

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 15, 2018



LivaNova PLC

(Exact Name of Registrant as Specified in its Charter)

England and Wales
(State or Other Jurisdiction
of Incorporation)

001-37599
(Commission
File Number)

98-1268150
(IRS Employer
Identification No.)

20 Eastbourne Terrace
London, W2 6LG
United Kingdom
(Address of Principal Executive Offices)

+44 20 33250660
(Registrant's Telephone Number, Including Area Code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

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

☐

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(d) Adoption of Amended Non-Employee Director RSU Agreements

On June 12, 2018, the board of directors (the "Board") of LivaNova Plc (the "Company") approved, pursuant to the Company's Non-Employee Director Compensation Policy (the "Director Compensation Policy") and consistent with its shareholder-approved 2016 UK Remuneration Policy, an amended form of award agreement (the "2018 Director RSU Agreement"). Grants under the 2018 Director RSU Agreements vest one year after grant date and, for any termination of service, will automatically vest at such termination on a pro-rated basis. Grants to each non-employee director will be made on June 15, 2018 under the 2018 Director RSU Agreements.

The foregoing description of the 2018 Director RSU Agreement is a summary and does not purport to be complete. Such description is qualified in its entirety by reference to the text of the form of 2018 Director RSU Agreement, which is filed with this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders.

On June 12, 2018, the Company held its 2018 Annual General Meeting of shareholders ("AGM") in Houston, Texas, USA.

At the Company's AGM, LivaNova's shareholders considered nine proposals as more fully described in the Company's 2018 Proxy Statement and as summarized below. Each of the ordinary resolutions 1-9 was adopted. The number of votes for and against, as well as the number of abstentions and the percentage of votes cast to each such resolution, are set forth below.

1. Ordinary resolution to elect, by separate resolutions, each of the following nine (9) directors for a term expiring at the AGM to be held in 2019. All nominees were elected.

Mr. Francesco Bianchi

Votes For	Votes Against	Votes Abstained	Broker non-votes
40,564,382	83,089	16,109	1,578,590
% of votes cast	% of votes cast	% of votes cast	
99.76	0.20	0.04	0

Mr. William A. Kozy

Votes For	Votes Against	Votes Abstained	Broker non-votes
40,617,746	29,725	16,109	1,578,590
% of votes cast	% of votes cast	% of votes cast	
99.89	0.07	0.04	0

Mr. Damien McDonald

Votes For	Votes Against	Votes Abstained	Broker non-votes
40,509,621	137,850	16,109	1,578,590
% of votes cast	% of votes cast	% of votes cast	
99.62	0.34	0.04	0

Mr. Daniel J. Moore

Votes For	Votes Against	Votes Abstained	Broker non-votes
40,483,491	162,360	17,729	1,578,590
% of votes cast	% of votes cast	% of votes cast	
99.56	0.40	0.04	0

Mr. Hugh M. Morrison

Votes For	Votes Against	Votes Abstained	Broker non-votes
40,008,295	639,176	16,109	1,578,590
% of votes cast	% of votes cast	% of votes cast	
98.39	1.57	0.04	0

Mr. Alfred J. Novak

Votes For	Votes Against	Votes Abstained	Broker non-votes
40,507,692	138,281	17,607	1,578,590
% of votes cast	% of votes cast	% of votes cast	
99.62	0.34	0.04	0

Dr. Sharon O’Kane

Votes For	Votes Against	Votes Abstained	Broker non-votes
37,964,503	2,682,968	16,109	1,578,590
% of votes cast	% of votes cast	% of votes cast	
93.36	6.60	0.04	0

Dr. Arthur L. Rosenthal

Votes For	Votes Against	Votes Abstained	Broker non-votes
40,509,111	138,360	16,109	1,578,590
% of votes cast	% of votes cast	% of votes cast	
99.62	0.34	0.04	0

Ms. Andrea L. Saia

Votes For	Votes Against	Votes Abstained	Broker non-votes
40,562,110	85,361	16,109	1,578,590
% of votes cast	% of votes cast	% of votes cast	
99.75	0.21	0.04	0

2. Ordinary resolution to approve, on an advisory basis, the frequency (“U.S. Say-on-Frequency”) of future advisory votes on the Company’s compensation of its Named Executive Officers (“U.S. Say-on-Pay”). A plurality of votes cast were voted in favor of holding future U.S. Say-on-Pay votes annually.

Every 1 year	Every 2 years	Every 3 years	Votes Abstained	Broker non-votes
38,700,486	372,270	1,568,525	22,299	1,578,590
% of votes cast	% of votes cast	% of votes cast	% of votes cast	
95.17	0.92	3.86	0.05	

Based on the voting results for this Proposal 2 at the AGM, and the Board’s consideration of the appropriate voting frequency for the Company at this time, the Board has decided that the Company will include a U.S. Say-on Pay vote in its proxy materials every year until such time as the next advisory vote is submitted to stockholders regarding the frequency of advisory votes on executive compensation, or until the Board otherwise determines that it is in the best interest of the Company to hold a U.S. Say on Pay vote with different frequency.

3. Ordinary resolution to approve, on an advisory basis LivaNova's compensation of its Named Executive Officers ("U.S. Say-on-Pay"). This advisory resolution was approved.

Votes For	Votes Against	Votes Abstained	Broker non-votes
38,737,927	1,849,958	75,695	1,578,590
% of votes cast	% of votes cast	% of votes cast	
95.26	4.55	0.19	

4. Ordinary resolution to ratify the appointment of PricewaterhouseCoopers LLP, a Delaware limited liability partnership ("PwC USA"), as the Company's independent registered public accounting firm for the year ended December 31, 2018. This ordinary resolution was approved.

Votes For	Votes Against	Votes Abstained
42,129,437	95,324	17,409
% of votes cast	% of votes cast	% of votes cast
99.73	0.23	0.04

5. Ordinary resolution to approve, on an advisory basis, the directors' remuneration report in the form set out in the Company's UK annual report and accounts ("U.K. Annual Report") for the period ended December 31, 2017. This advisory resolution was approved.

Votes For	Votes Against	Votes Abstained	Broker non-votes
38,812,581	1,825,803	25,196	1,578,590
% of votes cast	% of votes cast	% of votes cast	
95.45	4.49	0.06	

6. Ordinary resolution to approve the LivaNova Global Employee Share Purchase Plan ("ESPP"). This ordinary resolution was approved.

Votes For	Votes Against	Votes Abstained	Broker non-votes
40,450,559	194,184	18,837	1,578,590
% of votes cast	% of votes cast	% of votes cast	
99.47	0.48	0.05	

7. Ordinary resolution to receive and adopt the Company’s audited UK statutory accounts for year ended December 31, 2017, together with the reports of the directors and the auditors thereon. This ordinary resolution was approved.

Votes For	Votes Against	Votes Abstained
42,152,447	1,053	88,670
% of votes cast	% of votes cast	% of votes cast
99.79	0.00	0.21

8. Ordinary resolution to re-appoint PricewaterhouseCoopers UK, a limited liability partnership organized under the laws of England (“PwC U.K.”) as the Company’s UK statutory auditor under the UK Companies Act 2006 to hold office from the conclusion of the AGM until the conclusion of the next general meeting at which the annual report and accounts are laid. This ordinary resolution was approved.

Votes For	Votes Against	Votes Abstained
42,218,373	3,375	20,422
% of votes cast	% of votes cast	% of votes cast
99.94	0.01	0.05

9. Ordinary resolution to authorize the directors and/or the Audit & Compliance Committee of the Company to determine the remuneration of PwC UK, in its capacity as the Company’s UK statutory auditor under the UK Companies Act 2006. This ordinary resolution was approved.

Votes For	Votes Against	Votes Abstained
42,085,205	107,322	49,643
% of votes cast	% of votes cast	% of votes cast
99.63	0.25	0.12

Item 9.01 Financial Statements and Exhibits

d) Exhibits

<u>Exhibit</u>	<u>Description</u>
10.1	2018 Director RSU Agreement

Exhibit Index

<u>Exhibit No.</u>	<u>Description</u>
10.1	<u>2018 Director RSU Agreement</u>

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 hereunto duly authorized.

LivaNova PLC

Date: June 15, 2018

By: /s/ Catherine Moroz

Name: Catherine Moroz

Title: Company Secretary

**LIVANOVA PLC
2015 INCENTIVE AWARD PLAN**

DIRECTOR RESTRICTED STOCK UNIT AWARD GRANT NOTICE

LivaNova PLC, a public limited company incorporated under the laws of England and Wales (the “Company”), pursuant to its 2015 Incentive Award Plan, as amended from time to time (the “Plan”), hereby grants to the holder listed below (“Participant”) the number of Restricted Stock Units (the “RSUs”) set forth below. The RSUs are subject to the terms and conditions set forth in this Restricted Stock Unit Grant Notice (the “Grant Notice”) and the Restricted Stock Unit Agreement attached hereto as Exhibit A (the “Agreement”) and the Plan, which are incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in the Grant Notice and the Agreement.

Participant:

Grant Date: June 15, 2018

Number of RSUs:

The RSUs shall become fully vested on the earliest of (i) June 15, 2019, (ii) the date of a Change in Control or (iii) a Termination of Service (solely to the extent set out in section 2.2(b) of the

Vesting Schedule: Agreement).

By clicking the “ACCEPT” button, the Participant and the Company agree to be bound by the terms and conditions of the Sub-Plan, the Agreement, the Foreign Appendix, if applicable, and this Grant Notice all of which the Participant can access through a link from the Grant Notice. The Participant has reviewed the Plan, the Agreement, the Foreign Appendix, if applicable, and this Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to electronically signing the Grant Notice and fully understands all provisions of this Grant Notice and the Agreement. Shares subject to RSUs that become vested will be distributed in accordance with the Agreement (including, without limitation, Section 2.3 of the Agreement) The Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan, this Grant Notice, or the Agreement.

EXHIBIT A
TO DIRECTOR RESTRICTED STOCK UNIT AWARD GRANT NOTICE
DIRECTOR RESTRICTED STOCK UNIT AWARD AGREEMENT

Pursuant to the Grant Notice to which this Agreement is attached, the Company has granted to Participant the number of RSUs set forth in the Grant Notice.

ARTICLE I.

GENERAL

1.1 Defined Terms. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan or the Grant Notice.

1.2. Incorporation of Terms of Plan. The RSUs and the Shares issued to Participant hereunder are subject to the terms and conditions set forth in this Agreement and the Plan, which is incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

ARTICLE II.

AWARD OF RESTRICTED STOCK UNITS AND DIVIDEND EQUIVALENTS

2.1 Award of RSUs and Dividend Equivalents.

(a) In consideration of Participant's past and/or continued employment with or service to the Company or a Subsidiary and for other good and valuable consideration, effective as of the grant date set forth in the Grant Notice (the "Grant Date"), the Company has granted to Participant the number of RSUs set forth in the Grant Notice, upon the terms and conditions set forth in the Grant Notice, the Plan and this Agreement, subject to adjustment as provided in Section 13.2 of the Plan. Each RSU represents the right to receive one Share or, at the option of the Company, an amount of cash as set forth in Section 2.3(b), in either case, at the times and subject to the conditions set forth herein. However, unless and until the RSUs have vested, Participant will have no right to the payment of any Shares subject thereto. Prior to the actual delivery of any Shares, the RSUs will represent an unsecured obligation of the Company, payable only from the general assets of the Company.

(b) The Company hereby grants to Participant an Award of Dividend Equivalents with respect to each RSU granted pursuant to the Grant Notice for all ordinary cash dividends which are paid to all or substantially all holders of the outstanding Shares between the Grant Date and the date when the applicable RSU is distributed or paid to Participant or is forfeited or expires. The Dividend Equivalents for each RSU shall be equal to the amount of cash which is paid as a dividend on one Share. All such Dividend Equivalents shall be credited to Participant and be deemed to be reinvested in additional RSUs as of the date of payment of any such dividend based on the Fair Market Value of a Share on such date. Each additional RSU which results from such deemed reinvestment of Dividend Equivalents granted hereunder shall be subject to the same vesting, distribution or payment, adjustment and other provisions which apply to the underlying RSU to which such additional RSU relates.

2.2 Vesting of RSUs and Dividend Equivalents.

(c) Subject to Participant's continued employment with or service to the Company or a Subsidiary on each applicable vesting date and subject to the terms of this Agreement, the RSUs shall vest in such amounts and at such times as are set forth in the Grant Notice. Each additional RSU which results from deemed reinvestments of Dividend Equivalents pursuant to Section 2.1(b) hereof shall vest whenever the underlying RSU to which such additional RSU relates vests.

(d) In the event Participant incurs a Termination of Service, except as may be otherwise provided by the Administrator or as set forth in a written agreement between Participant and the Company, a prorated portion of the RSUs shall immediately vest upon such Termination of Service (calculated by multiplying the number of the RSUs by a fraction, the numerator of which is the number of days elapsed between the grant date and the date of the Termination of Service and the denominator of which is 365 days; provided, however, if necessary to avoid the imposition of additional taxes and penalties under Section 409A of the Internal Revenue Code, the RSUs shall be settled in Company ordinary shares on the date set forth in the original terms of such award notwithstanding the accelerated vesting set forth above. The Participant shall immediately forfeit any and all Dividend Equivalents granted under this Agreement which have not vested or do not vest on or prior to the date on which such Termination of Service occurs, and Participant's rights in any such Dividend Equivalents which are not so vested shall lapse and expire.

(e) In the event of a Change in Control that occurs following the Grant Date, the RSUs, to the extent not otherwise vested immediately prior to such Change in Control, shall become fully vested immediately prior to, but subject to the consummation of, such Change in Control, subject to the Participant's continuous employment with the Company or a Subsidiary through such Change in Control.

2.3 Distribution or Payment of RSUs.

(a) Participant's RSUs shall be distributed in Shares (either in book-entry form or otherwise) or, at the option of the Company, paid in an amount of cash as set forth in Section 2.3(b), in either case, as soon as administratively practicable following the vesting of the applicable RSU pursuant to Section 2.2, and, in any event, within sixty (60) days following such vesting (for the avoidance of doubt, this deadline is intended to comply with the "short-term deferral" exemption from Section 409A of the Code). Notwithstanding the foregoing, the Company may delay a distribution or payment in settlement of RSUs if it reasonably determines that such payment or distribution will violate Federal securities laws or any other Applicable Law, *provided* that such distribution or payment shall be made at the earliest date at which the Company reasonably determines that the making of such distribution or payment will not cause such violation, as required by Treasury Regulation Section 1.409A-2(b)(7)(ii), and *provided further* that no payment or distribution shall be delayed under this Section 2.3(a) if such delay will result in a violation of Section 409A of the Code.

(b) In the event that the Company elects to make payment of Participant's RSUs in cash, the amount of cash payable with respect to each RSU shall be equal to the Fair Market Value of a Share on the day immediately preceding the applicable distribution or payment date set forth in Section 2.3(a). All distributions made in Shares shall be made by the Company in the form of whole Shares, and any fractional share shall be distributed in cash in an amount equal to the value of such fractional share determined based on the Fair Market Value as of the date immediately preceding the date of such distribution.

2.4 Conditions to Issuance of Shares. The Company shall not be required to issue or deliver any certificate or certificates for any Shares or to cause any Shares to be held in book-entry form prior to the fulfillment of all of the following conditions: (A) the admission of the Shares to listing on all stock exchanges on which such Shares are then listed, (B) the completion of any registration or other qualification of the Shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or other governmental regulatory body, which the Administrator shall, in its absolute discretion, deem necessary or advisable, and (C) the obtaining of any approval or other clearance from any state or federal governmental agency that the Administrator shall, in its absolute discretion, determine to be necessary or advisable.

2.5 Tax Withholding. Notwithstanding any other provision of this Agreement:

(a) The Company and its Subsidiaries have the authority to deduct or withhold, or require Participant to remit to the Company or the applicable Subsidiary, an amount sufficient to satisfy any applicable federal, state, local and foreign taxes (including the employee portion of any FICA obligation) required by law to be withheld with respect to any taxable event arising pursuant to this Agreement. The Company and its Subsidiaries may withhold or Participant may make such payment in one or more of the forms specified below:

(i) by cash or check made payable to the Company or the Subsidiary with respect to which the withholding obligation arises;

(ii) by the deduction of such amount from other compensation payable to Participant;

(iii) with respect to any withholding taxes arising in connection with the distribution of the RSUs, by the Company withholding a net number of vested Shares otherwise issuable pursuant to the RSUs having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company and its Subsidiaries based on the minimum applicable statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes or such other rate as does not result in adverse accounting consequences for the Company;

(iv) with respect to any withholding taxes arising in connection with the distribution of the RSUs, with the consent of the Administrator, by tendering to the Company vested Shares having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company and its Subsidiaries based on the minimum applicable statutory withholding rates for federal, state, local and foreign income tax and payroll tax purposes or such other rate as does not result in adverse accounting consequences for the Company;

(v) with respect to any withholding taxes arising in connection with the distribution of the RSUs, through the delivery of a notice that Participant has placed a market sell order with a broker acceptable to the Company with respect to Shares then issuable to Participant pursuant to the RSUs, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company or the Subsidiary with respect to which the withholding obligation arises in satisfaction of such withholding taxes; *provided* that payment of such proceeds is then made to the Company or the applicable Subsidiary at such time as may be required by the Administrator, but in any event not later than the settlement of such sale; or

(vi) in any combination of the foregoing.

Unless the Board otherwise determines, the Company shall withhold using the method described in clause (iii) above.

(b) With respect to any withholding taxes arising in connection with the RSUs, in the event Participant fails to provide timely payment of all sums required pursuant to Section 2.5(a), the Company shall have the right and option, but not the obligation, to treat such failure as an election by Participant to satisfy all or any portion of Participant's required payment obligation pursuant to Section 2.5(a)(ii) or Section 2.5(a)(iii) above, or any combination of the foregoing as the Company may determine to be appropriate. The Company shall not be obligated to deliver any certificate representing Shares issuable with respect to the RSUs to, or to cause any such Shares to be held in book-entry form by, Participant or his or her legal representative unless and until Participant or his or her legal representative shall have paid or otherwise satisfied in full the amount of all federal, state, local and foreign taxes applicable with respect to the taxable income of Participant resulting from the vesting or settlement of the RSUs or any other taxable event related to the RSUs.

(c) In the event any tax withholding obligation arising in connection with the RSUs will be satisfied under Section 2.5(a)(iii), then the Company may elect to instruct any brokerage firm determined acceptable to the Company for such purpose to sell on Participant's behalf a whole number of shares from those Shares then issuable to Participant pursuant to the RSUs as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the tax withholding obligation and to remit the proceeds of such sale to the Company or the Subsidiary with respect to which the withholding obligation arises. Participant's acceptance of this Award constitutes Participant's instruction and authorization to the Company and such brokerage firm to complete the transactions described in this Section 2.5(c), including the transactions described in the previous sentence, as applicable. The Company may refuse to issue any Shares in settlement of the RSUs to Participant until the foregoing tax withholding obligations are satisfied, *provided* that no payment shall be delayed under this Section 2.5(c) if such delay will result in a violation of Section 409A of the Code.

(d) Participant is ultimately liable and responsible for all taxes owed in connection with the RSUs, regardless of any action the Company or any Subsidiary takes with respect to any tax withholding obligations that arise in connection with the RSUs. Neither the Company nor any Subsidiary makes any representation or undertaking regarding the treatment of any tax withholding in connection with the awarding, vesting or payment of the RSUs or the subsequent sale of Shares. The Company and the Subsidiaries do not commit and are under no obligation to structure the RSUs to reduce or eliminate Participant's tax liability.

2.6 Rights as Stockholder. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares (which may be in book-entry form) will have been issued and recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant (including through electronic delivery to a brokerage account). Except as otherwise provided herein, after such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to such Shares, including, without limitation, the right to receipt of dividends and distributions on such Shares.

ARTICLE III.

OTHER PROVISIONS

3.1 Administration. The Administrator shall have the power to interpret the Plan, the Grant Notice and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan, the Grant Notice and this Agreement as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Administrator will be final and binding upon Participant, the Company and all other interested persons. To the extent allowable pursuant to Applicable Law, no member of the Committee or the Board will be personally liable for any action, determination or interpretation made with respect to the Plan, the Grant Notice or this Agreement.

3.2 RSUs Not Transferable. The RSUs may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the Shares underlying the RSUs have been issued, and all restrictions applicable to such Shares have lapsed. No RSUs or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence. Notwithstanding the foregoing, with the consent of the Administrator, the RSUs may be transferred to certain persons or entities related to the Participant, including but not limited to members of Participant's family, charitable institutions or trusts or other entities whose beneficiaries or beneficial owners are members of Participant's family or to such other persons or entities as may be expressly approved by the Administrator, pursuant to any such conditions and procedures the Administrator may require.

3.3 Adjustments. The Administrator may accelerate the vesting of all or a portion of the RSUs in such circumstances as it, in its sole discretion, may determine. Participant acknowledges that the RSUs and the Shares subject to the RSUs are subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan, including Section 13.2 of the Plan.

3.4 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company's principal office, and any notice to be given to Participant shall be addressed to Participant at Participant's last address reflected on the Company's records. By a notice given pursuant to this Section 3.4, either party may hereafter designate a different address for notices to be given to that party. Any notice shall be deemed duly given when sent via email or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

3.5 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

3.6 Governing Law. The laws of the State of Delaware shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

3.7 Conformity to Securities Laws. Participant acknowledges that the Plan, the Grant Notice and this Agreement are intended to conform to the extent necessary with all Applicable Laws, including, without limitation, the provisions of the Securities Act and the Exchange Act, and any and all regulations and rules promulgated thereunder by the Securities and Exchange Commission, and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the RSUs are granted, only in such a manner as to conform to Applicable Law. To the extent permitted by Applicable Law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to Applicable Law.

3.8 Amendment, Suspension and Termination. To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Administrator or the Board, *provided* that, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely affect the RSUs in any material way without the prior written consent of Participant.

3.9 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in Section 3.2 and the Plan, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

3.10 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the RSUs (including RSUs which result from the deemed reinvestment of Dividend Equivalents), the Dividend Equivalents, the Grant Notice and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by Applicable Law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

3.11 Not a Contract of Employment. Nothing in this Agreement or in the Plan shall confer upon Participant any right to continue to serve as an employee or other service provider of the Company or any Subsidiary or shall interfere with or restrict in any way the rights of the Company and its Subsidiaries, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without cause, except to the extent expressly provided otherwise in a written agreement between the Company or a Subsidiary and Participant. Neither the Plan nor this Agreement afford the Participant any rights to compensation or damages, including for loss of or potential loss that the Participant may suffer as a result of the termination of the Plan, lapse of the RSUs or the termination of the Participant's employment with or service to the Company.

3.12 Entire Agreement. The Plan, the Grant Notice and this Agreement (including any exhibit hereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof.

3.13 Section 409A. This Award is not intended to constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code (together with any Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the date hereof, "Section 409A"). However, notwithstanding any other provision of the Plan, the Grant Notice or this Agreement, if at any time the

Administrator determines that this Award (or any portion thereof) may be subject to Section 409A, the Administrator shall have the right in its sole discretion (without any obligation to do so or to indemnify Participant or any other person for failure to do so) to adopt such amendments to the Plan, the Grant Notice or this Agreement, or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Administrator determines are necessary or appropriate for this Award either to be exempt from the application of Section 409A or to comply with the requirements of Section 409A.

3.14 Agreement Severable. In the event that any provision of the Grant Notice or this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of the Grant Notice or this Agreement.

3.15 Limitation on Participant's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant shall have only the rights of a general unsecured creditor of the Company with respect to amounts credited and benefits payable, if any, with respect to the RSUs and Dividend Equivalents.

3.16 Counterparts. The Grant Notice may be executed in one or more counterparts, including by way of any electronic signature, subject to Applicable Law, each of which shall be deemed an original and all of which together shall constitute one instrument.

3.17 Broker-Assisted Sales. In the event of any broker-assisted sale of Shares in connection with the payment of withholding taxes as provided in Section 2.5(a)(iii) or Section 2.5(c): (A) any Shares to be sold through a broker-assisted sale will be sold on the day the tax withholding obligation arises or as soon thereafter as practicable; (B) such Shares may be sold as part of a block trade with other participants in the Plan in which all participants receive an average price; (C) Participant will be responsible for all broker's fees and other costs of sale, and Participant agrees to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale; (D) to the extent the proceeds of such sale exceed the applicable tax withholding obligation, the Company agrees to pay such excess in cash to Participant as soon as reasonably practicable; (E) Participant acknowledges that the Company or its designee is under no obligation to arrange for such sale at any particular price, and that the proceeds of any such sale may not be sufficient to satisfy the applicable tax withholding obligation; and (F) in the event the proceeds of such sale are insufficient to satisfy the applicable tax withholding obligation, Participant agrees to pay immediately upon demand to the Company or its Subsidiary with respect to which the withholding obligation arises an amount in cash sufficient to satisfy any remaining portion of the Company's or the applicable Subsidiary's withholding obligation.

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