We do not expect the adoption of this update to have a material effect on our condensed consolidated financial statement disclosures.
<u>August 2018</u> ASU No. 2018-15, <i>Intangibles—Goodwill and Other—Internal-Use Software</i> (Subtopic 350-40): <i>Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract</i>	This update clarifies and aligns the accounting for implementation costs for hosting arrangements with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. This ASU is to be applied either retrospectively or prospectively with early adoption permitted.	January 1, 2020	We do not expect the adoption of this update to have a material effect on our condensed consolidated financial statements.

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 2018 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 2018 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, England. 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 Cardiovascular 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 a closing working capital adjustment. The results of operations of CRM are reflected as discontinued operations for all periods presented in this Quarterly Report on Form 10-Q. Refer to "Note 3. Discontinued Operations" to the condensed consolidated financial statements in this Quarterly Report on Form 10-Q.

Business Franchises

LivaNova is comprised of two principal business franchises, which are also our reportable segments: Cardiovascular and Neuromodulation, corresponding to our primary therapeutic areas. Other corporate activities include corporate shared service expenses for finance, legal, human resources, information technology and New Ventures.

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.

Cardiovascular Update

Our Cardiovascular business franchise is engaged in the development, production and sale of cardiopulmonary products, heart valves and advanced circulatory support products. 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 includes temporary life support product kits that can include a combination of pumps, oxygenators, and cannulae.

Product Remediation Plan

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 and issued inspectional observations on FDA's Form-483 applicable to our Munich, Germany facility.

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. For further information, please refer to "Note 5. Product Remediation Liability" in our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

Product Liability

The Company is currently involved in litigation involving our 3T device. As of April 30, 2019, we are aware of approximately 210 filed and unfiled claims worldwide, with the majority of the claims in various federal or state courts throughout the United States. On March 29, 2019, we announced a settlement framework that provides for a comprehensive resolution of the personal injury cases pending in the multi-district litigation in U.S. federal court, the related class action pending in federal court, as well as certain cases in state courts across the United States. The agreement, which makes no admission of liability, is subject to certain conditions, including acceptance of the settlement by individual claimants and provides for a total payment of up to \$225 million to resolve the claims covered by the settlement, with up to \$135 million to be paid no earlier than July 2019 and the remainder in January 2020. However, cases in state courts in the U.S. and in jurisdictions outside the U.S. continue to progress. In the fourth quarter of 2018, we recognized a \$294.1 million provision, which represents our best estimate of the Company's liability for these matters. At March 31, 2019, the provision estimate remains unchanged. For further information refer to "Note 11. Commitments and Contingencies."

Heart Valves

In February 2019, we announced that Japan's Ministry of Health, Labour and Welfare granted national reimbursement for the Perceval sutureless aortic heart valve to treat aortic valve disease.

Neuromodulation Update

Our Neuromodulation business franchise designs, develops and markets neuromodulation therapy for the treatment of drug-resistant epilepsy, TRD and obstructive sleep apnea. We are also focused on the development and clinical testing of the VITARIA System for treating heart failure through vagus nerve stimulation.

Depression

In February 2019, we announced that the U.S. Centers for Medicare & Medicaid Services ("CMS") finalized its National Coverage Determination ("NCD") for the LivaNova Vagus Nerve Stimulation Therapy ("VNS Therapy") System for TRD. This final decision initiates coverage for Medicare beneficiaries through Coverage with Evidence Development ("CED") when offered in a CMS-approved, double-blind, randomized, placebo-controlled trial with a follow-up duration of at least one year, as well as the coverage of VNS Therapy device replacement. The CED also includes the possibility to extend the study to a prospective longitudinal study.

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 2018 Form 10-K, refer to "Significant Accounting Policies" within "Note 1. Unaudited Condensed Consolidated Financial Statements" 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

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 and began the process of negotiating the future terms of the UK's relationship with the EU. Brexit could adversely affect UK, regional (including European) and worldwide economic and market conditions and could contribute to instability in global financial and foreign exchange markets, including volatility in the value of the British Pound and Euro. We have foreign exchange exposure management programs designed to help minimize the impact from foreign currency exchange rate movements. For the three

months ended March 31, 2019 and 2018, net sales generated from our European operations constituted approximately 22.7% and 23.7%, respectively, of total net sales.

Negotiations between the UK and the EU continue about provisions of the withdrawal agreement. Unless the deadline is further extended, the UK will leave the EU on October 31, 2019. Although the long-term effects of Brexit will depend on any agreements the UK makes to retain access to the EU markets, Brexit has created additional uncertainties that may ultimately result in new regulatory costs and challenges for medical device companies and increased restrictions on imports and exports throughout Europe. This could adversely affect our ability to conduct and expand our operations in Europe and may have an adverse effect on our overall business, financial condition and results of operations. For additional information on how Brexit could affect our business, see Part I, Item 1A Risk Factors—*“The UK’s vote in favor of withdrawing from the EU could lead to increased market volatility and make it more difficult for us to do business in Europe or have other adverse effects on our business”* of our 2018 Form 10-K.

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 ultimately 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 U.S., 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 change materially, Brexit may have a material adverse impact on our future financial results and results of operations. We continue to monitor and assess the potential impact of this event.

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 group finance exemptions (“GFE”) 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. On April 2, 2019, the EC concluded that “when financing income from a foreign group company, channeled through an offshore subsidiary, is financed with UK connected capital and there are no UK activities involved in generating the finance profits, the group finance exemption is justified and does not constitute State aid under EU rules.” However, in relation to Significant People Functions, “when financing income from a foreign group company, channeled through an offshore subsidiary, derives from UK activities, the group finance exemption is not justified and constitutes State aid under EU rules.” HMRC has stated that they do not consider the timing and form of the UK’s exit from the EU will have a practical impact on the requirement to recover the alleged aid. Within the coming weeks, HMRC will provide details as to how it will be recovering the amounts required by the decision. Based upon our assessment of the issue and the limited level of UK activities involved in our financing, no uncertain tax position reserve has been recognized related to this matter.

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 months ended March 31, 2019, as compared to the three months ended March 31, 2018.

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

	Three Months Ended March 31,	
	2019	2018
Net sales	\$ 250,801	\$ 250,398
Costs and expenses:		
Cost of sales - exclusive of amortization	84,254	84,598
Product remediation	2,947	3,715
Selling, general and administrative	125,704	104,161
Research and development	43,575	31,752
Merger and integration expenses	3,251	2,960
Restructuring expenses	2,533	1,881
Amortization of intangibles	9,316	8,801
Operating (loss) income from continuing operations	(20,779)	12,530
Interest income	249	447
Interest expense	(1,662)	(2,111)
Gain on acquisition	—	11,484
Foreign exchange and other gains (losses)	729	(273)
(Loss) income from continuing operations before tax	(21,463)	22,077
Income tax (benefit) expense	(6,614)	3,893
Losses from equity method investments	—	(362)
Net (loss) income from continuing operations	(14,849)	17,822
Net loss from discontinued operations, net of tax	—	(4,549)
Net (loss) income	\$ (14,849)	\$ 13,273

Net Sales

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

	Three Months Ended March 31,		
	2019	2018	% Increase (Decrease)
Cardiopulmonary			
United States	\$ 39,123	\$ 38,445	1.8 %
Europe	35,561	36,870	(3.6)%
Rest of world	46,886	49,815	(5.9)%
	<u>121,570</u>	<u>125,130</u>	<u>(2.8)%</u>
Heart Valves			
United States	4,356	6,536	(33.4)%
Europe	10,513	12,116	(13.2)%
Rest of world	10,804	12,390	(12.8)%
	<u>25,673</u>	<u>31,042</u>	<u>(17.3)%</u>
Advanced Circulatory Support			
United States	8,033	—	—
Europe	119	—	—
Rest of world	96	—	—
	<u>8,248</u>	<u>—</u>	<u>—</u>
Cardiovascular			
United States	51,512	44,981	14.5 %
Europe	46,193	48,986	(5.7)%
Rest of world	57,786	62,205	(7.1)%
	<u>155,491</u>	<u>156,172</u>	<u>(0.4)%</u>
Neuromodulation			
United States	76,886	77,992	(1.4)%
Europe	10,659	10,291	3.6 %
Rest of world	7,104	5,561	27.7 %
	<u>94,649</u>	<u>93,844</u>	<u>0.9 %</u>
Other			
	<u>661</u>	<u>382</u>	<u>73.0 %</u>
Totals			
United States	128,398	122,973	4.4 %
Europe ⁽¹⁾	56,852	59,277	(4.1)%
Rest of world	65,551	68,148	(3.8)%
Total	<u>\$ 250,801</u>	<u>\$ 250,398</u>	<u>0.2 %</u>

(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 March 31,		
	2019	2018	% Change
Cardiovascular	\$ 989	\$ 10,258	(90.4)%
Neuromodulation	21,631	38,734	(44.2)%
Other	(28,299)	(22,820)	24.0 %
Total reportable segment income from continuing operations ⁽¹⁾	<u>\$ (5,679)</u>	<u>\$ 26,172</u>	(121.7)%

(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.

Cardiovascular

Cardiovascular net sales decreased \$0.7 million or 0.4% for the three months ended March 31, 2019 compared to the three months ended March 31, 2018. This decrease was primarily due to decreased cardiopulmonary and heart valve sales of \$3.6 million and \$5.4 million, respectively, offset by an increase in advanced circulatory support sales of \$8.2 million due to the inclusion of the operating results of TandemLife starting from the acquisition date in April 2018. Cardiopulmonary sales of \$121.6 million were positively impacted by double-digit growth in heart-lung machines, as customers continue to upgrade from our legacy S3 device to our current S5 device, and strong growth in oxygenators, but were more than offset by the impact of exiting of a distribution agreement on January 1, 2019 that accounted for \$7.8 million in sales during the three months ended March 31, 2018 and unfavorable foreign currency exchange rate fluctuations during the three months ended March 31, 2019. Heart valve sales of \$25.7 million were negatively impacted by declines in sales of mechanical and tissue heart valves and unfavorable foreign currency exchange rate fluctuations during the three months ended March 31, 2019.

Cardiovascular operating income decreased \$9.3 million or 90.4% for the three months ended March 31, 2019 compared to the three months ended March 31, 2018 primarily due to increased R&D investments and increased legal costs associated with our 3T device.

Neuromodulation

Neuromodulation net sales increased \$0.8 million or 0.9% for the three months ended March 31, 2019 compared to the three months ended March 31, 2018 as strong growth in the Europe and Rest of world regions was mostly offset by unexpected weakness in the U.S. market principally due to competitive dynamics and sales force turnover.

Neuromodulation operating income decreased \$17.1 million or 44.2% for the three months ended March 31, 2019 compared to the three months ended March 31, 2018 primarily due to increased marketing expenses and increased R&D expenses associated with our Sentiva VNS Therapy System, TRD and heart failure.

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 March 31,		
	2019	2018	Change
Cost of sales - exclusive of amortization	33.6%	33.8%	(0.2)%
Product remediation	1.2%	1.5%	(0.3)%
Selling, general and administrative	50.1%	41.6%	8.5 %
Research and development	17.4%	12.7%	4.7 %
Merger and integration expenses	1.3%	1.2%	0.1 %
Restructuring expenses	1.0%	0.8%	0.2 %
Amortization of intangibles	3.7%	3.5%	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 months ended March 31, 2019 compared to the three months ended March 31, 2018 primarily due to additional litigation expenses primarily related to our 3T devices, U.S. investments in a direct to consumer campaign for epilepsy, the impact of including and expanding Advanced Circulatory Support commercial capabilities, strengthening our

commercial organization in international markets, expenses associated with the expiration of a contract with one of our distributors, and lower than expected overall 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 our strategic portfolio initiatives, including TMVR, TRD, Obstructive Sleep Apnea and Heart Failure. R&D expenses as a percentage of net sales increased for the three months ended March 31, 2019 compared to the three months ended March 31, 2018 primarily due to additional R&D expenses for our development of next generation products, including heart-lung machines, the SenTiva VNS Therapy System and TandemLife and clinical trials and strategic investments in TRD, TMVR, obstructive sleep apnea and heart failure.

Gain on Acquisition

On January 16, 2018, we acquired the remaining outstanding interest of ImThera for cash consideration of up to \$225 million. On the acquisition date, we remeasured our existing investment in ImThera at fair value and recognized a pre-tax non-cash gain of \$11.5 million.

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 earnings mix in various jurisdictions 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 March 31, 2019 was 30.8% compared with 17.6% for the three months ended March 31, 2018. 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 months ended March 31, 2018, the increase in the effective tax rate for the three months ended March 31, 2019 was primarily attributable to a realized benefit from discrete tax items including the release of an uncertain tax position.

Liquidity and Capital Resources

The accompanying condensed consolidated financial statements have been prepared on the basis that LivaNova will continue as a going concern. As further discussed in “Note 11. Commitments and Contingencies,” the Company recorded a \$294.1 million litigation provision liability as of December 31, 2018 based on managements’ best estimate, of which \$161.9 million is anticipated to be paid during 2019 and the majority of the remainder is expected to be paid in the first half of 2020. In connection with our assessment of going concern considerations as of the issuance date of our 2018 Form 10-K in accordance with ASU 2014-15, “Disclosures of Uncertainties about an Entity’s Ability to Continue as a Going Concern,” the Company determined that collectively the payments of the \$294.1 million liability and the \$23.3 million of current debt obligations represented a condition that raised substantial doubt about our ability to continue as a going concern. However, on February 25, 2019, the Company received \$350 million in aggregate financing commitments pursuant to a Commitment Letter from Bank of America Merrill Lynch International DAC, Barclays Bank PLC, BNP Paribas and Intesa Sanpaolo S.P.A for a debt facility. We concluded that the anticipated execution of the debt facility agreement based on the Commitment Letter, when combined with current and anticipated future operating cash flows, alleviated the substantial doubt about the Company’s ability to continue as a going concern over the 12-month period beginning from the issuance date of our 2018 Form 10-K. On March 26, 2019, we entered into a Facility Agreement that provides a multicurrency term loan facility in an aggregate principal amount of \$350 million and terminates on March 26, 2022.

Based on our current business plan, we believe that our existing cash and cash equivalents, future cash generated from operations and borrowings will be sufficient to fund our expected operating needs, working capital requirements, R&D opportunities, capital expenditures, obligations anticipated for the litigation involving our 3T device and debt service requirements over the 12-month period beginning from the issuance date of these financial statements. Accordingly, there are no conditions present as of the issuance date of these financial statements that raise substantial doubt about our ability to continue as a going concern. Our liquidity could be adversely affected by a material deterioration of future operating results. Refer to “Note 8. Financing Arrangements” in the condensed consolidated financial statements in this Quarterly Report on Form 10-Q for additional information regarding our debt.

No provision has been made for income taxes on unremitted earnings of our foreign controlled subsidiaries (non-UK subsidiaries) as of March 31, 2019. 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 increase (decrease) in the balance of cash and cash equivalents were as follows (in thousands):

	Three Months Ended March 31,	
	2019	2018
Operating activities	\$ 1,974	\$ 20,393
Investing activities	(5,641)	(83,352)
Financing activities	7,589	32,047
Effect of exchange rate changes on cash and cash equivalents	(350)	2,261
Net increase (decrease)	<u>\$ 3,572</u>	<u>\$ (28,651)</u>

Operating Activities

Cash provided by operating activities during the three months ended March 31, 2019 decreased by \$18.4 million as compared to the same prior-year period. The decrease is primarily due to increases in working capital along with a decrease in net income adjusted for non-cash items.

Investing Activities

Cash used in investing activities during the three months ended March 31, 2019 decreased \$77.7 million as compared to the same prior-year period. The decrease is primarily due to the 2018 acquisition of ImThera, net of cash acquired, of \$77.6 million.

Financing Activities

Cash provided by financing activities during the three months ended March 31, 2019 decreased \$24.5 million as compared to the same prior-year period. The decrease is primarily due to a decrease in short-term borrowing proceeds of \$20.0 million.

Off-Balance Sheet Arrangements

As of March 31, 2019, we did not have any off-balance sheet 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, 2018.

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 9. 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 2018 Form 10-K in “Part II, Item 7. 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

Management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of the design and effectiveness of our disclosure controls and procedures as of March 31, 2019. Based on that evaluation, the Chief Executive Officer (CEO) and the Chief Financial Officer (CFO) have concluded the disclosure controls and procedures were not effective as of that date due to the material weaknesses in internal control over financial reporting that were disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2018.

(b) Changes in Internal Control Over Financial Reporting

On January 1, 2019, we implemented a new software system, as well as new internal controls, to support adoption of the new Lease Accounting standard, ASC 842. The operating effectiveness of these controls will be evaluated as part of our annual assessment of the effectiveness of internal controls over financial reporting for the fiscal year ended December 31, 2019. No other changes over internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d - 5(f) under the Exchange Act) occurred during the quarter ended March 31, 2019.

Remediation

Efforts have been ongoing throughout the quarter to remediate the material weaknesses reported in our 2018 10-K filing. We have begun implementing a new tool, SAP GRC module, that will help us better manage IT and business user access in our ERP system. In addition, we are implementing new controls and formalizing existing controls around price and quantity in our Revenue process. The weaknesses will not be considered remediated, until the applicable controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively. We expect that the remediation of the material weaknesses will be completed prior to the end of fiscal year 2019.

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 as previously disclosed in Part I, Item 1A “Risk Factors” of our 2018 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
2.1	Stock and Asset Purchase Agreement, dated as of March 8, 2018, by and among the Company, MicroPort Cardiac Rhythm B.V. and MicroPort Scientific Corporation (excluding schedules and exhibits, which the Company agrees to furnish supplementally to the Securities and Exchange Commission upon request), incorporated by reference to Exhibit 2.1 of the Company's Current Report on Form 8-K, filed on March 8, 2018
3.1	Amended Articles of Association, incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K, filed on June 15, 2018
10.1†	2019 LivaNova Short-Term Incentive Plan approved February 20, 2019, incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K/A, filed on March 6, 2019
10.2*	Commitment Letter dated February 25, 2019, by and among LivaNova PLC and the lenders party thereto
10.3	US\$350 million multicurrency term facilities agreement dated March 26, 2019, by and among LivaNova PLC, the lenders, arrangers and bookrunners, documentation agent and co-ordinator parties thereto and Barclays Bank PLC as agent. Incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, filed March 29, 2019
10.4†	Description of 2019 Long Term Incentive Plan approved March 29, 2019, incorporated by reference to Exhibit 10.1 if the Company's Current Report on Form 8-K, filed on April 1, 2019
10.5†	Form of the Company's 2019 Long Term Incentive Plan RSU Award Agreement, incorporated by reference to Exhibit 10.2 if the Company's Current Report on Form 8-K, filed on April 1, 2019
10.6†	Form of the Company's 2019 Long Term Incentive Plan SAR Award Agreement, incorporated by reference to Exhibit 10.3 if the Company's Current Report on Form 8-K, filed on April 1, 2019
10.7†	Form of the Company's 2019 Long Term Incentive Plan PSU Award Agreement (rTSR condition), incorporated by reference to Exhibit 10.4 if the Company's Current Report on Form 8-K, filed on April 1, 2019
10.8†	Form of the Company's 2019 Long Term Incentive Plan PSU Award Agreement (FCF condition), incorporated by reference to Exhibit 10.5 of the Company's Current Report on Form 8-K, filed on April 1, 2019
10.9†*	Service Agreement, dated February 28, 2017, between Alistair Simpson and LivaNova PLC
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 (Loss) for the three months ended March 31, 2019 and March 31, 2018, (ii) the Condensed Consolidated Statements of Comprehensive Income for the three months ended March 31, 2019 and March 31, 2018, (iii) the Condensed Consolidated Balance Sheet as of March 31, 2019 and December 31, 2018, (iv) the Condensed Consolidated Statements of Cash Flows for the three months ended March 31, 2019 and March 31, 2018, 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: May 1, 2019

To: LivaNova PLC (the "**Company**")
20 Eastbourne Terrace, London, W2 6LG
For the attention of: Chief Financial Officer

25 February 2019

Dear Sirs,

Commitment Letter - USD 350,000,000 term loan facility of which USD 116,666,667 equivalent can be provided in euros (the "Facility") for LivaNova PLC as the borrower

We Bank of America Merrill Lynch International DAC, Barclays Bank PLC, BNP Paribas, London Branch and Intesa Sanpaolo S.p.A (the "**Mandated Lead Arrangers**"), Bank of America Merrill Lynch International DAC, Barclays Bank PLC, BNP Paribas, London Branch and Intesa Sanpaolo S.p.A (the "**Bookrunners**") and Bank of America Merrill Lynch International DAC, Barclays Bank PLC, BNP Paribas, London Branch and Intesa Sanpaolo S.p.A (the "**Underwriters**") are pleased to set out in this letter the terms and conditions on which we are willing to arrange and underwrite the Facility.

In this letter:

"**Affiliate**" means in relation to a person, a subsidiary or holding company of that person, a subsidiary of any such holding company.

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

"**Facility Documents**" means a facility agreement and related documentation (based on the terms set out in the Term Sheet and this letter) in form and substance satisfactory to the Mandated Lead Arrangers, Bookrunners and Underwriters.

"**Fee Letter**" means any fee letter between any of the Mandated Lead Arrangers, the Bookrunners, the Underwriters, the Documentation Agent and Coordinator and/or the Agent and the Company dated on or about the date of this letter or on or about the date of the facility agreement in relation to the Facility.

"**Mandate Documents**" means this letter, the Term Sheet and any Fee Letter.

"**Term Sheet**" means the term sheet attached to this letter as an appendix.

"**Underwriting Proportion**" means, in relation to an Underwriter, the underwriting proportion set out opposite its name in paragraph 3.1.

Unless a contrary indication appears, a term defined in any Mandate Document has the same meaning when used in this letter.

1. **Appointment**

- 1.1 The Company appoints:
- (a) the Mandated Lead Arrangers as exclusive arrangers of the Facility;
 - (b) the Underwriters as exclusive underwriters of the Facility;
 - (c) the Bookrunners as exclusive bookrunners;
 - (d) Bank of America Merrill Lynch International DAC as documentation agent and coordinator in connection with the Facility (the "**Documentation Agent and Coordinator**"); and
 - (e) Barclays Bank PLC as facility agent in connection with the Facility.
- 1.2 Until this mandate terminates in accordance with paragraph 12 (*Termination*):
- (a) no other person shall be appointed as mandated lead arranger, underwriter, bookrunner, documentation agent and coordinator or facility agent;
 - (b) no other titles shall be awarded; and
 - (c) except as provided in the Mandate Documents, no other compensation shall be paid to any person,
- in connection with the Facility without the prior written consent of each of the Mandated Lead Arrangers.
- 1.3 Any of the Mandated Lead Arrangers, Bookrunners and Underwriters may delegate by written notice to the Company any or all of its rights and obligations under this letter to any of its subsidiaries or affiliates (each a "**Delegate**") and may designate any Delegate as responsible for the performance of any of its appointed functions under this letter. Following designation, a Delegate may rely on this letter.
2. **Conditions**
- 2.1 This offer to arrange and underwrite the Facility is made on the terms of the Mandate Documents and is subject to satisfaction of the following conditions:
- (a) compliance by the Company with all the terms of each Mandate Document;
 - (b) each of the representations and warranties made by the Company or any other member of the Group in connection with the transaction contemplated in the Mandate Documents (including, but not limited to, those set out in paragraph 6 (*Information*)) being correct;
 - (c) the preparation, execution and delivery of the Facility Documents by no later than the date falling 60 days after the date of this letter or any later date agreed between the Company and each of the Mandated Lead Arrangers and Underwriters; and

- (d) completion by each of the Mandated Lead Arrangers and Underwriters of client identification procedures (including, if necessary, identification of directors and major shareholders of the Company) in compliance with applicable money laundering rules.

3. Underwriting Proportions

3.1 The underwriting proportions of each of the Underwriters in respect of the Facility are as follows:

Underwriter	Underwriting Proportion (%)	Amount (USD)
Bank of America Merrill Lynch International DAC	25	87,500,000
Barclays Bank PLC	25	87,500,000
BNP Paribas, London Branch	25	87,500,000
Intesa Sanpaolo S.p.A	25	87,500,000
Total	100	350,000,000

3.2 The obligations of the Mandated Lead Arrangers, Bookrunners and the Underwriters under the Mandate Documents are several. No Mandated Lead Arranger is responsible for the obligations of any other Mandated Lead Arranger. No Bookrunner is responsible for the obligations of any other Bookrunner. No Underwriter is responsible for the obligations of any other Underwriter.

4. Fees, Costs and Expenses

4.1 All fees shall be paid in accordance with the Fee Letter(s) or as set out in the Term Sheet.

4.2 The Company shall promptly on demand pay the Agent, the Mandated Lead Arrangers, the Bookrunners and the Underwriters the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing and execution of the Facility Documents and the Mandate Documents whether or not the Facility Documents are signed. The Company acknowledges that each or any of the Mandated Lead Arrangers may receive a benefit, including without limitation, a discount, credit or other accommodation, from any relevant legal counsel based on the legal fees such legal counsel may receive on account of their relationship with the Mandated Lead Arrangers including, without limitation, fees paid pursuant to the Mandate Documents.

5. Payments

All payments to be made under the Mandate Documents:

- (a) shall be paid in the currency of invoice and in immediately available, freely transferable cleared funds to such account(s) with such bank(s) as the Mandated Lead Arrangers, the Agent, the Bookrunners or the Underwriters (as applicable) notify to the Company;

- (b) shall be paid without any deduction or withholding for or on account of tax (a "**Tax Deduction**") unless a Tax Deduction is required by law. If a Tax Deduction is required by law to be made, the amount of the payment due 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; and
- (c) are exclusive of any value added tax or similar charge ("**VAT**"). If VAT is chargeable, the Company shall also and at the same time pay to the recipient of the relevant payment an amount equal to the amount of the VAT.

6. **Information**

6.1 The Company represents and warrants that:

- (a) any factual information provided to the Mandated Lead Arrangers or the Bookrunners by or on behalf of it or any other member of the Group (the "**Information**") is true and accurate in all material respects as at the date it is provided or as at the date (if any) at which it is stated;
- (b) nothing has occurred or been omitted and no information has been given or withheld that results in the Information being untrue or misleading in any material respect; and
- (c) any financial projections contained in the Information have been prepared in good faith on the basis of recent historical information and on the basis of reasonable assumptions.

6.2 The representations and warranties set out in paragraph 6.1 are deemed to be made by the Company daily by reference to the facts and circumstances then existing commencing on the date of this letter and continuing until the date the Facility Documents are signed.

6.3 The Company shall immediately notify the Mandated Lead Arrangers and the Bookrunners in writing if any representation and warranty set out in paragraph 6.1 is incorrect or misleading and agrees to supplement the Information promptly from time to time to ensure that each such representation and warranty is correct when made.

6.4 The Company acknowledges that the Mandated Lead Arrangers, the Bookrunners and the Underwriters will be relying on the Information without carrying out any independent verification.

7. **Indemnity**

7.1

- (a) Whether or not the Facility Documents are signed, the Company shall within three Business Days of demand indemnify each Indemnified Person against any cost, expense, loss or liability (including without limitation legal fees) incurred by or awarded against that Indemnified Person in each case arising out of or in connection with any action, claim, investigation or proceeding commenced or

threatened (including, without limitation, any action, claim, investigation or proceeding to preserve or enforce rights) in relation to:

- (i) the use of the proceeds of the Facility;
 - (ii) any Mandate Document or any Facility Document; and/or
 - (iii) the arranging or underwriting of the Facility.
- (b) The Company will not be liable under paragraph (a) above for any cost, expense, loss or liability (including without limitation legal fees) incurred by or awarded against an Indemnified Person if that cost, expense, loss or liability results directly from any breach by that Indemnified Person of any Mandate Document or any Facility Document which is in each case finally judicially determined to have resulted directly from the gross negligence or wilful misconduct of that Indemnified Person.
- (c) For the purposes of this paragraph 7:

"Indemnified Person" means each Mandated Lead Arranger, each Bookrunner, each Underwriter, the Documentation Agent and Coordinator, the Agent, each Lender, in each case, any of their respective Affiliates and each of their (or their respective Affiliates') respective directors, officers, employees and agents.

7.2 No Mandated Lead Arranger, Bookrunner or Underwriter shall have any duty or obligation, whether as fiduciary for any Indemnified Person or otherwise, to recover any payment made or required to be made under paragraph 7.1.

7.3

- (a) The Company agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company or any of its Affiliates for or in connection with anything referred to in paragraph 7.1 above except, following the Company's agreement to the Mandate Documents, for any such cost, expense, loss or liability incurred by the Company that results directly from any breach by that Indemnified Person of any Mandate Document or any Facility Document which is in each case finally judicially determined to have resulted directly from the gross negligence or wilful misconduct of that Indemnified Person.
- (b) Notwithstanding paragraph (a) above, no Indemnified Person shall be responsible or have any liability to the Company or any of its Affiliates or anyone else for consequential losses or damages.
- (c) The Company represents to the Mandated Lead Arrangers, the Bookrunners and Underwriters that:
- (i) it is acting for its own account and it has made its own independent decisions to enter into the transaction contemplated in the Mandate Documents (the "**Transaction**") and as to whether the Transaction is

appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary;

- (ii) it is not relying on any communication (written or oral) from any or all of the Mandated Lead Arrangers, the Bookrunners or Underwriters as investment advice or as a recommendation to enter into the Transaction, it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction. No communication (written or oral) received from any or all of the Mandated Lead Arrangers, Bookrunners or Underwriters shall be deemed to be an assurance or guarantee as to the expected results of the Transaction;
- (iii) it is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction. It is also capable of assuming, and assumes, the risks of the Transaction; and
- (iv) no Mandated Lead Arranger, Bookrunner or Underwriter is acting as a fiduciary for or as an adviser to it in connection with the Transaction.

7.4 The Contracts (Rights of Third Parties) Act 1999 shall apply to this paragraph 7 but only for the benefit of the other Indemnified Persons, subject always to the terms of paragraphs 15.2 and 17 (*Governing Law and Jurisdiction*).

8. **Confidentiality**

The Company acknowledges that the Mandate Documents are confidential and the Company shall not, and shall ensure that no other member of the Group shall, without the prior written consent of each of the Mandated Lead Arrangers, the Bookrunners and Underwriters, disclose the Mandate Documents or their contents to any other person except:

- (a) as required by law or by any applicable governmental or other regulatory authority or by any applicable stock exchange; and
- (b) to its employees or professional advisers for the purposes of the Facility who have been made aware of and agree to be bound by the obligations under this paragraph or are in any event subject to confidentiality obligations as a matter of law or professional practice.

9. **Publicity/Announcements**

9.1 All publicity in connection with the Facility shall be managed by the Mandated Lead Arrangers in consultation with the Company.

9.2 No announcements regarding the Facility or any roles as arranger, underwriter, bookrunner, lender or agent shall be made without the prior written consent of the Company and each of the Mandated Lead Arrangers, Bookrunners and Underwriters.

10. **Conflicts**

- 10.1 The Company and each Mandated Lead Arranger, Bookrunner and Underwriter acknowledges that the Mandated Lead Arrangers or their Affiliates, the Bookrunners or their Affiliates and the Underwriters or their Affiliates may provide debt financing, equity capital or other services to other persons with whom the Company or its Affiliates may have conflicting interests in respect of the Facility in this or other transactions.
- 10.2 The Company and each Mandated Lead Arranger, Bookrunner and Underwriter acknowledges that the Mandated Lead Arrangers or their Affiliates, the Bookrunners or their Affiliates and the Underwriters or their Affiliates may act in more than one capacity in relation to this transaction and may have conflicting interests in respect of such different capacities.
- 10.3 The Mandated Lead Arrangers, Bookrunners and Underwriters shall not use confidential information obtained from the Company or its Affiliates for the purposes of the Facility in connection with providing services to other persons or furnish such information to such other persons.
- 10.4 The Company acknowledges that the Mandated Lead Arrangers, Bookrunners and Underwriters have no obligation to use any information obtained from another source for the purposes of the Facility or to furnish such information to the Company or its Affiliates.

11. **Assignments**

- 11.1 The Company shall not assign any of its rights or transfer any of its rights or obligations under the Mandate Documents without the prior written consent of each of the Mandated Lead Arrangers, the Bookrunners and Underwriters.

12. **Termination**

- 12.1 If the Company does not accept the offer made by each of the Mandated Lead Arrangers, Bookrunners and Underwriters in this letter by countersigning this letter and the Fee Letter setting out the Upfront Fee referred to in the Term Sheet before close of business in London on the date falling five Business Days after the date of this letter, such offer shall terminate on that date.
- 12.2 Any Mandated Lead Arranger, Bookrunner or Underwriter may terminate its obligations under this letter with immediate effect by notifying the Company and the other Mandated Lead Arranger(s), Bookrunner(s) and Underwriter(s) if in its opinion, any of the conditions set out in paragraph 2 (*Conditions*) is not satisfied;

13. **Survival**

- 13.1 Except for paragraphs 2 (*Conditions*), 3 (*Underwriting Proportions*) and 12 (*Termination*) the terms of this letter shall survive and continue after the Facility Documents are signed.

13.2 Without prejudice to paragraph 13.1, paragraphs 4 (*Fees, Costs and Expenses*), 5 (*Payments*), 7 (*Indemnity*), 8 (*Confidentiality*), 9 (*Publicity/Announcements*), 10 (*Conflicts*) and 12 (*Termination*) to 17 (*Governing Law and Jurisdiction*) inclusive shall survive and continue after any termination of the obligations of any Mandated Lead Arranger, Bookrunner or Underwriter under the Mandate Documents.

14. **Entire Agreement**

14.1 The Mandate Documents set out the entire agreement between the Company, the Mandated Lead Arrangers, the Bookrunners and the Underwriters as to arranging and underwriting the Facility and supersede any prior oral and/or written understandings or arrangements relating to the Facility.

14.2 Any provision of a Mandate Document may only be amended or waived in writing signed by the Company and each of the Mandated Lead Arrangers, Bookrunners and Underwriters.

15. **Third Party Rights**

15.1 Unless expressly provided to the contrary in this letter, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any of its terms.

15.2 Notwithstanding any term of this letter, the consent of any person who is not a party to this letter is not required to rescind or vary this letter at any time.

16. **Counterparts**

This letter 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 letter.

17. **Governing Law and Jurisdiction**

17.1 This letter (including the agreement constituted by your acknowledgement of its terms) (the "**Letter**") and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of the transaction contemplated by this Letter) are governed by English law.

17.2 The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Letter (including a dispute relating to any non-contractual obligation arising out of or in connection with either this Letter or the negotiation of the transaction contemplated by this Letter).

If you agree to the above, please acknowledge your agreement and acceptance of the offer by signing and returning the enclosed copy of this letter to Jason Rapley at jason.rapley@baml.com.

Yours faithfully

/s/ David Pepper

For and on behalf of

Bank of America Merrill Lynch International DAC
as Mandated Lead Arranger

/s/ David Pepper

For and on behalf of

Bank of America Merrill Lynch International DAC
as Bookrunner

/s/ David Pepper

For and on behalf of

Bank of America Merrill Lynch International DAC

as Underwriter

/s/ Michael Joyner

For and on behalf of

Barclays Bank PLC

as Mandated Lead Arranger

/s/ Michael Joyner

For and on behalf of

Barclays Bank PLC

as Bookrunner

/s/ Michael Joyner

For and on behalf of

Barclays Bank PLC

as Underwriter

/s/ Michael Redferne

For and on behalf of

BNP Paribas, London Branch

as Mandated Lead Arranger

/s/ Michael Redferne

For and on behalf of

BNP Paribas, London Branch

as Bookrunner

/s/ Michael Redferne

For and on behalf of

BNP Paribas, London Branch

as Underwriter

/s/ Stefano Boniello

For and on behalf of

Intesa Sanpaolo S.p.A

as Mandated Lead Arranger

Name: Stefano Boniello

Title: Global Relationship manager

/s/ Guido Austoni

For and on behalf of

Intesa Sanpaolo S.p.A

as Mandated Lead Arranger

Name: Guido Austoni

Title: Global Head of Basic Materials & Healthcare

/s/ Stefano Boniello

For and on behalf of

Intesa Sanpaolo S.p.A

as Bookrunner

Name: Stefano Boniello

Title: Global Relationship manager

/s/ Guido Austoni

For and on behalf of

Intesa Sanpaolo S.p.A

as Bookrunner

Name: Guido Austoni

Title: Global Head of Basic Materials & Healthcare

/s/ Stefano Boniello

For and on behalf of

Intesa Sanpaolo S.p.A

as Underwriter

Name: Stefano Boniello

Title: Global Relationship manager

/s/ Guido Austoni

For and on behalf of

Intesa Sanpaolo S.p.A

as Underwriter

Name: Guido Austoni

Title: Global Head of Basic Materials & Healthcare

/s/ Jason Rapley

For and on behalf of

Bank of America Merrill Lynch International DAC

as Documentation Agent and Coordinator

/s/ Michael Joyner

For and on behalf of

Barclays Bank PLC

as Agent

We acknowledge and agree to the above:

/s/ Thad Huston
For and on behalf of
LivanoVA PLC
as the Company

Name: Thad Huston
Title: Chief Financial Officer

Date: 25 February 2019

APPENDIX

Term Sheet

TERM SHEET

USD350,000,000 FACILITY FOR LIVANOVA PLC

The provision of the Facility is subject to the terms and conditions of the Commitment Letter and satisfactory documentation.

PARTIES

Company:	LivanoVA PLC
Borrower:	The Company
Mandated Lead Arrangers and Bookrunners:	Bank of America Merrill Lynch International DAC, Barclays Bank PLC, BNP Paribas, London Branch and Intesa Sanpaolo S.p.A.
Lenders:	As selected by the Mandated Lead Arrangers in consultation with the Company.
Documentation Agent and Coordinator:	Bank of America Merrill Lynch International DAC
Agent:	Barclays Bank PLC.
Group:	The Company and its Subsidiaries for the time being.

THE FACILITY

Facility:	Multicurrency term loan facility.
Amount:	USD350,000,000 to be made available in two tranches (each a " Tranche ") (i) USD233,333,333 (the " USD Tranche ") and (ii) EUR equivalent of USD116,666,667 to be determined prior to the date of the Agreement (the " EUR Tranche "); provided that the amounts utilised shall be in a ratio of 2/3 USD Tranche and 1/3 EUR Tranche (calculated using the same exchange rate used in determining the EUR equivalent of USD116,666,667 as referred to above in (ii)).

Termination Date:	3 years after the date of the Agreement.
Purpose:	General corporate purposes (excluding acquisitions, dividends and share buybacks).
Availability Period:	From the date of the Agreement to the date which is 12 months after the date of the Agreement.
Minimum Amount of each Loan:	USD 4,000,000 / EUR equivalent of USD 2,000,000 as applicable.
Maximum Number of Loans:	No more than 5 Loans in respect of the USD Tranche and no more than 5 Loans in respect of the EUR Tranche, being an aggregate of 10 Loans, may be outstanding.
Repayment:	The Company shall repay the Loans in instalments by repaying on each Repayment Date an amount equal to the percentage of the outstanding principal amount of the Loans under the relevant Tranche as at the last day of the Availability Period set opposite that Repayment Date below:
Voluntary Prepayment:	Loans may be prepaid after the last day of the Availability Period in whole or in part on five Business Days' (or such shorter period as the Agent may agree) prior notice (but, if in part, by a minimum of USD4,000,000 / EUR equivalent of USD2,000,000 (as applicable)). Any prepayment shall be made with accrued interest on the amount prepaid and, subject to breakage costs, without premium or penalty. Any amount prepaid may not be redrawn and shall be applied pro rata against scheduled repayments of Loans outstanding; provided that the Loans prepaid shall be in a ratio 2/3 USD Tranche and 1/3 EUR Tranche.

PRICING

Upfront Fee:	1 per cent of the aggregate principal amount of the Facility as at the date of the Commitment Letter payable pursuant to the Upfront Fee Letter between the Company and the Mandated Lead Arrangers dated on or about the date of the Commitment Letter.
Documentation Agent and Coordinator Fee:	To be agreed between the Company and the Documentation Agent and Coordinator in a separate Fee Letter.
Agency Fee:	To be agreed between the Company and the Agent in a separate Fee Letter.
Commitment Fee:	35 per cent. of the applicable Margin on the unused and uncanceled amount of relevant Tranche for the Availability Period. Accrued commitment fee is payable quarterly in arrear during the Availability Period, on the last day of the Availability Period and on the cancelled amount of the relevant Tranche at the time a full cancellation is effective.
Margin:	In relation to the USD Tranche, 1.60 per cent. per annum; and In relation to the EUR Tranche, 1.40 per cent. per annum.
Interest Periods for Loans:	Three months or any other period agreed between the Company, the Agent and the Lenders (in relation to the relevant Loan).

Interest on Loans:

The aggregate of the applicable:

- (a) Margin; and
- (b) interest rate benchmark.

Interest rate benchmarks:

In relation to any Loan in EUR, EURIBOR and, in relation to any Loan in USD, LIBOR set, in each case, by reference to Thomson Reuters (and, if necessary, the use of linear interpolation) or, if not available, by reference to specified fallbacks and if the rate is less than zero, it shall be deemed to be zero.

Any interest rate benchmark which is not available by reference to Thomson Reuters may be replaced with the consent of the Majority Lenders and the Company.

Interest rate benchmarks shall be set by reference to Thomson Reuters without taking account of any correction, recalculation or republication of the originally published rate by the administrator.

Payment of Interest on Loans:

Interest is payable on the last day of each Interest Period (and, in the case of Interest Periods of longer than six months, on the dates falling at six-monthly intervals after the first day of the Interest Period).

OTHER TERMS

Documentation:

The Facility will be made available under a facility agreement based on the current recommended form of multicurrency syndicated term facility agreement (investment grade) of the LMA, this Term Sheet and otherwise in form and substance satisfactory to the Mandated Lead Arrangers acting reasonably and having regard to the USD 170,000,000 bridge facility agreement dated 14 February 2018 and entered into between the Company and Bank of America Merrill Lynch International Limited to resolve any disputes.

Prepayment and Cancellation:**(a) Illegality**

A Lender may cancel its Commitment and require prepayment of its share of the Loans.

(b) Change of Control

If a Change of Control occurs:

- (1) a Lender shall not be obliged to fund a Loan; and
- (2) a Lender may by not less than 30 days' notice cancel its Commitment and require repayment of all its share of the Loans.

“**Change of Control**” means:

- (1) any person or group of persons acting in concert gain direct or indirect control of the Company; or
- (2) the Company ceases to be the beneficial owner directly or indirectly through wholly owned subsidiaries, of more than 50 per cent of the issued share capital of the Italian Subsidiary

“**acting in concert**” means acting together pursuant to an agreement or understanding (whether formal or informal).

“**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

(c) Increased Costs, Tax Gross Up and Tax Indemnity

The Company may cancel the Commitment of and prepay any Lender that makes a claim under these provisions.

(d) Voluntary Cancellation

The Company may, on not less than five Business Days' (or such shorter period as the Agent may agree) prior notice, cancel the whole or any part (being a minimum of USD4,000,000 / EUR equivalent of USD2,000,000) of the Available Facility.

The Available Facility shall, if cancelled in part, be cancelled in a ratio of 2/3 USD Tranche and 1/3 EUR Tranche.

Representations:

The Company will make the representations set out in Schedule 1 (*Representations*) to this Term Sheet (i) on the date of the Agreement (except for representations and warranties in paragraph 11(a) and (b) of Schedule 1 (*Representations*) to this Term Sheet which shall be made on the date such information or projections are delivered) and (ii) in the case of paragraphs 1 to 6, 10(a), 12(d), 19, 20 and 24 of Schedule 1 (*Representations*) to this Term Sheet, on the date of each Utilisation Request and the first day of each Interest Period

Information Undertakings:

The Company shall supply each of the following:

- (a) as soon as they become available, but in any event within 180 days of the end of its financial years its audited consolidated financial statements for that financial year
- (b) as soon as they become available, but in any event within 90 days of the end of each of its financial half years ending 30 June its consolidated financial statements for that financial half year
- (c) with each set of consolidated financial statements, a compliance certificate setting out (in reasonable detail) computations as to compliance with the financial covenants as at the date at which those financial statements were drawn up
- (d) all material documents dispatched by the Company to its shareholders (or any class of them) or its creditors (or any class of them) at the same time as they are dispatched
- (e) 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 are likely to be adversely determined and if adversely determined, would have a Material Adverse Effect
- (f) promptly, such further information regarding the financial condition, assets, business and operations of any member of the Group as any Finance Party may reasonably request
- (g) promptly, notify the Agent upon becoming aware of the occurrence of any Default
- (h) promptly upon request by the Agent, certificate signed by two of its directors or senior officers that no Default is continuing or if a Default is continuing specifying the Default and the steps (if any) being taken to remedy it

On the introduction of or any change in law, a change in the status of the Company or a proposed assignment or transfer by a Lender to a party that is not an existing Lender, which obliges a Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Company shall promptly upon the request of the Agent or any Lender supply such documentation and other evidence as is reasonably requested by the Agent (for itself and on behalf of any Lender) or any Lender (or prospective new Lender) in order for the Agent or such Lender (or prospective new Lender) to carry out and be satisfied with the results of all necessary "know your customer" or other checks in relation to the transactions contemplated in the Finance Documents.

Financial Covenants:

The financial undertakings set out in Schedule 2 (*Financial Undertakings*) to this

Term Sheet will be included in the Agreement

General Undertakings:	The undertakings set out in Schedule 3 (<i>General Undertakings</i>) to this Term Sheet will be included in the Agreement in respect of the Company and, where applicable, in relation to the Group
Events of Default:	Each of the events or circumstances set out in Schedule 4 (<i>Events of Default</i>) to this Term Sheet will be included in the Agreement in respect of the Company and, if appropriate, any member of the Group
Majority Lenders:	66 ² / ₃ % of Total Commitments.
Assignments and Transfers by Lenders:	<p>Subject to the following paragraph, a Lender may assign any of its rights or 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.</p> <p>The consent of the Company will be required (not to be unreasonably withheld or delayed) unless the transfer or assignment is to another Lender or an Affiliate or a Related Fund of a Lender or is made at a time when an Event of Default is continuing, provided that no transfer or assignment shall be made to any person whose business is similar or related to the business carried on by the Group as a whole (or to an Affiliate of any such person or any such person acting on behalf of or on the instructions of any such person) or to a Distressed Fund without the prior written consent of the Borrower (at its sole discretion). The Company will be deemed to have given its consent if no express refusal is received within 5 Business Days.</p>
Conditions Precedent:	These will include the documents and other evidence set out in Schedule 5 (<i>Conditions Precedent</i>) to this Term Sheet in form and substance satisfactory to the Agent
Miscellaneous Provisions:	The Agreement will contain provisions relating to, among other things, default interest, market disruption, breakage costs, tax gross up and indemnities including FATCA, increased costs (including Basel III and CRDIV), set-off, replacement of screen rate, bail-in and administration.
Costs and Expenses:	Subject to any agreed caps, all costs and expenses (including legal fees) reasonably incurred by the Agent and the Mandated Lead Arrangers in connection with the preparation, negotiation, printing, execution and syndication of the Agreement and any other document referred to in it shall be paid by the Company promptly on demand whether or not the Agreement is signed.
Governing Law:	English.
Jurisdiction:	Courts of England.
Definitions:	Terms defined in the current recommended form of multicurrency syndicated term facility agreement (investment grade) of the LMA have the same meaning in this Term Sheet unless given a different meaning in this Term Sheet (including in Schedule 6 (<i>Certain Definitions</i>) to this Term Sheet).

Schedule 1

Representations

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.

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.

3. Non-conflict with other obligations

Subject to the Legal Reservations, 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.

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.

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.

6. Governing law and enforcement

Subject to the Legal Reservations:

- (a) the choice of English law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation; and
- (b) any judgment obtained in England in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

7. Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph 7(a) of Schedule 4 (*Events of Default*) to this Term Sheet; or
- (b) creditors' process described in paragraph 8 (*Creditor's process*) of Schedule 4 (*Events of Default*) to this Term Sheet,

has been taken or, to its knowledge, threatened in relation to the Borrower or any Material Subsidiary; and none of the circumstances described in paragraph 6 (*Insolvency*) of Schedule 4 (*Events of Default*) to this Term Sheet applies to a the Borrower or any Material Subsidiary.

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.

9. Deduction of Tax

It is not required to make any Tax Deduction from any payment it may make under any Finance Document to any Lender.

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 Material Subsidiaries or to which its (or any of its Material Subsidiaries') assets are subject which would have a Material Adverse Effect.

11. No misleading information

- (a) Any material factual information provided by any member of the Group to any Finance Party 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 any Finance Party 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 paragraph are made by the Borrower only so far as it is aware having made due and careful enquiries.

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 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 the date of its Original Financial Statements.
- (d) Its most recent financial statements required to be delivered in accordance with the Term Sheet:
 - (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.

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, are reasonably likely 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.

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.

15. Environmental laws

- (a) Each member of the Group is in compliance with paragraph 3 (*Environmental Compliance*) of Schedule 3 (*General Undertakings*) to this Term Sheet 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.

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 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. 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 the Agreement.
- (b) No member of the Group has any Financial Indebtedness outstanding that is prohibited under paragraph 18 (*Financial Indebtedness*) of Schedule 3 (*General Undertakings*) to this Term Sheet.

18. Pari passu ranking

Subject to the Legal Reservations, 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.

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 other than where a failure to do so could not reasonably be expected to have a Material Adverse Effect.

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, other than where a failure to be so could not reasonably be expected to have a Material Adverse Effect.

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,

other than where a failure to be or do so could not reasonably be expected to have a Material Adverse Effect.

22. Accounting Reference Date

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

23. No adverse consequences

- (a) It is not necessary under the laws of its Relevant Jurisdictions:
 - (i) in order to enable any Finance Party 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 any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.

- (b) No Finance Party is or will 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.

24. Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No 2015/848 on Insolvency Proceedings (recast) (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).

25. Anti-corruption and anti-money laundering 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 all applicable laws and regulations that relate to anti-money laundering, counter-terrorist financing or record keeping or reporting requirements relating to anti-money laundering or counter-terrorist financing, and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

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, any Finance Party being in breach of any Sanctions or becoming a Restricted Party.

Schedule 2

Financial Undertakings

The financial undertakings set out in this Schedule shall remain in force from the date of the Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force (unless indicated otherwise).

1. Financial condition

- (a) **Consolidated Net Financial Indebtedness to Consolidated EBITDA:** The Company shall ensure that 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.
- (b) **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.
- (c) **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.
- (d) **Consolidated Net Worth:** the Consolidated Net Worth shall at no time be lower than USD 725,000,000.

2. Financial covenant calculations

The financial ratio shall be calculated in accordance with US GAAP and tested by reference to each of the financial statements each compliance certificate to be delivered as set out in this Term Sheet.

3. Definitions

In this Schedule:

"**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;
- (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 time); less
- (b) the aggregate amount at that time of: (i) cash; (ii) debt securities issued or guaranteed by any member state of the OECD that benefit from an investment grade rating; and (iii) receivables from any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

"**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 the 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 of a financial year and ending on an Accounting Date in that financial year.

Schedule 3

General Undertakings

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 Agent 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.

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 to which it is a party or would reasonably be expected to have a Material Adverse Effect.

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.

4. Environmental claims

The Borrower shall, promptly upon becoming aware of the same, inform the Agent 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.

5. Pari passu ranking

The Borrower shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party 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.

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.

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 paragraph 7(a) and 7(b), or, in the case of paragraph 7(d) and 7(e), such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

8. Access

If an Event of Default is continuing or the Agent reasonably suspects an Event of Default is continuing, the Borrower shall, and it shall ensure that each Material Subsidiary will permit the Agent 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 Lenders 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 the Borrower and each Material Subsidiary and (b) meet and discuss matters with senior management.

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 where a failure to do so would have or would be reasonably likely to have a Material Adverse Effect.

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 required to be delivered to the Agent in accordance with the Term Sheet; 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.

11. Anti-corruption and anti-money laundering 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:
 - (A) (other than in respect of matters referred to in paragraph (B) below) applicable anti-corruption laws and all applicable anti-money laundering and counter-terrorist financing laws and regulations; and
 - (B) all record keeping or reporting requirements required pursuant to any applicable anti-money laundering or counter-terrorist financing laws or regulations in each case in all material respects; and
- (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

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) knowingly engage in any transaction that evades or avoids or breaches directly or indirectly, any Sanctions applicable to it; or
- (c) knowingly 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.

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,
- (v) 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 13(a) and 13(b) do not apply to any Permitted Security:

14. Loans or credit

(a) Except as permitted under paragraph 14(b), 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 14(a) does not apply to a Permitted Loan.

15. Acquisitions

- (a) Except as permitted under paragraph 15(b), 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 15(a) does not apply to an acquisition that is a Permitted Acquisition.

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 16(a) does not apply to any Permitted Transaction.

17. No Guarantees or indemnities

- (a) Except as permitted under paragraph 17(b), 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 17(a) does not apply to a guarantee which is a Permitted Guarantee.

18. Financial Indebtedness

- (a) The Borrower shall ensure that the Subsidiary Financial Indebtedness does not exceed at any time 35 per cent of Group Financial Indebtedness.
- (b) For the purposes of this paragraph 18:

"Group Financial Indebtedness" means the Financial Indebtedness of the Group excluding, in each case, Financial Indebtedness of the Group incurred under any Excluded Guarantee; and

"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 Italian Subsidiary and the Financial Indebtedness of the Group incurred under any Excluded Guarantee.

- (c) 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. Disposal of assets

- (a) Except as permitted under paragraph 19(b), 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 19(a) 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 19(b)(i) to 19(b)(iv), provided that over the life of the Facility the aggregate value of the disposed assets and other disposals of assets not falling within paragraphs 19(b)(i) to 19(b)(iv), shall not exceed 10 per cent of the total assets of the Group as reports in the latest audited consolidated financial statements.

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.

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.

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 Agent pursuant to Schedule 5 (*Conditions Precedent*) to this Term Sheet except in writing:
- (i) in accordance with the Agreement;
 - (ii) prior to or on the first Utilisation Date, with the prior written consent of the Lenders; 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 Lenders.
- (b) The Borrower shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs 22(a)(i) to 22(a)(iii).

23. Accounting practices

The Borrower shall not change its Accounting Reference Date nor materially change its accounting policies, in each case unless required to do so in order to comply with US GAAP.

Schedule 4

Events of Default

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 five Business Days of its due date.

2. Financial covenants

Any requirement of Schedule 2 (*Financial undertakings*) to this Term Sheet is not satisfied.

3. Other obligations

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in paragraph 1 (*Non-payment*) and Schedule 2 (*Financial undertakings*)) to this Term Sheet.
- (b) No Event of Default under paragraph 3(a) will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days, of the earlier of (A) the Agent giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

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.

5. Cross default

- (a) Any Financial Indebtedness of the Borrower or any Material Subsidiary is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of the Borrower or any Material Subsidiary 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 the Borrower or any Material Subsidiary is cancelled or suspended by a creditor of the Borrower or any Material Subsidiary 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.

- (e) No Event of Default will occur under this paragraph 5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs 5(a) to 5(d) is less than USD 7,500,000 (or its equivalent in any other currency or currencies).

6. Insolvency

- (a) The Borrower or any Material Subsidiary:
 - (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 Lenders) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any the Borrower or any Material Subsidiary is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Borrower or any Material Subsidiary.

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 the Borrower or any Material Subsidiary other than a solvent liquidation or reorganisation of any Material Subsidiary;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of the Borrower or any Material Subsidiary;
 - (iii) the appointment of a liquidator (other than in respect of a solvent liquidation of a Material Subsidiary), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any Material Subsidiary or any of its assets; or
 - (iv) enforcement of any Security over any assets of the Borrower or any Material Subsidiary,or any analogous procedure or step is taken in any jurisdiction.
- (b) This paragraph 7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 10 Business Days of commencement.

8. Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Borrower or any Material Subsidiary and is not discharged within 10 Business Days of commencement.

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.

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.

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 Italian Subsidiary.

12. Audit qualification

The Borrower's auditors qualify the audited annual consolidated financial statements of the Borrower on the grounds of inadequate or unreliable information or being unable to prepare the accounts on a going concern basis, in each case which would have or would be reasonably likely to have a Material Adverse Effect.

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 where such limitation or curtailment has or is reasonably likely to have a Material Adverse Effect.

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.

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 the Borrower or any Material Subsidiary or its assets which have or are reasonably likely to have a Material Adverse Effect.

16. Material adverse change

Any event or circumstance occurs which has or will have a Material Adverse Effect.

Schedule 5

Conditions Precedent

1. The Company

- (a) A copy of the constitutional documents of the Company.
- (b) A copy of a resolution of the board of directors of the Company:
 - (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 1(b).
- (d) A certificate of the Company (signed by an authorised signatory) 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 Company certifying that each copy document relating to it specified in this Schedule 5 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 Mandated Lead Arrangers in England, substantially in the form distributed to the Mandated Lead Arrangers prior to signing this Agreement.

3. Other documents and evidence

- (a) The Original Financial Statements of the Group.
- (b) Evidence that the fees, costs and expenses then due from the Company pursuant to have been paid or will be paid by the first Utilisation Date.
- (c) Evidence of satisfaction of any customary or required “know your customer” checks or other similar checks under all applicable laws and regulations in respect of the Company.
- (d) Evidence that the USD70,000,000 revolving facility made available to the Company pursuant to an amendment and restatement agreement dated 10 April 2018 between the Company as borrower and Barclays Bank PLC as lender will be irrevocably and unconditionally repaid (and permanently cancelled) in full on or before the first Utilisation Date.

Schedule 6

Certain Definitions

"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;

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

"Distressed Fund" means a fund whose investment strategy includes purchasing debt for the purpose of actively managing that debt holding to obtain ownership of equity in or gain control of the relevant borrower(s) and/or to exploit holdout or blocking positions;

"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;

"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;

"Intellectual Property" means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and
- (b) the benefit of all applications and rights to use such assets of each member of the Group (which may now or in the future subsist).

"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 referred to in Schedule 5 (*Conditions Precedent*) to this Term Sheet;

"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 2 (*Financial Undertakings*) to this Term Sheet; or
- (c) the validity or enforceability of the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents;

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

- (a) is listed in Schedule 7 (Material Companies) to this Term Sheet; 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;

"Original Financial Statements" means the audited consolidated financial statements of the Group for the financial year ended 31 December [2017/2018];

"Permitted Acquisition" means:

- (a) a Permitted Share Buyback;
- (b) an acquisition for cash consideration of all or the majority of the issued share capital of a limited liability company, but only if:
 - (i) no Event of Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;
 - (ii) 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;
 - (iii) 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.

Any acquisition whose Individual Purchase Price exceeds USD 75,000,000 or its equivalent will only be permitted under paragraph (b) above if the Borrower has delivered to the Agent not later than 30 Business Days before legally committing to make such acquisition a certificate signed by two directors of the Borrower to which is attached a copy of the latest audited accounts (or if not available, management accounts) of the target company or business.

Such certificate must give calculations showing in reasonable detail that the Borrower would have remained in compliance with the financial covenants set out in Schedule 2 (*Financial Undertakings*) to this Term Sheet if the covenant test was recalculated for the relevant period ending on the most recent Accounting Date consolidating the financial statements of the target company (consolidated if it has Subsidiaries) or business with the financial statements of the Group for such period on a pro forma basis and as if the consideration for the proposed acquisition had been paid at the start of that period.

"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:

- (a) 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;
- (b) any securitisation and/or factoring programme of the receivables of the Group consented to by Agent (acting on the instructions of the Majority Lenders (acting reasonably)); and/or
- (c) any disposal of receivables not otherwise permitted under paragraphs (a) or (b) above where the net consideration receivable (when aggregated with the consideration for all such other receivables disposed of) does not exceed USD 40,000,000 in any financial year;

"Permitted Security" means:

- (a) any Security listed in Schedule 8 (*Existing Security*) to this Term Sheet 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 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 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 Share Buyback" means any share buyback occurring at any time on or after the date falling 18 Months after the date of the Agreement provided that at that time (a) the aggregate principal amount of the Loans outstanding does not exceed USD 200,000,000 and (b) the ratio of Consolidated Net Financial Indebtedness to Consolidated EBITDA does not exceed 1.5 times.

"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;

"Restricted Party" means a person that is:

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

"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;

"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;

"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;

Schedule 7

Material Companies

LIVANOVA USA INC, USA

SORIN GROUP ITALIA SRL

LIVANOVA JAPAN K.K.

LIVANOVA AUSTRALIA PTY LIMITED

Schedule 8

Existing Security

GROUP MEMBER	SECURITY	TOTAL PRINCIPAL AMOUNT OF INDEBTEDNESS SECURED
Sorin Group Italia Srl	Mortgage	€210,526
Sorin Group Italia Srl	Mortgage	€325,926

Dated ___ February 2017

LIVANOVA PLC

ALISTAIR SIMPSON

SERVICE AGREEMENT

THIS AGREEMENT is made on _____ 2017 (the “Commencement Date”)

BETWEEN

(1) **LIVANOVA PLC**, a company registered in England with registered number 09451374 and having its registered office at 20 Eastbourne Terrace, W2 6LG London (the “Company”); and

(2) **ALISTAIR SIMPSON**, residing in _____ (the “Executive”).

BACKGROUND

The Company wishes to employ the Executive as General Manager, Cardiac Surgery on the terms and conditions of this Agreement and the Executive wishes to accept such employment.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

“**Basic Salary**” means the salary, as specified in Clause 6.1.1 or, as appropriate, the reviewed annual salary from time to time;

“**Board**” means the Board of directors of the Company from time to time or any duly authorised committee thereof, or where the relevant powers have been reserved to the Company’s members, its members from time to time;

“**Compensation Committee**” means the compensation committee appointed by the Board;

“**Confidential Information**” means all information which is identified or treated by the Company or any Group Company or any of the Group’s clients or customers as confidential or which by reason of its character or the circumstances or manner of its disclosure is evidently confidential including (without prejudice to the foregoing generality) any information about the personal affairs of any of the directors (or their families) of the Company or any Group Company, business plans, proposals relating to the acquisition or disposal of a company or business or proposed expansion or contraction of activities, maturing new business opportunities, research and development projects, designs, secret processes, trade secrets, product or services development and formulae, know-how, inventions, sales statistics and forecasts, marketing strategies and plans, costs, profit and loss and other financial information (save to the extent published in audited accounts), prices and discount structures and the names, addresses and contact and other details of: (a) employees and their terms of employment; (b) customers and potential customers, their requirements and their terms of business with the Company/Group; and (c) suppliers and potential suppliers and their terms of business (all whether or not recorded in writing or in electronic or other format);

“**Employment**” means the employment of the Executive under this Agreement or, as the context requires, the duration of that employment;

“Group”	means together or separately the Company, any holding company of the Company and any subsidiaries and subsidiary undertakings of the Company or any such holding company (and the words “subsidiary” and “holding company” shall have the meanings given to them in section 1159 of the Companies Act 2006 and “subsidiary undertaking” shall have the meaning given in section 1162 of the Companies Act 2006) from time to time;
“Group Company”	means any company within the Group;
“Health Care Scheme”	means the medical expenses insurance, permanent health insurance (“ PHI ”), critical illness insurance or other healthcare or disability scheme(s) or arrangement(s) as may be provided or introduced from time to time by the Company (at the Company’s discretion) for the benefit of executives in the Group;
“Intellectual Property Rights”	means any and all existing and future intellectual or industrial property rights in and to any Works (whether registered or unregistered), including all existing and future patents, copyrights, design rights, database rights, trade marks, semiconductor topography rights, plant varieties rights, internet rights/domain names, know-how and any and all applications for any of the foregoing and any and all rights to apply for any of the foregoing in and to any Works;
“Minority Holder”	means a person who either solely or jointly holds (directly or through nominees) any shares or loan capital in any company whose shares are listed or dealt in on a recognised investment exchange (as that term is defined by section 285 Financial Services and Markets Act 2000) provided that such holding does not, when aggregated with any shares or loan capital held by the Executive’s partner and/or his or his partner’s children under the age of 18, exceed 3% of the shares or loan capital of the class concerned for the time being issued;
“Share Incentives”	means any options or other rights that the Executive may have to purchase, hold or otherwise acquire shares or rights in respect of or relating to shares in the Company or a Group Company;
“Termination Date”	means the date of termination of the Employment;
“Works”	means any documents, materials, models, designs, drawings, processes, inventions, formulae, computer coding, methodologies, know-how, Confidential Information or other work, performed made, created, devised, developed or discovered by the Executive in the course of the Employment (and whether or not made or discovered in the course of the Employment) either alone or with any other person in connection with or in any way affecting or relating to the business of the Company or any Group Company or capable of being used or adapted for use therein or in connection therewith.

1.2 Interpretation and Construction

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

- (a) words importing the singular shall include the plural and vice versa;
- (b) words importing any gender shall include all other genders;
- (c) words importing the whole shall be treated as including reference to any part of the whole;

- (d) any reference to a Clause, the Schedule or part of the Schedule is to the relevant Clause, Schedule or part of the Schedule of or to this Agreement unless otherwise specified;
- (e) reference to this Agreement or to any other document is a reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- (f) reference to a provision of law is a reference to that provision as extended, applied, amended, consolidated or re-enacted or as the application thereof is modified from time to time and shall be construed as including reference to any order, instrument, regulation or other subordinate legislation from time to time made under it;
- (g) references to a “person” includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body (whether or not having separate legal personality) or two or more of the foregoing;
- (h) general words shall not be given a restrictive meaning because they are followed by words which are particular examples of the acts, matters or things covered by the general words and “including”, “include” and “in particular” shall be construed without limitation; and
- (i) the meaning of any words coming after “other” or “otherwise” shall not be constrained by the meaning of any words coming before “other” or “otherwise” where a wider construction is possible.

1.3 **Headings**

The table of contents and the headings in this Agreement are included for convenience only and shall be ignored in construing this Agreement.

2. **THE EMPLOYMENT**

2.1 **Appointment**

Subject to the provisions of this Agreement, the Company employs the Executive and the Executive accepts employment as General Manager, Cardiac Surgery of the Company.

The starting date of this agreement is _____, subject to the obtainment of the necessary work permit and visa according to the UK immigration legislation.

2.2 **Work Permits and warranty**

- 2.2.1 The Executive warrants to the Company that by virtue of entering into this Agreement he will not be in breach of any express or implied obligation to any third party, including any restrictive covenants.
- 2.2.2 This employment contract is executed under the condition that the employee obtains all legally required immigration documents, including the residence permit and work permit/visa.
- 2.2.3 As from the commencement of this employment contract, and therefore after receiving all necessary immigration documents, the Executive warrants that he will notify the Company in advance of any possible change to his immigration status, as soon as he becomes aware of any

circumstances that might give rise to such change. Should the Company discover that the Executive does not have permission to live and work anymore in the United Kingdom or if any such permission is revoked, the Company reserves the right to terminate the Employment immediately and without notice or pay in lieu of notice and without referring to the warning stages of the Company's disciplinary procedure.

3. DURATION OF THE EMPLOYMENT

3.1 Continuous Employment

- 3.1.1 The Executive's continuous period of employment with the Company commenced on the Effective Date.
- 3.1.2 No employment with any previous employer shall count as part of the Executive's continuous period of employment.

3.2 Duration and Notice

Subject to the provisions of Clauses 3.3 and 17.1, the Employment shall continue unless and until terminated at any time by:

- (a) the Company, which must give to the Executive not less than six months' prior written notice of termination of the Employment; or
- (b) the Executive, who must give to the Company not less than six months' prior written notice of termination of the Employment.

3.3 Payment in lieu of notice

- 3.3.1 The Company shall be entitled, at its sole discretion, to terminate the Employment immediately at any time by giving the Executive notice in writing. In these circumstances, subject to the terms of Clause 3.3.2, the Company will subsequently make a payment to the Executive in lieu of notice, calculated in accordance with the provisions of Clauses 3.3.3 and 3.3.4 (the payment being referred to as a "**Notice Payment**").
- 3.3.2 For the avoidance of doubt, the Company is not obliged to make a Notice Payment. If the Company shall decide not to make a Notice Payment, the Executive shall not be entitled to enforce that payment as a contractual debt nor as liquidated damages.
- 3.3.3 The Notice Payment will be paid less all deductions that are required or permitted by law to be made including in respect of income tax, national insurance contributions and any sums due to the Company or any Group Company.
- 3.3.4 Subject to the terms of Clause 3.4, the Notice Payment will consist of a sum equivalent to the Basic Salary which the Executive would have received in respect of any notice period outstanding on the Termination Date, but will exclude any bonus, commission share of profit, pension contributions and any other benefits (including any benefits derived from any Share Incentives) that he would have received or would have accrued to him during that period.
- 3.3.5 The Notice Payment is in full and final settlement of all and any rights and claims that the Executive may have against the Company arising out of the termination of his employment (including both contractual and statutory employment claims). The Executive agrees to waive, release and discharge any and all such rights and claims and acknowledges that it is a condition of the payment of the Notice Payment that he will execute a settlement agreement (and any other

documents reasonably required by the Company) in a form reasonably acceptable to the Company in order to give effect to the release and waiver in this Clause 3.3.

3.4 Payment in instalments

3.4.1 The Company may, at its sole discretion and subject to the terms of Clause 3.4.2, pay the Notice Payment in equal monthly instalments over a period of six months (the “**Instalment Period**”), the first instalment payable at the end of the month in which the Termination Date occurs.

3.4.2 If the Executive commences alternative employment during the Instalment Period then the gross instalments of Notice Payment payable after that date will be reduced by a sum equal to the gross amount of the Executive’s income from the alternative employment.

3.4.3 If the Executive obtains alternative employment that is to commence during the Instalment Period he will immediately advise the Company of that fact and of his gross monthly salary from that employment. If the Executive fails to comply with this obligation, then from the date the Executive commences alternative employment, the Executive shall have no further entitlement to any payment of Notice Payment.

4. HOURS AND PLACE OF WORK

4.1 Hours of work

The Executive agrees that he shall work normal business hours together with such additional hours as are necessary for the proper performance of his duties. No payment will be made for any additional hours worked by the Executive.

4.2 Working Time Regulations

4.2.1 The Executive has autonomous decision making powers. The duration of his working time is not measured or predetermined.

4.3 Place of work

4.3.1 The Executive’s place of work will initially be at the Company’s offices at 20 Eastbourne Terrace, W2 6LG London but the Company may require the Executive to work at any other location within or outside the UK for such periods as the Company may from time to time require. The Executive will be given reasonable notice of any change in his permanent place of work.

4.3.2 The Executive will not be required to be absent from the United Kingdom for a period exceeding one month at any one time.

5. SCOPE OF THE EMPLOYMENT

5.1 Duties of the Executive

During the Employment the Executive shall:

- (a) undertake and carry out to the best of his ability such duties and exercise such powers in relation to the Group’s business as may from time to time be assigned to or vested in him, including where those duties require the Executive to work for any Group Company;
- (b) in the discharge of those duties and the exercise of those powers observe and comply with all lawful resolutions, regulations and directions from time to time made by, or under the authority of, the Board and promptly upon request, give a full account to the Chief Executive Officer of all matters with which he is involved. He will provide the information in writing if requested;

- (c) comply with the Articles of Association (as amended from time to time) of any Group Company of which he is a director;
- (d) do, or refrain from doing, such things as are necessary or expedient to ensure compliance by himself and any Group Company with applicable law and regulations;
- (e) ensure compliance with the UK Corporate Governance Code, as applicable from time to time;
- (f) act in accordance with all statutory, fiduciary and common law duties that he owes to the Company and any Group Company;
- (g) refrain from doing anything which would cause him to be disqualified from acting as a director;
- (h) do, or refrain from doing, such things as are necessary or expedient to ensure compliance by himself and any Group Company with applicable law and regulations and all other regulatory authorities relevant to any Group Company and any codes of practice issued by any Group Company (as amended from time to time);
- (i) unless prevented by ill-health, holidays or other unavoidable cause, devote the whole of his working time, attention and skill to the discharge of his duties under this Agreement;
- (j) faithfully and diligently perform his duties and at all times use his best endeavours to promote and protect the interests of the Group;
- (k) promptly disclose to the Company full details of any wrongdoing by the Executive or any other employee of any Group Company where that wrongdoing is material to that employee's employment by the relevant company or to the interests or reputation of any Group Company;
- (l) not incur on behalf of the Company or any Group Company any capital expenditure in excess of such sum as may be authorised from time to time by resolution of the Board; and
- (m) not enter into on behalf of the Company or any Group Company any commitment, contract or arrangement which is otherwise than in the normal course of the Company's or the relevant Group Company's business or is outside the scope of his normal duties or authorisations or is of an unusual or onerous or long-term nature.

5.2 Directorships and Directors and Officers insurance

The Executive may be required to act as a director of a Group Company (either executive or non-executive) as the Board requires from time to time. The Company reserves the right on giving written notice to the Executive to terminate any office of directorship immediately at any time.

5.3 Right to suspend duties and powers

- 5.3.1 The Company reserves the right in its absolute discretion to suspend all or any of the Executive's duties and powers on terms it considers expedient or to require him to perform only such duties, specific projects or tasks as are assigned to him expressly by the Company (including the duties of another position of equivalent status) in any case for such period or periods and at such place or places (including, without limitation, the Executive's home) as the Company in its absolute discretion deems necessary (the "**Garden Leave**"). During any period of Garden Leave the terms and conditions set out in this Agreement shall continue to apply to the Executive.

5.3.2 The Company may, at its sole discretion, require that during the Garden Leave the Executive shall not:

- (a) enter or attend the premises of the Company or any Group Company;
- (b) contact or have any communication with any client or prospective client or supplier of the Company or any Group Company in relation to the business of the Company or any Group Company;
- (c) contact or have any communication with any employee, officer, director, agent or consultant of the Company or any Group Company in relation to the business of the Company or any Group Company;
- (d) remain or become involved in any aspect of the business of the Company or any Group Company except as required by such companies; or
- (e) work either on his own account or on behalf of any other person.

5.3.3 During Garden Leave, the Executive will continue to receive his Basic Salary and benefits but will not accrue any bonus, commission or share of profit.

5.3.4 For the avoidance of doubt, the Company may exercise its powers under this Clause 5.3 at any time during the Employment on a condition that notice of termination has been given by either party.

6. REMUNERATION

6.1 Basic Salary

6.1.1 During the Employment the Company shall pay the Executive a Basic Salary of not less than £280,000 per annum. The Basic Salary shall accrue from day to day and be payable by credit transfer in equal monthly instalments in arrears on or around the last day of each calendar month or otherwise as arranged from time to time.

6.1.2 The Basic Salary shall be inclusive of all directors' fees (if any) to which the Executive may become entitled including all remuneration and director's fees in respect of services rendered by the Executive to any Group Company.

6.2 Salary review

The Basic Salary shall be reviewed annually; however, the Company is not obliged to increase the Basic Salary at any review.

6.3 Discretionary bonus

6.3.1 The Company may, at its sole discretion, pay the Executive a bonus in respect of each financial year of the Company (the "**Bonus**"). The Executive's target bonus is a sum equal to 40% of his Basic Salary for that financial year. The terms and amount of this bonus (and whether it is paid in cash or in other forms, such as shares or share options) will be approved from time to time and notified to the Executive by the Company, or if applicable to the Executive, the Compensation Committee, in its sole discretion.

6.3.2 The actual amount of any Bonus payable will be determined by reference to the achievement of performance objectives, which may include both Company and personal performance objectives. The Compensation Committee, if applicable to the Executive, will determine appropriate Company performance targets at the beginning of each financial year. The Bonus will be paid

by the Company after receipt by it of the audited financial statements of the Company for the financial year in question.

6.3.3 The Bonus will only be paid if the Executive is in Employment (and has not received or served notice of termination of employment) at the date the Bonus is due for payment. Upon the termination of the Executive's employment or (if earlier) upon either party giving notice under Clause 3 or the Company exercising its rights under Clause 17, the Executive will have no rights as a result of this Agreement or any alleged breach of it to any compensation under or in respect of any Bonus. For the avoidance of doubt, the Bonus will not accrue, nor will the Executive have any legitimate expectation as to the size or form of the Bonus, until the Company pays it to him. There are no circumstances whether in reliance on express or implied terms or otherwise where the Executive can require pay out of a particular sum or payment in a particular form or claim compensation for loss of such a Bonus.

6.4 **Signing bonus**

The Company shall pay the Executive a signing bonus of £170,000 gross, subject to withholding taxes and national insurance contribution, and the payment of it will be made together with the first salary payment of the Employee within the Company.

6.5 **Corporate Governance**

All payments and/or benefits payable to the Executive are subject to and conditional upon: (i) the terms of applicable law, regulation and governance codes that regulate or govern executive pay from time to time; and (ii) the consent of the shareholders of the Company, as appropriate as determined by the Board (together "**Remuneration Governance**"). The Company reserves the right to amend, reduce, hold back, defer, claw back and alter the structure of any payments and benefits payable to the Executive in order to comply with Remuneration Governance.

7. **EXPENSES**

7.1 **Out-of-pocket expenses**

The Company shall reimburse to the Executive (against receipts or other appropriate evidence as the Company may require) the amount of all out-of-pocket expenses reasonably and properly incurred by him in the proper discharge of his duties hereunder to the extent that such expenses are incurred in accordance with the Company's business expenses policy from time to time.

7.2 **Company credit/charge cards**

In the event that the Company issues a Company sponsored credit or charge card to the Executive he shall use such card only for expenses reimbursable under Clause 7.1 and shall return it to the Company when so requested and in any event immediately on termination of the Employment howsoever arising.

8. **DEDUCTIONS**

The Executive agrees that the Company may deduct from any sums due to him under this Agreement any sums due by him to the Company including, without limitation, any debits to his Company credit or charge card not authorised by the Company, the Executive's pension contributions (if any), any overpayments, loans or advances made to him by the Company, the cost of repairing any damage or loss to the Company's property caused by him and any losses suffered by the Company as a result of any negligence or breach of duty by the Executive.

9. **ALLOWANCES**

9.1 **School Allowance**

Commencing 1st August 2017 (the “School Date”), the Company will provide the Executive with a monthly allowance toward Executive’s incremental costs for school tuition for the Executive’s daughter in the amount of £4.167 (the “School Allowance”), subject to the deduction of tax and National Insurance contributions. The School Allowance shall decrease by 20% (up to £3.333) on the first anniversary of the School Date, and Executive’s entitlement to the School Allowance shall end as of 31 July 2019.

9.2 **Company car**

The Executive will be entitled to receive a Company leased-car corresponding to his level in accordance to the Company Car Policy. Alternatively, the Executive may choose to receive a cash allowance of £1100 per month, subject to normal tax withholdings, in lieu of a Company vehicle. This amount is also subject to company car policy changes.

10. **PENSION SCHEME**

10.1 **The Scheme**

10.1.1 The Executive is eligible to join the Company’s pension scheme (the “**Scheme**”), subject to its rules in force from time to time. Details of the Scheme are available from the Company. Pursuant to the Scheme, the Company will make an annual contribution to the Scheme in respect of the Executive equal to 15% of the Executive’s monthly gross salary and bonus payments, excluding other payments such as the car allowance. The contribution shall be paid to the Scheme at such time or times during the year as the Company shall decide at its discretion.

10.1.2 When the Company becomes subject to the employer duties in the Pensions Act 2008, the Company reserves the right to amend the Executive’s pension arrangements in place in its absolute discretion. The Company will inform the Executive of any changes to his pension arrangements at that time.

10.1.3 A copy of the current explanatory booklet giving details of the Scheme is available from the HR department.

10.1.4 The Scheme is not a contracted-out scheme for the purposes of the Pension Schemes Act 1993.

10.2 **Company’s right to amend and terminate**

10.2.1 The Company may at any time terminate the Scheme or the Executive’s membership of it subject to providing him with membership of an equivalent pension scheme.

11. **OTHER INSURANCE & BENEFITS**

11.1 **Health Care Scheme**

Without prejudice to the terms of Clauses 3 and 17, the Executive (and his spouse and children up to the age of 18 in respect of private medical insurance) shall be entitled during the Employment, to participate in any Health Care Scheme subject to the following terms and conditions:

- (a) the Executive’s (and his family’s participation as applicable) is subject to the Company’s rules regarding eligibility and the rules, terms and conditions of the relevant Scheme, both in force from time to time, copies of which shall be available from Human Resources;

- (b) the Company reserves the right to terminate the Executive's (or his family's, as applicable) or the Company's participation in any of the Schemes, substitute a new scheme for an existing Scheme and/or alter the level or type of benefits available under any Scheme;
- (c) if a scheme provider (e.g. an insurance company or pensions provider) refuses for any reason (whether under its own interpretation of the rules, terms and conditions of the relevant insurance policy or otherwise) to accept a claim and/or provide the relevant benefit(s) to the Executive (or his family) under the applicable Scheme, the Company shall not be liable to provide (or compensate the Executive for the loss of) such benefit(s) nor shall it be obliged to take action against the provider to enforce any rights under the Scheme;
- (d) the fact that the termination of the Employment under Clauses 3 and 17 may result in the Executive or his family ceasing to be eligible to receive or continue to receive benefits under any Scheme does not remove the Company's right to terminate the Employment; and
- (e) the Executive's acceptance of such variations to his terms and conditions of employment as may from time to time be required by the Company.

11.2 **Payments**

11.2.1 All payments under the Schemes will be subject to the deductions required by law.

11.2.2 Where payments are made under a PHI scheme or critical illness scheme, all other payments or benefits provided to or in respect of the Executive will cease from the start of those payments (if they have not done so already), unless the Company is fully reimbursed by the relevant insurance provider for the cost of providing the benefit.

11.3 **Medical examinations**

At any reasonable time during the Employment the Company may require the Executive to undergo a medical examination by a medical practitioner appointed by the Company and at the Company's expense. The Executive will consent to such examination and to the results being made available to the Company.

12. **RELOCATION PACKAGE**

12.1 **Relocation allowance**

A one-time "Relocation Allowance" of 30,000 GBP gross (15,000 GBP + 15,000 GBP in compensation of not using the shipment of household goods assistance), subject to taxes and National Insurance contribution, will be provided to the Employee to cover miscellaneous relocation expenses not covered elsewhere in the policy.

The Executive is encouraged to retain receipts for relocation expenses to reduce their taxability at filing time.

12.2 **Pre-departure Visits**

In addition to the Relocation Allowance, the Company will reimburse the Employee and his spouse for reasonable expenses related to a visit the new United Kingdom once to secure housing, schooling, and become acquainted with the new living environment. All travel should be booked and expensed per the Company's corporate travel and expense guidelines.

12.3 Two Years of Tax Assistance

In addition to the Relocation Allowance, the Company will provide the Executive with tax consultation through a professional tax services firm prior to relocation and after arrival in the United Kingdom for a period of two tax years. The intent of this consultation is to explain tax implications resulting from localization and to review the Executive's expected tax responsibilities associated with it. The Company will appoint a Tax Consultant to support the Executive on tax compliance in the UK and in the United States, if desired, for the first two tax years following the Commencement Date.

12.4 Immigration Support

In addition to the Relocation Allowance, the Company will provide immigration assistance to the Executive through an immigration vendor and will cover the cost of obtaining required entry and work documentation for the Executive, as well as required entry documentation for the Executive's approved accompanying family members prior to relocation. This includes passports and any required medical exams or other documentation required by immigration authorities.

The Executive is responsible for maintaining valid immigration and travel documents going forward.

12.5 Travel to the new employment country (the United Kingdom)

In addition to the Relocation Allowance, the Company will provide the Executive and his accompanying dependents with travel to the United Kingdom for purposes of relocation according to the Company's corporate travel guidelines.

12.6 Temporary Living

In addition to the Relocation Allowance, the Company will support temporary living expenses for a total of 60 cumulative days in the home and/or new employment country while the Executive and the Executive's family are in between permanent housing. Hotel accommodation is provided. Temporary living expenses are covered in accordance with The Company's travel and expense guidelines.

12.7 Housing

In addition to the Relocation Allowance, the Company agrees to provide relocation assistance to the Executive, including assistance with the sale of the Executive's principal residence at 1821 La Colina Drive, Santa Ana, California 92705, pursuant to the terms of the Managed Executive Plan provided by the Company's vendor, Orion Mobility; packing, shipping to the United Kingdom and unpacking Executive's household possessions at the Company's expense; and reimbursement of expenses incurred in connection with the purchase of a principal residence in the United Kingdom. If the Executive is compelled to pay income taxes on any of the foregoing relocation benefits provided by the Company, the Company will pay to the Executive such additional amounts as are necessary to ensure receipt by the Executive of the full amount that the Executive would have received but for the income taxes payable by the Executive or by the Company on his behalf.

13. HOLIDAYS

13.1 The holiday year

The Company's holiday year runs from 1st January to 31st December. Holidays can only be taken with the prior permission of the Chief Executive Officer of the Company.

13.2 **Annual entitlement**

13.2.1 The Executive's annual entitlement to paid holidays is to those public or customary holidays recognised by the Company in any holiday year of which there are eight in total and in addition 24 contractual days holiday. In addition, the Executive shall be entitled to one additional day of holiday per year of continuous service (assessed as at 1st January each year) up to a maximum of five additional days.

13.2.2 Entitlement to contractual holidays is accrued pro rata throughout the holiday year. The Executive will be entitled to take public and customary holidays on the days that they are recognised by the Company during the holiday year.

13.2.3 The Executive is not entitled to carry any unused holiday entitlement forward to the next holiday year without the permission of the Company.

13.3 **Holiday entitlement on termination**

13.3.1 Upon notice of termination of the Employment being served by either party, the Company may require the Executive to take any unused holidays accrued in the holiday year in which the termination takes place at that time during any notice period. Alternatively, the Company may, at its discretion, on termination of the Employment, make a payment in lieu of accrued contractual holiday entitlement.

13.3.2 The Executive will be required to make a payment to the Company in respect of any holidays taken in excess of his holiday entitlement accrued at the Termination Date. Any sums so due may be deducted from any money owing to the Executive by the Company.

14. **ABSENCE**

14.1 **Absence due to sickness or injury**

14.1.1 If the Executive is absent from work due to sickness or injury he shall:

- (a) immediately inform the Company of his sickness or injury; and
- (b) In respect of absence due to sickness, injury or accident that continues for more than 7 consecutive days (including weekends) the Executive must provide the Company with a note of fitness to work stating the reason for the absence. Thereafter notes of fitness to work must be provided to the Company to cover the remainder of the period of continuing sickness absence.

14.1.2 Failure to follow the requirements referred to in Clause 13.1.1 may result in disciplinary action and loss of Statutory Sick Pay and/or Company Sick Pay pursuant to Clause 13.2.

14.2 **Payment of salary during absence**

14.2.1 Subject to the Executive complying with the terms of Clause 13.1.1, the Company may, at its sole discretion, continue to pay Basic Salary during any period of absence due to sickness or injury for up to a maximum of three months in any period of twelve consecutive months (the twelve-month period being referred to as the "**Entitlement Period**") unless the Employment is terminated in terms of Clauses 3 or 17. The first Entitlement Period will begin on the first day of absence and any subsequent Entitlement Period will start on the first day of any absence occurring outside an enduring Entitlement Period.

14.2.2 Payment of the Basic Salary in terms of Clause 13.2.1 shall be made less:

- (a) an amount equivalent to any Statutory Sick Pay payable to the Executive;
- (b) any sums which may be received by the Executive under any insurance policy effected by the Company; and
- (c) any other benefits or sums which the Executive receives, such as under a PHI or other insurance scheme, in terms of the Employment or under any relevant legislation.

14.3 Absence caused by third party negligence

If the Executive's absence is caused by the negligence of a third party in respect of which damages are recoverable, then all sums paid by the Company during the period of absence in terms of Clause 13.2 shall constitute loans to the Executive who shall:

- (a) notify the Company immediately of all the relevant circumstances and of any claim, compromise, settlement or judgment made or awarded; and
- (b) if the Company so requires, refund to it an amount determined by the Company, not exceeding the lesser of:
 - (i) the amount of damages recovered by him in respect of loss of earnings during the period of absence under any compromise, settlement or judgment; and
 - (ii) the sums advanced to him by the Company in respect of the period of incapacity.

15. RESTRICTIONS DURING EMPLOYMENT

15.1 Disclosure of other interests

The Executive shall disclose to the Company any interest of his own (or that of his partner or of any child of his or of his partner under eighteen years of age):

- (a) in any trade, business or occupation whatsoever which is in any way similar to any of those in which the Company or any Group Company is involved; and
- (b) in any trade, business or occupation carried on by any supplier or customer of the Company or any Group Company whether or not such trade, business or occupation is conducted for profit or gain.

15.2 Restrictions on other activities and interests of the Executive

15.2.1 During the Employment the Executive shall not at any time, without the prior written consent of the Company, either alone or jointly with any other person, carry on or be directly or indirectly employed, engaged, concerned or interested in any business, prospective business or undertaking other than a Group Company. Nothing contained in this Clause 14.2.1 shall preclude the Executive from being a Minority Holder unless the holding is in a company that is a direct business competitor of the Company or any Group Company in which case, the Executive shall obtain the prior consent of the Company to the acquisition or variation of such holding.

15.2.2 If the Executive, with the consent of the Company, accepts any other appointment he must keep the Company accurately informed of the amount of time he spends working under that appointment.

15.3 Transactions with the Company

Subject to any regulations issued by the Company, the Executive shall not be entitled to receive or obtain directly or indirectly any discount, rebate, commission or any other form of gift or gratuity (any of these referred to as a “**Gratuity**”) as a result of the Employment or any sale or purchase of goods or services effected or other business transacted (whether or not by him) by or on behalf of the Company or any Group Company and if he (or any person in which he is interested) obtains any Gratuity he shall account to the Company for the amount received by him (or a due proportion of the amount received by the person having regard to the extent of his interest therein).

15.4 **Dealing in securities**

The Executive shall comply with every rule of law (including but not limited to the insider dealing provisions contained in Part V of the Criminal Justice Act 1993), the UK Financial Conduct Authority’s listing rules’ Model Code for transactions in securities by directors of listed companies, certain employees and persons connected with them and every regulation of the Company for the time being in force in relation to dealings in shares or other securities of the Company or any Group Company. Under Rule 4 of the Model Code, the person to whom notice should be given and from whom acknowledgement must be received before the Executive may deal in securities shall be the Company Secretary of the Company from time to time or such other person as shall be notified to the Executive. The Executive also acknowledges that under the provisions of the Model Code the Executive must seek to ensure compliance with the Model Code by persons connected with the Executive (within the meaning of section 96B and Schedule 11B of the Financial Services and Markets Act 2000) including, without limitation, the Executive's spouse and dependent children, and by investment managers acting on the Executive’s behalf or on behalf of connected persons. The Executive undertakes to procure that dealings by or on behalf of such persons are in compliance with the Model Code.

15.5 **Compliance with the code on Corporate Governance**

The Executive shall comply, if and to the extent that the Board considers appropriate for a company the size of the Company, with the provisions of “The UK Corporate Governance Code” a corporate governance code issued by the Financial Reporting Council (as amended from time to time).

16. **CONFIDENTIALITY AND COMPANY DOCUMENTS**

16.1 **Restrictions on disclosure and use of Confidential Information**

The Executive must not either during the Employment (except in the proper performance of his duties) or at any time (without limit) after the Termination Date:

- (a) divulge or communicate to any person;
- (b) use for his own purposes or for any purposes other than those of the Company or any Group Company; or
- (c) through any failure to exercise due care and diligence, cause any unauthorised disclosure of;

any Confidential Information. The Executive must at all times use his best endeavours to prevent publication or disclosure of any Confidential Information. These restrictions shall cease to apply to any information which shall become available to the public generally otherwise than through the default of the Executive.

16.2 **Protection of Company documents and materials**

All notes, records, lists of customers, suppliers and employees, correspondence, computer and other discs or tapes, data listings, codes, keys and passwords, designs, drawings and other documents or material whatsoever (whether made or created by the Executive or otherwise and in whatever medium or format) relating to the business of the Company or any Group Company or any of its or their clients (and any copies of the same):

- (a) shall be and remain the property of the Company or the relevant Group Company or client; and
- (b) shall be handed over by the Executive to the Company or the relevant Group Company or client on demand by the Company and in any event on the termination of the Employment;

provided that following the termination of the Employment, the Executive shall be provided with reasonable access to board minutes and agendas of any Group Company relating to a period during which he was a director of such Group Company that shall nevertheless remain confidential.

17. INVENTIONS AND OTHER WORKS

17.1 Executive to further interests of the Company

The Company and the Executive agree that the Executive may make or create Works during the Employment and agree that in this respect the Executive is obliged to further the interests of the Company and any Group Company.

17.2 Disclosure and ownership of Works

The Executive must immediately disclose to the Company all Works and all Intellectual Property Rights. Both the Works and all Intellectual Property Rights will (subject to sections 39 to 43 Patents Act 1977) belong to and be the absolute property of the Company or any other person the Company may nominate.

17.3 Protection, registration and vesting of Works

The Executive shall immediately on request by the Company (whether during or after the Employment) and at the expense of the Company:

- (a) apply or join with the Company or any Group Company in applying for any Intellectual Property Rights or other protection or registration (“**Protection**”) in the United Kingdom and in any other part of the world for, or in relation to, any Works;
- (b) execute all instruments and do all things necessary for vesting all Intellectual Property Rights or Protection when obtained and all right, title and interest to and in the same absolutely and as sole beneficial owner in the Company or such Group Company or other person as the Company may nominate; and
- (c) sign and execute any documents and do any acts reasonably required by the Company in connection with any proceedings in respect of any applications and any publication or application for revocation of any Intellectual Property Rights or Protection.

17.4 Waiver of rights by the Executive

The Executive hereby irrevocably and unconditionally waives all rights under Chapter IV Copyright, Designs and Patents Act 1988 and any other moral rights which he may have in the Works, in whatever part of the world such rights may be enforceable including:

- (a) the right conferred by section 77 of that Act to be identified as the author of any such Works; and
- (b) the right conferred by section 80 of that Act not to have any such Works subjected to derogatory treatment.

17.5 **Power of Attorney**

The Executive hereby irrevocably appoints the Company to be his attorney and in his name and on his behalf to execute any such act and to sign all deeds and documents and generally to use his name for the purpose of giving to the Company the full benefit of this Clause. The Executive agrees that, with respect to any third parties, a certificate signed by any duly authorised officer of the Company that any act or deed or document falls within the authority hereby conferred shall be conclusive evidence that this is the case.

17.6 **Statutory rights**

Nothing in this Clause 16 shall be construed as restricting the rights of the Executive or the Company under sections 39 to 43 Patents Act 1977.

18. **TERMINATION**

18.1 **Termination events**

Notwithstanding any other provision of this Agreement, the Company shall be entitled, but not bound, to terminate the Employment with immediate effect by giving to the Executive notice in writing at any time after the occurrence of any one or more of the following events:

- (a) if the Executive is guilty of any gross misconduct or behaviour which tends to bring himself or the Company or any Group Company into disrepute; or
- (b) if the Executive commits any material or persistent breach of this Agreement (in the case of a non-material persistent breach, having been given notice in writing of the breach and a reasonable opportunity to rectify the breach) or fails to comply with any reasonable order or direction of the Company; or
- (c) if the Executive fails to perform his duties to the reasonable satisfaction of the Company after having been given notice in writing of: (i) the areas of underperformance, and (ii) the improvements in performance that are reasonably required by the Company; and after a reasonable period of time to make the necessary improvements in performance; or
- (d) if he becomes insolvent or bankrupt or compounds with or grants a trust deed for the benefit of his creditors; or
- (e) if his behaviour (whether or not in breach of this Agreement) can reasonably be regarded as materially prejudicial to the interests of the Company or any Group Company, including if he is found guilty of any criminal offence punishable by imprisonment (whether or not such sentence is actually imposed); or
- (f) if he has an order made against him disqualifying him from acting as a company director; or
- (g) if he becomes of unsound mind; or

- (h) if the Executive is found guilty of a serious breach of the rules or regulations as amended from time to time of the UK Listing Authority (including the Model Code for transactions in securities by directors), or any other regulatory authority relevant to the Company or any Group Company or any code of practice issued by the Company or any Group Company (as amended from time to time); or
- (i) the expiration of 3 months following notice in writing if the Executive has been prevented by reason of ill health, injury or some other reason beyond his control from performing his duties under this Agreement for a period or periods aggregating at least ninety days in the preceding period of twenty-four consecutive months, provided that if at any time during the period of such notice and before the termination of the Employment the Executive shall provide a medical certificate satisfactory to the Company to the effect that he has fully recovered his physical and/or mental health and that no recurrence of illness or incapacity can reasonably be anticipated, the Company shall withdraw the notice.

18.2 Company's right to proceed

While the Company will endeavour to deal fairly with allegations against the Executive, it reserves the right to proceed under Clause 17.1 without prior notice and without holding a hearing or inviting any representations from the Executive.

18.3 Termination on resignation as director

If the Executive resigns as a director of the Company or any Group Company (otherwise than at the request of the Company), he shall be deemed to have terminated the Employment with effect from the date of his resignation and the Employment shall terminate at that time, unless the Company agrees with the Executive that the Employment should continue, in which case the Employment may be subject to any terms and conditions stipulated by the Company in its absolute discretion.

18.4 No damages or payment in lieu of notice

In the event of the Employment being terminated pursuant to Clause 17.1 or 17.3, the Executive shall not be entitled to receive any payment in lieu of notice nor make any claim against the Company or any Group Company for damages for loss of office or termination of the Employment. Regardless of this, the termination shall be without prejudice to the continuing obligations of the Executive under this Agreement.

19. EVENTS UPON TERMINATION

19.1 Obligations upon termination

Immediately upon the termination of the Employment howsoever arising, the Executive shall:

- (a) deliver to the Company all Works, materials within the scope of Clause 15.2 and all other materials and property including credit or charge cards, mobile telephone, computer equipment, disks and software, passwords, encryption keys or the like, keys, security pass, letters, stationery, documents, files, films, records, reports, plans and papers (in whatever format including electronic) and all copies thereof used in or relating to the business of the Company or the Group which are in the possession of or under the control of the Executive;
- (b) resign (without claim for compensation) as a director and from all other offices held by him in the Company or any Group Company or otherwise by virtue of the Employment. For the avoidance of doubt, such resignations shall be without prejudice to any claims

the Executive may have against the Company or any Group Company arising out of the termination of the Employment; and

- (c) transfer without payment, to the Company, or as the Company may direct, any shares or other securities held by the Executive as nominee or trustee for the Company or any Group Company;

and should the Executive fail to do so the Company is hereby irrevocably authorised to appoint some person to sign any documents and/or do all things in his name and on his behalf necessary to give effect thereto,

20. RESTRICTIONS AFTER TERMINATION

20.1 Definitions

Since the Executive is likely to obtain Confidential Information in the course of the Employment and personal knowledge of and influence over suppliers, customers, clients and employees of the Company and Group Companies, the Executive hereby agrees with the Company that in addition to the other terms of this Agreement and without prejudice to the other restrictions imposed upon him by law, he will be bound by the covenants and undertakings contained in Clauses 19.2 to 19.5. In this Clause 19, unless the context otherwise requires:

“Customer”	means any person to which the Company distributed, sold or supplied Restricted Products or Restricted Services during the Relevant Period and with which, during that period either the Executive, or any employee under the direct or indirect supervision of the Executive, had material dealings in the course of the Employment, but always excluding therefrom, any division, branch or office of such person with which the Executive and/or any such employee had no dealings during that period;
“Prospective Customer”	means any person with which the Company had discussions during the Relevant Period regarding the possible distribution, sale or supply of Restricted Products or Restricted Services and with which during such period the Executive, or any employee who was under the direct or indirect supervision of the Executive, had material dealings in the course of the Employment, but always excluding therefrom any division, branch or office of that person with which the Executive and/or any such employee had no dealings during that period;
“Relevant Period”	means: (i) where the Employment is continuing, the period of the Employment; and (ii) where the Employment has terminated, the period of twelve months immediately preceding the Termination Date;
“Restricted Area”	means: <ul style="list-style-type: none"> (a) the United Kingdom; and (b) any other country in the world where, on the Termination Date, the Company dealt in Restricted Products or Restricted Services;
“Restricted Employee”	means any person who was a director, employee or consultant of the Company at any time within the Relevant Period who by reason of that position and in particular his seniority and expertise or knowledge of Confidential Information or knowledge of or influence over the clients, customers or contacts of the Company is likely to cause damage to the Company if he were to leave the employment of the Company and become employed by a competitor of the Company;
“Restricted Period”	means the period commencing on the Termination Date and, subject to the terms of Clause 19.4, continuing for twelve months;
“Restricted Products”	means any product, device, equipment or machinery researched into, developed, manufactured, supplied, marketed, distributed or sold by the Company and with which the duties of the Executive were materially concerned or for which he was responsible during the Relevant Period, or any products, equipment or machinery of the same type or materially similar to those products, equipment or machinery;
“Restricted Services”	means any services (including but not limited to technical and product support, technical advice and customer services) researched into, developed or supplied by the Company and with which the duties of the Executive were materially concerned or for which he was responsible during the Relevant Period, or any services of the same type or materially similar to those services;
“Supplier”	means any supplier, agent, distributor or other person who, during the Relevant Period was in the habit of dealing with the Company and with which, during that period, the Executive, or any employee under the direct or indirect supervision of the Executive, had material dealings in the course of the Employment.

20.2 Restrictive covenants

Both during the Employment and during the Restricted Period, the Executive will not, without the prior written consent of the Company (such consent not to be unreasonably withheld), whether by himself, through his employees or agents or otherwise and whether on his own behalf or on behalf of any person, directly or indirectly:

- (a) so as to compete with the Company, solicit business from or canvas any Customer or Prospective Customer in respect of Restricted Products or Restricted Services;
- (b) so as to compete with the Company, accept orders from, act for or have any business dealings with, any Customer or Prospective Customer in respect of Restricted Products or Restricted Services;
- (c) within the Restricted Area, be employed or engaged or at all interested (except as a Minority Holder) in that part of a business or person which is involved in the business of researching into, developing, manufacturing, distributing, selling, supplying or otherwise dealing with Restricted Products or Restricted Services, if the business or person is or seeks to be in competition with the Company. For the purposes of this sub-Clause, acts done by the Executive outside the Restricted Area shall nonetheless be deemed to be done within the Restricted Area where their primary purpose is to distribute, sell, supply or otherwise deal with Restricted Products or Restricted Services in the Restricted Area;
- (d) solicit or induce or endeavour to solicit or induce any person who was a Restricted Employee (and with whom the Executive had dealings during the Relevant Period) to cease working for or providing services to the Company, whether or not any such person would thereby commit a breach of contract;
- (e) employ or otherwise engage any Restricted Employee in the business of researching into, developing, manufacturing, distributing, selling, supplying or otherwise dealing with Restricted Products or Restricted Services if that business is, or seeks to be, in competition with the Company; or
- (f) solicit or induce or endeavour to solicit or induce any Supplier to cease to deal with the Company and shall not interfere in any way with any relationship between a Supplier and the Company.

20.3 Application of restrictive covenants to other Group Companies

Clause 19.2 shall also apply as though references to the “**Company**” in Clauses 19.1 and 19.2 include references to each Group Company in relation to which the Executive has in the course of the Employment or by reason of rendering services to or holding office in such Group Company:

- (a) acquired knowledge of its products, services, trade secrets or Confidential Information; or
- (b) had personal dealings with its Customers or Prospective Customers; or
- (c) supervised directly or indirectly employees having personal dealings with its Customers or Prospective Customers;

but so that references to the “**Company**” shall for this purpose be deemed to be references to the relevant Group Company. The obligations undertaken by the Executive pursuant to this Clause 19.3 shall, with respect to each Group Company, constitute a separate and distinct covenant in favour of and for the benefit of each Group Company and which shall be enforceable either by the particular Group Company or by the Company on behalf of the Group Company and the

invalidity or unenforceability of any such covenant shall not affect the validity or enforceability of the covenants in favour of any other Group Company.

20.4 Effect of suspension on Restricted Period

If the Company exercises its right to suspend the Executive's duties and powers under Clause 5.3 after notice of termination of the Employment has been given, the aggregate of the period of the suspension and the Restricted Period shall not exceed twelve months and if the aggregate of the two periods would exceed twelve months, the Restricted Period shall be reduced accordingly.

20.5 Further undertakings

The Executive hereby undertakes to the Company that he will not at any time:

- (a) during the Employment or after the Termination Date engage in any trade or business or be associated with any person engaged in any trade or business using any trading names used by the Company or any Group Company including the name(s) or incorporating the word(s) "LivaNova", "Cyberonics" or "Sorin";
- (b) after the Termination Date make any public statement in relation to the Company or any Group Company or any of their officers or employees; or
- (c) after the Termination Date represent or otherwise indicate any association or connection with the Company or any Group Company or for the purpose of carrying on or retaining any business represent or otherwise indicate any past association with the Company or any Group Company.

20.6 Severance

The restrictions in this Clause 19 (on which the Executive has had the opportunity to take independent advice, as the Executive hereby acknowledges) are separate and severable restrictions and are considered by the parties to be reasonable in all the circumstances. It is agreed that if any such restrictions, by themselves, or taken together, shall be adjudged to go beyond what is reasonable in all the circumstances for the protection of the legitimate interests of the Company or a Group Company but would be adjudged reasonable if some part of it were deleted, the relevant restriction or restrictions shall apply with such deletion(s) as may be necessary to make it or them valid and enforceable.

21. RECONSTRUCTION AND AMALGAMATIONS

If the Company undergoes any process of reconstruction or amalgamation (whether or not involving the liquidation of the Company) and the Executive is offered employment by the successor or proposed successor to the Company or any Group Companies on terms which as a whole are no less favourable than those under this Agreement whether as to duties, responsibilities, remuneration or otherwise and the Executive does not accept the offer within one month of it being made, then the Executive shall have no claim against the Company or the successor to the Company in respect of termination of this Agreement and the Employment.

22. DISCIPLINARY AND GRIEVANCE PROCEDURE

22.1 Disciplinary procedures and grievance procedures

- 22.1.1 Any disciplinary action taken in connection with the Employment will usually be taken in accordance with the Company's normal disciplinary procedures (which are workplace rules and not contractually binding) a copy of which is available from Human Resources.
- 22.1.2 If the Executive wishes to obtain redress of any grievance relating to the Employment or is dissatisfied with any reprimand, suspension or other disciplinary step taken by the Company, he should follow the procedures set out in the Company's grievance policy, a copy of which is available from Human Resources.

23. GENERAL

23.1 Provisions which survive termination

Any provision of this Agreement which is expressed or intended to have effect on, or to continue in force after, the termination of this Agreement shall have such effect, or, as the case may be, continue in force, after such termination.

23.2 No collective agreements

There are no collective agreements that directly affect the terms and conditions of the Employment.

24. DATA PROTECTION AND PRIVACY

24.1 Data Protection

The Executive acknowledges and agrees that the Company is permitted to hold personal information (including sensitive personal data) about the Executive as part of its personnel and other business records and may use such information in the course of the Company's or the Group's business. The Executive agrees that the Company may disclose such information to third parties in the event that such disclosure is in the Company's view required for the proper conduct of the Company's business or that of any Group Company. This Clause 23.1 applies to information held, used or disclosed in any medium.

24.2 Privacy

All communications, whether by telephone, email, fax, or any other means, which are transmitted, undertaken or received using the Company's IT or communications systems ("**Company Systems**") or on Company premises will be treated by the Company as work related. The Company Systems are provided for work use only. The Company may intercept, record and monitor all communications made by the Executive and his use of the Company Systems, without further notice. The Executive should not regard any communications or use as being private.

25. AMENDMENTS, WAIVERS AND REMEDIES

25.1 Amendments

No amendment or variation of this Agreement or any of the documents referred to in it (other than an alteration in the Basic Salary) shall be effective unless it is in writing and signed by or on behalf of each of the parties.

25.2 Waivers and remedies cumulative

- 25.2.1 The rights of each party under this Agreement:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

25.2.2 Delay in exercising or non-exercise of any right is not a waiver of that right.

25.2.3 Any right of rescission conferred upon the Company by this Agreement shall be in addition to and without prejudice to all other rights and remedies available to it.

26. ENTIRE AGREEMENT

26.1.1 This Agreement and the documents referred to in it constitute the entire agreement and understanding of the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to the subject matter of this Agreement.

26.1.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

26.1.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

26.1.4 Nothing in this Clause shall limit or exclude any liability for fraud.

27. NO OUTSTANDING CLAIMS

The Executive hereby acknowledges that he has no outstanding claims of any kind against the Company or any Group Company (other than in respect of remuneration and expenses due to the date of this Agreement but not yet paid).

28. SEVERANCE

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other provisions of this Agreement; or
- (b) the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

29. NOTICE

29.1 Notices and deemed receipt

Any notice hereunder shall be given by either party to the other either personally to the Executive or the Company Secretary (as appropriate) or sent in the case of the Company, to its registered office for the time being and, in the case of the Executive, to his address last known to the Company. Any such notice shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid recorded delivery or registered post or by facsimile transmission. Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;

- (b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting;
- (c) in the case of registered airmail, five days from the date of posting; and
- (d) in the case of fax or email, at the time of transmission;

provided that if deemed receipt occurs before 9am on a business day the notice shall be deemed to have been received at 9am on that day and if deemed receipt occurs after 5pm on a business day, or on a day which is not a business day, the notice shall be deemed to have been received at 9am on the next business day. For the purpose of this Clause, “**business day**” means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.

30. GOVERNING LAW AND JURISDICTION

30.1 Governing law

This Agreement is governed by and to be construed in accordance with English law.

30.2 Jurisdiction

Each party hereby submits to the exclusive jurisdiction of the English courts as regards any claim, dispute or matter arising out of or in connection with this Agreement and its implementation and effect.

IN WITNESS of which this Agreement has been executed and delivered as a deed on the first date written above.

EXECUTED as a Deed
by LIVANOVA PLC
acting by Elodie Maertens,
HR Director
and a Witness

Elodie Maertens

Witness

Full Name:

Address:

EXECUTED as a Deed
By Alistair Simpson
in the presence of:

Witness's

Signature:

Full Name:

Address:

CERTIFICATION

I, Damien McDonald, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2019, 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: May 1, 2019

/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 March 31, 2019, 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: May 1, 2019

/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 March 31, 2019, 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: May 1, 2019

/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.