

---

---

**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): October 19, 2015**

---

**LivaNova PLC**

(Exact Name of Registrant as Specified in its Charter)

---

**England and Wales**  
(State or Other Jurisdiction  
of Incorporation)

**333-203510**  
(Commission  
File Number)

**98-1268150**  
(IRS Employer  
Identification No.)

**5 Merchant Square  
London W2 1AY  
United Kingdom**  
(Address of Principal Executive Offices)

**+44 800 975 8080**  
(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 filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- 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))
- 
-

## **Explanatory Note**

On October 19, 2015, pursuant to the Transaction Agreement, dated as of March 23, 2015 (the “*Transaction Agreement*”), by and among LivaNova PLC (the “*Company*” or “*LivaNova*”), Sorin S.p.A. (“*Sorin*”), Cyberonics, Inc. (“*Cyberonics*”) and Cypher Merger Sub, Inc. (“*Merger Sub*”), (a) Sorin merged with and into the Company, with the Company continuing as the surviving company (the “*Sorin Merger*”) and (b) following the consummation of the Sorin Merger, Merger Sub merged with and into Cyberonics, with Cyberonics continuing as the surviving company and as a wholly owned subsidiary of the Company (the “*Cyberonics Merger*” and, together with the Sorin Merger, the “*Mergers*”).

### **Item 1.01 Entry into a Material Definitive Agreement.**

In connection with the Mergers, LivaNova entered into the following agreements:

#### ***Amended and Restated Finance Contract***

On October 19, 2015 (the “*Closing Date*”) and pursuant to an Amendment and Restatement Agreement (the “*Amendment Agreement*”), by and among the Company, Sorin, certain of Sorin’s subsidiaries and the European Investment Bank (the “*EIB*”), dated as of October 2, 2015, the Company, Sorin CRM S.A.S., Sorin Group Italia S.r.l., and the EIB entered into that certain Amended and Restated Finance Contract (the “*Amended and Restated Finance Contract*”). The Amended and Restated Finance Contract amends and restates Sorin’s existing €100 million term loan finance contract dated as of May 6, 2014.

The foregoing description of the Amendment Agreement and the Amended and Restated Finance Contract does not purport to be complete and is qualified in its entirety by reference to the full texts thereof filed as Exhibits 10.1 and 10.2 hereto, respectively, and incorporated herein by reference.

#### ***Indemnification Agreements***

Effective October 19, 2015, the Company entered into deeds of indemnity (the “*Deeds of Indemnification*”) with certain directors and officers of the Company. The Deeds of Indemnification provide indemnification to such directors and officers to the fullest extent permitted by the laws of England and Wales or the laws of any other jurisdiction and arising out of, or in connection with, the actual or purported exercise of, or failure to exercise, any of such person’s powers, duties or responsibilities as a director or officer of the Company or any of its subsidiaries. Further, pursuant to the Deeds of Indemnification, the Company agrees to advance expenses incurred in defense of these proceedings, on the terms and conditions set forth in the Deeds of Indemnification. The Deeds of Indemnification also provide procedures for requesting and obtaining indemnification and advancement of expenses.

The foregoing description of the Deeds of Indemnification is a general description only and is qualified in its entirety by reference to the form of the Deed of Indemnification (Directors) and the form of the Deed of Indemnification (Officers), which are filed as Exhibits 10.3 and 10.4 hereto, respectively, and incorporated herein by reference.

### **Item 2.03 Creation of a Direct Financial Obligation.**

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

### **Item 4.01 Changes in Registrant’s Certifying Accountant.**

#### ***(a) Dismissal of Independent Registered Public Accounting Firm***

The transaction involving the Mergers was treated as a “reverse acquisition” for accounting purposes and, as such, the historical financial statements of the accounting acquirer, Cyberonics, will become the historical financial statements of the Company. KPMG LLP (“*KPMG*”) was the independent auditor that audited Cyberonics’ financial statements for the fiscal years ended April 25, 2014 and April 24, 2015. In connection with the consummation of the Mergers, on October 19, 2015, the Audit & Compliance Committee (the “*Audit Committee*”) of the Company’s board of directors approved the engagement of PricewaterhouseCoopers S.p.A. (“*PricewaterhouseCoopers*”) as the Company’s independent registered public accountants to audit the financial statements of the Company and its consolidated subsidiaries for the fiscal period beginning April 25, 2015 and ending on December 31, 2015, such engagement to be effective immediately. Accordingly, the Audit Committee of the Company’s board of directors will dismiss KPMG as the independent registered public accountants of Cyberonics upon completion by KPMG of its review, in accordance with auditing standards generally accepted in the United States of America, applicable to the interim financial information of Cyberonics to be included in the Transition Report on Form 10-Q to be filed by the Company with the Securities and Exchange Commission (the “*SEC*”) for the period beginning on April 25, 2015 and ending on October 19, 2015, as discussed in Item 5.03 below, and under the assumption that KPMG is able to perform such review, which is contingent upon completion by KPMG of its independence review of the Company (inclusive of Sorin).

For the fiscal years ended April 25, 2014 and April 24, 2015, no report by KPMG on the Cyberonics financial statements contained an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope or accounting principles. During the fiscal years ended April 25, 2014 and April 24, 2015 and the subsequent interim period through October 19, 2015, (i) there have been no disagreements with KPMG on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to KPMG's satisfaction, would have caused KPMG to make reference to the subject matter of the disagreement in connection with its report on the financial statements for any such year, and (ii) there were no reportable events of the type described in Item 304(a)(1)(v) of Regulation S-K.

The Company has provided KPMG with a copy of the disclosures contained in this Item 4.01 and requested that KPMG furnish a letter addressed to the SEC stating whether it agrees with those disclosures. A copy of such letter, dated October 19, 2015, is filed as Exhibit 16.1 to this Current Report on Form 8-K.

*(b) Engagement of a New Independent Registered Public Accounting Firm*

As noted above in Item 4.01(a), on October 19, 2015, the Audit Committee of the Company's board of directors determined that PricewaterhouseCoopers will serve as the independent registered public accounting firm for the Company for the fiscal period beginning April 25, 2015 and ending on December 31, 2015. During the fiscal years ended April 25, 2014 and April 24, 2015, and for the interim period through October 19, 2015, Cyberonics did not consult with PricewaterhouseCoopers in regard to Cyberonics' financial statements, which were audited by KPMG, with respect to: (i) the application of accounting principles to a specified transaction, either completed or proposed; (ii) the type of audit opinion that might be rendered on Cyberonics' financial statements; or (iii) any other matter that was either the subject of a disagreement (as defined in Item 304(a)(1)(iv) of Regulation S-K and the related instructions to Item 304 of Regulation S-K) or a reportable event of the type described in Item 304(a)(1)(v) of Regulation S-K. Additionally, during the fiscal years ended April 25, 2014 and April 24, 2015, and for the interim period through October 19, 2015, no written report or oral advice was provided to Cyberonics by PricewaterhouseCoopers that was an important factor considered by Cyberonics in reaching a decision as to any accounting, auditing or financial reporting issue.

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

*New Articles of Association*

On the Closing Date, in connection with the consummation of the Mergers, the Company amended and restated its articles of association. The new articles of association of the Company are attached hereto as Exhibit 3.1 and are incorporated herein by reference.

*Change in Fiscal Year*

Prior to the Mergers, Cyberonics' fiscal year ended on the last Friday in April of each year. The fiscal year of LivaNova, which became the successor issuer to Cyberonics on October 19, 2015, begins on January 1 and ends on December 31 of each year. LivaNova will file with the SEC a Transition Report on Form 10-Q for the period beginning on April 25, 2015 and ending on October 19, 2015 and a Transition Report on Form 10-K for the period beginning on April 25, 2015 and ending on December 31, 2015 in connection with such succession.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

The information set forth in the Exhibit Index following the signature page hereto is incorporated herein by reference.

**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: October 19, 2015

By: /s/ Brian Sheridan

Name: Brian Sheridan

Title: Company Secretary

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
3.1	Articles of Association of LivaNova PLC*
10.1	Amendment and Restatement Agreement, dated as of October 2, 2015, by and among LivaNova PLC, Sorin S.p.A., Sorin CRM S.A.S., Sorin Group Italia S.r.l. and the European Investment Bank*
10.2	Amended and Restated Finance Contract, dated as of October 19, 2015, by and among LivaNova PLC, Sorin CRM S.A.S., Sorin Group Italia S.r.l. and the European Investment Bank*
10.3	Form of Deed of Indemnification (Directors)*
10.4	Form of Deed of Indemnification (Officers)*
16.1	Letter from KPMG LLP to the U.S. Securities and Exchange Commission*

\* Filed herewith

**ARTICLES OF ASSOCIATION**

**of**

**LIVANOVA PLC**

**PUBLIC LIMITED COMPANY**

**“the Company”**

**(effective as from 19 October 2015)**

---

**ARTICLES OF ASSOCIATION**

---

## CONTENTS

Clause		Page
1.	MODEL ARTICLES NOT TO APPLY	1
2.	INTERPRETATION	1
3.	LIABILITY OF MEMBERS	5
4.	SHARES AND SHARE CAPITAL	5
5.	AUTHORITY TO ALLOT SHARES AND DISAPPLICATION OF PRE-EMPTION RIGHTS	7
6.	VARIATION OF RIGHTS	8
7.	SHARE CERTIFICATES	8
8.	LIEN	9
9.	CALLS ON SHARES	10
10.	FORFEITURE AND SURRENDER	11
11.	TRANSFER OF SHARES	12
12.	TRANSMISSION OF SHARES	13
13.	SHARE WARRANTS	14
14.	UNTRACED MEMBERS	14
15.	ALTERATION OF CAPITAL	15
16.	GENERAL MEETINGS	16
17.	NOTICE OF GENERAL MEETINGS	16
18.	PROCEEDINGS AT GENERAL MEETINGS	17
19.	AMENDMENTS TO RESOLUTIONS	21
20.	PROPOSED MEMBER RESOLUTIONS	22
21.	VOTES OF MEMBERS	23
22.	PROXIES AND CORPORATE REPRESENTATIVES	26
23.	NUMBER AND CLASSIFICATION OF DIRECTORS	29
24.	APPOINTMENT OF DIRECTORS	30
25.	DIRECTORS' FEES AND EXPENSES	31
26.	[RESERVED]	32
27.	POWERS OF THE BOARD	32
28.	COMPLIANCE WITH NASDAQ RULES	32
29.	DELEGATION OF DIRECTORS' POWERS	32
30.	DISQUALIFICATION AND REMOVAL OF DIRECTORS	33
31.	EXECUTIVE DIRECTORS	34
32.	DIRECTORS' INTERESTS	34
33.	PROCEEDINGS OF DIRECTORS	37
34.	MINUTES	40

35.	SECRETARY	40
36.	THE SEAL	40
37.	REGISTERS	41
38.	DIVIDENDS	41
39.	SCRIP DIVIDENDS	44
40.	CAPITALISATION OF PROFITS	45
41.	RETURN OF CAPITAL	47
42.	CHANGE OF THE COMPANY'S NAME	47
43.	RECORD DATES	47
44.	ACCOUNTS	48
45.	NOTICES AND OTHER COMMUNICATIONS	48
46.	DESTRUCTION OF DOCUMENTS	51
47.	WINDING UP	53
48.	INDEMNITY AND INSURANCE	53
49.	DISPUTE RESOLUTION	54



**1. MODEL ARTICLES NOT TO APPLY**

The regulations in the relevant model articles shall not apply to the Company.

**2. INTERPRETATION**

2.1 In these Articles (if not inconsistent with the subject or context) the following words shall bear the following meanings:

“**Affiliates**” means, with respect to any specified Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified Person;

“**Articles**” means the articles of association for the time being of the Company;

“**Board**” means the board of Directors of the Company from time to time;

“**British Pounds Sterling**” or “**£**” means the lawful currency of the United Kingdom;

“**certificated share**” means a share in the capital of the Company which is not an uncertificated share and references in these Articles to a share being held in certificated form shall be construed accordingly;

“**clear days**” means, in relation to the period of a notice, that period excluding the day on which a notice is given or deemed to be given and the day for which it is given or which it is to take effect;

“**Companies Act**” means the Companies Act 2006 including any modifications or re-enactment of it for the time being in force;

“**Contract**” means, as to any Person, any contract, lease, easement, license, instrument or understanding to which the applicable Person is a party;

“**Control**” means, as to any Person, the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of shares or other equity securities or as trustee or executor, by Contract or otherwise; the terms “Controlled” and “Controlling” shall have a correlative meaning;

“**Depository**” means any depository, custodian or nominee approved by the Board that holds legal title to shares in the capital of the Company for the purposes of facilitating beneficial ownership of such shares by another individual;

“**Director**” means a director of the Company from time to time;

“**dividend**” means dividend or bonus;

“**electronic address**” means any number or address used for the purposes of sending or receiving notices, documents or information by electronic means;

“**equity security**” shall have the meaning given to such term in Rule 405 under the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder;

“**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended from time to time, and the regulations promulgated thereunder;

“**executed**” means any mode of execution;

“**financial institution**” means a recognised clearing house or a nominee of a recognised clearing house or of a recognised investment exchange who is designated within the meaning of section 778(2) of the Companies Act;

“**FSMA**” means the Financial Services and Market Act 2000;

“**Fully Diluted Interest**” means, with respect to any member, the percentage of the Ordinary Shares owned by that member assuming the exercise or conversion, as applicable, of all options, warrants, rights and convertible or other similar securities outstanding on the date in question, whether vested or unvested, on a cashless net exercise basis or conversion assuming the price of the Ordinary Share underlying such option, warrant, right or convertible or other similar securities equals the 5-day volume weighted average trading price of such Ordinary Shares ending on the trading day prior to the date in question. For the avoidance of doubt, it is intended that Fully Diluted Interest shall be calculated using a customary treasury stock method to determine fully diluted shares outstanding;

“**Governmental Authority**” shall mean any national, federal, state, county, municipal, local or foreign government, or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory, taxing or administrative functions of or pertaining to government, and any arbitrator or arbitral body or panel of competent jurisdiction;

“**holder**” means, in relation to a share in the capital of the Company, the member whose name is entered in the register of members as the holder of that share;

“**Independent Director**” means a director who meets the independence standards of the NASDAQ applicable to non-controlled domestic US issuers;

“**Law**” means any federal, state, provincial, municipal, local or foreign law, statute, code, ordinance, rule, regulation, circular, order, judgment, writ, stipulation, award, injunction, decree or arbitration award or finding;

“**member**” means a member of the Company;

“**NASDAQ**” means the National Association of Securities Dealers Automated Quotations

“**Office**” means the registered office of the Company from time to time;

“**officer**” includes a Director, manager and the secretary, but shall not include an auditor;

“**Official List**” means the list of securities that have been admitted to listing which is maintained by the Financial Conduct Authority in accordance with section 74(1) of FSMA;

“**Operator**” means Euroclear UK and Ireland Limited or such other person as may for the time being be approved by HM Treasury as Operator under the Uncertificated Securities Rules;

“**Ordinary Shares**” means the ordinary shares in the capital of the Company from time to time, identified in Article 4.1(a) and with the rights set out therein and these Articles generally;

“**paid**” means paid or credited as paid;

“**participating class**” means a class of shares title to which is permitted by the operator to be transferred by means of a relevant system;

“**Percentage Interest**” means, with respect to any member, the percentage of the total outstanding Ordinary Shares of owned by that member;

“**Person**” means any individual, corporation, limited company, limited liability company, partnership, association, trust, unincorporated organization, Governmental Authority, other entity or group (as defined in Section 13(d) of the Exchange Act);

“**public announcement**” shall mean (a) disclosure in a press release reported by Reuters, the Dow Jones News Service, Associated Press or a comparable news service or other method of public announcement as the Board may deem appropriate in the circumstances or in a document publicly filed by the Company with the US Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act; and (b) for so long as any of the Company’s Shares are admitted to the Official List or to trading on the London Stock Exchange, disclosure via a regulatory information service and, where the Board considers appropriate, in one or more newspapers with a national circulation in the United Kingdom;

“**register**” means the register of members of the Company;

“**relevant system**” means a computer-based system which allows units of securities without written instruments to be transferred and endorsed pursuant to the Uncertificated Securities Rules;

“**seal**” means the common seal (if any) of the Company and includes an official seal (if any) kept by the Company by virtue of section 49 or 50 of the Companies Act;

“**secretary**” means the secretary of the Company and includes a joint, assistant, deputy or temporary secretary and any other person appointed to perform the duties of the secretary of the Company;

“**Subsidiary**” shall mean, with respect to any Person, any corporation, partnership, joint venture or other legal entity of which such Person (either alone or through or together with any other Subsidiary), owns, directly or indirectly, a majority of the stock or other equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation, partnership, joint venture or other legal entity, or any Person that would otherwise be deemed a “subsidiary” under Rule 12b-2 promulgated under the Exchange Act;

“**UKLA**” means the United Kingdom listing authority, which is the Financial Conduct Authority when performing its functions under Part VI of FSMA;

“**Uncertificated Securities Rules**” means every statute (including any orders, regulations or other subordinate legislation made under it) relating to the holding, evidencing of title to, or transfer of, uncertificated shares and legislation, rules or other arrangements made under or by virtue of such provisions;

“**uncertificated share**” means a share of a class which is at the relevant time a participating class, title to which is recorded on the register as being held in uncertificated form and references in these Articles to a share being held in uncertificated form shall be construed accordingly;

“**undertaking**” includes a body corporate, trust or partnership, joint ventures or an unincorporated association carrying on a trade or business with or without a view to profit (and, in relation to an undertaking which is not a company, expressions in these articles appropriate to companies shall be construed as references to the corresponding persons, officers, documents or organs (as the case may be) appropriate to undertakings of that description);

“**United Kingdom**” means Great Britain and Northern Ireland;

“**US Dollars**” or “**\$**” means the lawful currency of the United States of America; and

“**Voting Shares**” means the Ordinary Shares and any other shares which may be issued with the right to attend and vote at general meetings.

- 2.2 Subject to the following paragraph, references to any provision of any enactment or of any subordinate legislation (as defined by section 2(1) of the Interpretation Act 1978) include any modification or re-enactment of that provision for the time being in force.
- 2.3 Words and expressions contained in these Articles which are not defined in Article 2 but are defined in the Companies Act have the same meaning as in the Companies Act (but excluding any modification of the Companies Act not in force at the date these Articles took effect) unless inconsistent with the subject or the context.
- 2.4 In these Articles, unless the context otherwise requires:
- (a) words in the singular include the plural, and *vice versa*;
  - (b) words importing any gender include all genders;
  - (c) a reference to a person includes a reference to a body corporate (wherever resident or domiciled) and to an unincorporated body of persons;
  - (d) reference to a document or information being “sent”, “supplied” or “given” to or by a person means such document or information, or a copy of such document or information, being sent, supplied, given, delivered, issued or made available to or by, or served on or by, or deposited with or by that person by any method authorised by these Articles, and “sending”, “supplying” and “giving” shall be construed accordingly;
  - (e) references to documents “being signed” or to “signature” include a reference to it being executed under hand or under seal or by any other method and, in the case of a communication in electronic form, such references are to its being authenticated as specified in the Companies Act;
  - (f) references to “writing” include references to typewriting, printing, lithography, photography and any other modes of representing or reproducing words in a legible and non-transitory form, whether sent or supplied in electronic form or made available on a website or otherwise and “written” shall be construed accordingly;
  - (g) references to “other” and “otherwise” shall not be construed *ejusdem generis* where a wider construction is possible;
  - (h) references to a power are to power of any kind, whether administrative, discretionary or otherwise;
  - (i) references to a committee of the Directors are to a committee established in accordance with these Articles, whether or not comprised wholly of Directors;
  - (j) any words following the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
  - (k) powers of delegation shall not be restrictively construed but the widest interpretation shall be given to them;

- (l) the word “Board” in the context of the exercise of any power contained in these Articles includes any committee consisting of one or more Directors, any Director, any other officer of the Company and any local or divisional board, manager or agent of the Company to which or, as the case may be, to whom the power in question has been delegated;
- (m) no power of delegation shall be limited by the existence or, except where expressly provided by the terms of delegation, the exercise of that or any other power of delegation; and
- (n) except where expressly provided by the terms of delegation, the delegation of a power shall not exclude the concurrent exercise of that power by any other body or person who is for the time being authorised to exercise it under these Articles or under another delegation of the power.

2.5 The headings are inserted for convenience only and do not affect the construction of these Articles.

### 3. LIABILITY OF MEMBERS

The liability of each member is limited to the amount, if any, unpaid on the shares held by that member.

### 4. SHARES AND SHARE CAPITAL

4.1 The Company may issue the following shares in the capital of the Company with rights attaching to them and denominated, in each case, as follows:

- (a) **Ordinary Shares**, each of which shall be denominated in British Pounds Sterling with a nominal value of £1. Each Ordinary Share shall be issued with one vote attaching to it for voting purposes in respect of all matters on which Voting Shares in the capital of the Company have voting rights and shall form a single class with the other Voting Shares in the capital of the Company for such purposes. The holders of Ordinary Shares shall, in respect of the Ordinary Shares held by them, be entitled to receive notice of, attend and speak at and vote at, general meetings of the Company.

4.2 Notwithstanding Article 4.1, subject to the provisions of the Companies Act, and without prejudice to any rights attached to any existing shares or class of shares:

- (a) any share may be issued in one or more classes with such rights or restrictions as the Company may by special resolution determine or, subject to and in default of such determination, as the Board shall determine; and
- (b) shares may be issued which are to be redeemed or are to be liable to be redeemed at the option of the Company or the holder and the Board may determine the terms, conditions and manner of redemption of shares provided that it does so before the shares are allotted.

4.3 The Company may exercise all powers of paying commissions or brokerage conferred or permitted by the Companies Act. Subject to the provisions of the Companies Act, any such commission may be satisfied by the payment of cash or by the allotment of fully or partly paid shares or partly in one way and partly in the other and may be in respect of a conditional or an absolute subscription.

4.4 Except as required by law, no person shall be recognised by the Company as holding any share upon any trust. Except as otherwise provided by these Articles or by law, the Company

shall not be bound by or recognise (even if having notice of it) any equitable, contingent, future, partial or other claim or any interest in any share (or in any fractional part of a share) except the holder's absolute ownership of the entirety of the share and all the rights attaching to it.

4.5 Under and subject to the Uncertificated Securities Rules, the Board may permit title to shares of any class to be evidenced otherwise than by certificate and title to shares of such a class to be transferred by means of a relevant system and may make arrangements for a class of shares (if all shares of that class are in all respects identical) to become a participating class. Title to shares of a participating class may only be evidenced otherwise than by a certificate where that class of shares is at the relevant time a participating class. The Board may also, subject to compliance with the Uncertificated Securities Rules, determine at any time that title to any class of shares may from a date specified by the Board no longer be evidenced otherwise than by a certificate or that title to such a class shall cease to be transferred by means of any particular relevant system.

4.6 In relation to a class of shares which is a participating class and for so long as it remains a participating class, no provision of these Articles shall apply or have effect to the extent that it is inconsistent in any respect with:

- (a) the holding of shares of that class in uncertificated form;
- (b) the transfer of title to shares of that class by means of a relevant system; or
- (c) any provision of the Uncertificated Securities Rules,

and, without prejudice to the generality of this Article, no provision of these Articles shall apply or have effect to the extent that it is in any respect inconsistent with the maintenance, keeping or entering up by the Operator, so long as that is permitted or required by the Uncertificated Securities Rules, of an Operator register of securities in respect of that class of shares in registered form.

4.7 Shares of a class which is at the relevant time a participating class may be changed from uncertificated to certificated form, and from certificated to uncertificated form, in accordance with and subject as provided in the Uncertificated Securities Rules.

4.8 Unless the Board determines otherwise, shares which a member holds in uncertificated form shall be treated as separate holdings from any shares which that member holds in certificated form, but shares in the capital of the Company that fall within a certain class shall not form a separate class of shares from other shares in that class because any share in that class is held in uncertificated form.

4.9 Where the Company is entitled under any provision of the Companies Act or these Articles to sell, transfer or otherwise dispose of, forfeit, re-allot, accept the surrender of, or otherwise enforce a lien over, an uncertificated share, the Company shall be entitled, subject to the provisions of the Companies Act and these Articles to:

- (a) require the holder of the uncertificated share by notice in writing to change that share into certificated form within the period specified in the notice and to hold that share in certificated form so long as required by the Company;
- (b) appoint any person to take such steps, by instruction given by means of a relevant system or otherwise, in the name of the holder of such share as may be required to effect the transfer of such share and such steps shall be as effective as if they had been taken by the registered holder of that share; and
- (c) take any other action that the Board considers appropriate to achieve the sale, transfer, disposal, forfeiture, reallocation or surrender of that share, or otherwise to enforce a lien in respect of that share.

- 4.10 Unless the Board determines otherwise or the Uncertificated Securities Rules require otherwise, any shares issued or created out of or in respect of any uncertificated shares shall be uncertificated shares and any shares issued or created out of or in respect of any certificated shares shall be certificated shares.
- 4.11 The Company shall be entitled to assume that the entries on the record of securities maintained by it in accordance with the Uncertificated Securities Rules and regularly reconciled with the relevant Operator register of securities are a complete and accurate reproduction of the particulars entered in the Operator register of securities and shall accordingly not be liable in respect of any act or thing done or omitted to be done by or on behalf of the Company in reliance on such assumption. Any provision of these Articles which requires or envisages that action will be taken in reliance on information contained in the register shall be construed to permit that action to be taken in reliance on information contained in any relevant record of securities (as so maintained and reconciled).

## **5. AUTHORITY TO ALLOT SHARES AND DISAPPLICATION OF PRE-EMPTION RIGHTS**

- 5.1 In addition to any similar authority which has not been fully utilised, the Board shall be generally and unconditionally authorised pursuant to section 551 of the Companies Act to:
- (a) exercise all of the powers of the Company to allot shares in the Company, and to grant rights to subscribe for or to convert any security into shares in the Company up to an aggregate nominal amount representing 20 per cent. of the number of shares in the capital of the Company as at the date of the adoption of these Articles and after consummation of the transactions contemplated by the transaction Agreement between, amongst others, Sorin S.P.A. and Cyberonics, Inc. first dated 26 February 2015 (in addition to any authority to allot that has not yet expired granted to the Board prior to the date of the adoption of these Articles) for a period expiring (unless previously renewed, varied or revoked by the Company in general meeting) on the date which is five years from the date of the adoption of these Articles by the Company; and
  - (b) make an offer or agreement which would or might require shares to be allotted, or rights to subscribe for or convert any security into shares to be granted, after expiry of the authority described in this Article 5.1 and the Board may allot shares and grant rights in pursuance of that offer or agreement as if this authority had not expired.
- 5.2 Subject to these Articles, the Board shall be generally empowered pursuant to section 570 of the Companies Act and section 573 of the Companies Act to allot equity securities (as defined in the Companies Act) for cash, pursuant to the authority conferred by Article 5.1 of these Articles as if section 561(1) of the Companies Act did not apply to the allotment.
- 5.3 Subject to the provisions of the Companies Act relating to the authority to allot shares and the disapplication of pre-emption rights or otherwise and of any resolution of the Company in general meeting passed pursuant to those provisions, and, in the case of redeemable shares, the provisions of Article 5.4:
- (a) all shares for the time being in the capital of the Company shall be at the disposal of the Board; and
  - (b) the Board may reclassify, allot (with or without conferring a right of renunciation), grant options over, or otherwise dispose of them to such persons on such terms and conditions and at such times as it thinks fit.

5.4 Subject to the provisions of the Companies Act, and without prejudice to any rights attached to existing shares, any share may be issued which is to be redeemed, or is liable to be redeemed at the option of the Company or the holder. The Board may determine the terms, conditions and manner of redemption of any redeemable share so issued provided that it does so before the share is allotted.

5.5 The Board may at any time after the allotment of a Share, but before a Person has been entered in the register as the holder of the Share, recognise a renunciation of the Share by the allottee in favour of another Person and may grant to an allottee a right to effect a renunciation on such terms and conditions as the Board thinks fit.

## 6. VARIATION OF RIGHTS

6.1 Subject to the provisions of the Companies Act, if at any time the capital of the Company is divided into different classes of shares, all or any of the rights attached to any existing class may from time to time be varied or abrogated, either while the Company is a going concern or during or in contemplation of a winding up:

- (a) in such manner (if any) as may be provided by those rights;
- (b) with the written consent of the holders of 75% in nominal value of the issued shares of that class (excluding any shares of that class held as treasury shares), which consent shall be in hard copy form or in electronic form sent to such address (if any) for the time being specified by or on behalf of the Company for that purpose, or in default of such specification to the Office, and may consist of several documents, each executed or authenticated in such manner as the Board may approve by or on behalf of one or more holders, or a combination of both; or
- (c) with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class, but not otherwise.

6.2 For the purposes of Article 6.1, if at any time the capital of the Company is divided into different classes of shares, unless otherwise expressly provided by the rights attached to any share or class of shares, those rights shall be deemed not to be varied by:

- (a) the issue of further shares ranking *pari passu* with, or subsequent to, that share or class of shares;
- (b) the purchase or redemption by the Company of any of its own shares; and
- (c) the exercise by the Board of any of the powers contemplated by Articles 38.7, 38.8 and 39.1.

## 7. SHARE CERTIFICATES

7.1 On becoming the holder of any share other than a share in uncertificated form, every person (other than a financial institution in respect of whom the Company is not required by law to complete and have ready a certificate) shall be entitled, without payment, to have issued to him within two months after allotment or lodgement of a transfer (unless the terms of issue of the shares provide otherwise) one certificate for all the shares of each class held by him (and,



upon transferring a part of his holding of shares of any class, to a certificate for the balance of that holding). A holder may elect to receive one or more additional certificates for any of his shares upon payment for every certificate after the first of such reasonable sum as the Directors may determine from time to time.

7.2 Every certificate shall:

- (a) be issued under the seal, or under such other form of authentication as the Board may approve (which may include manual or facsimile signatures by one or more Directors); and
- (b) shall specify the number, class and distinguishing numbers (if any) of the shares to which it relates and the amount or respective amounts paid up on the shares.

7.3 The Company shall not be bound to issue more than one certificate for shares held jointly by more than one person and delivery of a certificate to one joint holder shall be sufficient delivery to all of them, and seniority shall be determined in the manner described in Article 21.3. Shares of different classes may not be included in the same certificate.

7.4 If a share certificate is damaged, defaced or worn out or said to be lost, stolen or destroyed, it may be renewed on such terms (if any) as to evidence and indemnity and payment of any exceptional out-of-pocket expenses incurred by the Company in investigating evidence and preparing the requisite form of indemnity as the Directors may determine but otherwise free of charge, and (in the case of damage, defacement or wearing out) on delivery up of the old certificate to the Company.

7.5 When a member's holding of Shares of a particular class increases, the Company may issue such holder with a single, consolidated certificate in respect of all the Shares of a particular class which that member holds or a separate certificate in respect of only those Shares by which that member's holding has increased. When a member's holding of Shares of a particular class is reduced, the Company must ensure that the member is issued with one or more certificates in respect of the number of Shares held by the member after that reduction, save that the Company need not (in the absence of a request from the member) issue any new certificate if all the Shares which the member no longer holds as a result of the reduction and none of the Shares which the member retains following the reduction, were, immediately before the reduction, represented by the same certificate.

## **8. LIEN**

8.1 The Company shall have a first and paramount lien on every share (not being a fully paid share) for all amounts payable to the Company (whether presently or not) in respect of that share. The Board may at any time (generally or in a particular case) waive any lien or declare any share to be wholly or in part exempt from the provisions of Articles 8.1 to 8.4 inclusive. The Company's lien on a share takes priority over any third party's interest in that share and shall extend to all amounts (including without limitation dividends) payable in respect of it.

8.2 The Company may sell, in such manner as the Board determines, any share on which the Company has a lien if an amount in respect of which the lien exists is presently payable and is not paid within 14 clear days after written notice has been sent to the holder of the share, or to the person entitled to it in consequence of the death or bankruptcy of the holder or otherwise by operation of law, demanding payment and stating that if the notice is not complied with the shares may be sold.

8.3 To give effect to the sale the Board may, in the case of a share in certificated form, authorise any person to execute an instrument of transfer of the share sold to, or in accordance with the directions of, the purchaser. In the case of a share in uncertificated form, the Board may, to

enable the Company to deal with the share in accordance with the provisions of this Article 8.3, exercise any of the powers of the Company under Article 4.9 to effect the sale of the share. The title of the transferee to the share shall not be affected by any irregularity in or invalidity of the proceedings in reference to the sale and the transferee shall not be bound to see to the application of the purchase money.

- 8.4 The net proceeds of the sale, after payment of the costs, shall be applied in or towards payment or satisfaction of so much of the amount for which the lien exists as is presently payable, and any residue shall (upon surrender to the Company for cancellation of the certificate for the share sold, in the case of a share in certificated form, and, whether the share sold is in certificated form or uncertificated form, subject to a like lien for any amount not presently payable as existed upon the share before the sale) be paid to the person entitled to the share at the date of the sale.

## **9. CALLS ON SHARES**

- 9.1 Subject to the terms of allotment, the Board may from time to time make calls upon the members in respect of any amounts unpaid on their shares (whether in respect of nominal value or premium) and each member shall (subject to receiving at least 14 clear days' notice specifying when and where payment is to be made) pay to the Company as required by the notice the amount called on his shares. A call may be required or permitted to be paid by instalments. A call may, by further notice in writing, before receipt by the Company of an amount due under it, be revoked in whole or in part and payment of a call may be postponed in whole or part. A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made.
- 9.2 A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.
- 9.3 The joint holders of a share shall be jointly and severally liable to pay all calls in respect of it.
- 9.4 A call notice need not be issued in respect of sums which are specified, in the terms on which a share is issued, as being payable to the Company in respect of that share (whether in respect of nominal value or premium) on allotment or on a date fixed by or in accordance with the terms of issue; provided that if the due date for payment of such sum has passed and it has not been paid, the holder of the share concerned at the due date for payment will be treated in all respects as having failed to comply with a call notice in respect of that sum and is liable to the same consequences as a person having failed to comply with a call notice as regards the payment of interest and forfeiture.
- 9.5 If a call or an instalment of a call remains unpaid in whole or in part after it has become due and payable the person from whom it is due shall pay interest on the amount unpaid from the day it became due and payable until it is paid at the rate fixed by the terms of allotment of the shares in question or in the notice of the call or, if no rate is fixed, the rate determined by the Board, not exceeding 20 per cent. per annum, or, if higher, at the appropriate rate (as defined by the Companies Act), but the Board may in respect of any individual member waive payment of interest wholly or in part.
- 9.6 An amount payable in respect of a share on allotment or at any fixed date, whether in respect of nominal value or premium or as an instalment of a call, shall be deemed to be a call duly made and notified and payable on the date so fixed or in accordance with the terms of the allotment. If it is not paid these Articles shall apply as if that sum had become due and payable by virtue of a call duly made and notified.

- 9.7 Subject to the terms of allotment, the Directors may on the issue of shares differentiate between the allottees or holders in the amounts and times of payment of calls on their shares.
- 9.8 The Board may, if it thinks fit, receive from any member willing to advance it all or any part of the amount unpaid on any shares held by him (beyond the sums actually called up) as a payment in advance of calls, and such payment shall, to the extent of it, extinguish the liability on the shares in respect of which it is advanced. The Company may pay on all or any of the amount so advanced (until it would, but for such advance, become presently payable) interest on the amount so received, or so much of it as exceeds the sums called up on the shares in respect of which it has been received, at such rate (if any) as the member and the Board agree not exceeding 20 per cent. per annum or, if higher, the appropriate rate (as defined in the Companies Act).

## **10. FORFEITURE AND SURRENDER**

- 10.1 If a call or an instalment of a call remains unpaid, in whole or in part, after it has become due and payable, the Board may give to the person from whom it is due not less than 14 clear days' written notice requiring payment of the amount unpaid together with any interest which may have accrued and any costs, charges and expenses incurred by the Company by reason of such non-payment. The notice shall name the place where payment is to be made and shall state that if the notice is not complied with the shares in respect of which the call was made will be liable to be forfeited.
- 10.2 If the notice is not complied with, any share in respect of which it was given may, at any time before the payment required by the notice has been made, be forfeited by a resolution of the Board. The forfeiture shall include all dividends and other amounts payable in respect of the forfeited shares and which have not been paid before the forfeiture. When a share has been forfeited, notice of the forfeiture shall be sent to the person who was the holder of the share before the forfeiture. An entry shall be made promptly in the register opposite the entry of the share showing that notice has been sent, that the share has been forfeited and the date of forfeiture. No forfeiture shall be invalidated by the omission or neglect to send that notice or to make those entries.
- 10.3 Subject to the provisions of the Companies Act, a forfeited share shall be deemed to belong to the Company and may be sold, re-allotted or otherwise disposed of on such terms and in such manner as the Board determines either to the person who was before the forfeiture the holder or to any other person. At any time before sale, re-allotment or other disposition, the forfeiture may be cancelled on such terms as the Board determines. Where for the purposes of its disposal a forfeited share is to be transferred to any person, the Board may, in the case of a share in certificated form, authorise someone to execute an instrument of transfer and, in the case of a share in uncertificated form, the Board may exercise any of the powers of the Company under Article 12. The Company may receive the consideration given for the share on its disposal and register the transferee as the holder of the share.
- 10.4 A person shall cease to be a member in respect of any share which has been forfeited or surrendered and shall, if the share is held in certificated form, surrender to the Company for cancellation the certificate for the share forfeited but shall remain liable to the Company for all amounts which at the date of forfeiture were presently payable by him to the Company in respect of that share plus interest at the rate at which interest was payable on those amounts before the forfeiture or, if no interest was so payable, at the rate determined by the Board, not exceeding 20 per cent. per annum or, if higher, the appropriate rate (as defined in the Companies Act) from the date of forfeiture until payment. The Board may waive payment wholly or in part or enforce payment without any allowance for the value of the share at the time of forfeiture or for any consideration received on its disposal.

- 10.5 The Board may accept the surrender of any share which it is in a position to forfeit upon such terms and conditions as may be agreed and, subject to any such terms and conditions, a surrendered share shall be treated as if it had been forfeited.
- 10.6 The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in and all claims and demands against the Company in respect of the share and all other rights and liabilities incidental to the share as between the person whose share is forfeited and the Company, except only such of those rights and liabilities as are by these Articles expressly saved, or are by the Companies Act given or imposed in the case of past members.
- 10.7 A statutory declaration by a Director or the secretary that a share has been duly forfeited on a specified date shall be conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share. The declaration shall (subject to the execution of an instrument of transfer if necessary, in the case of a share in certificated form) constitute a good title to the share. The person to whom the share is disposed of shall not be bound to see to the application of the consideration, if any, nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings relating to the forfeiture or disposal of the share.

## **11. TRANSFER OF SHARES**

- 11.1 Without prejudice to any power of the Company to register as member a person to whom the right to any share has been transmitted by operation of law, the instrument of transfer of a share in certificated form may be in any usual form or in any other form which the Board may approve. An instrument of transfer shall be executed by or on behalf of the transferor and, where the share is not fully paid, by or on behalf of the transferee. An instrument of transfer need not be under seal.
- 11.2 Each member may transfer all or any of his shares which are in uncertificated form by means of a relevant system in such manner provided for, and subject as provided in, the Uncertificated Securities Rules. No provision of these Articles shall apply in respect of an uncertificated share to the extent it requires or contemplates the effecting of a transfer by an instrument in writing or the production of a certificate for the share to be transferred.
- 11.3 The Board may, in its absolute discretion, refuse to register the transfer of a share in certificated form if it is not fully paid provided that the refusal does not prevent dealings in shares in the Company from taking place on an open and proper basis.
- 11.4 The Board may, in its absolute discretion, also refuse to register the transfer of a share in certificated form:
- (a) unless the instrument of transfer:
    - (i) is lodged, duly stamped, at the Office or such other place as the Board has appointed, accompanied by the certificate for the share to which it relates, or such other evidence as the Directors may reasonably require to show the transferor's right to make the transfer, or evidence of the right of someone other than the transferor to make the transfer on the transferor's behalf;
    - (ii) is in respect of only one class of shares; and
    - (iii) is in favour of not more than four transferees; or
  - (b) with respect to a share on which the Company has a lien and a sum in respect of which the lien exists is presently payable and is not paid within 14 clear days after notice has been sent to the holder of the share in accordance with Article 8.2.

- 11.5 The Board may also refuse to register a transfer of uncertificated shares in any circumstances that are allowed or required by the Uncertificated Securities Rules and the relevant system.
- 11.6 If the Board refuses to register a transfer of a share, it shall notify the transferor of the refusal and the reasons for it as soon as practicable and in any event within two months after the date on which the instrument of transfer was lodged with the Company (in the case of a transfer of a share in certificated form) or the instructions to the relevant system received. The Board shall send to the transferee such further information about the reasons for the refusal as the transferee may reasonably request.
- 11.7 No fee shall be charged for the registration of any instrument of transfer or other document or instruction relating to or affecting the title to any share.
- 11.8 The Company shall be entitled to retain any instrument of transfer which is registered, but any instrument of transfer which the Board refuses to register shall (except in the case of fraud) be returned to the person lodging it when notice of the refusal is sent.
- 11.9 Nothing in these Articles shall preclude the Board from recognising a renunciation of the allotment of any share by the allottee in favour of some other person.

## **12. TRANSMISSION OF SHARES**

- 12.1 If a member dies, the survivor or survivors where he was a joint holder, or his personal representatives where he was a sole holder or the only survivor of joint holders, shall be the only persons recognised by the Company as having any title to his interest, but nothing in this Article 12.1 shall release the estate of a deceased member from any liability in respect of any share which had been solely or jointly held by him.
- 12.2 A person becoming entitled to a share in consequence of the death or bankruptcy of a member or otherwise by operation of law may, upon such evidence being produced as the Board may properly require, elect either to become the holder of the share or to have some person nominated by him registered as the transferee. If he elects to become the holder he shall give notice to the Company to that effect. If he elects to have another person registered, and the share is a certificated share, he shall execute an instrument of transfer of the share to that person. If he elects to have himself or another person registered and the share is an uncertificated share, he shall take any action the Board may require (including without limitation the execution of any document) to enable himself or that person to be registered as the holder of the share. All the provisions of these Articles relating to the transfer of shares shall apply to the notice or instrument of transfer as if it were an instrument of transfer signed by the member and the death or bankruptcy of the member or other event giving rise to the transmission had not occurred.
- 12.3 A person entitled by transmission to a share in uncertificated form who elects to have some other person registered shall either:
- (a) procure that instructions are given by means of the relevant system to effect transfer of such uncertificated share to that person; or
  - (b) change the uncertificated share to certified form and execute an instrument of transfer to that person.
- 12.4 The Board may at any time send a notice requiring any such person referred to in Article 12.2 to elect either to be registered himself or to transfer the share. If the notice is not complied with within 60 days, the Board may after the expiry of that period withhold payment of all dividends or other amounts payable in respect of the share until the requirements of the notice have been complied with.

12.5 A person becoming entitled to a share by reason of the death or bankruptcy of a member or otherwise by operation of law shall, upon such evidence being produced as the Board may reasonably require as to his entitlement and subject otherwise to Article 12.2, have the same rights in relation to the share to which he would be entitled if he were the holder of the share, and may give a discharge for all dividends and other moneys payable in respect of the share, except that he shall not, before being registered as the holder of the share, be entitled in respect of it to receive notice of, or to attend or vote at, any general meeting or at any separate meeting of the holders of any class of shares in the capital of the Company.

### 13. SHARE WARRANTS

In accordance with Law, the Company shall not issue share warrants to bearer.

### 14. UNTRACED MEMBERS

14.1 The Company shall be entitled to sell any share held by a member, or any share to which a person is entitled by transmission, if:

- (a) during the period of 12 years before the date of the publication of the advertisements referred to in paragraph (b) of this Article 14 (or, if published on different dates, the first date) (the *relevant period*) at least three dividends in respect of the share have been declared and all dividend warrants, cheques or other method of payment for amounts payable in respect of the share which have been sent and were payable in a manner authorised by these Articles have remained uncashed;
- (b) the Company has, as soon as practicable after the expiration of the relevant period, inserted an advertisement in a leading national daily newspaper published in the United Kingdom and in a newspaper circulating in the area of the registered address or last known address of the member or person concerned, giving notice of its intention to sell such share (and the said advertisements, if not published on the same day, shall have been published within 30 days of each other);
- (c) during the relevant period and the further period of three months after the publication of the advertisements referred to in paragraph (b) of this Article 14 (or, if published on different dates, the later date) the Company has received no communication from, or on behalf of, such member or person concerned; and
- (d) the Company has given notice to the UKLA of its intention to make such sale, if shares of the class concerned are listed on the Official List or dealt on the London Stock Exchange.

14.2 The Company shall also be entitled to sell any additional share issued during the relevant period of 12 years in right of any share to which Article 14.1 applies (or in right of any share so issued), if the criteria in Article 14.1 are satisfied in relation to the additional share (but as if the words “during the period of 12 years” were omitted from paragraph (a) and the words “, after the expiration of the relevant period,” were omitted from paragraph (b)).

14.3 To give effect to the sale of any share pursuant to Articles 14.1 to 14.4 inclusive the Company may:

- (a) in the case of a share in certificated form, appoint any person to execute an instrument of transfer of the share, and the instrument shall be as effective as if it had been executed by the registered holder of, or person entitled by transmission to, the share; and
- (b) in the case of a share in uncertificated form, in accordance with the Uncertificated Securities Rules, the Board may issue a written notification to the Operator requiring the conversion of the shares to certificated form.

14.4 An instrument of transfer executed by that person in accordance with Article 14.3(a) shall be as effective as if it had been executed by the holder of, or person entitled by transmission to, the shares. An exercise by the Company of its powers in accordance with Article 14.3(b) shall be as effective as if exercised by the registered holder of or person entitled by transmission to the shares. The purchaser shall not be bound to see to the application of the proceeds of sale, nor shall his title to the share be affected by any irregularity in or invalidity of the proceedings relating to the sale. The net proceeds of sale shall belong to the Company which shall be indebted to the member or other person entitled to the share for an amount equal to the net proceeds of the sale and the Company shall enter the name of such former member or other person in the books of the Company as a creditor for that amount. No trust or duty to account shall arise in respect of the net proceeds and no interest shall be payable in respect of the proceeds of sale, which may be employed in the business of the Company or invested in such investments as the Board may think fit.

## 15. ALTERATION OF CAPITAL

15.1 Subject to the Companies Act and the provisions of these Articles, and without prejudice to any relevant special rights attached to any class of shares, the Company may from time to time:

- (a) increase its share capital by allotting new shares;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) sub-divide its shares, or any of them, into shares of smaller amount than its existing shares;
- (d) redeem and/ or cancel any of its shares;
- (e) redenominate its share capital or any class of share capital; and
- (f) determine that, as between the shares resulting from such a sub-division, any of them may have any preference or advantage as compared with the others,

and where any difficulty arises in regard to any consolidation or division, the Directors may settle such difficulty as they see fit.

15.2 Whenever any fractions arise as a result of a consolidation or sub-division of shares, the Board may on behalf of the members deal with the fractions as it thinks fit. In particular, without limitation, the Board may sell shares, representing fractions to which any members would otherwise become entitled, to any person (including, subject to the provisions of the Companies Act, the Company) and distribute the net proceeds of sale in due proportion among those members or retain such net proceeds for the benefit of the Company. In the case of shares to be sold being held in certificated form, the Board may authorise some person to execute an instrument of transfer of the shares to, or in accordance with the directions of, the purchaser. In the case of shares to be sold in uncertificated form, the Board may, to enable the Company to deal with the share in accordance with the provisions of this Article 15.2, do all acts and things it considers necessary or expedient to effect the transfer of the shares to, or in accordance with the directions of, the purchaser, including arranging for any such shares to be entered in the register as shares in certificated form where this makes it easier to sell them. The transferee shall not be bound to see to the application of the purchase money nor shall his title to the shares be affected by any irregularity in or invalidity of the proceedings in reference to the sale.

15.3 All shares created by an increase of the Company's share capital (unless otherwise provided by the terms of allotment of the shares of that class), by consolidation, division or sub-division of its share capital or the conversion of stock into paid-up shares shall be subject to all the provisions of these Articles, including without limitation provisions relating to the payment of calls, lien, forfeiture, transfer and transmission.

15.4 The Company shall not consolidate, divide, sub-divide or redenominate any one or more Ordinary Shares without consolidating, dividing, sub-dividing or redenominating (as the case may be) all of the Ordinary Shares, on an equal per share basis.

## **16. GENERAL MEETINGS**

16.1 The Board shall convene and the Company shall hold general meetings as annual general meetings in accordance with the Companies Act.

16.2 All provisions of these Articles relating to general meetings of the Company shall, *mutatis mutandis*, apply to every separate general meeting of the holders of any class of shares in the capital of the Company, except that:

(a) the necessary quorum at any such meeting (or adjournment thereof) shall be members of that class who together represent at least the majority of the voting rights of all members of that class entitled to vote, present in person or by proxy, at the relevant meeting; and

(b) each holder of shares of the class shall, on a poll, have one vote in respect of every share of the class held by him.

For the purposes of this Article 16.2, where a person is present by proxy or proxies, he is treated only as holding the shares in respect of which those proxies are authorised to exercise voting rights with respect to any matter proposed at the meeting.

16.3 The Board may call general meetings whenever and at such times and places as it shall determine. On requisition of members pursuant to the provisions of the Companies Act, the Board shall promptly convene a general meeting in accordance with the requirements of the Companies Act. At a general meeting called by a requisition (or by requisitionists), no business may be transacted except that stated by the requisition or proposed by the Board.

16.4 A general meeting may also be called under this Article 16 if the Company has fewer than two directors and the director (if any) is unable or unwilling to appoint sufficient directors to make up a quorum or to call a general meeting to do so. In such case, two or more members may call a general meeting (or instruct the secretary to do so) for the purpose of appointing one or more directors.

## **17. NOTICE OF GENERAL MEETINGS**

17.1 At least 21 clear days' notice must be given to call an annual general meeting. Subject to the provisions of the Companies Act, at least 14 clear days' notice must be given to call all other general meetings. A general meeting may be called by shorter notice if it is so agreed by a majority in number of the members having a right to attend and vote at the meeting, being a majority who together hold not less than 95 per cent. in nominal value of the shares giving that right.



- 17.2 Subject to the provisions of the Companies Act and any relevant special rights or restrictions attached to any shares, notices shall be given to every member as of the record date for such meeting and to the Directors. The beneficial owners nominated to enjoy information rights under the Companies Act and the auditors of the Company are entitled to receive all notices of, and other communications relating to, any general meeting which any member is entitled to receive.
- 17.3 Subject to the provisions of the Companies Act, the notice shall specify the place (including without limitation any satellite meeting place arranged for the purposes of Article 18.9, which shall be identified as such in the notice), the date and the time of meeting and the general nature of the business to be transacted, and in the case of an annual general meeting shall specify the meeting as such. In the case of a meeting to pass a special resolution, the notice shall specify the intention to propose the resolution as a special resolution.
- 17.4 The notice of a general meeting must specify a time (which must not be more than 48 hours, excluding any part of a day that is not a working day, before the time fixed for the meeting) by which a person must be entered on the register in order to have the right to attend or vote at the meeting. Changes to entries on the register after the time specified in the notice will be disregarded in deciding the rights of any person to attend or vote.
- 17.5 Where the Company has given an electronic address in any notice of meeting, any document or information relating to proceedings at the meeting may be sent by electronic means to that address, subject to any conditions or limitations specified in the relevant notice of meeting.
- 17.6 The accidental omission to send notice of a meeting or resolution, or to send any notification where required by the Companies Act or these Articles in relation to the publication of a notice of meeting on a website, or to send a form of proxy where required by the Companies Act or these Articles, to any person entitled to receive it, or the non-receipt for any reason of any such notice, resolution or notification or form of proxy by that person, whether or not the Company is aware of such omission or non-receipt, shall not invalidate the proceedings at that meeting.

## **18. PROCEEDINGS AT GENERAL MEETINGS**

- 18.1 No business shall be transacted at a meeting unless a quorum is present but the absence of a quorum shall not preclude the choice or appointment of a chairman, which shall not be treated as part of the business of the meeting. If the Company has only one member entitled to attend and vote at the general meeting, one qualifying person present at the meeting and entitled to vote is a quorum. Except as otherwise provided by these Articles, a quorum is the members who together represent at least the majority of the voting rights of all the members entitled to vote, present in person or by proxy, at the relevant meeting.
- 18.2 If a quorum is not present within half an hour after the time appointed for holding the meeting (or such additional time as the chairman of the meeting decides to wait), or if during a meeting a quorum ceases to be present, the meeting, if convened on the requisition of members, shall be dissolved, and in any other case shall stand adjourned. The continuation of a general meeting adjourned under this Article 18.2 for lack of quorum shall take place either:
- (a) on a day that is not less than 14 days but not more than 28 days after it was adjourned and at a time and/or place specified for the purpose in the notice calling the meeting; or
- (b) where no such arrangements have been specified, on a day that is not less than 14 days but not more than 28 days after it was adjourned and at such time and/or place as the chairman of the meeting decides (or, in default, the directors decide).

- In the case of a general meeting to take place in accordance with Article 18.2(b), the Company must give not less than seven clear days' notice of any adjourned meeting and the notice must state the quorum requirement.
- 18.3 At an adjourned meeting the quorum is one qualifying person present and entitled to vote. If at the adjourned meeting a quorum is not present within 15 minutes after the time appointed for holding the meeting, the meeting shall be dissolved.
- 18.4 The chairman (if any) of the Board, or in his absence the deputy chairman of the Board, or in the absence of both of them some other Director nominated prior to the meeting by the Board, shall preside as chairman of the meeting. If none of the chairman, deputy chairman or such other Director (if any) is present within 15 minutes after the time appointed for holding the meeting or is not willing to act as chairman, the Directors present shall elect one of their number present and willing to act to be chairman of the meeting, and if there is only one Director present, he shall be chairman of the meeting.
- 18.5 If no Director is willing to act as chairman or if no Director is present within 15 minutes after the time appointed for holding the meeting, the members present in person or by proxy and entitled to vote shall choose a member present in person or a proxy of a member or a person authorised to act as a representative of a corporation in relation to the meeting to be chairman of the meeting.
- 18.6 The Board or the chairman of the meeting may make any arrangement and impose any restriction they consider appropriate to ensure the security of a general meeting, including to direct that any person wishing to attend any general meeting should submit to such searches or other security arrangements (including without limitation, requiring evidence of identity to be produced before entering the meeting and placing restrictions on the items of personal property which may be taken into the meeting) as they or he consider appropriate under the circumstances. The Directors or the chairman of the meeting may in their or his absolute discretion refuse entry to, or eject from, any general meeting any person who refuses to submit to a search or otherwise comply with such security arrangements or restrictions.
- 18.7 The Board or the chairman of the meeting may take such action, give such direction or put in place such arrangements as they or he consider appropriate to secure the safety of the people attending the meeting and to promote the orderly conduct of the business of the meeting. Any decision of the chairman of the meeting on matters of procedure or matters arising incidentally from the business of the meeting, and any determination by the chairman of the meeting as to whether a matter is of such a nature, shall be final.
- 18.8 Directors may attend and speak at general meetings and at any separate meeting of the holders of any class of shares, whether or not they are members. The chairman of the meeting may permit other persons who are not members of the Company or otherwise entitled to exercise the rights of members in relation to general meetings to attend and, at the chairman of the meeting's discretion, speak at a general meeting or at any separate class meeting.
- 18.9 In the case of any general meeting, the Board may, notwithstanding the specification in the notice convening the general meeting of the place at which the chairman of the meeting shall preside (the **principal place**), make arrangements for simultaneous attendance and participation at satellite meeting places, or by way of any other electronic means, allowing persons not present together at the same place to attend, speak and vote at the meeting. The arrangements for simultaneous attendance and participation at satellite meeting places, or other places at which persons are participating via electronic means may include arrangements for controlling or regulating the level of attendance at any particular venue provided that such arrangements shall operate so that all members and proxies wishing to attend the meeting are able to attend at one or other of the venues. The members or proxies at the satellite meeting places, or other places at which persons are participating via electronic means, shall be

counted in the quorum for, and be entitled to vote at, the general meeting in question, and that meeting shall be duly constituted and its proceedings valid if the chairman of the meeting is satisfied that adequate facilities are available throughout the meeting to ensure that the members or proxies attending at the satellite meeting places, or other places at which persons are participating via electronic means, are able to:

- (a) participate in the business for which the meeting has been convened;
- (b) see and hear all persons who speak (whether through the use of microphones, loud speakers, audio-visual communication equipment or otherwise) in the principal place and any other such place; and
- (c) be heard and seen by all other persons so present in the same way.

18.10 The chairman of the general meeting shall be present at, and the meeting shall be deemed to take place at, the principal place. If it appears to the chairman of the meeting that the facilities at the principal place or any satellite meeting place, have become inadequate for the purposes set out in Article 18.9, then the chairman of the meeting may, without the consent of the meeting, interrupt or adjourn the general meeting. All business conducted at the general meeting up to the point of the adjournment shall be valid. The provisions of Article 18.15 shall apply to that adjournment.

18.11 The Board may make arrangements for persons entitled to attend a general meeting or an adjourned general meeting to be able to view and hear the proceedings of the general meeting or adjourned general meeting and to speak at the meeting (whether by the use of microphones, loudspeakers, audio-visual communications equipment or otherwise) by attending at a venue anywhere in the world not being a satellite meeting place. Those attending at any such venue shall not be regarded as present at the general meeting or adjourned general meeting and shall not be entitled to vote at the meeting at or from that venue. The inability for any reason of any member present in person or by proxy at such a venue to view or hear all or any of the proceedings of the meeting or to speak at the meeting shall not in any way affect the validity of the proceedings of the meeting.

18.12 The Board may from time to time make any arrangements for controlling the level of attendance at any venue for which arrangements have been made pursuant to Article 18.12 (including without limitation the issue of tickets or the imposition of some other means of selection) it in its absolute discretion considers appropriate, and may from time to time change those arrangements. If a member, pursuant to those arrangements, is not entitled to attend in person or by proxy at a particular venue, he shall be entitled to attend in person or by proxy at any other venue for which arrangements have been made pursuant to Article 18.9. The entitlement of any member to be present at such venue in person or by proxy shall be subject to any arrangement then in force and stated by the notice of meeting or adjourned meeting to apply to the meeting.

- 18.13 If, after the sending of the notice of a general meeting but before the meeting is held, or after the adjournment of a general meeting but before the adjourned meeting is held (whether or not notice of the adjourned meeting is required), the Board decides that it is impracticable or unreasonable, for a reason beyond its control, to hold the meeting at the declared place (or any of the declared places, in the case of a meeting to which Article 18.9 applies) and/or time, it may change the place (or any of the declared places, in the case of a meeting to which Article 18.8 applies) and/or postpone the time at which the meeting is to be held. If such a decision is made, the Board may then change the place (or any of the declared places, in the case of a meeting to which Article 18.8 applies) and/or postpone the time again if it decides that it is reasonable to do so. In either case:
- (a) no new notice of the meeting need be sent, but the Board shall, if practicable, advertise the date, time and place of the meeting by public announcement and in two newspapers with national circulation in the United Kingdom and shall make arrangements for notices of the change of place and/or postponement to appear at the original place and/or at the original time; and
  - (b) a proxy appointment in relation to the meeting may, if by means of a document in hard copy form, be delivered to the Office or such other place within the United Kingdom as may be specified by or on behalf of the Company in accordance with Article 22.7(a) or, if in electronic form, be received at the address (if any) specified by or on behalf of the Company in accordance with Article 22.7(b).
- 18.14 For the purposes of Articles 18.9, 18.10, 18.11, 18.12 and 18.13, the right of a member to participate in the business of any general meeting shall include, without limitation, the right to speak, vote on a poll, be represented by a proxy and have access to all documents which are required by the Companies Act or these Articles to be made available at the meeting.
- 18.15 Without prejudice to any other power of adjournment he may have under these Articles or at common law:
- (a) the chairman of the meeting may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place or for an indefinite period; and
  - (b) the chairman of the meeting may, without the consent of the meeting, adjourn the meeting before or after it has commenced, to another date, time or place which the chairman of the meeting may decide, if the chairman of the meeting considers that:
    - (i) there is not enough room for the number of members and proxies who wish to attend the meeting;
    - (ii) the behaviour of anyone present prevents, or is likely to prevent, the orderly conduct of the business of the meeting;
    - (iii) an adjournment is necessary to protect the safety of any person attending the meeting; or
    - (iv) an adjournment is necessary to give all persons entitled to do so a reasonable opportunity of speaking and voting at the meeting; or
    - (v) an adjournment is otherwise necessary in order for the business of the meeting to be properly carried out.
- 18.16 Save in accordance with Article 18.2 an adjournment may, subject to the provisions of the Companies Act, be for such time and to such other place (or, in the case of a meeting held at a principal place and a satellite meeting place, such other places) as the chairman may, in his absolute discretion determine, notwithstanding that by reason of such adjournment some members may be unable to be present at the adjourned meeting. Any such member may nevertheless appoint a proxy for the adjourned meeting either in accordance with Articles 22.2, 22.3 and 22.7 or by means of a document in hard copy form which, if delivered at the meeting which is adjourned to the chairman or the secretary or any Director, shall be valid even though it is given at less notice than would otherwise be required by Article 22.7(a). Subject to the provisions of the Companies Act, it shall not be necessary to give notice of an adjourned meeting, except that when a meeting is adjourned for 28 days or more, or for an indefinite period, at least seven clear days' notice shall be given specifying the time and place (or places, in the case of a meeting to which Article 18.9 applies) of the adjourned meeting

and the general nature of the business to be transacted. No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. A resolution put to the vote of a general meeting must be decided on a poll.

- 18.17 Subject to Article 18.18, a poll shall be taken as the chairman directs and he may, and shall if required by the meeting, appoint scrutineers (who need not be members) and fix a time and a place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 18.18 A poll on the election of a chairman or on a question of adjournment shall be taken immediately. A poll on any other question shall be taken at either the meeting or such time and place as the chairman directs not being more than 30 days after the meeting.

## **19. AMENDMENTS TO RESOLUTIONS**

19.1 A special resolution to be proposed at a general meeting may be amended by ordinary resolution if:

- (a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed; and
- (b) the amendment does not go beyond what is necessary to correct a clear error in the resolution.

19.2 An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if:

- (a) written notice of the terms of the proposed amendment and of the intention to move the amendment have been delivered in hard copy to the Company at the Office or to such other place as may be specified by or on behalf of the Company for that purpose, or received in electronic form at such address (if any) for the time being specified by or on behalf of the Company for that purpose, at least 48 hours before the time for holding the meeting or the adjourned meeting at which the ordinary resolution in question is proposed (which, if the Board so specifies, shall be calculated taking no account of any part of a day that is not a working day) and the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the substance of the resolution; or
- (b) the chairman of the meeting, in his absolute discretion, decides that the proposed amendment may be considered or voted on.

19.3 With the consent of the chairman of the meeting, an amendment may be withdrawn by its proposer before it is voted on. If an amendment proposed to any resolution under consideration is ruled out of order by the chairman of the meeting, the proceedings on the resolution shall not be invalidated by any error in the ruling.

## 20. PROPOSED MEMBER RESOLUTIONS

20.1 Where a member or members, in accordance with the provisions of the Companies Act, request the Company to (i) call a general meeting for the purposes of bringing a resolution before the meeting, or (ii) give notice of a resolution to be proposed at a general meeting, such request must, in each case and in addition to the requirements of the Companies Act, contain the following (and, to the extent that the request relates to the nomination of a director, the content requirements of Article 24.3(b) also apply):

- (a) to the extent that the request relates to the nomination of a director, as to each person whom the member(s) propose(s) to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected (or re-elected);
- (b) to the extent that that request relates to any business other than the nomination of a Director that the member(s) propose(s) to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such member(s) (other than where the member is a Depositary) and any Member Associated Person on whose behalf the nomination or proposal is made, individually or in the aggregate, including any anticipated benefit to the member(s) (other than where the member is a Depositary) or the Member Associated Person therefrom on whose behalf the nomination or proposal is made; and
- (c) as to the member(s) giving the notice and the Member Associated Person, if any, on whose behalf the nomination or proposal is made:
  - (i) the name and address of such member(s), as they appear on the Company's books, and of such Member Associated Persons, if any;
  - (ii) the class and number of shares of the Company held by such member(s) which are owned beneficially by such member(s) and such Member Associated Persons, if any;
  - (iii) a description of all agreements, arrangements and understandings between such member (other than where the member is a Depositary) and such Member Associated Persons, if any, each proposed nominee and any other person or persons (including their names) in connection with the nomination of a Director or the proposal of any other business by such member(s) or such Member Associated Person, if any;
  - (iv) any other information relating to such member or Member Associated Person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies pursuant to Section 14 of the Exchange Act; and
  - (v) to the extent known by the Member Associated Person or the member(s) giving the notice, the name and address of any other member or Member Associated Person supporting the nominee for election or re-election as a Director or the proposal of other business on the date of such request.

20.2 For the purposes of Article 20, a **Member Associated Person** of any member shall mean:

- (A) any person controlling, directly or indirectly, or acting in concert with, such member;
- (B) any beneficial owner of shares in the capital of the Company owned of record or beneficially by such member; and
- (C) any person controlling, controlled by or under common control with such Member Associated Person.

20.3 If a request made in accordance with Article 20.1 does not include the information specified in that Article, or if a request made in accordance with Article 20.1 is not received in the time and manner required by Article 20.4, in respect of such shares which the relevant member(s) hold which are owned beneficially by such member(s) and the Member Associated Persons, if any, on whose behalf the nomination or proposal is made (the **member default shares**) the relevant member(s) shall not be entitled to vote, either personally or by proxy at a general meeting or at a separate meeting of the holders of that class of shares (or at an adjournment of any such meeting), the member default shares with respect to the matters detailed in the request made in accordance with Article 20.1.

20.4 Without prejudice to the rights of any member under the Companies Act, a member who makes a request to which Article 20.1 relates, must deliver any such request in writing to the secretary at the Office not earlier than the close of business on the one hundred and twentieth (120) calendar day nor later than the close of business on the ninetieth (90) calendar day prior to the date of the first anniversary of the preceding year's annual general meeting provided, however, that in the event that the date of an annual general meeting is more than thirty (30) calendar days before or more than sixty (60) calendar days after the date of the first anniversary of the preceding year's annual general meeting, notice by the member must be so delivered in writing not earlier than the close of business on the one hundred and twentieth (120) calendar day prior to such annual general meeting and not later than the close of business on the later of (i) the ninetieth (90) calendar day prior to such annual general meeting and (ii) the 10 calendar day after the day on which public announcement of the date of such annual general meeting is first made by the Company. In no event shall any adjournment or postponement of an annual general meeting or the public announcement thereof commence a new time period for the giving of a member's notice as described in this Article 20.4.

Notwithstanding anything in the foregoing provisions of this Article 20.4 to the contrary, in the event that the number of Directors to be elected to the Board is increased and there is no public announcement, naming all of the nominees for Director or specifying the size of the increased Board, made by the Company at least one hundred (100) calendar days prior to the date of the first anniversary of the preceding year's annual general meeting or, a member's notice required by this Article 20.4 shall also be considered as validly delivered in accordance with this Article 20.4, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the secretary at the Office not later than 5.00 pm, local time, on the tenth (10) calendar day after the day on which such public announcement is first made by the Company.

Notwithstanding the provisions of Articles 20.1 or 20.3 or the foregoing provisions of this Article 20.4, a member shall also comply with all applicable requirements of the Companies Act and of the Exchange Act with respect to the matters set forth in Articles 20.1 or 20.3 or in this Article 20.4. Nothing in Article 20.1 or 20.3 or in this Article 20.4 shall be deemed to affect any rights of members to request inclusion of proposals in, nor the right of the Company to omit proposals from, the Company's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act, subject in each case to compliance with the Exchange Act.

## 21. VOTES OF MEMBERS

21.1 A resolution put to the vote of a general meeting must be taken on a poll. This Article 21.1 may only be removed, amended or varied by resolution of the members passed unanimously at a general meeting of the Company.

21.2 Subject to any relevant special rights or restrictions attached to any shares (including, for the avoidance of doubt, such rights and restrictions set out in Article 4.1 above), on a poll taken at a meeting, every qualifying member present and entitled to vote on the resolution has one vote in respect of each Ordinary Share.

- 21.3 In the case of joint holders the vote of the senior who tenders a vote shall be accepted to the exclusion of the votes of the other joint holders, and seniority shall be determined by the order in which the names of the holders stand in the register of members.
- 21.4 A member in respect of whom an order has been made by any court or official having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote by any person authorised in that behalf by that court or official and such person may vote by proxy. Evidence to the satisfaction of the Board of the authority of the person claiming the right to vote shall be delivered to the Office, or such other place as is specified in accordance with these Articles for the delivery or receipt of appointments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised (provided that the Company may specify, in any case, that in calculating the period of 48 hours, no account shall be taken of any part of a day that is not a working day). Failure to satisfy the requirements of this Article 21.4 shall cause the right to vote not to be exercisable.
- 21.5 In the case of an equality of votes, the chairman of the meeting shall not be entitled to a casting vote.
- 21.6 No member shall have the right to vote at any general meeting or at any separate meeting of the holders of any class of shares, either in person or by representative or proxy, in respect of any share held by him unless all amounts presently payable by him in respect of that share have been paid.
- 21.7 If at any time the Board is satisfied that any member, or any other person appearing to be interested in shares held by such member, has been duly served with a notice under section 793 of the Companies Act (a **section 793 notice**) and is in default for the prescribed period in supplying to the Company the information thereby required, or, in purported compliance with such a notice, has made a statement which is false or inadequate in a material particular, then the Board may, in its absolute discretion at any time by notice (a **direction notice**) to such member direct that:
- (a) in respect of the shares in relation to which the default occurred (the **default shares**, which expression includes any shares issued after the date of the section 793 notice in respect of those shares) the member shall not be entitled to attend or vote either personally or by proxy at a general meeting or at a separate meeting of the holders of that class of shares or on a poll; and
  - (b) where the default shares represent at least 0.25 per cent. in nominal value of the issued shares of their class (calculated exclusive of any shares held in treasury), in respect of the default shares:
    - (i) no payment shall be made by way of dividend and no share shall be allotted or distributed pursuant to Articles 39.1, 40.1, and 40.2; and
    - (ii) no transfer of any default share shall be registered unless:
      - (A) the member is not himself in default as regards supplying the information required and it has been proved to the reasonable satisfaction of the Board that no person in default of supplying the information required is interested in any of the shares which are the subject of the transfer; or
      - (B) the transfer is an approved transfer.



For the purposes of ensuring this Article 21.7(b)(ii) can apply to all shares held by the member, the Company may in accordance with the Uncertificated Securities Rules, issue a written notification to the Operator requiring conversion into certificated form of any share held by the member in uncertificated form.

- 21.8 The Company shall send the direction notice to each other person appearing to be interested in the default shares, but the failure or omission by the Company to do so shall not invalidate such notice.
- 21.9 Any direction notice shall cease to have effect not more than seven days after the earlier of receipt by the Company of:
- (a) a notice of an approved transfer, but only in relation to the shares transferred; or
  - (b) all the information required by the relevant section 793 notice, in a form satisfactory to the Board.
- 21.10 The Board may at any time send a notice cancelling a direction notice.
- 21.11 The Company may exercise any of its powers under Article 4.9 in respect of any default share that is held in uncertificated form.
- 21.12 For the purposes of this Article 21.12 and Articles 21.7, 21.8, 21.9, 21.10 and 21.11:
- (a) a person shall be treated as appearing to be interested in any shares if the member holding such shares has sent to the Company a notification under section 793 of the Companies Act which either:
    - (i) names such person as being so interested; or
    - (ii) fails to establish the identities of all those interested in the shares, and (after taking into account the said notification and any other relevant section 793 notification) the Company knows or has reasonable cause to believe that the person in question is or may be interested in the shares;
  - (b) the prescribed period is 14 days from the date of service of the section 793 notice; and
  - (c) a transfer of shares is an approved transfer if:
    - (i) it is a transfer of shares pursuant to an acceptance of a takeover offer (within the meaning of section 974 of the Companies Act);
    - (ii) the Board is satisfied that the transfer is made pursuant to a sale of the whole of the beneficial ownership of the shares the subject of the transfer to a party unconnected with the member and with any other person appearing to be interested in the shares; or
    - (iii) the transfer results from a sale made through a recognised investment exchange as defined in the FSMA or any other stock exchange outside the United Kingdom on which the Company's shares are normally traded.
- 21.13 Nothing contained in Article 21.7, 21.8, 21.9, 21.10 and 21.11 limits the power of the Company under section 794 of the Companies Act.

- 21.14 Any objection to the qualification of any person voting at a general meeting or on a poll or to the counting of, or failure to count, any vote, must be made at the meeting or adjourned meeting or at the time the poll is taken (if not taken at the meeting or adjourned meeting) at which the vote objected to is tendered. Every vote not disallowed at such meeting shall be valid and every vote not counted which ought to have been counted shall be disregarded. Any objection made in due time shall be referred to the chairman of the meeting whose decision shall be final and conclusive. If a vote is not disallowed by the chairman of the meeting it is valid for all purposes.
- 21.15 The Company shall not be bound to enquire whether any proxy or corporate representative votes in accordance with the instructions given to him by the member he represents and if a proxy or corporate representative does not vote in accordance with the instructions of the member he represents the vote or votes cast shall nevertheless be valid for all purposes.
- 21.16 If any votes are counted which ought not to have been counted, or might have been rejected, the error shall not vitiate the result of the voting unless it is pointed out at the same meeting, or any adjournment of the meeting, and, in the opinion of the chairman, it is of sufficient magnitude to vitiate the result of the voting.

## **22. PROXIES AND CORPORATE REPRESENTATIVES**

- 22.1 A member is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the Company in respect of the shares to which the proxy appointment relates. The proxy appointment shall, unless it provides to the contrary, be valid for any adjournment of the meeting as well as for the meeting to which it relates. A proxy need not be a member.
- 22.2 The appointment of a proxy shall be:
- (a) in the case of a proxy relating to shares in the capital of the Company held in the name of a Depository, in a form or manner of communication approved by the Board, which may include, without limitation, a voter instruction form to be provided to the Company by certain third parties on behalf of the Depository. Subject thereto, the appointment of a proxy may be:
    - (i) in hard copy form; or
    - (ii) in electronic form, to the electronic address provided by the Company for this purpose; or
  - (b) in the case of a proxy relating to the shares to which Article 22.2(a) does not apply:
    - (i) in any usual form or in any other form or manner of communication which the Board may approve. Subject thereto, the appointment of a proxy may be:
      - (A) in hard copy form; or
      - (B) in electronic form, to the electronic address provided by the Company for this purpose;
- 22.3 The appointment of a proxy, whether made in hard copy form or in electronic form, shall be executed by or on behalf of the appointor in such manner as the Directors may approve, which in the case of a corporation may be either under its common seal or under the hand of a duly authorised officer or other person duly authorised for that purpose or in any other manner authorised by its constitution.

- 22.4 Without limiting these Articles, the Board may in relation to uncertificated shares:
- (a) approve the appointment of a proxy by means of an electronic communication in the form of an “**uncertificated proxy instruction**” (a properly authorised dematerialised instruction and/or other instruction or notification, which is sent by means of the relevant system and received by such participant in that system acting on behalf of the Company as the Board may prescribe, in such form and subject to such terms and conditions as the Board may prescribe (subject always to the facilities and requirements of the relevant system));
  - (b) approve supplements to, or amendments or revocations of, any such uncertificated proxy instruction by the same means; and
  - (c) prescribe the method of determining the time at which any such uncertificated proxy instruction is to be treated as received by the Company or such participant and may treat any such uncertificated proxy instruction which purports to be or is expressed to be sent on behalf of the holder of a share as sufficient evidence of the authority of the person sending that instruction to send it on behalf of that holder.

The term “**properly authenticated dematerialised instruction**” shall have the meaning given in the Uncertificated Securities Rules.

- 22.5 The Board may, if it thinks fit, but subject to the provisions of the Companies Act, at the Company’s expense (with or without provision for their return prepaid) send hard copy forms of proxy for use at the meeting, or at any separate meeting of the holders of any class of shares, and issue invitations in electronic form to appoint a proxy in relation to the meeting in such form as may be approved by the Board. If, for the purpose of any meeting appointments of proxy or invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the Company’s expense, they shall be issued to all (and not to some only) of the members entitled to be sent a notice of the meeting and to vote at it. The accidental omission or the failure due to circumstances beyond the Company’s control, to send or make available such an appointment of proxy or give such an invitation to, or the non-receipt thereof by, any member entitled to attend and vote, at a meeting shall not invalidate the proceedings at that meeting.

- 22.6 The appointment of a proxy shall not preclude a member from attending and voting in person at the meeting or poll concerned. A member may appoint more than one proxy to attend on the same occasion, provided that each such proxy is appointed to exercise the rights attached to a different share or shares held by that member. References in these Articles to an appointment of proxy include references to an appointment of multiple proxies.

- 22.7 Without prejudice to Article 18.13(b) or the second sentence of Article 19.16, the appointment of a proxy shall:

- (a) if in hard copy form, be delivered by hand or by post to the Office or such other place within the United Kingdom as may be specified by or on behalf of the Company for that purpose:
  - (i) in the notice convening the meeting; or
  - (ii) in any form of proxy sent by or on behalf of the Company in relation to the meeting,by the time specified by the Board (as the Board may determine, in compliance with the provisions of the Companies Act) in any such notice or form of proxy; and

- (b) if in electronic form, be received at the electronic address to which the appointment of a proxy may be sent by electronic means pursuant to a provision of the Companies Act or to any other address specified by or on behalf of the Company for the purpose of receiving the appointment of a proxy in electronic form:
- (i) in the notice convening the meeting;
  - (ii) in any form of proxy sent by or on behalf of the Company in relation to the meeting;
  - (iii) in any invitation to appoint a proxy issued by the Company in relation to the meeting; or
  - (iv) on a website that is maintained by or on behalf of the Company and identifies the Company,
- by the time specified by the Board (as the Board may determine, in compliance with the provisions of the Companies Act) in any such method of notification.

The Board may specify, when determining the dates by which proxies are to be lodged, that no account need be taken of any part of a day that is not a working day.

22.8 Subject to the provisions of the Companies Act, where the appointment of a proxy is expressed to have been or purports to have been sent or supplied by a person on behalf of a holder:

- (a) the Company may treat the appointment as sufficient evidence of that person's authority to execute the appointment of proxy on behalf of that member; and
- (b) the holder shall, if requested by or on behalf of the Company at any time, send or procure the sending of reasonable evidence of the authority under which the appointment of proxy has been made, sent or supplied (which may include, without limitation, a copy of such authority certified notarially or in some other way approved by the Board), to such address and by such time as may be specified in the request and, if the request is not complied with in any respect, the appointment of proxy may be treated as invalid.

22.9 Subject to Article 22.8, a proxy appointment which is not delivered or received in accordance with Article 22.7 shall be invalid. Where two or more valid appointments of proxy are delivered or received in respect of the same share in relation to the same meeting, the one which was last delivered or received shall, unless otherwise specified in the notice convening the meeting, be treated as replacing and revoking the other or others as regards that share. If the Company is unable to determine which is last delivered or received, or if the Company determines that it has insufficient evidence to decide whether or not a proxy appointment is in respect of the same share, it shall be entitled to determine which proxy appointment (if any) is to be treated as valid. Subject to the Companies Act, the Company may determine at its discretion when a proxy appointment shall be treated as delivered or received for the purposes of these Articles.

22.10 The Company shall not be required to check that a proxy or corporate representative votes in accordance with any instructions given by the member by whom he is appointed. Any failure to vote as instructed shall not invalidate the proceedings on the resolution.

22.11 Any corporation which is a member of the Company (the **grantor**) may, by resolution of its directors or other governing body, authorise such person or persons as it thinks fit to act as its representative or representatives at any meeting of the Company or at any separate meeting of

the holders of any class of shares. A Director, the secretary or other person authorised for the purpose by the secretary may require all or any of such persons to produce a certified copy of the resolution of authorisation before permitting him to exercise his powers. Such person is entitled to exercise (on behalf of the grantor) the same powers as the grantor could exercise if it were an individual member of the Company. Where a grantor authorises more than one person and more than one authorised person purports to exercise a power in respect of the same shares:

- (a) if they purport to exercise the power in the same way as each other, the power is treated as exercised in that way; and
- (b) if they do not purport to exercise the power in the same way as each other, the power is treated as not exercised.

22.12 The termination of the authority of a person to act as a proxy or duly authorised representative of a corporation does not affect:

- (a) whether he counts in deciding whether there is a quorum at a meeting;
- (b) the validity of anything he does as chairman of a meeting;
- (c) the validity of a poll demanded by him at a meeting; or
- (d) the validity of a vote given by that person,

unless notice of the termination was either delivered or received as mentioned in the following sentence at least 24 hours before the start of the relevant meeting or adjourned meeting or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll. Such notice of termination shall be either by means of a document in hard copy form delivered to the Office or to such other place within the United Kingdom as may be specified by or on behalf of the Company in accordance with Article 22.7(a) or in electronic form received at the address specified by or on behalf of the Company in accordance with Article 22.7(b), regardless of whether any relevant proxy appointment was effected in hard copy form or in electronic form.

22.13 A proxy given in the form of a power of attorney or similar authorisation granting power to a person to vote on behalf of a member at forthcoming meetings in general shall not be treated as valid for a period of more than three years, unless a contrary intention is stated in it.

### **23. NUMBER AND CLASSIFICATION OF DIRECTORS**

23.1 Unless otherwise decided by the Board (where, for the period beginning on the date of the unconditional adoption of these Articles and ending at the first annual meeting of members of the Company following the completion of the Company's second full fiscal year, such decision must be taken unanimously), the number of directors shall be 9. The composition of the Board (and, if applicable, each director) will satisfy the requirements of applicable law and any securities exchange on which the Company's securities are listed. Each director shall be able to understand and speak English sufficiently to be able to participate fully in all meetings of the Board.

23.2 The continuing directors or sole continuing director may act notwithstanding any vacancies in their number, but, if there is only one continuing director, the continuing director may act only for the purpose of filling vacancies or of calling a general meeting, but not for any other purpose.

23.3 The directors in office immediately following the unconditional adoption of these Articles shall be appointed for a term that will expire at the first annual meeting of members of the Company following the completion of the Company's second full fiscal year.

## 24. APPOINTMENT OF DIRECTORS

- 24.1 Subject to the Articles, any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director:
- (a) by ordinary resolution;
  - (b) at a general meeting called under article 16.4;
  - (c) by a decision of the directors.
- 24.2 Subject to the Companies Act, the directors may enter into an agreement or arrangement with any director for the provision of any services outside the scope of the ordinary duties of a director. Any such agreement or arrangement may be made on such terms and conditions as (subject to the Act) the directors think fit and (without prejudice to any other provision of the articles) they may remunerate any such director for such services as they think fit.
- 24.3 No person shall be appointed a Director at any annual general meeting unless:
- (a) he is nominated by the Board; or
  - (b) notice in respect of that person is given by a member qualified to vote at the meeting (other than the person to be proposed) has been received by the Company in accordance with Article 20.1 and Article 20.4 or section 338 of the Companies Act of the intention to nominate that person for appointment stating the particulars which would, if he were so appointed, be required to be included in the Company's register of directors, together with notice by that person of his willingness to be appointed.
- 24.4 The directors may require that any notice of a proposed director by a member include additional disclosure regarding such proposed director, including such person's interest in the Company.
- 24.5 Except as otherwise authorised by the Companies Act, a motion for the appointment of two or more persons as Directors by a single resolution shall not be made unless a resolution that it should be so made has first been agreed to by the meeting without any vote being given against it.
- 24.6 In the event that at a general meeting it is proposed to vote upon a number of the resolutions for the appointment of a person as a Director (each a **Director Resolution**) that exceeds the total number of Directors that are to be appointed to the Board at that meeting (the **Board Number**), the persons that shall be appointed Directors shall first be the person who receives the greatest number of "for" votes (whether or not a majority of those votes cast in respect of that Director Resolution), and then shall second be the person who receives the second greatest number of "for" votes (whether or not a majority of those votes cast in respect of that Director Resolution), and so on, until the number of Directors so appointed equals the Board Number.
- 24.7 Subject to the provisions of these Articles, the Company may by ordinary resolution appoint a person who is willing to act as a Director, and is permitted by law to do so, to be a Director, either to fill a vacancy or as an additional Director. Any Director elected in accordance with this Article 24.7 shall hold office for the remainder of the full term of the class of Directors in which the vacancy occurred or to which the new Director is appointed, until his successor is appointed or until his earlier resignation or removal in accordance with Article 30.1.

24.8 The Board may appoint a person who is willing to act as a Director and is permitted by law to do so, either to fill a vacancy or as an additional Director. Any Director elected in accordance with this Article 24.8 shall hold office for the remainder of the full term of the class of Directors in which the vacancy occurred or to which the new Director is appointed, until his successor is appointed or until his earlier resignation or removal in accordance with Article 30.1.

24.9 A Director shall not be required to hold any shares in the capital of the Company by way of qualification.

24.10 All acts done by:

- (a) a meeting of the directors;
- (b) a meeting of a committee of the directors;
- (c) written resolution of the directors; or
- (d) a person acting as a director, or a committee,

shall be valid notwithstanding that it is discovered afterwards that there was a defect in the appointment of a person or persons acting or that any of them were disqualified from holding office, had ceased to hold office or were not entitled to vote on the matter in question.

## 25. DIRECTORS' FEES AND EXPENSES

25.1 Unless otherwise determined by the Company by ordinary resolution, there shall be paid to the Directors (other than alternate Directors and Directors employed by the company in an executive capacity) such fees for their services in the office of Director as the Directors may from time to time determine (or as the Company may decide by ordinary resolution). The total fees will be divided among the directors in the proportions that the Directors decide. If no decision is made, the total fees will be divided equally. The fees shall be deemed to accrue from day to day and shall be distinct from and additional to any remuneration or other benefits which may be paid or provided to any Director pursuant to any other provision of these Articles.

25.2 Subject to the Companies Act and the Articles, Directors' fees may be payable in any form and, in particular, the Directors may arrange for part of a fee payable under this Article 25 to be provided in the form of fully paid shares of the Company. The amount of the fee payable in this way is at the Directors' discretion. The amount of the fee will be applied to purchase or subscribe for shares on behalf of the Director.

25.3 Unless the Directors decide otherwise, a Director is not accountable to the Company for any remuneration which he receives as a director or other officer or employee of the Company's subsidiary undertakings or of any other body corporate in which the Company is interested.

25.4 The Directors may also be paid all reasonable travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of the Directors, or of committees of the Board, or general meetings or separate meetings of the holders of any class of shares or debentures of the Company or otherwise in connection with the discharge of their duties as Directors.

- 25.5 Subject to the Act, the Directors may make arrangements to provide a director with funds to meet expenditure incurred (or to be incurred) by him for the purposes of the Company; or enabling him to properly perform his duties as an officer of the Company; or enabling him to avoid incurring any such expenditure.
- 25.6 Any Director who holds any executive office or who serves on any committee of the Board or who performs services which the Board considers go beyond the ordinary duties of a Director may be paid such special remuneration (whether by way of bonus, commission, participation in profits or otherwise) as the Board may determine.

**26. [RESERVED]**

**27. POWERS OF THE BOARD**

- 27.1 Subject to the provisions of the Companies Act, these Articles and to any directions given by special resolution to take or refrain from taking, specified action, the business of the Company shall be managed by the Board who may exercise all the powers of the Company, including without limitation the power to dispose of all or any part of the undertaking of the Company. No alteration of these Articles and no such direction shall invalidate any prior act of the Board which would have been valid if that alteration had not been made or that direction had not been given. The powers given by Articles 27.1 to 27.3 inclusive shall not be limited by any special power given to the Board by these Articles, and a meeting of the Board at which a quorum is present may exercise all powers exercisable by the Board.
- 27.2 The Board may exercise the voting power conferred by the shares in any body corporate held or owned by the Company in such manner in all respects as it thinks fit (including without limitation the exercise of that power in favour of any resolution appointing its members or any of them as directors of such body corporate, or voting or providing for the payment of remuneration or the provision of indemnification to the directors of such body corporate).
- 27.3 The Board may decide to make provision for the benefit of persons employed or formerly employed by the Company or any of its Subsidiaries (other than a Director or former Director or shadow Director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the Company or that Subsidiary.
- 27.4 The Board may exercise all the powers of the Company to borrow money and to mortgage or charge all or part of the undertaking, property and assets (present or future) and uncalled capital of the Company and, subject to the Companies Act, to issue debentures and other securities, whether outright or as collateral security for a debt, liability or obligation of the Company or of a third party.

**28. COMPLIANCE WITH NASDAQ RULES**

- 28.1 For as long as the Ordinary Shares are listed on the NASDAQ, the Company shall comply with all NASDAQ corporate governance standards set forth in Section 3 of the NASDAQ Listed Company Manual applicable to non-controlled domestic U.S. issuers, regardless of whether the Company is a foreign private issuer.

**29. DELEGATION OF DIRECTORS' POWERS**

- 29.1 Subject to the provisions of these Articles, the Directors may delegate any of the powers which are conferred on them under these Articles:
- (a) to a committee consisting of one or more Directors and (if thought fit) one or more other persons, to such an extent and on such terms and conditions as the Board thinks fit; or
  - (b) to such person by such means (including by power of attorney), to such an extent, and on such terms and conditions, as they think fit including delegation to any Director holding any executive office such of its powers as the Board considers desirable to be exercised by him.



Any such delegation shall, in the absence of express provision to the contrary in the terms of delegation, be deemed to include authority to sub-delegate to one or more Directors (whether or not acting as a committee) or to any employee or agent of the Company all or any of the powers delegated and may be made subject to such conditions as the Board may specify, and may be revoked or altered.

29.2 The power to delegate under Article 29.1 includes the power to delegate the determination of any fee, remuneration or other benefit which may be paid or provided to any Director.

29.3 The Board may appoint any person to any office or employment having a designation or title including the word “director” or attach to any existing office or employment with the Company such a designation or title and may terminate any such appointment or the use of any such designation or title. The inclusion of the word “director” in the designation or title of any such office or employment shall not imply that the holder is a Director, and the holder shall not thereby be empowered in any respect to act as, or be deemed to be, a Director for any of the purposes of these Articles.

#### **Committees**

29.4 Subject to Article 29.5, the proceedings of any committee appointed under paragraph (a) of Article 29.1 with two or more members shall be governed by such of these Articles as regulate the proceedings of Directors so far as they are capable of applying, and the quorum at a meeting of any such committee shall be two.

29.5 The Directors may make rules regulating the proceedings of such committees. For as long as the Ordinary Shares are listed on the NASDAQ, all committees shall comply with the applicable rules of the NASDAQ applicable to non-controlled domestic US issuers. The directors may otherwise make rules of procedure for all or any committees, which prevail over rules derived from the Articles.

### **30. DISQUALIFICATION AND REMOVAL OF DIRECTORS**

30.1 A person ceases to be a Director if:

- (a) the period expires, if he has been appointed for a fixed period;
- (b) he ceases to be a Director by virtue of any provision of the Companies Act (including, without limitation, section 168 of the Companies Act) or he becomes prohibited by law from being a Director;
- (c) he is deemed unfit or has otherwise been requested to be removed from office by any regulatory authority in any applicable jurisdiction;
- (d) he becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (e) a registered medical practitioner who is treating that person gives a written opinion to the Company stating that that person has become physically or mentally incapable of acting as a Director and may remain so for more than three months;

- (f) by reason of his mental health a court makes an order which wholly or partly prevents him from personally exercising any powers or rights he would otherwise have;
- (g) he resigns his office by notice in writing to the Company and such resignation has taken effect in accordance with its terms;
- (h) in the case of a Director who holds any executive office, his appointment as such is terminated or expires and the Board resolves that he should cease to be a Director;
- (i) he is absent for more than six consecutive months without permission of the Board from meetings of the Board held during that period and the Board resolves that he should cease to be a Director; or
- (j) he dies.

30.2 A unanimous resolution of the directors (excluding the director the subject of this Article) declaring a director to have ceased to be a director under the terms of this Article is conclusive as to the fact and grounds of cessation stated in the resolution.

30.3 If a director ceases to be a director for any reason, he shall cease to be a member of any committee of the directors.

### **31. EXECUTIVE DIRECTORS**

31.1 Subject to the provisions of the Companies Act, the Directors may appoint one or more of their number to the office of chief executive or to any other executive office of the Company (including, without limitation, to hold the office of president and/or treasurer but excluding that of auditor) and any such appointment may be made for such terms, at such remuneration and on such other conditions as the Directors think fit. The Company may enter into an agreement or arrangement with any such Director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a Director. The Board may revoke or vary any such appointment but without prejudice to any rights or claims which the person whose appointment is revoked or varied may have against the Company because of the revocation or variation.

31.2 Any appointment of a Director to an executive office shall terminate if he ceases to be a Director but without prejudice to any rights or claims which he may have against the Company by reason of that cessation. A Director appointed to an executive office shall not cease to be a Director merely because his appointment to such executive office terminates.

31.3 The emoluments of any Directors holding executive office for his services shall be determined by the Board, and may be of any description, including without limitation admission to, or continuance of, membership of any scheme (including any share acquisition scheme) or fund instituted or established or financed or contributed to by the Company for the provision of pensions, life assurance or other benefits for employees or their dependants, or the payment of a pension or other benefits to him or his dependants on or after retirement or death, apart from membership of any such scheme or fund.

### **32. DIRECTORS' INTERESTS**

32.1 For the purposes of these Articles (i) a conflict of interest includes (x) a conflict of interest and duty and (y) a conflict of duties and (ii) interest includes both direct and indirect interests.

32.2 A director shall be authorised for the purposes of section 175 of the Act to act or continue to act as a director of the Company notwithstanding that at the time of his appointment or subsequently he also holds office as a director of, or holds any other office, employment or engagement with, any other member of the Group.

- 32.3 For the purposes of section 175 of the Companies Act, the Board may (subject to such terms and conditions, if any, as the Board may think fit to impose from time to time, and always subject to the Board's right to vary or terminate such authorisation) authorise, to the fullest extent permitted by law:
- (a) any matter proposed to it in accordance with these Articles which would, if not so authorised, involve a breach of duty by a Director under that section, including, without limitation, any matter which relates to a situation in which a Director has, or can have, an interest which conflicts, or possibly may conflict, with the interests of the Company or which may reasonably be regarded as likely to give rise to a conflict of interest; and
  - (b) a Director to accept or continue in any office, employment or position in addition to his office as a Director and, without prejudice to the generality of Article 32.3(a), may authorise the manner in which a conflict of interest arising out of such office, employment or position may be dealt with, either before or at the time that such a conflict of interest arises,

provided that any such authorisation will be effective only if:

- (i) any requirement as to quorum at the meeting at which the matter is considered is met without counting the Director in question or any other interested Director; and
- (ii) the matter was agreed to without such Director voting or would have been agreed to if such Director's votes had not been counted.

The Board may (whether at the time of the giving of the authorisation or subsequently) make any such authorisation subject to any limits or conditions it expressly imposes but such authorisation is otherwise given to the fullest extent permitted. The Board may vary or terminate any such authorisation at any time.

- 32.4 Subject to the provisions of the Companies Act, and provided that he has disclosed to the Board the nature and extent of any material interest of his (unless the circumstances referred to in section 177(5) or section 177(6) of the Companies Act apply, in which case no disclosure is required), a Director notwithstanding his office:
- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
  - (b) may (or any firm of which he is a member may) act in a professional capacity for the Company (otherwise than as auditor) or any other body in which the Company is otherwise interested and he or his firm shall be entitled to remuneration for professional services as if he were not a Director; and
  - (c) may be a Director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any undertaking:
    - (i) in which the Company is (directly or indirectly) interested as shareholder, member, partner or otherwise; or
    - (ii) with which he has such a relationship at the request or direction of the Company.

- 32.5 A Director shall not, by reason of his office, be accountable to the Company for any remuneration or other benefit which he derives from any office or employment or from any transaction or arrangement or from any interest in any undertaking:
- (a) the acceptance, entry into or existence of which has been authorised by the Board pursuant to Article 32.2 (subject, in any case, to any limits or conditions to which such authorisation was subject); or
  - (b) which he is permitted to hold or enter into by virtue of paragraphs (a), (b) or (c) of Article 32.4,
- nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Companies Act;
- 32.6 Any disclosure required by Article 32.4 may be made at a meeting of the Board, by notice in writing or by general notice or otherwise in accordance with section 177 of the Companies Act.
- 32.7 A Director shall be under no duty to the Company with respect to any information which he obtains or has obtained otherwise than as a Director and in respect of which he owes a duty of confidentiality to another person. However, to the extent that his relationship with that other person gives rise to a conflict of interest or possible conflict of interest, this Article 32.7 applies only if the existence of that relationship has been authorised by the Board pursuant to Article 32.2. In particular, the Director shall not be in breach of the general duties he owes to the Company by virtue of sections 171 to 177 of the Companies Act because he fails:
- (a) to disclose any such information to the Board or to any Director or other officer or employees of the Company; and/or
  - (b) to use or apply any such information in performing his duties as a Director.
- 32.8 Where the existence of a Director's relationship with another person or undertaking has been authorised by the Board pursuant to Article 32.2 and his relationship with that person or undertaking gives rise to a conflict of interest or possible conflict of interest, the Director shall not be in breach of the general duties he owes to the Company by virtue of sections 171 to 177 of the Companies Act because he:
- (a) absents himself from meetings of the Board at which any matter relating to the conflict of interest or possible conflict of interest will or may be discussed or from the discussion of any such matter at a meeting or otherwise; and/or
  - (b) makes arrangements not to receive documents and information relating to any matter which gives rise to the conflict of interest or possible conflict of interest sent or supplied by the Company and/or for such documents and information to be received and read by a professional adviser,
- for so long as he reasonably believes such conflict of interest or possible conflict of interest subsists, provided that provided that if a majority of the Independent Directors of the Company so determine (excluding any Independent Director who is conflicted in respect of the particular matter), such conflicted director may be permitted to participate in the relevant meeting (or part thereof), and to receive documents and information relating to the matter, but not to vote (save to the extent that such participation or access to such documents and information would constitute a breach of applicable competition law or regulation.

- 32.9 The provisions of Articles 32.7 and 32.8 are without prejudice to any equitable principle or rule of law which may excuse the Director from:
- (a) disclosing information, in circumstances where disclosure would otherwise be required under these Articles; or
  - (b) attending meetings or discussions or receiving documents and information as referred to in Article 32.8, in circumstances where such attendance or receiving such documents and information would otherwise be required under these Articles.
- 32.10 For the purposes of Article 32.4:
- (a) a general notice given to the Directors that a Director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the Director has an interest in any such transaction of the nature and extent so specified;
  - (b) an interest of which a Director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his; and
  - (c) a Director shall be deemed to have disclosed the nature and extent of an interest which consists of him being a Director, officer or employee of any undertaking in which the Company is interested.

### **33. PROCEEDINGS OF DIRECTORS**

- 33.1 Subject to the provisions of these Articles, the Board may regulate their proceedings as they think fit.
- 33.2 A Director may, and the secretary at the request of a Director shall, call a meeting of the Board or a committee of the Board by giving notice to each Director. A notice of a meeting of the Board shall be deemed to be properly given to a Director if given to him personally or by word of mouth, or sent in hard copy to him at his last known address or any other address (if any) as may for the time being be specified by him or on his behalf to the Company for this purpose or sent in electronic form to such address (if any) for the time being specified by him or on his behalf to the Company for this purpose. Any Director may waive the requirement for notice of a meeting and any such waiver may be retrospective. Any notice pursuant to this Article 33.2 need not be in writing if the Board so determines and any such determination may be retrospective.
- 33.3 Questions arising at a meeting shall be decided by a majority of votes of the Directors present at such meeting who are entitled to vote on such question. A Director who is also an alternate Director shall be entitled in the absence of his appointor to a separate vote on behalf of his appointor in addition to his own vote, and an alternate Director who is appointed by two or more Directors shall be entitled to a separate vote on behalf of each of his appointors in the appointors' absence.
- 33.4 No business shall be transacted at any meeting of the Board unless a quorum is present. The quorum at a meeting of the Board shall be a majority of the Directors then in office. Any Director who ceases to be a Director at a Board meeting may continue to be present and to act as a Director and be counted in the quorum until the termination of the Board meeting if no Director objects. A Director shall not be counted in the quorum present in relation to a matter or resolution on which he is not entitled to vote (or when his vote cannot be counted) but shall be counted in the quorum present in relation to all other matters or resolutions considered or voted on at the meeting. An alternate Director, who is not himself a Director shall, if his appointor is not present but is entitled to be counted in the quorum, be counted in the quorum.

- 33.5 The Directors may at any time elect from their number, and remove, a chairman of the Board and a deputy chairman. Unless he is unwilling to do so, the Director appointed as chairman, or in his stead the Director appointed as deputy chairman, shall preside at all meetings of the Board at which he is present. If there is no Director holding either office, or if neither the chairman nor the deputy chairman is present within five minutes after the time appointed for the meeting, or if the chairman or deputy chairman is not willing to preside, the Directors present may choose one of their number to be chairman of the meeting.
- 33.6 All acts done by a meeting of the Board, or of a committee of the Board, or by a person acting as a Director, shall, notwithstanding that it may afterwards be discovered that there was a defect in the appointment of any Director, any member of the committee or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, or that the meeting was not quorate (provided that the Directors present at the inquorate meeting believed, in good faith, that the meeting was quorate and made all such enquiries as were reasonable in the circumstances to establish that the meeting was quorate), be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director and had been entitled to vote and that the meeting was quorate.
- 33.7 A resolution in writing agreed to by all the Directors entitled to receive notice of a meeting of the Board or of a committee of the Board and who would be entitled to vote (and whose vote would have been counted) on the resolution at a meeting of the Board or of a committee of the Board shall (if that number is sufficient to constitute a quorum) be as valid and effectual as if it had been passed at a meeting of the Board or (as the case may be) of that committee, duly convened and held. A resolution in writing is adopted when the Company receives from all such Directors a document indicating their agreement to the proposed resolution either by being signed or otherwise authenticated in the manner permitted by the Companies Act for a document in the relevant form, sent in either hard copy or electronic form (including facsimile transmission) to such address (if any) for the time being specified by the Company for that purpose. A resolution agreed to by an alternate Director need not also be agreed to by his appointor and, if it is agreed to by a Director who has appointed an alternate Director, it need not also be agreed to by the alternate Director in that capacity.
- 33.8 Without prejudice to Article 33.1, a meeting of the Board or of a committee of the Board may consist of a conference between Directors who are not all in one place, but each of whom is able (whether directly or by conference telephone or by any other form of communication equipment) to hear each of the other participating Directors, and to speak to and be heard by each of the others simultaneously. A Director taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in the quorum accordingly and the word "meeting" in these Articles shall be construed accordingly. Such meeting shall be deemed to take place where it is convened to be held or (if no Director is present in that place) where the largest group of those participating is assembled, or, if there is no such group, where the chairman of the meeting is located.
- 33.9 Except as otherwise provided by these Articles, a Director shall not vote at a meeting of the Board or a committee of the Board on any resolution concerning a matter in which he has, directly or indirectly, an interest (other than an interest in shares, debentures or other securities of, or otherwise in or through, the Company) which can reasonably be regarded as likely to give rise to a conflict with the interests of the Company, unless his interest arises only because the resolution falls within one or more of the following matters:
- (a) the giving of a guarantee, security or indemnity in respect of money lent to, or an obligation incurred by him at the request of, or for the benefit of, the Company or any of its subsidiary undertakings;

- (b) the giving of a guarantee, security or indemnity in respect of a debt or obligation of the Company or any of its subsidiary undertakings for which the director has assumed responsibility (in whole or in part and whether alone or jointly with others) under a guarantee or indemnity or by the giving of security;
- (c) the giving to him of any other indemnity which is on substantially the same terms as indemnities given or to be given to all of the other directors and/or to the funding by the Company of his expenditure on defending proceedings or the doing by the Company of anything to enable him to avoid incurring such expenditure where all other directors have been given or are to be given substantially the same arrangements;
- (d) a contract, arrangement, transaction or proposal concerning an offer of shares, debentures or other securities of the Company or any of its subsidiary undertakings for subscription, purchase or exchange, in which offer he is or may be entitled to participate as holder of securities or in the underwriting or sub-underwriting of which he is to participate;
- (e) a contract, arrangement, transaction or proposal concerning any other undertaking in which he or any person connected with him is interested, directly or indirectly, and whether as an officer, shareholder, member, partner, creditor or otherwise if he and any persons connected with him do not to his knowledge hold an interest (as that term is used in sections 820 to 825 of the Companies Act) representing one per cent. or more of either any class of the equity share capital of such undertaking (or any other undertaking through which his interest is derived) or of the voting rights available to shareholders, members, partners or equivalent of the relevant undertaking (or any interest being deemed for the purpose of this Article 33.9 to be likely to give rise to a conflict with the interests of the Company in all circumstances);
- (f) a contract, arrangement, transaction or proposal for the benefit of employees and directors and/or former employees and directors of the Company or any of its subsidiary undertakings and/or members of their families (including a spouse or civil partner or a former spouse or former civil partner) or any person who is or was dependent on such persons, including but without being limited to a retirement benefits scheme and an employees' share scheme, which does not accord to any director any privilege or advantage not generally accorded to the employees and/or former employees to whom such arrangement relates; and
- (g) a contract, arrangement, transaction or proposal concerning any insurance against any liability which the Company is empowered to purchase or maintain for, or for the benefit of, any Directors or for persons who include Directors.

33.10 The Company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of these Articles prohibiting a Director from voting at a meeting of the Directors or of a committee of the Directors or ratify any transaction not duly authorised by reason of contravention of any such provision. The Board may suspend or relax to any extent, in respect of any particular matter, any provision of these Articles prohibiting a Director from voting at a meeting of the Directors or of a committee of the Directors.

33.11 Where proposals are under consideration concerning the appointment (including without limitation fixing or varying the terms of appointment) of two or more Directors to offices or employments with the Company or any undertaking in which the Company is interested, the proposals may be divided and considered in relation to each Director separately. In such cases each of the Directors concerned shall be entitled to vote in respect of each resolution except that concerning his own appointment.

33.12 If a question arises at a meeting of the Directors, or a meeting of a committee of the Directors, as to the right of a Director to vote, the question may, before the conclusion of the meeting, be decided by a resolution of a majority of Directors present at the meeting (other than the Director concerned and any other Director having a like interest as such Director) and such resolution shall be final and conclusive.

**34. MINUTES**

34.1 The Directors shall cause minutes to be made in books kept for the purpose:

- (a) of all appointments of officers made by the Directors; and
- (b) of all proceedings at meetings of the Company, of the holders of any class of shares in the capital of the Company, and of the Board, and of committees of the Board, including the names of the Directors present at each such meeting.

34.2 Any such minutes, if purporting to be signed by the chairman of the meeting to which they relate or of the meeting at which they are read, shall be sufficient evidence without any further proof of the facts therein stated.

**35. SECRETARY**

Subject to the provisions of the Companies Act, the secretary shall be appointed by the Board for such term, at such remuneration and on such other conditions as they think fit. Any secretary so appointed may be removed by the Board but without prejudice to any claim for damages for breach of any contract of service between him and the Company.

**36. THE SEAL**

36.1 The seal shall be used only by the authority of a resolution of the Board or of a committee of the Board. The Board may determine whether any instrument to which the seal is affixed, shall be signed and, if it is to be signed, who shall sign it. Unless otherwise determined by the Board:

- (a) share certificates and, subject to the provisions of any instrument constituting the same, certificates issued under the seal in respect of any debentures or other securities, need not be signed and any signature may be applied to any such certificate by any mechanical, electronic or other means or may be printed on it; and
- (b) every other instrument to which the seal is affixed shall be signed by two authorised persons or by a Director in the presence of a witness who attests the signature and for this purpose an authorised person is any Director or the secretary of the Company.

36.2 Any document may be executed under the seal by impressing the seal by mechanical means or by printing the seal or a facsimile of it on the document or by applying the seal or a facsimile of it by any other means to the document. A document executed, with the authority of a resolution of the Board, in any manner permitted by section 44(2) of the Companies Act and expressed (in whatever form of words) to be executed by the Company has the same effect as if executed under the seal.

36.3 Subject to the provisions of the Companies Act, the Company may have an official seal for use in any place.



## **37. REGISTERS**

- 37.1 Subject to the provisions of the Companies Act, the Company may keep an overseas or local register in any place, and the Board may make, amend and revoke any regulations it thinks fit about the keeping of that register.
- 37.2 Any Director or the secretary or any other person appointed by the Board for the purpose shall have power to authenticate and certify as true copies of and extracts from:
- (a) any document comprising or affecting the constitution of the Company, whether in hard copy form or electronic form;
  - (b) any resolution passed by the Company, the holders of any class of shares in the capital of the Company, the Board or any committee of the Board, whether in hard copy form or electronic form; and
  - (c) any book, record and document relating to the business of the Company, whether in hard copy form or electronic form (including without limitation the accounts).

If certified in this way, a document purporting to be a copy of a resolution, or the minutes or an extract from the minutes of a meeting of the Company, the holders of any class of shares in the capital of the Company, the Board or a committee of the Board, whether in hard copy form or electronic form, shall be conclusive evidence in favour of all persons dealing with the Company in reliance on it or them that the resolution was duly passed or that the minutes are, or the extract from the minutes is, a true and accurate record of any proceedings at a duly constituted meeting.

## **38. DIVIDENDS**

- 38.1 The rights as regarding income attaching to the Ordinary Shares shall be as set out in this Article.
- 38.2 Each Ordinary Share shall be entitled to receive all of the distributable profits available and declared by the Directors for distribution by way of a dividend amongst the holders of the Ordinary Shares. Each Ordinary Share shall rank equally with all other Ordinary Shares in the capital of the Company for any dividend and shall receive its pro rata portion of any dividend rounded to the nearest whole number (such rounding to be in the sole discretion of the Board).
- 38.3 Subject to the provisions of the Companies Act, the Company may by ordinary resolution declare dividends in accordance with the respective rights of the members, but no dividend shall exceed the amount recommended by the Directors.
- 38.4 Subject to the provisions of the Companies Act and to Article 38.8, the Board may pay interim dividends, whether or not satisfied wholly or partly by the distribution of assets including without limitation paid up shares or debentures of another body corporate, of such amounts and on such dates and in respect of such periods as they may think fit if it appears to them that they are justified by the profits of the Company available for distribution. If the share capital is divided into different classes, the Board may:
- (a) pay interim dividends on shares which confer deferred or non-preferred rights with regard to dividend as well as on shares which confer preferential rights with regard to dividend, but no interim dividend shall be paid on shares carrying deferred or non-preferred rights if at the time of payment, any preferential dividend is in arrears; and
  - (b) pay at intervals settled by them any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment;

If the Board acts in good faith they shall not incur any liability to the holders of shares conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on any shares having deferred or non-preferred rights. Where any distribution is satisfied wholly or partly by the distribution of assets, where any difficulty arises in regard to such distribution, the Directors may settle the same as they think fit and in particular (but without limitation) may issue fractional certificates (or ignore fractions) and fix the value for distribution of any assets, and may determine that cash shall be paid to any member on the basis of the value so fixed in order to adjust the rights of members, and may vest any assets in trustees.

- 38.5 Dividends may be declared and paid in any currency or currencies that the Board shall determine. The Board may also determine the exchange rate and the relevant date for determining the value of any dividend in any currency.
- 38.6 Subject to the provisions of the Companies Act and except as otherwise provided by these Articles or the rights attached to shares, all dividends shall be declared and paid according to the amounts paid up on the shares on which the dividend is paid. If any share is issued on terms that it ranks for dividend as from a particular date, it shall rank for dividend accordingly. In any other case (and except as aforesaid), dividends shall be apportioned and paid proportionately to the amounts paid up on the shares during any portion or portions of the period in respect of which the dividend is paid. For the purpose of this Article 38.6, an amount paid up on a share in advance of a call shall be treated, in relation to any dividend declared after the payment but before the call, as not paid up on the share.
- 38.7 Subject to Article 38.8, a general meeting declaring a dividend may, upon the recommendation of the Board, by ordinary resolution direct that it shall be satisfied wholly or partly by the distribution of assets including without limitation paid up shares or debentures of another body corporate. Where any difficulty arises in regard to the distribution, the Directors may settle the same as they think fit and in particular (but without limitation) may issue fractional certificates (or ignore fractions) and fix the value for distribution of any assets, and may determine that cash shall be paid to any member on the basis of the value so fixed in order to adjust the rights of members, and may vest any assets in trustees.
- 38.8 Unless otherwise recommended by two-thirds of the Board and approved by an ordinary resolution of the Company, where the securities of another body corporate are distributed, they must only be distributed to holders of Ordinary Shares on the basis that the holders of Ordinary Shares receive the identical class of securities on an equal per share basis.
- 38.9 Any dividend or other money payable in respect of a share may be paid:
- (a) in cash;
  - (b) by cheque or warrant made payable to or to the order of the holder or person entitled to payment;
  - (c) by direct debit, bank or other funds transfer system to the holder or person entitled to payment or, if practicable, to a person designated by notice to the Company by the holder or person entitled to payment; or
  - (d) by any other method approved by the Board and agreed (in such form as the Company thinks appropriate) by the holder or person entitled to payment.

For uncertificated shares, any payment may be made by means of the relevant system (subject always to the facilities and requirements of the relevant system) and such payment may be made by the Company or any other person on its behalf sending an instruction to the operator of the relevant system to credit the cash memorandum account of the holder or joint holder of such shares or, if permitted by the Company, of such person as the holder or joint holders may in writing direct.

- 38.10 If two or more persons are registered as joint holders of any share, or are entitled by transmission jointly to a share, the Company may:
- (a) pay any dividend or other moneys payable in respect of the share to any one of them and any one of them may give effectual receipt for the payment; and
  - (b) for the purpose of Article 38.9, rely in relation to the share on the written direction, designation or agreement of, or notice to the Company by, any one of them.
- 38.11 A cheque or warrant may be sent by post:
- (a) where a share is held by a sole holder, to the registered address of the holder of the share;
  - (b) if two or more persons are the holders of the share, to the registered address of the person who is first named in the register of members;
  - (c) if two or more persons are holders of the share or are jointly entitled to it by reason of the death or bankruptcy of the holder or otherwise by operation of law, as if it were a notice to be sent under Article 45.12; or
  - (d) in any case to such person and to such address as the person entitled to payment may direct by notice to the Company.
- 38.12 Every cheque or warrant shall be made payable to the order of or to the person or persons entitled or to such other person as the person or persons entitled may by notice direct and payment of the cheque or warrant shall be a good discharge to the Company. Every cheque or warrant sent or transfer of funds made by the relevant bank or relevant system in accordance with these Articles shall be at the risk of the holder or person entitled. The Company shall have no responsibility for any sums lost or delayed in the course of payment by any method used by the Company in accordance with Article 38.9.
- 38.13 The Company may cease to send any cheque or warrant (or to use any other method of payment) for any dividend payable in respect of a share if:
- (a) in respect of at least two consecutive dividends payable on that share the cheque or warrant has been returned undelivered or remains uncashed (or that other method of payment has failed); or
  - (b) following one such occasion, reasonable enquiries have failed to establish any new address of the holder;
- but, subject to the provisions of these Articles, shall recommence sending cheques or warrants (or using another method of payment) for dividends payable on that share if the person or persons entitled so request and have supplied in writing a new address or account to be used for that purpose.
- 38.14 The Board may deduct from any dividend or other moneys payable to any member in respect of a share any moneys presently payable by him to the Company in respect of that share.

Where a person is entitled by transmission to a share, the Board may retain any dividend payable in respect of that share until that person (or that person's transferee) becomes the holder of that share.

- 38.15 No dividend or other money payable in respect of a share shall bear interest against the Company, unless otherwise provided by the rights attached to the share.
- 38.16 Any dividend which has remained unclaimed for 12 years from the date when it became due for payment shall, if the Directors so resolve, be forfeited and cease to remain owing by the Company. The payment of any unclaimed dividend or other money payable in respect of a share may (but need not) be paid by the Company into an account separate from the Company's own account. Such payment shall not constitute the Company a trustee in respect of it.

### **39. SCRIP DIVIDENDS**

39.1 The Board may offer any holder of shares the right to elect to receive shares, credited as fully paid, instead of cash in respect of the whole (or some part, to be determined by the Board) of all or any dividend subject to the following terms and conditions:

- (a) Each holder of shares shall be entitled to that number of new shares as are together as nearly as possible equal in value to (but not greater than) the cash amount (disregarding any tax credit) of the dividend that such holder would have received by way of dividend but elects to forego (each a new share). For this purpose, the value of each new share shall be:
- (i) equal to the average quotation for the relevant shares in the capital of the Company, that is, the average of the closing prices for those shares on the NASDAQ, or the London Stock Exchange or other exchange or quotation service on which the Company's shares are listed or quoted as derived from such source as the Board may deem appropriate, on the day on which such shares are first quoted ex the relevant dividend and the four subsequent business days; or
  - (ii) calculated in any other manner the Board considers fit;

but shall never be less than the par value of the new share. A certificate or report by the auditors as to the value of a new share in respect of any dividend shall be conclusive evidence of that value.

- (b) Each holder of shares shall only be entitled to new Ordinary Shares.
- (c) On or as soon as possible after announcing that any dividend is to be declared or recommended, the Board, if it intends to offer an election in respect of that dividend, shall also announce that intention. If, after determining the basis of allotment, the Board decides to proceed with the offer, it shall notify the holders of shares of the terms and conditions of the right of election offered to them, specifying the procedure to be followed and place at which, and the latest time by which, elections or notices amending or terminating existing elections must be delivered in order to be effective.
- (d) The Board shall not proceed with any election unless the Board has sufficient authority to allot shares and sufficient reserves or funds that may be appropriated to give effect to it after the basis of allotment is determined.
- (e) The Board may exclude from any offer any holders of shares where the Board believes the making of the offer to them would or might involve the contravention of the laws of any territory or that for any other reason the offer should not be made to them.

- (f) The dividend (or that part of the dividend in respect of which a right of election has been offered) shall not be payable in cash on shares in respect of which an election has been made (the elected ordinary shares) and instead such number of new shares shall be allotted to each holder of elected ordinary shares as is arrived at on the basis stated in paragraph (a) of this Article 39.1. For that purpose the Board shall appropriate out of any amount for the time being standing to the credit of any reserve or fund (including without limitation the profit and loss account), whether or not it is available for distribution, a sum equal to the aggregate nominal amount of the new shares to be allotted and apply it in paying up in full the appropriate number of new shares for allotment and distribution to each holder of elected shares as is arrived at on the basis stated in paragraph (a) of this Article 39.1.
- (g) The new shares when allotted shall rank *pari passu* in all respects with the fully paid shares of the same class then in issue except that they shall not be entitled to participate in the relevant dividend in lieu of which they were allotted.
- (h) No fraction of a share shall be allotted. The Board may make such provisions as it thinks fit for any fractional entitlements including without limitation payment in cash to holders in respect of their fractional entitlements, provision for the accrual, retention or accumulation of all or part of the benefit of fractional entitlements to or by the Company or to or by or on behalf of any holder or the application of any accrual, retention or accumulation to the allotment of fully paid shares to any holder.
- (i) The Board may do all acts and things it considers necessary or expedient to give effect to the allotment and issue of any share pursuant to this Article 39.1 or otherwise in connection with any offer made pursuant to this Article 39.1 and may authorise any person, acting on behalf of the holders concerned, to enter into an agreement with the Company providing for such allotment or issue and incidental matters Any agreement made under such authority shall be effective and binding on all concerned.
- (j) The Board may, at its discretion, amend, suspend or terminate any offer pursuant to the above.

#### **40. CAPITALISATION OF PROFITS**

40.1 The Board may, subject to the provisions of this Article 40.1, Article 40.2 and Article 40.3 inclusive, resolve to capitalise any undistributed profits of the Company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of any reserve or fund of the Company (including without limitation the Company's share premium account and capital redemption reserve, if any) and:

- (a) appropriate the sum resolved to be capitalised to the members or any class of members on the record date specified in the relevant resolution who would have been entitled to it if it were distributed by way of dividend and in proportion to the nominal amounts of the shares (whether or not fully paid) held by them respectively which would entitle them to participate in a distribution of that sum if the shares were fully paid and the sum were then distributable and were distributed by way of dividend;
- (b) apply such sum on their behalf either in or towards paying up the amounts, if any, for the time being unpaid on any shares held by them respectively, or in paying up in full shares, debentures or other obligations of the Company of a nominal amount equal to that sum but the share premium account, the capital redemption reserve, and any profits which are not available for distribution may, for the purposes of this Article 40.1, only be applied in paying up shares to be allotted to members credited as fully paid;

- (c) allot the shares, debentures or other obligations credited as fully paid to those members or as they may direct, in those proportions, or partly in one way and partly in the other;
- (d) resolve that any shares so allotted to any member in respect of a holding by him of any partly paid shares shall so long as such shares remain partly paid rank for dividend only to the extent that the latter shares rank for dividend;
- (e) where shares or debentures become, or would otherwise become, distributable under this Article 40.1 in fractions, make such provision as the Board thinks fit for any fractional entitlements including without limitation authorising their sale and transfer to any person, resolving that the distribution be made as nearly as practicable in the correct proportion but not exactly so, ignoring fractions altogether or resolving that cash payments be made to any members in order to adjust the rights of all parties;
- (f) authorise any person to enter on behalf of all the members concerned into an agreement with the Company providing for either:
  - (i) the allotment to members respectively, credited as fully paid, of any further shares, debentures or other obligations to which they are entitled upon such capitalisation; or
  - (ii) the payment up by the Company on behalf of the members of the amounts, or any part of the amounts, remaining unpaid on their existing shares by the application of their respective proportions of the sums resolved to be capitalised,and any agreement made under such authority being binding on all such members, and

(g) generally do all acts and things required to give effect to such resolution as aforesaid.

40.2 In exercising its authority under Article 40.1, unless recommended by two-thirds of the Board and approved by an ordinary resolution of the Company, the Board may only resolve to capitalise any undistributed profits of the Company not required for paying any preferential dividend (whether or not they are available for distribution) or any sum standing to the credit of any reserve or fund of the Company (including without limitation the Company's share premium account and capital redemption reserve, if any) and to issue and allot Ordinary Shares, as otherwise contemplated by Article 40.1, to holders of Ordinary Shares on an equal per share basis.

40.3

- (a) Where, pursuant to an employees' share scheme (within the meaning of section 1166 of the Companies Act) the Company has granted awards ("awards" being options or other incentive awards, including, without limitation, stock appreciation rights, restricted stock units, performance stock units and restricted stock awards) to subscribe for or with respect to shares on terms which provide (inter alia) for adjustments to the subscription, exercise or base price payable on the exercise of such award or to the number of shares to be allotted upon the exercise, or with respect to, such award, in the event of any increase or reduction in, or other reorganisation of, the Company's issued share capital and an otherwise appropriate adjustment would result in the subscription, exercise or base price for any share being less than its nominal

value, then, subject to the provisions of the Companies Act, the Directors may, on the exercise of any of the awards concerned and payment of the subscription, exercise or base price which would have applied had such adjustment been made, capitalise any such profits or other sum as is mentioned in Article 40.1 above (as if such Article 40.1 did not make reference to Article 40.2) to the extent necessary to pay up the unpaid balance of the nominal value of the shares which fall to be allotted on the exercise of such awards and apply such amount in paying up such balance and allot shares fully paid accordingly. The provisions of Article 40.1 shall apply mutatis mutandis to this Article 40.3(a) as if Article 40.1 did not make reference to Article 40.2.

- (b) Where, pursuant to an employees' share scheme (within the meaning of section 1166 of the Companies Act) the Company has granted awards ("awards" being options or other incentive awards, including, without limitation, stock appreciation rights, restricted stock units, performance stock units and restricted stock awards) to subscribe for or with respect to shares, then, subject to the provisions of the Companies Act, the Directors may, on the grant, exercise or vesting of any of the awards concerned, capitalise any such profits or other sum as is mentioned in Article 40.1 above (as if such Article 40.1 did not make reference to Article 40.2) to the extent necessary to pay up the unpaid balance of the nominal value of the shares which fall to be allotted on the grant, exercise or vesting of such awards and apply such amount in paying up such balance and allot shares fully paid accordingly. The provisions of Article 40.1 shall apply mutatis mutandis to this Article 40.3(b) as if Article 40.1 did not make reference to Article 40.2.

#### **41. RETURN OF CAPITAL**

41.1 The rights as regards return of capital attaching to the Ordinary Shares shall be as set out in this Article.

41.2 On a return of capital on a liquidation, reduction of capital or otherwise, the surplus assets of the Company available for distribution among the members shall be applied in the same order of priority as applies in respect of dividends and distributions set out in Article 38 (or as close thereto as is possible).

#### **42. CHANGE OF THE COMPANY'S NAME**

The Company's name may be changed by resolution of the Board.

#### **43. RECORD DATES**

43.1 Notwithstanding any other provision of these Articles, and subject to the Companies Act, but without prejudice to any special rights attached to any shares, the Company or the Directors may:

- (a) fix any date as the record date for any dividend, distribution, allotment or issue, which shall not be more than 60 days prior to such action;
- (b) for the purpose of determining which persons are entitled to attend and vote at a general meeting of the Company, or a separate general meeting of the holders of any class of shares in the capital of the Company, and how many votes such persons may cast, specify in the notice of meeting a time by which a person must be entered on the register in order to have the right to attend or vote at the meeting provided that such time shall not be more than 60 days nor less than 10 days before the date of such meeting and changes to the register after the time specified by virtue of this Article 43.1 shall be disregarded in determining the rights of any person to attend or vote at the meeting; and
- (c) for the purposes of sending notices to any one or more members (including, without limitation, notices of general meetings, or separate general meetings of the holders of any class of shares in the capital of the Company), give such notices by reference to the register of members as it stands at the close of business on a day determined by the Company or the Board, which day may not be more than 60 days before the day that such notices are sent.

#### **44. ACCOUNTS**

- 44.1 No member (as such, other than a Director) shall have any right to inspect any accounting record or other document of the Company, unless he is authorised to do so by statute, by order of the court, by the Board or by ordinary resolution of the Company.
- 44.2 Subject to the Companies Act, a copy of the Company's annual accounts and reports for that financial year shall, at least 21 clear days before the date of the meeting at which copies of those documents are to be laid in accordance with the provisions of the Companies Act, be sent to every member and to every holder of the Company's debentures, and to every person who is entitled to receive notice of meetings from the Company under the provisions of the Companies Act or of these Articles or, in the case of joint holders of any share or debenture, to one of the joint holders. A copy need not be sent to a person for whom the Company does not have a current address.
- 44.3 Subject to the Companies Act, the requirements of Article 44.2 shall be deemed satisfied in relation to any person by sending to the person, instead of such copies, a summary financial statement derived from the Company's annual accounts and directors' report, which shall be in the form and containing the information prescribed by the Companies Act and any regulations made under the Companies Act.

#### **45. NOTICES AND OTHER COMMUNICATIONS**

- 45.1 Any notice to be given to or by any person pursuant to these Articles shall be in writing other than a notice calling a meeting of the Directors which need not be in writing.
- 45.2 Any notice, document or information may (without prejudice to Articles 45.9 and 45.10) be given, sent or supplied by the Company to any member either:
- (a) personally;
  - (b) by sending it by post in a prepaid envelope addressed to the member at his registered address or postal address given to the Company for that purpose, or by leaving it at that address;
  - (c) through a relevant system, where the notice, document or information relates to uncertificated shares;
  - (d) subject to Article 45.3, by sending it in electronic form to a person who has agreed (generally or specifically) that the notice, document or information may be sent or supplied in that form (and has not revoked that agreement); or
  - (e) subject to the provisions of the Companies Act, by making it available on a website, provided that the requirements in (i) to (iv) below are satisfied.

The requirements referred to in paragraph (e) are that:

- (i) the member has agreed (generally or specifically) that the notice, document or information may be sent or supplied to him by being made available on a



website (and has not revoked that agreement), or the member has been asked by the Company to agree that the Company may send or supply notices, documents and information generally, or the notice, document or information in question, to him by making it available on a website and the Company has not received a response within the period of 28 days beginning on the date on which the Company's request was sent and the member is therefore taken to have so agreed (and has not revoked that agreement);

- (ii) the member is sent a notification of the presence of the notice, document or information on a website, the address of that website, the place on that website where it may be accessed, and how it may be accessed (**notification of availability**); and
- (iii) in the case of a notice of meeting, the notification of availability states that it concerns a notice of a company meeting, specifies the place, time and date of the meeting, and states whether it will be an annual general meeting, and
- (iv) the notice, document or information continues to be published on that website, in the case of a notice of meeting, throughout the period beginning with the date of the notification of availability and ending with the conclusion of the meeting and in all other cases throughout the period specified by any applicable provision of the Companies Act, or, if no such period is specified, throughout the period of 28 days beginning with the date on which the notification of availability is sent to the member, save that if the notice, document or information is made available for part only of that period then failure to make it available throughout that period shall be disregarded where such failure is wholly attributable to circumstances which it would not be reasonable to have expected the Company to prevent or avoid.

45.3 The Board may from time to time issue, endorse or adopt terms and conditions relating to the use of electronic means for the sending of notices, other documents and proxy appointments by the Company to members or persons entitled by transmission and by members or persons entitled by transmission to the Company.

45.4 In the case of joint holders of a share:

- (a) it shall be sufficient for all notices, documents and other information to be given, sent or supplied to the joint holder whose name stands first in the register of members in respect of the joint holding (first named **holder**) only and any notice, document or other information so sent shall be deemed for all purposes sent to all the joint holders; and
- (b) the agreement of the first named holder that notices, documents and information may be given, sent or supplied in electronic form or by being made available on a website shall be binding on all the joint holders.

45.5 The Company may at any time and at its sole discretion choose to give, send or supply notices, documents and information only in hard copy form to some or all members.

45.6 For the avoidance of doubt, the provisions of Articles 45.1 to 45.5 are subject to Article 17.6.

45.7 A member present either in person or by proxy, or in the case of a corporate member by a duly authorised representative, at any meeting of the Company or of the holders of any class of shares shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.

- 45.8 Every person who becomes entitled to a share shall be bound by any notice in respect of that share which, before his name is entered in the register of members, has been given to the person from whom he derives his title, but this Article 45.8 does not apply to a notice given under section 793 of the Companies Act.
- 45.9 Subject to the Companies Act, where by reason of the suspension or curtailment of postal services, the Company is unable effectively to give notice of a general meeting, the general meeting may be convened by public announcement. The Company shall send a copy of the notice to members in the same manner as it sends notices under Articles 45.1 to 45.5 inclusive if at least seven clear days before the meeting the posting of notices again becomes practicable.
- 45.10 Subject to the Companies Act, any notice, document or information to be given, sent or supplied by the Company to the members or any of them, not being a notice to which Article 45.9 applies, shall be sufficiently given, sent or supplied if given by public announcement.
- 45.11 Any notice, document or information given, sent or supplied by the Company to the members or any of them:
- (a) by hand shall be deemed to have been received by the member when it is handed to the member or left at his registered address;
  - (b) by post, shall be deemed to have been received 24 hours after the time at which the envelope containing the notice, document or information was posted unless it was sent by second class post or there is only one class of post, or it was sent by air mail to an address outside the United Kingdom, in which case it shall be deemed to have been received 48 hours after it was posted Proof that the envelope was properly addressed, prepaid and posted shall be conclusive evidence that the notice, document or information was sent or supplied;
  - (c) by means of a relevant system, shall be deemed to have been received when the Company or any sponsoring system-participant acting on its behalf sends the issuer instructions relating to the notice, document or other information;
  - (d) by advertisement, shall be deemed to have been received on the day on which the advertisement appears;
  - (e) by electronic means, shall be deemed to have been received by the member on the day following that on which it was sent or supplied Proof that a notice, document or information in electronic form was addressed to the electronic address provided by the member for the purpose of receiving communications from the Company shall be conclusive evidence that the notice, document or information was sent or supplied and such notice, document or information shall be deemed received by the member at that time notwithstanding that the Company becomes aware that the member has filed to receive the relevant notice, document or information for any reason and notwithstanding that the Company subsequently sends or supplies a hard copy of such document or information by post to the member;  
or
  - (f) by making it available on a website, shall be deemed to have been received on the date on which the notice, document or information was first made available on the website or, if later, when the member is deemed to have been received notification of the fact that the notice, document or information was available on the website in accordance with this Article 45.11 and such notice, document or information shall be deemed received by the member on that day notwithstanding that the Company becomes aware that the member has filed to receive the relevant document or information for any reason and notwithstanding that the Company subsequently sends a hard copy of such notice, document or information by post to the member.

- 45.12 Any notice, document or information may be given, sent or supplied by the Company to the person entitled to a share in consequence of the death or bankruptcy of a member or otherwise by operation of law by sending or delivering it in any manner that the Company may choose authorised by these Articles for the sending of notice, document or information to a member addressed to that person by name, or by the title of representative of the deceased or trustee of the bankrupt or by any similar description, at the address, if any, as may be supplied for that purpose by the person claiming to be so entitled. Until such an address has been supplied, a notice may be given in any manner in which it might have been given if the death or bankruptcy or other event giving rise to the transmission had not occurred.
- 45.13 If on three consecutive occasions, or on one occasion and reasonable enquiries have failed to establish the member's address, notices, documents or information sent or supplied to a member by post have been returned undelivered, the member shall not be entitled to receive any subsequent notice, document or information until he has supplied to the Company (or its agent) a new registered address or a postal address, or shall have informed the Company, in such a manner as may be specified by the Company, of an electronic address. For the purposes of this Article 45.13, references to notices, documents or information include references to a cheque or other instrument of payment, but nothing in this Article 45.13 entitles the Company to cease sending any cheque or other instrument of payment for any dividend, unless it is otherwise so entitled under these Articles. Without prejudice to the generality of the foregoing, any notice of a general meeting of the Company which is in fact sent or purports to be sent to such member shall be ignored for the purpose of determining the validity of the proceedings at such general meeting.
- 45.14 Where a document is required under these Articles to be signed by a member or any other person, if the document is in electronic form, then in order to be valid the document must either:

- (a) incorporate the electronic signature, or personal identification details (which may be details previously allocated by the Company), of that member or other person, in such form as the Directors may approve; or
- (b) be accompanied by such other evidence as the Directors may require in order to be satisfied that the document is genuine.

The Company may designate mechanisms for validating any such document and a document not validated by the user of any such mechanisms shall be deemed as having not been received by the Company. In the case of any document or information relating to a meeting, an instrument of proxy or invitation to appoint a proxy, any validation requirements shall be specified in the relevant notice of meeting in accordance with Articles 17.5 and 22.7(b).

## **46. DESTRUCTION OF DOCUMENTS**

46.1 The Company shall be entitled to destroy:

- (a) any instrument of transfer of shares which have been registered, and all other documents on the basis of which any entry is made in the register, at any time after the expiration of six years from the date of registration;
- (b) any dividend mandate, variation or cancellation of dividend mandates, and notification of change of name or address, at any time after two years from the date on which it is recorded;

- (c) any share certificate which has been cancelled at any time after the expiration of one year from the date on which it is cancelled;
- (d) all paid dividend warrants and cheques at any time after the expiration of one year from the date of actual payment;
- (e) all proxy appointments which have been used for the purpose of a poll at any time after the expiration of one year from the date of use;
- (f) all proxy appointments which have not been used for the purpose of a poll at any time after one month from the end of the meeting to which the proxy appointment relates and at which no poll was demanded; and
- (g) any other document on the basis of which an entry in the register of members is made, after six years from the date on which it is made.

Any document referred to in this Article 46.1 may be destroyed earlier than the relevant date authorised, provided that a permanent record of the document is made which is not destroyed before that date.

46.2 It shall be conclusively presumed in favour of the Company that:

- (a) every entry in the register of members purporting to have been made on the basis of an instrument of transfer or other document destroyed in accordance with Article 46.1 was duly and properly made;
- (b) that every instrument of transfer destroyed in accordance with Article 46.1 was a valid and effective instrument duly and properly registered;
- (c) that every share certificate destroyed in accordance with Article 46.1 was a valid and effective certificate duly and properly cancelled; and
- (d) that every other document destroyed in accordance with Article 46.1 was a valid and effective document in accordance with the particulars in the records of the Company.

provided that

- (i) Article 46.1 shall apply only to the destruction of a document in good faith and without notice of any claim (regardless of the parties to it) to which the document might be relevant;
- (ii) nothing in Article 46.1 shall be construed as imposing upon the Company any liability in respect of the destruction of any such document otherwise than in accordance with Article 46.1 which would not attach to the Company in the absence of Article 46.1; and
- (iii) references in Article 46.1 to the destruction of any document include references to the disposal of it in any manner.

46.3 References in this Article 46 to instruments of transfer shall include, in relation to uncertificated shares, instructions and/or notifications made in accordance with the relevant system relating to transfer of such shares.

**47. WINDING UP**

47.1 If the Company commences liquidation, the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by law, subject to the provisions of the Companies Act:

- (a) divide among the members in specie the whole or any part of the assets, whether they shall consist of property of the same kind or not, of the Company and may, for that purpose, value any assets as he deems fair and determine how the division shall be carried out as between the members or different classes of members; and
- (b) vest the whole or any part of the assets in trustees upon such trusts for the benefit of the members as he may with the like sanction determine;

but no member shall be compelled to accept any assets upon which there is a liability.

47.2 The power of sale of a liquidator shall include a power to sell wholly or partially for shares or debentures or other obligations of another body corporate, either then already constituted or about to be constituted for the purpose of carrying out the sale.

**48. INDEMNITY AND INSURANCE**

48.1 Subject to the provisions of the Companies Act, the Company may exercise all the powers of the Company to:

- (a) indemnify to any extent any person who is or was a Director, or a Director of any associated company, directly or indirectly (including by funding any expenditure incurred or to be incurred by him) against any loss or liability, whether in connection with any proven or alleged negligence, default, breach of duty or breach of trust by him or otherwise, in relation to the Company or any associated company;
- (b) indemnify to any extent any person who is or was a Director of an associated company that is a trustee of an occupational pension scheme, directly or indirectly (including by funding any expenditure incurred or to be incurred by him) against any liability incurred by him in connection with the company's activities as trustee of an occupational pension scheme; and/or
- (c) purchase and maintain insurance for or for the benefit of any person who is or was:
  - (i) a Director, officer or employee of the Company, or any body corporate which is or was the holding company or subsidiary undertaking of the Company, or in which the Company or such holding company or subsidiary undertaking has or had any interest (whether director or indirect) or with which the Company or such holding company or subsidiary undertaking is or was in any way allied or associated; or
  - (ii) a trustee of any pension fund in which employees of the Company or any other body referred to in paragraph (c)(1) of this Article 48.1 are or have been interested;

including without limitation insurance against any loss or liability or any expenditure he may incur, whether in connection with any proven or alleged act or omission in the actual or purported execution or discharge of his duties or in the exercise or purported exercise of his powers or otherwise in relation to this duties, power or offices, whether comprising negligence, default, breach of duty, breach of trust or otherwise, in relation to the relevant body or fund

48.2 No Director or former Director shall be accountable to the Company or the members for any benefit provided pursuant to these Articles. The receipt of any such benefit shall not disqualify any person from being or becoming a director of the Company.

---

**49. DISPUTE RESOLUTION**

- 49.1 The courts of England and Wales shall have exclusive jurisdiction to determine any and all disputes brought by a member in that member's capacity (whether in its own name or in the name of the Company) as such against the Company and/or the Board and/or any of the Directors individually or collectively, arising out of or in connection with these Articles or any non-contractual obligations arising out of or in connection with these Articles.
- 49.2 The governing law of these Articles is the law of England and Wales and these Articles shall be interpreted in accordance with English law.
- 49.3 For the purposes of Article 49.1, Director shall be read so as to include each and any Director of the Company from time to time in his capacity as such or as an employee of the Company and shall include any former Director of the Company.

**GRUPPO SORIN R&D**

Amendment Agreement in relation to the  
Finance Contract signed on  
6 May 2014 in Luxembourg

*between the*

European Investment Bank

*and*

Sorin S.p.A., LivaNova PLC, Sorin CRM S.A.S.  
and Sorin Group Italia S.r.l.

## CONTENTS

Clause	Page
1. INTERPRETATION	3
2. AMENDMENT AND RESTATEMENT OF THE FINANCE CONTRACT	4
3. GUARANTOR CONFIRMATION	4
4. REPRESENTATIONS AND WARRANTIES	5
5. FEES AND EXPENSES	5
6. MISCELLANEOUS	5
7. GOVERNING LAW AND JURISDICTION	6
SCHEDULE 1	7
CONDITIONS PRECEDENT	
SCHEDULE 2	9
AMENDED AND RESTATED FINANCE CONTRACT	



**THIS AMENDMENT AND RESTATEMENT AGREEMENT** (this “**Agreement**”) is dated 2 October 2015 and made between:

- (1) **The European Investment Bank**, having its seat at 100 blvd Konrad Adenauer, Luxembourg, L-2950 Luxembourg (the “**Bank**”);
- (2) **Sorin S.p.A.**, a company incorporated in Italy having its registered office at Via Benigno Crespi, 17, 20159 Milano, Italy (the “**Italian Holdco**”);
- (3) **Sorin CRM S.A.S.**, a company incorporated in France having its registered office at 4 Avenue Réaumur, 92140 Clamart Cedex – France (the “**French Subsidiary**”);
- (4) **Sorin Group Italia S.r.l.**, a company incorporated in Italy, having its registered office at Via Benigno Crespi, 17, 20159 Milano, Italy (the “**Italian Subsidiary**”); and
- (5) **LivaNova PLC**, a public limited company incorporated in England and Wales with registered number 9451374, having its registered office at c/o Legalinx Limited, 1 Fetter Lane, London EC4A 1BR, United Kingdom (the “**UK Holdco**”).

**WHEREAS:**

- (A) The Italian Holdco, the French Subsidiary, the Italian Subsidiary and the Bank entered into a research and development finance contract dated 6 May 2014 (the “**Finance Contract**”).
- (B) The Italian Holdco has entered into a transaction agreement dated 23 March 2015 with, among others, Cyberonics, Inc., a Delaware corporation listed on NASDAQ (“**Cyberonics**”) (the “**Transaction Agreement**”). Pursuant to the Transaction Agreement, it is expected that the Italian Holdco will merge with and into its wholly-owned subsidiary UK Holdco, with UK Holdco being the surviving entity.
- (C) The Italian Holdco, the French Subsidiary, the Italian Subsidiary and the Bank have agreed to enter into this agreement in order to amend the terms of the Finance Contract in the manner set out below.
- (D) The parties acknowledge that the purpose of the Finance Contract, being research and development activities in Italy and France for the 2014-2016 period, is not impacted by the transaction.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this Agreement:

“**Companies**” means, collectively, the UK Holdco, the Italian Holdco, the French Subsidiary and the Italian Subsidiary.

“**Effective Date**” means the date on which the Bank confirms to UK Holdco in writing (including by electronic mail or other electronic means) that the Bank has received in a form and substance satisfactory to it (acting reasonably) each of the documents and other evidence listed in Schedule 1 (*Conditions Precedent*).

“**Merger**” has the meaning given to it under the Finance Contract (as amended and restated pursuant to this Agreement).

## 1.2 Construction

- (a) Terms defined in the Finance Contract (as amended and restated pursuant to this Agreement) shall have the same meaning when used in this Agreement.
- (b) In this Agreement, references to:
  - (i) Clauses and Schedules are, save if explicitly stipulated otherwise, references respectively to clauses of, and recitals and schedules to this Agreement;
  - (ii) a provision of law are references to that provision as amended or re-enacted; and
  - (iii) any other agreement or instrument are references to that other agreement or instrument as amended, novated, supplemented, extended or restated.

## 1.3 Third Party Rights

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

## 2. AMENDMENT AND RESTATEMENT OF THE FINANCE CONTRACT

### 2.1 The Finance Contract

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

### 2.2 Continuing Effect

Except as amended by the terms of this Agreement, the Finance Contract shall remain in full force and effect and any reference in the amended and restated Finance Contract or to any provision of the Finance Contract will be construed as a reference to the amended and restated Finance Contract, or that provision, as amended and restated by this Agreement.

### 2.3 Further Assurance

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

## 3. GUARANTOR CONFIRMATION

### 3.1 Guarantee Confirmation

Each Co-debtor confirms that, with effect from (and including) the Effective Date, the co-debtorship under Article 1.11 (*Co-debtorship: joint and several liability*) of the amended and restated Finance Contract and the guarantees and indemnities set out in Article 7.01 (*Guarantee and Indemnity*) of the amended and restated Finance Contract shall:

- (a) continue to apply in respect of the obligations of each Co-debtor under the amended and restated Finance Contract; and
- (b) extend to all new obligations of any Co-debtor under the amended and restated Finance Contract arising from the amendments effected by this Agreement, subject only to the guarantee limitations set out in Article 7.01I (*Limitation of the Obligations of the French Subsidiary*) of the amended and restated Finance Contract.

### **3.2 Changes to the parties of the Finance Contract**

- (a) As a result of and with effect from the completion of the Merger, UK Holdco shall by operation of law assume all of the rights and obligations of Italian Holdco, including those under the original Finance Contract.
- (b) With effect from (and including) the Effective Date, and subject to the completion of the Merger, UK Holdco agrees to be a party to the amended and restated Finance Contract as the “Parent” and to be bound by the obligations expressed to be performed by the “Parent” thereunder.

## **4. REPRESENTATIONS AND WARRANTIES**

UK Holdco, the French Subsidiary and the Italian Subsidiary make each of the representations and warranties in Article 6.15 (*General Representations and Warranties*) of the amended and restated Finance Contract (by reference to the facts and circumstances then existing) on;

- (a) the date of this Agreement, provided that any reference in Article 6.15 (*General Representations and Warranties*) of the amended and restated Finance Contract to “this Contract” shall be read as though it were a reference to this Agreement; and
- (b) the Effective Date.

## **5. FEES AND EXPENSES**

### **5.1 Costs and Expenses**

- (a) Each Company shall pay promptly on demand to the Bank the amount of all charges and expenses, including professional, banking or exchange charges incurred by the Bank in connection with the preparation, execution, implementation, enforcement and termination of this Agreement or any related document and any amendment, supplement or waiver in respect of this Agreement or any related document.
- (b) Each Company shall pay all Taxes, duties, fees and other impositions of whatsoever nature, including stamp duty and registration fees, arising out of the execution or implementation of this Agreement.

### **5.2 Amendment Fee**

An amendment fee of EUR 25,000.00 (twenty-five thousand euros) shall be due by the Companies to the Bank in connection with the execution of this Agreement. This amount shall be paid within 15 days following the date of the relevant invoice sent by the Bank to the Companies, indicating the number of the Bank’s invoice as reference.

## **6. MISCELLANEOUS**

### **6.1 Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

## 6.2 Partial Invalidity

If at any time any term of this Agreement is or becomes illegal, invalid or unenforceable in any respect, or this Agreement is or becomes ineffective in any respect, under the laws of any jurisdiction, such illegality, invalidity, unenforceability or ineffectiveness shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement or the effectiveness in any other respect of this Agreement in that jurisdiction; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement or the effectiveness of this Agreement under the laws of such other jurisdictions.

## 6.3 Remedies and Waivers

No failure or delay or single or partial exercise by the Bank in exercising any of its rights or remedies under this Agreement shall be construed as a waiver of such right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## 7. GOVERNING LAW AND JURISDICTION

### 7.1 Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

### 7.2 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute (a “**Dispute**”) arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) or any non-contractual obligation arising out of or in connection with this Agreement.
- (b) The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

### 7.3 Agent of Service

Without prejudice to any other mode of service allowed under any relevant law, each of the Italian Holdco, the French Subsidiary and the Italian Subsidiary hereby irrevocably appoints LivaNova PLC, at c/o Legalinx Limited, 1 Fetter Lane, London EC4A 1BR, United Kingdom as its agent of service for the purposes of accepting service on its behalf of any writ, notice, order, judgement or other legal process (and UK Holdco by its execution of this Agreement accepts that appointment). Each of the Italian Holdco, the French Subsidiary and the Italian Subsidiary agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

**IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed in 6 (six) originals in the English language.

## SCHEDULE 1

### CONDITIONS PRECEDENT

#### 1) Companies

- a) A copy of the constitutional documents of each Company or a certificate of an authorised signatory of each relevant Company certifying that the constitutional documents previously delivered to the Bank for the purposes of the original Finance Contract have not been amended and remain in full force and effect.
- b) A copy of the relevant authority of signatories of each Company, including a resolution of the board of directors, or any other competent corporate authority, of each of UK Holdco, the French Subsidiary and the Italian Subsidiary:
  - i. approving the terms of, and the transactions contemplated by, this Agreement and resolving that it execute this Agreement;
  - ii. authorising a specified person or persons to execute this Agreement on its behalf; and
  - iii. in the case of a Company other than UK Holdco, authorising UK Holdco to act as its agent in connection with this Agreement.
- c) If applicable, a copy of any power of attorney authorising the person or persons specified therein to sign this Agreement to which it is a party.
- d) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above and, if applicable, any power of attorney referred to in paragraph (c).
- e) A certificate of an authorised signatory of the relevant Company certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

#### 2) Amendment agreement

Two originals of this Agreement duly executed by the parties thereto.

#### 3) Legal Opinions

Legal opinions issued by the external legal counsel of the Companies on (i) the due incorporation, capacity and corporate authorizations of each of the Companies; and (ii) on the legal, valid, binding and enforceable obligations by each of the Companies under this Agreement in accordance with their respective law of their jurisdiction of incorporation, substantially in the form distributed to the Bank prior to signing this Agreement.

#### 4) Merger

- a) Copy of the Transaction Agreement executed by the parties to that document.
- b) A certificate of UK Holdco (signed by a director) certifying that:
  - i. the Merger has become effective (attaching supporting evidence including a copy of the order given by the High Court of England and Wales sanctioning the Merger);

- ii. each of the matters specified in sections 6.01 and 6.02 of the Transaction Agreement relating to the Merger have been satisfied or, with the consent of the Bank, waived, except for any waiver which is not materially adverse to the interests of the Bank;
- iii. the Transaction Agreement has not been amended, varied, novated, supplemented, superseded, waived or terminated in a way which is materially adverse to the interests of the Bank, except with the consent of the Bank; and
- iv. UK Holdco is not aware of any material breach of any warranty or any material claim under the Transaction Agreement.

**5) Other documents or evidence**

Evidence of the payment of the amendment fee set out in Article 5.2 (*Amendment Fee*) of this Agreement.

---

**SCHEDULE 2**

**AMENDED AND RESTATED FINANCE CONTRACT**

**SIGNATORIES**

**THE BANK**

Signed for and on behalf of the

**EUROPEAN INVESTMENT BANK**

The Head of Division

/s/ Massimo Novo

Massimo NOVO

The Financial Monitoring Officer

/s/ Marcella Bellucci

Massimo BELLUCCI

this 2nd day of October 2015, in Luxembourg



**THE ITALIAN HOLDCO**

for and on behalf of **Sorin S.p.A.**

/s/ Demetrio Mauro

---

Name: Demetrio Mauro

Title: Duly Authorized Attorney

**THE FRENCH SUBSIDIARY**

for and on behalf of **Sorin CRM S.A.S.**

/s/ Demetrio Mauro

---

Name: Demetrio Mauro

Title: Duly Authorized Attorney

**THE ITALIAN SUBSIDIARY**

for and on behalf of **Sorin Group Italia S.r.l.**

/s/ Demetrio Mauro

---

Name: Demetrio Mauro

Title: The Managing Director

**THE UK HOLDCO**

for and on behalf of **LivaNova PLC**

by its duly authorised attorney pursuant to

a power of attorney dated 20 July 2014

/s/ Giorgio Cottura

---

Name: Mr Giorgio Cottura

Title: Duly authorised attorney

**GRUPPO SORIN R&D**

Finance Contract

*between the*

European Investment Bank

*and*

LivaNova PLC, Sorin CRM S.A.S.  
and Sorin Group Italia S.r.l.

Luxembourg, 6 May 2014  
(as amended and restated pursuant to an amendment  
and restatement agreement dated 2 October 2015)

**THIS CONTRACT IS MADE BETWEEN:**

The European Investment Bank having its seat at 100 blvd Konrad Adenauer, Luxembourg, L-2950 Luxembourg,

(the “**Bank**”)

of the first part, and

LivaNova PLC, a public limited company incorporated in England and Wales with registered number 9451374, having its registered office at c/o Legalinx Limited, 1 Fetter Lane, London EC4A 1BR, United Kingdom,

(the “**Parent**”)

of the second part, and

Sorin CRM S.A.S., a company incorporated in France having its registered office at, 4 Avenue Réaumur-92140 Clamart Cdx – France,

(the “**French Subsidiary**”)

of the third part, and

Sorin Group Italia S.r.l., a company incorporated in Italy, having its registered office at Via Benigno Crespi,17, 20159 Milano, Italy,

(the “**Italian Subsidiary**”)

of the fourth part.

The Parent, the French Subsidiary and the Italian Subsidiary are collectively referred to herein as the “**Borrowers**”, and each of them a “**Borrower**”.

The Bank and the Borrowers are collectively referred to herein as the “**Parties**”.

**WHEREAS:**

- (1) The Borrowers have stated that they are undertaking a project of research and development (R&D) related to various new products and product improvements in heart failure (cardiovascular diseases) with a particular focus on (i) cardiac surgery (heart valves and cardiopulmonary), (ii) cardiac rhythm management and (iii) new ventures (innovative medical devices related to heart failure). The project covers the entire product development from pre-clinical studies up to clinical trials for the period 2014-2016. The project will be carried out in Italy (43%) and France (57%), as more particularly described in the technical description (the “**Technical Description**”) set out in Schedule A (the “**Project**”).
- (2) The total cost of the Project, as estimated by the Bank, is EUR 286,200,000.00 (two hundred eighty six million two hundred thousand euros) and the Borrowers stated that they intend to finance the Project as follows:

<b>Source</b>	<b>Amount (EUR)</b>
Credit from the Bank	100,000,000.00
Other funding sources	186,200,000.00
<b>TOTAL</b>	<b>286,200,000.00</b>

- (3) In order to fulfil the financing plan set out in Recital (2), the Borrowers have requested from the Bank a credit of EUR 100,000,000.00 (one hundred million euros).
- (4) The Bank, considering that the financing of the Project falls within the scope of its functions, and having regard to the statements and facts cited in these Recitals, has decided to give effect to the Borrowers’ request providing to them a credit in an amount of EUR 100,000,000.00 (one hundred million euros) under this Finance Contract (the “**Contract**”); provided that the amount of the Bank loan shall not, in any case, exceed 50% (fifty per cent) of the total cost of the Project set out in Recital (2).
- (5) The Borrowers have authorised the borrowing of the sum of EUR 100,000,000.00 (one hundred million euros) represented by this credit on the terms and conditions set out in this Contract.
- (6) The Statute of the Bank provides that the Bank shall ensure that its funds are used as rationally as possible in the interests of the European Union; and, accordingly, the terms and conditions of the Bank’s loan operations must be consistent with relevant policies of the European Union.
- (7) The Bank considers that access to information plays an essential role in the reduction of environmental and social risks, including human rights violations, linked to the projects it finances and has therefore established its Transparency policy, the purpose of which is to enhance the accountability of the EIB Group towards its stakeholders and the citizens of the European Union in general.
- (8) The processing of personal data shall be carried out by the Bank in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the EC institutions and bodies and on the free movement of such data.

**NOW THEREFORE** it is hereby agreed as follows:

## **INTERPRETATION AND DEFINITIONS**

### **(a) Interpretation**

In this Contract:

- (i) References to Articles, Recitals, Schedules and Annexes are, save if explicitly stipulated otherwise, references respectively to articles of, and recitals, schedules and annexes to this Contract.
- (ii) References to a provision of law are references to that provision as amended or re-enacted.
- (iii) References to any other agreement or instrument are references to that other agreement or instrument as amended, novated, supplemented, extended or restated.

### **(b) Definitions**

In this Contract:

**“Acceptance Deadline”** for a notice means:

- (a) 16h00 Luxembourg time on the day of delivery, if the notice is delivered by 14h00 Luxembourg time on a Business Day; or
- (b) 11h00 Luxembourg time on the next following day which is a Business Day, if the notice is delivered after 14h00 Luxembourg time on any such day or is delivered on a day which is not a Business Day.

**“Accounting Date”** shall mean each 30 June and 31 December.

**“Amendment and Restatement Agreement”** means the amendment and restatement agreement dated 2 October 2015 and entered into between, amongst others, the Borrowers and the Bank.

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

**“Business Day”** means a day (other than a Saturday or Sunday) on which the Bank and commercial banks are open for general business in Luxembourg.

**“Change-of-Control Event”** has the meaning given to it in Article 4.03A(3).

**“Change-of-Law Event”** has the meaning given to it in Article 4.03A(4).

**“Co-debtor”** means each of the Parent, the Italian Subsidiary and the French Subsidiary acting as co-debtor under Article 1.11 and guarantor under Article 7.01.

**“Completion”** means the date on which the “Cyberonics Merger Effective Time” (as such term is defined in the Transaction Agreement) occurs.

**“Compliance Certificate”** means a certificate substantially in the form set out in Schedule D.2.

**“Consolidated EBITDA”** shall mean in relation to the Group the consolidated profit and loss statement of the Group and determined in accordance with IFRS:

- (i) the net revenues (*ricavi netti*) of the Group;
- (ii) plus other revenues and income (*altri ricavi e proventi*), change in inventory of work in progress, semifinished goods and finished goods (*variazione rimanenze prodotti in lavorazione, semilavorati e finiti*) and increase in Borrower-produced additions to non-current assets (*incremento di immobilizzazioni per lavori interni*);



- (iii) minus cost of raw material and other materials (*costi per materie prime ed altri materiali*), cost of services used (*costi per servizi*), personnel expenses (*costi per il personale*) and miscellaneous operating costs (*altri costi di funzionamento*).

“**Consolidated Net Financial Indebtedness**” shall mean at any time:

- (i) 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 Euro 30,000,000.00 (thirty million euros), or following, and subject to, Completion, USD 33,000,000.00 (thirty-three million US dollars) at that times); less
- (ii) the aggregate amount at that time of: (aa) cash; (bb) debt securities issued or guaranteed by any member state of the OECD; (cc) debt securities issued by leading entities and listed on national stock exchanges of any member of the European Union; (dd) receivables from derivative financial instruments; and (ee) deposits or notes purchased in respect of the credit enhancements of securitisation programmes up to an aggregate amount not exceeding Euro 30,000,000.00 (thirty million euros), or following, and subject to, Completion, USD 33,000,000.00 (thirty-three million US dollars) for each financial year.

“**Consolidated Total Net Interest Payable**” shall mean for a period in relation to Group:

- (i) 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);
- (ii) less any interest received or receivable by any member of the Group (after deducting any applicable withholding tax) in such period.

“**Contract**” has the meaning given to it in Recital (4).

“**Credit**” has the meaning given to it in Article 1.01.

“**Criminal offence**” means any of the following criminal offences as applicable: fraud, corruption, coercion, collusion, obstruction, money laundering, financing of terrorism.

“**Deferment Indemnity**” means an indemnity calculated on the amount of disbursement deferred or suspended at the percentage rate (if higher than zero) by which:

- the interest rate net of the Margin that would have been applicable to such amount had it been disbursed to the Borrowers on the Scheduled Disbursement Date

exceeds

- EURIBOR (one month rate) less 0.125% (12.5 basis points), unless this value is less than zero, in which case it will be set at zero.

Such indemnity shall accrue from the Scheduled Disbursement Date to the Disbursement Date or, as the case may be, until the date of cancellation of the Notified Tranche in accordance with this Contract.

“**Disbursement Notice**” means a notice from the Bank to the Borrowers pursuant to and in accordance with Article 1.02C.

“**Disbursement Request**” means a notice substantially in the form set out in Schedule C.1.

“**Disruption Event**” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with this Contract; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of either the Bank or a Borrower, preventing that party:
- (i) from performing its payment obligations under this Contract; or
- (ii) from communicating with other parties,

and which disruption (in either such case as per (a) or (b) above) is not caused by, and is beyond the control of, the party whose operations are disrupted.

“**Effective Date**” shall have the meaning given to it in the Amendment and Restatement Agreement.

“**Environment**” means the following, in so far as they affect human health and social well-being:

- (a) fauna and flora;
- (b) soil, water, air, climate and the landscape; and
- (c) cultural heritage and the built environment,

and includes, without limitation, occupational and community health and safety.

“**Environmental Approval**” means any Authorisation required by Environmental Law.

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

“**Environmental Law**” means:

- (a) EU law, including principles and standards;
- (b) national laws and regulations; and
- (c) applicable international treaties of which a principal objective is the preservation, protection or improvement of the Environment.

“**EURIBOR**” has the meaning given to it in Schedule B.

“**EUR**” or “**euro**” means the lawful currency of the Member States of the European Union which adopt or have adopted it as their currency in accordance with the relevant provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union or their succeeding treaties.

“**Event of Default**” means any of the circumstances, events or occurrences specified in Article 10.01.

“**Financial Indebtedness**” shall mean any indebtedness for or in respect of:

- (i) moneys borrowed;
- (ii) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (iii) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (iv) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (v) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis – including true sale IFRS – under an arrangement other than a Permitted Receivables Disposal);
- (vi) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and lease back arrangements and sale and purchase arrangements having deferred payment terms longer than terms customary on the market) having the financial effect of a borrowing;
- (vii) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (fair value) shall be taken into account);
- (viii) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

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

“**Final Availability Date**” means the 16 November 2015.

“**Fixed Rate**” means an annual interest rate determined by the Bank in accordance with the applicable principles from time to time laid down by the governing bodies of the Bank for loans made at a fixed rate of interest, denominated in EUR and bearing equivalent terms for the repayment of capital and the payment of interest. Fixed Rate shall include the Margin.

“**Fixed Rate Tranche**” means a Tranche on which Fixed Rate is applied.

“**Floating Rate**” means a fixed-spread floating interest rate, that is to say an annual interest rate determined by the Bank for each successive Floating Rate Reference Period equal to the EURIBOR plus the Spread.

“**Floating Rate Reference Period**” means each period from one Payment Date to the next relevant Payment Date; the first Floating Rate Reference Period shall commence on the date of disbursement of the Tranche.

“**Floating Rate Tranche**” means a Tranche on which Floating Rate is applied.

“**GAAP**” means generally accepted accounting principles in the United States, including IFRS.

“**Group**” means the Parent and its Subsidiaries.

“**IFRS**” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“**Indemnifiable Prepayment Event**” means a Prepayment Event other than those specified in paragraphs 4.03A(2) or 4.03A(5).

“**Loan**” means the aggregate amount of Tranches disbursed from time to time by the Bank under this Contract.

“**Margin**” means the component of the rate of interest quantified in Article 3.01.

“**Market Disruption Event**” means any of the following circumstances:

- (a) there are, in the reasonable opinion of the Bank, events or circumstances adversely affecting the Bank’s access to its sources of funding;
- (b) in the opinion of the Bank, funds are not available from its ordinary sources of funding in order to adequately fund a Tranche in the relevant currency and/or for the relevant maturity and/or in relation to the reimbursement profile of such Tranche;
- (c) in relation to a Tranche in respect of which interest is or would be payable at Floating Rate:
  - (A) the cost to the Bank of obtaining funds from its sources of funding, as determined by the Bank, for a period equal to the Floating Rate Reference Period of such Tranche (i.e. in the money market) would be in excess of the applicable EURIBOR;
  - or
  - (B) the Bank determines that adequate and fair means do not exist for ascertaining the applicable EURIBOR of such Tranche or it is not possible to determine the EURIBOR in accordance with the definition contained in Schedule B.

“**Material Adverse Change**” in relation to a Borrower and/or any of its Subsidiaries, any event or change of condition, as compared with the condition at the Effective Date, affecting respectively that Borrower and/or any of its Subsidiaries, which, in the reasonable opinion of the Bank, materially impairs the ability respectively of that Borrower and/or of any of its Subsidiaries to perform the financial and other obligations under this Contract or which materially affect any security provided hereunder.

“**Maturity Date**” means the last repayment date of a Tranche specified pursuant to Article 4.01A(b)(iv).

**“Merger”** means the merger on the terms of the Transaction Agreement of Sorin S.p.A. with and into LivaNova PLC by way of a cross-border merger in accordance with EU Directive 2005/56/EC of the European Parliament and Council of October 26, 2005 on cross-border mergers of limited liability companies.

**“Notified Tranche”** means a Tranche in respect of which the Bank has issued a Disbursement Notice.

**“Payment Date”** means: the annual, semi-annual or quarterly dates specified in the Disbursement Notice until the Maturity Date, save that, in case any such date is not a Relevant Business Day, it means:

- (a) for a Fixed Rate Tranche, the following Relevant Business Day, without adjustment to the interest due under Article 3.01; and
- (b) for a Floating Rate Tranche, the next day, if any, of that calendar month that is a Relevant Business Day or, failing that, the nearest preceding day that is a Relevant Business Day, in all cases with corresponding adjustment to the interest due under Article 3.01.

**“Permitted Receivables Disposal”** means (i) any factoring programme with recourse (*pro solvendo*) or without recourse (*pro soluto*) of receivables of the Group which are already concluded at date of signature of this Contract; and/or (ii) any securitisation and/or factoring programme of the receivables of the Group previously consented by the Bank, such consent not to be unreasonably withheld.

**“Prepayment Amount”** means the amount of a Tranche to be prepaid by the Borrowers in accordance with Article 4.02A.

**“Prepayment Date”** means the date, which shall be a Payment Date, on which the Borrowers proposes to effect prepayment of a Prepayment Amount.

**“Prepayment Event”** means any of the events described in Article 4.03A.

**“Prepayment Indemnity”** means in respect of any principal amount to be prepaid or cancelled, the amount communicated by the Bank to the Borrowers as the present value (as of the Prepayment Date) of the excess, if any, of:

- (a) the interest net of the Margin that would accrue thereafter on the Prepayment Amount over the period from the Prepayment Date to the Maturity Date if it were not prepaid; over
- (b) the interest that would so accrue over that period, if it were calculated at the Redeployment Rate, less 0.15% (fifteen basis points).

The said present value shall be calculated at a discount rate equal to the Redeployment Rate, applied as of each relevant Payment Date.

**“Prepayment Notice”** means a written notice from the Bank to the Borrowers in accordance with Article 4.02A.

**“Prepayment Request”** means a written request from a Borrower to the Bank to prepay all or part of the Loan, in accordance with Article 4.02A.

**“Project”** has the meaning given to it in Recital (1).

**“Redeployment Rate”** means the Fixed Rate excluding the Margin in effect on the day of the indemnity calculation for fixed-rate loans denominated in the same currency and which shall have the same terms for the payment of interest and the same repayment profile to the Maturity Date as the Tranche in respect of which a prepayment is proposed or requested to be made. For those cases where the period is shorter than 48 months, the most closely corresponding money market rate equivalent will be used, that is the EURIBOR minus 0.125% (12.5 basis points) for periods of up to 12 (twelve) months. For periods falling between 12 and 48 months, the bid point on the swap rates as published by Reuters for the related currency and observed by the Bank at the time of calculation will apply.

“**Relevant Business Day**” means a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007 (TARGET2) is open for the settlement of payments in EUR.

“**Scheduled Disbursement Date**” means the date on which a Tranche is scheduled to be disbursed in accordance with Article 1.02C.

“**Security**” means any mortgage, pledge, lien, charge, assignment by way of security (*cessione dei crediti in garanzia*) or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Spread**” means the fixed spread to the EURIBOR (being either plus or minus) determined by the Bank including the Margin and notified to the Borrowers in the relevant Disbursement Notice.

“**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 owned, directly or indirectly by the first mentioned company or corporation; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

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

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

“**Technical Description**” has the meaning given to it in Recital (1).

“**Tranche**” means each disbursement made or to be made under this Contract.

“**Transaction Agreement**” shall have the meaning given to it in the Amendment and Restatement Agreement.

“**USD**” means the lawful currency of the United States of America.

## **ARTICLE 1**

### **Credit and Disbursements**

#### **1.01 Amount of Credit**

By this Contract the Bank establishes in favour of the Borrowers, and the Borrowers accept, the credit in an amount of EUR 100,000,000.00 (one hundred million euros) for the financing of the Project (the “**Credit**”).

#### **1.02 Disbursement procedure**

##### **1.02A Tranches**

The Bank shall disburse the Credit in up to 2 (two) Tranches. The amount of each Tranche, if not being the undrawn balance of the Credit, shall be in a minimum amount of EUR 50,000,000.00 (fifty million euros).

**1.02B Disbursement Request**

- (a) Each of the Borrowers may present to the Bank a Disbursement Request for the disbursement of a Tranche, such Disbursement Request to be received at the latest 15 (fifteen) days before the Final Availability Date. The Disbursement Request shall be in the form set out in Schedule C and shall specify:
  - (i) the amount of the Tranche;
  - (ii) the preferred disbursement date for the Tranche; such preferred disbursement date must be a Relevant Business Day falling at least 15 (fifteen) days after the date of the Disbursement Request and, in any event, on or before the Final Availability Date, it being understood that notwithstanding the Final Availability Date the Bank may disburse the Tranche up to 4 (four) calendar months from the date of the Disbursement Request;
  - (iii) whether the Tranche is a Fixed Rate Tranche or a Floating Rate Tranche, each pursuant to the relevant provisions of Article 3.01;
  - (iv) the preferred interest payment periodicity for the Tranche, chosen in accordance with Article 3.01;
  - (v) the preferred terms for repayment of principal for the Tranche, chosen in accordance with Article 4.01;
  - (vi) the preferred first and last dates for repayment of principal for the Tranche; and
  - (vii) the IBAN code (or appropriate format in line with local banking practice) and SWIFT BIC of the bank account to which disbursement of the Tranche should be made in accordance with Article 1.02D.
- (b) If the Bank, following a request by any of the Borrowers, has provided that Borrower, before the submission of the Disbursement Request, with a non-binding fixed interest rate or spread quotation to be applicable to the Tranche, that Borrower may also at its discretion specify in the Disbursement Request such quotation, that is to say:
  - (i) in the case of a Fixed Rate Tranche, the aforementioned fixed interest rate previously quoted by the Bank; or
  - (ii) in the case of a Floating Rate Tranche, the aforementioned spread previously quoted by the Bank, applicable to the Tranche until the Maturity Date.
- (c) Each Disbursement Request shall be accompanied by evidence of the authority of the person or persons authorised to sign it and the specimen signature of such person or persons or a declaration by the relevant Borrower that no change has occurred in relation to the authority of the person or persons authorised to sign Disbursement Requests under this Contract.
- (d) Subject to Article 1.02C(b), each Disbursement Request is irrevocable.

**1.02C Disbursement Notice**

- (a) Not less than 10 (ten) days before the proposed Scheduled Disbursement Date of a Tranche the Bank shall, if the Disbursement Request conforms to this Article 1.02, deliver to the relevant Borrower a Disbursement Notice which shall specify:
  - (i) the amount of the Tranche;
  - (ii) the Scheduled Disbursement Date;
  - (iii) the interest rate basis for the Tranche, being: (i) a Fixed Rate Tranche; or (ii) a Floating Rate Tranche all pursuant to the relevant provisions of Article 3.01;
  - (iv) the first interest Payment Date and the periodicity for the payment of interest for the Tranche;
  - (v) the terms for repayment of principal for the Tranche;

- (vi) the first and last dates for repayment of principal for the Tranche;
  - (vii) the applicable Payment Dates for the Tranche; and
  - (viii) for a Fixed Rate Tranche the Fixed Rate and for a Floating Rate Tranche the Spread applicable to the Tranche until the Maturity Date.
- (b) If one or more of the elements specified in the Disbursement Notice does not reflect the corresponding element, if any, in the Disbursement Request, the relevant Borrower may following receipt of the Disbursement Notice revoke the Disbursement Request by written notice to the Bank to be received no later than 12h00 Luxembourg time on the next Business Day and thereupon the Disbursement Request and the Disbursement Notice shall be of no effect. If the relevant Borrower have not revoked in writing the Disbursement Request within such period, such Borrower will be deemed to have accepted all elements specified in the Disbursement Notice.
- (c) If the relevant Borrower has presented to the Bank a Disbursement Request in which such Borrower has not specified the fixed interest rate or spread as set out in Article 1.02B(b), such Borrower will be deemed to have agreed in advance to the Fixed Rate or Spread as subsequently specified in the Disbursement Notice.

**1.02D Disbursement Account**

Disbursement shall be made to the account of the relevant Borrower as that Borrower shall notify in writing to the Bank not later than 15 (fifteen) days before the Scheduled Disbursement Date (with IBAN code).

Only one account may be specified for each Tranche.

**1.03 Currency of disbursement**

The Bank shall disburse each Tranche in EUR.

**1.04 Conditions of disbursement**

**1.04A First Tranche**

The disbursement of the first Tranche under Article 1.02 is conditional upon receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date, of the following documents or evidence:

- (a) evidence that the execution of this Contract by the Borrowers have been duly authorised and that the person or persons signing this Contract on behalf of each of the Borrowers is/are duly authorised to do so together with the specimen signature of each such person or persons;
- (b) evidence that the Borrowers have obtained all necessary Authorisations, required in connection with this Contract and the Project;
- (c) legal opinions issued by the external legal counsel of the Borrowers (at the cost of the Borrowers) on (i) the due incorporation, capacity and corporate authorizations of each of the Borrowers; and (ii) on the legal, valid, binding and enforceable obligations by each of the Borrowers under this Contract in accordance with their respective law of their jurisdiction of incorporation;
- (d) legal memorandum by the external legal counsel of the Borrowers (at the cost of the Borrowers) on the execution of this Contract by the French Subsidiary as Co-debtor;
- (e) evidence that any process agent referred to in Article 11.03 has accepted its appointment;
- (f) evidence of compliance by the relevant Borrower with the financial covenants pursuant to Article 6.07;

- (g) evidence of payment of the appraisal fee in full pursuant to Article 1.08; and
- (h) evidence that the Parent has repaid in full the loans, together with accrued interest, and all other amounts accrued or outstanding, under the Finance Contract between the Bank and the Parent in Milan on 6 December 2007 (FI N° 24.239(IT) Serapis N° 2004-0233) denominated "Sorin Tecnologie Medicali R & D".

1.04B **All Tranches**

The disbursement of each Tranche under Article 1.02, including the first, is subject to the following conditions:

- (a) that the Bank has received, in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date for the proposed Tranche, of the following documents or evidence:
  - (i) a certificate from the Borrower in the form of Schedule D.1, signed by an authorised representative of the Borrower and dated no earlier than the date falling 15 (fifteen) days before the Scheduled Disbursement Date;
  - (ii) a copy of any other authorisation or other document, opinion or assurance which the Bank has notified the Parent is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, this Contract or the validity and enforceability of the same.
- (b) that on the Disbursement Date for the proposed Tranche:
  - (i) the representations and warranties which are repeated pursuant to Article 6.15 are correct in all material respects; and
  - (ii) no event or circumstance which constitutes or would with the passage of time or giving of notice under this Contract constitute:
    - (aa) an Event of Default, or
    - (bb) a Prepayment Event,has occurred and is continuing unremedied or unwaived or would result from the disbursement of the proposed Tranche.

1.05 **Deferment of disbursement**

1.05A **Grounds for deferment**

Upon the written request of the relevant Borrower, the Bank shall defer the disbursement of any Notified Tranche in whole or in part to a date specified by the relevant Borrower being a date falling not later than 6 (six) months from its Scheduled Disbursement Date and not later than 60 (sixty) days prior to the first repayment date of the Tranche indicated in the Disbursement Notice. In such case, the relevant Borrower shall pay the Deferment Indemnity calculated on the amount of disbursement deferred.

Any request for deferment shall have effect in respect of a Tranche only if it is made at least 5 (five) Business Days before its Scheduled Disbursement Date.

If for a Notified Tranche any of the conditions referred to in Article 1.04 is not fulfilled as at the specified date and at the Scheduled Disbursement Date (or the date expected for disbursement in case of a previous deferment), disbursement will be deferred to a date agreed between the Bank and the relevant Borrower falling not earlier than 5 (five) Business Days following the fulfilment of all conditions of disbursement (without prejudice to the right of the Bank to suspend and/or cancel the undisbursed portion of the Credit in whole or in part pursuant to Article 1.06B). In such case, the relevant Borrower shall pay the Deferment Indemnity calculated on the amount of disbursement deferred.



**1.05B Cancellation of a disbursement deferred by 6 (six) months**

The Bank may, by notice in writing to the relevant Borrower, cancel a disbursement which has been deferred under Article 1.05A by more than 6 (six) months in aggregate. The cancelled amount shall remain available for disbursement under Article 1.02.

**1.06 Cancellation and suspension**

**1.06A Borrower's right to cancel**

The Parent, on behalf of the Borrowers, may at any time by notice in writing to the Bank cancel, in whole or in part and with immediate effect, the undisbursed portion of the Credit. However, the notice shall have no effect in respect of (i) a Notified Tranche which has a Scheduled Disbursement Date falling within 5 (five) Business Days of the date of the notice or (ii) a Tranche in respect of which a Disbursement Request has been submitted but no Disbursement Notice has been issued.

**1.06B Bank's right to suspend and cancel**

- (a) The Bank may, by notice in writing to the Parent, on behalf of the Borrowers, suspend and/or cancel the undisbursed portion of the Credit in whole or in part at any time and with immediate effect:
- (i) upon the occurrence of a Prepayment Event or an Event of Default or an event or circumstance which would with the passage of time or giving of notice under this Contract constitute a Prepayment Event or an Event of Default; or
  - (ii) if a Material Adverse Change occurs.
- (b) Any suspension shall continue until the Bank ends the suspension or cancels the suspended amount.

**1.06C Indemnity for suspension and cancellation of a Tranche**

**1.06C(1) SUSPENSION**

If the Bank suspends a Notified Tranche, whether upon an Indemnifiable Prepayment Event or an Event of Default or upon the occurrence of a Material Adverse Change, the Parent, on behalf of the Borrowers, shall pay to the Bank the Deferment Indemnity calculated on the amount of disbursement suspended.

**1.06C(2) CANCELLATION**

If pursuant to Article 1.06A, any of the Borrowers cancels:

- (a) a Fixed Rate Tranche which is a Notified Tranche, it shall indemnify the Bank under Article 4.02B;
- (b) a Floating Rate Notified Tranche or any part of the Credit other than a Notified Tranche, no indemnity is payable.

If the Bank cancels:

- (i) a Fixed Rate Tranche which is a Notified Tranche upon an Indemnifiable Prepayment Event or pursuant to Article 1.05B, the relevant Borrower shall pay to the Bank the Prepayment Indemnity; or
- (ii) a Notified Tranche upon an Event of Default, the relevant Borrower shall indemnify the Bank under Article 10.03.

Save in these cases, no indemnity is payable upon cancellation of a Tranche by the Bank.

The indemnity shall be calculated as if the cancelled amount had been disbursed and repaid on the Scheduled Disbursement Date or, to the extent that the disbursement of the Tranche is currently deferred or suspended, on the date of the cancellation notice.

**1.07 Cancellation after expiry of the Credit**

On the day following the Final Availability Date, and unless otherwise specifically agreed to in writing by the Bank, the part of the Credit in respect of which no Disbursement Request has been made in accordance with Article 1.02B shall be automatically cancelled, without any notice being served by the Bank to the Borrowers and without liability arising on the part of the Parties.

**1.08 Appraisal fee**

The Parent, on behalf of the Borrowers, shall pay or cause to be paid to the Bank within the earlier of (i) 31 July 2014 and (ii) the date of disbursement of the first Tranche an appraisal fee in respect of the appraisal conducted by the Bank in relation to the Project. The amount of the appraisal fee is EUR 150,000.00 (one hundred fifty thousand euros). The Parent, on behalf of the Borrowers, authorises the Bank to retain out of the first Tranche an amount equal to the appraisal fee and such amount so retained by the Bank shall be treated as having been disbursed by the Bank in payment of the appraisal fee.

**1.09 Non-utilisation fee**

The Parent, on behalf of the Borrowers, shall pay to the Bank a non-utilisation fee calculated on the daily undrawn un-cancelled balance of the Credit from the date falling 12 (twelve) months from the date of the Contract at a rate of 0.10% (ten basis points) per annum, the accrued non-utilisation fee being payable:

- (a) on each 1 June, 1 September, 1 December and 1 March of each year; and
- (b) on the Final Availability Date; or, if the Credit is cancelled in full under Article 1.06 prior to the Final Availability Date, on the date of cancellation.

If the date on which the non-utilisation fee is due to be paid is not a Relevant Business Day, payment shall be made on the next day, if any, of that calendar month that is a Relevant Business Day or, failing that, the nearest preceding day that is a Relevant Business Day, in all cases with a corresponding adjustment to the amount of non-utilisation fee due.

**1.10 Sums due under Article 1**

Sums due under Articles 1.05 and 1.06 shall be payable in EUR. They shall be payable within 15 (fifteen) days of the Borrower's receipt of the Bank's demand or within any longer period specified in the Bank's demand.

**1.11 Co-debtorship: joint and several liability**

Each Co-debtor is jointly and severally liable for all amounts due by the other Co-debtors under this Contract and for all the relevant obligations of the other Co-debtors under this Contract.

**ARTICLE 2**

**The Loan**

**2.01 Amount of Loan**

The Loan shall comprise the aggregate amount of Tranches disbursed by the Bank under the Credit, as confirmed by the Bank pursuant to Article 2.03.

**2.02** Currency of repayment, interest and other charges

Interest, repayments and other charges payable in respect of each Tranche shall be made by the Borrower in the currency in which the Tranche is disbursed. Any other payment shall be made in the currency specified by the Bank having regard to the currency of the expenditure to be reimbursed by means of that payment.

**2.03** Confirmation by the Bank

Within 10 (ten) days after disbursement of each Tranche, the Bank shall deliver to the relevant Borrower the amortisation table referred to in Article 4.01, if appropriate, showing the Disbursement Date, the amount disbursed, the repayment terms and the interest rate of and for that Tranche.

**ARTICLE 3**

**Interest**

**3.01** Rate of interest

For the purposes of this Contract “**Margin**” means 101 basis points (1,01 %).

Fixed Rates and Spreads are available for periods of not less than 4 (four) years.

**3.01A** Fixed Rate Tranches

The relevant Borrower shall pay interest on the outstanding balance of each Fixed Rate Tranche at the Fixed Rate quarterly, semi-annually or annually in arrears on the relevant Payment Dates as specified in the Disbursement Notice, commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is 15 (fifteen) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

Interest shall be calculated on the basis of Article 5.01(a).

**3.01B** Floating Rate Tranches

The relevant Borrower shall pay interest on the outstanding balance of each Floating Rate Tranche at the Floating Rate quarterly, semi-annually or annually in arrears on the relevant Payment Dates, as specified in the Disbursement Notice commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first Payment Date is 15 (fifteen) days or less then the payment of interest accrued during such period shall be postponed to the following Payment Date.

The Bank shall notify the Floating Rate to the relevant Borrower within 10 (ten) days following the commencement of each Floating Rate Reference Period.

If pursuant to Articles 1.05 and 1.06 disbursement of any Floating Rate Tranche takes place after the Scheduled Disbursement Date the EURIBOR applicable to the first Floating Rate Reference Period shall apply as though the disbursement had been made on the Scheduled Disbursement Date.

Interest shall be calculated in respect of each Floating Rate Reference Period on the basis of Article 5.01(b). If the Floating Rate for any Floating Rate Reference Period is below zero, it will be set at zero.

**3.02** Interest on overdue sums

Without prejudice to Article 10 and by way of exception to Article 3.01, if any of the Borrowers fails to pay any amount payable by it under this Contract on its due date, interest shall accrue on any overdue amount payable under the terms of this Contract from the due date to the date of actual payment at an annual rate equal to:

- (i) for overdue sums related to Floating Rate Tranches, the applicable Floating Rate plus 2% (200 basis points);
- (ii) for overdue sums related to Fixed Rate Tranches, the higher of (a) the applicable Fixed Rate plus 2% (200 basis points) or (b) the EURIBOR plus 2% (200 basis points);
- (iii) for overdue sums other than under (i) or (ii) above, the EURIBOR plus 2% (200 basis points) and shall be payable in accordance with the demand of the Bank. For the purpose of determining the EURIBOR in relation to this Article 3.02, the relevant periods within the meaning of Schedule B shall be successive periods of one month commencing on the due date.

If the overdue sum is in a currency other than the currency of the Loan, the following rate per annum shall apply, namely the relevant interbank rate that is generally retained by the Bank for transactions in that currency plus 2% (200 basis points), calculated in accordance with the market practice for such rate.

### **3.03 Market Disruption Event**

If at any time (i) from the issuance by the Bank of the Disbursement Notice in respect of a Tranche, and (ii) until the date falling 30 (thirty) calendar days prior to the Scheduled Disbursement Date, a Market Disruption Event occurs, the Bank may notify to the Borrower that this clause has come into effect. In such case the rate of interest applicable to such Notified Tranche until the Maturity Date shall be the percentage rate per annum which is the sum of:

- the Margin and
- the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank. The Borrower shall have the right to refuse in writing such disbursement within the deadline specified in the notification and shall bear charges incurred as a result, if any, in which case the Bank shall not make the disbursement and the corresponding Credit shall remain available for disbursement under Article 1.02B. If the Borrower does not refuse the disbursement in time, the parties agree that the disbursement and the conditions thereof shall be fully binding for both parties.

The Spread or Fixed Rate previously notified by the Bank in the Disbursement Notice shall no longer be applicable.

## **ARTICLE 4**

### **Repayment**

#### **4.01 Normal repayment**

- (a) Each Borrower shall repay each Tranche by instalments on the Payment Dates specified in the relevant Disbursement Notice in accordance with the terms of the amortisation table delivered pursuant to Article 2.03.
- (b) Each amortisation table shall be drawn up on the basis that:
  - (i) in the case of a Fixed Rate Tranche, repayment shall be made annually, semi-annually or quarterly by equal instalments of principal or constant instalments of principal and interest;
  - (ii) in the case of a Floating Rate Tranche, repayment shall be made by equal annual, semi-annual or quarterly instalments of principal;

- (iii) the first repayment date of each Tranche shall be a Payment Date falling not earlier than 60 (sixty) days from the Scheduled Disbursement Date and not later than the first Payment Date immediately following the first anniversary of the Scheduled Disbursement Date of the Tranche; and
- (iv) the last repayment date of each Tranche shall be a Payment Date falling not earlier than 4 (four) years and not later than 7 (seven) years from the Scheduled Disbursement Date.

## **4.02 Voluntary prepayment**

### **4.02A Prepayment option**

Subject to Articles 4.02B, 4.02C and 4.04, a Borrower may prepay all or part of any Tranche, together with accrued interest and indemnities if any, upon giving a Prepayment Request with at least 1 (one) month's prior notice specifying (i) the Prepayment Amount, (ii) the Prepayment Date, (iii) if applicable, the choice of application method of the Prepayment amount in line with Article 5.05C(i) and (iv) the contract number ("FI nr") mentioned on the cover page of this Contract.

Subject to Article 4.02C the Prepayment Request shall be binding and irrevocable.

### **4.02B Prepayment indemnity**

#### **4.02B(1) FIXED RATE TRANCHE**

If any of the Borrowers prepays a Fixed Rate Tranche, that Borrower shall pay to the Bank on the Prepayment Date the Prepayment Indemnity.

#### **4.02B(2) FLOATING RATE TRANCHE**

A Borrowers may prepay a Floating Rate Tranche without indemnity on any relevant Payment Date.

### **4.02C Prepayment mechanics**

Upon presentation by a Borrower to the Bank of a Prepayment Request, the Bank shall issue a Prepayment Notice to the Borrowers, not later than 15 (fifteen) days prior to the Prepayment Date. The Prepayment Notice shall specify the Prepayment Amount, the accrued interest due thereon, the Prepayment Indemnity payable under Article 4.02B or, as the case may be, that no indemnity is due, the method of application of the Prepayment Amount and the Acceptance Deadline.

If the relevant Borrower accepts the Prepayment Notice no later than by the Acceptance Deadline, it shall effect the prepayment. In any other case, the Borrowers may not effect the prepayment.

The relevant Borrower shall accompany the prepayment by the payment of accrued interest and indemnity, if any, due on the Prepayment Amount, as specified in the Prepayment Notice.

## **4.03 Compulsory prepayment**

### **4.03A Prepayment Events**

#### **4.03A(1) PROJECT COST REDUCTION**

If the total cost of the Project falls below the figure stated in Recital (2) so that the amount of the Credit exceeds 50% (fifty per cent) of such total cost, the Bank may forthwith, by notice to the Borrowers, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan up to the amount by which the Credit exceeds 50% (fifty per cent) of the total cost of the Project. The Borrowers shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

4.03A(2) *PARI PASSU TO NON-EIB FINANCING*

If any of the Borrowers (or any other member of the Group) voluntarily prepays (for the avoidance of doubt, prepayment shall include a repurchase or cancellation where applicable) a part or the whole of any Non-EIB Financing and:

- such prepayment is not made within a revolving credit facility (save for the cancellation of the revolving credit facility);
- such prepayment is not made out of the proceeds of a loan or other indebtedness having a term at least equal to the unexpired term of the Non-EIB Financing prepaid,

the Bank may, by notice to the Borrowers, cancel the undisbursed portion of the Credit and demand prepayment of the Loan. The proportion of the Loan that the Bank may require to be prepaid shall be the same as the proportion that the prepaid amount of the Non-EIB Financing bears to the aggregate outstanding amount of all Non-EIB Financing.

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

For the purposes of this Article, “**Non-EIB Financing**” includes any loan, (save for the Loan and any other direct loans from the Bank to the Borrower (or any other member of the Group)), credit bond or other form of financial indebtedness or any obligation for the payment or repayment of money originally granted to the Borrower (or any other member of the Group)) for a term of more than 3 (three) years.

4.03A(3) *CHANGE OF CONTROL*

Each of the Borrowers shall promptly inform the Bank if a Change-of-Control Event has occurred or is likely to occur in respect of itself (or, in case of the Parent, in respect of any Borrower). At any time after the occurrence of a Change-of-Control Event, the Bank may, by notice to the Borrowers, cancel the undisbursed portion of the Credit and demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract.

In addition, if the Borrowers have informed the Bank that a Change-of-Control Event is about to occur, or if the Bank has reasonable cause to believe that a Change-of-Control Event is about to occur, the Bank may request that the Borrowers consult with it. Such consultation shall take place within 30 (thirty) days from the date of the Bank’s request. After the earlier of (a) the lapse of 30 (thirty) days from the date of such request for consultation, or (b) at any time thereafter, upon the occurrence of the anticipated Change-of-Control Event the Bank may, by notice to the Borrowers, cancel the undisbursed portion of the Credit and demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract.

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

For the purposes of this Article:

- (a) a “**Change-of-Control Event**” occurs if:
  - (i) any person or group of persons acting in concert gains control of the Parent or of the entity directly or ultimately controlling the Parent;
  - (ii) the Parent ceases to be the beneficial owner directly or indirectly through wholly owned subsidiaries of more than 50% (fifty per cent) of the issued share capital of the French Subsidiary; or
  - (iii) the Parent 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;
- (b) “**acting in concert**” means acting together pursuant to an agreement or understanding (whether formal or informal); and

- (c) “**control**” means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise.

4.03A(4) **CHANGE OF LAW**

The Borrowers shall promptly inform the Bank if a Change-of-Law Event has occurred or is likely to occur. In such case, or if the Bank has reasonable cause to believe that a Change-of-Law Event has occurred or is about to occur, the Bank may request that the Borrowers consult with it. Such consultation shall take place within 30 (thirty) days from the date of the Bank’s request. If, after the lapse of 30 (thirty) days from the date of such request for consultation the Bank is of the reasonable opinion that the effects of the Change-of-Law Event cannot be mitigated to its satisfaction, the Bank may by notice to any of the Borrowers, cancel the undisbursed portion of the Credit and demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract.

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

For the purposes of this Article “**Change-of-Law Event**” means the enactment, promulgation, execution or ratification of or any change in or amendment to any law, rule or regulation (or in the application or official interpretation of any law, rule or regulation) that occurs after the Effective Date and which, in the opinion of the Bank, would materially impair any of the Borrowers’ ability to perform their obligations under this Contract.

4.03A(5) **ILLEGALITY**

If it becomes unlawful in any applicable jurisdiction for the Bank to perform any of its obligations as contemplated in this Contract or to fund or maintain the Loan, the Bank shall promptly notify the Borrowers and the Bank may immediately (i) suspend or cancel the undisbursed portion of the Credit and/or (ii) demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Contract on the date indicated by the Bank in its notice to the Borrowers.

4.03B **Prepayment mechanics**

Any sum demanded by the Bank pursuant to Article 4.03A, together with any interest or other amounts accrued or outstanding under this Contract including, without limitation, any indemnity due under Article 4.03C and Article 4.04, shall be paid on the date indicated by the Bank in its notice of demand.

4.03C **Prepayment indemnity**

In the case of an Indemnifiable Prepayment Event, the indemnity, if any, shall be determined in accordance with Article 4.02B.

**4.04 General**

A repaid or prepaid amount may not be reborrowed. This Article 4 shall not prejudice Article 10.

If any Borrower prepays a Tranche on a date other than a relevant Payment Date, that Borrower shall indemnify the Bank in such amount as the Bank shall certify is required to compensate it for receipt of funds otherwise than on a relevant Payment Date.

## **ARTICLE 5**

### **Payments**

#### **5.01 Day count convention**

Any amount due by way of interest, indemnity or fee from a Borrower under this Contract, and calculated in respect of a fraction of a year, shall be determined on the following respective conventions:

- (a) in respect of interest and indemnities due under a Fixed Rate Tranche, a year of 360 (three hundred and sixty) days and a month of 30 (thirty) days;
- (b) in respect of interest and indemnities due under a Floating Rate Tranche, a year of 360 (three hundred and sixty) days and the number of days elapsed;
- (c) in respect of fees, a year of 360 (three hundred and sixty) days and the number of days elapsed.

#### **5.02 Time and place of payment**

Unless otherwise specified in this Contract or in the Bank's demand, all sums other than sums of interest, indemnity and principal are payable within 15 (fifteen) days of the relevant Borrower's receipt of the Bank's demand.

Each sum payable by the Borrowers under this Contract shall be paid to the relevant account notified by the Bank to the relevant Borrower. The Bank shall notify the account not less than 15 (fifteen) days before the due date for the first payment by the relevant Borrower and shall notify any change of account not less than 15 (fifteen) days before the date of the first payment to which the change applies. This period of notice does not apply in the case of payment under Article 10.

The Borrower shall indicate in each payment made hereunder the contract number ("FI nr") found on the cover page of this Contract.

A sum due from a Borrower shall be deemed paid when the Bank receives it.

Any disbursements by and payments to the Bank under this Contract shall be made using account(s) acceptable to the Bank. For the avoidance of doubt, any account in the name of a Borrower held with a duly authorized financial institution in the jurisdiction where that Borrower is incorporated or where the Project is undertaken is deemed acceptable to the Bank.

#### **5.03 No set-off by the Borrower**

All payments to be made by any Borrower under this Contract shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

#### **5.04 Disruption to Payment Systems**

If either the Bank determines (in its discretion) that a Disruption Event has occurred or the Bank is notified by any of the Borrowers that a Disruption Event has occurred:

- (a) the Bank may, and shall if requested to do so by the Parent, consult with the Parent on behalf of the Borrowers with a view to agreeing with the Parent on behalf of the Borrowers such changes to the operation or administration of this Contract as the Bank may deem necessary in the circumstances;



- (b) the Bank shall not be obliged to consult with the Parent in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes; and
- (c) the Bank shall not be liable for any damages, costs or losses whatsoever arising as a result of a Disruption Event or for taking or not taking any action pursuant to or in connection with this Article 5.04.

5.05

**Application of sums received**

- (a) General

Sums received from a Borrower shall only discharge its payment obligations if received in accordance with the terms of this Contract.

- (b) Partial payments

If the Bank receives a payment that is insufficient to discharge all the amounts then due and payable by a Borrower under this Contract, the Bank shall apply that payment:

- (i) first, in or towards payment pro rata of any unpaid fees, costs, indemnities and expenses due under this Contract;
- (ii) secondly, in or towards payment of any accrued interest due but unpaid under this Contract;
- (iii) thirdly, in or towards payment of any principal due but unpaid under this Contract; and
- (iv) fourthly, in or towards payment of any other sum due but unpaid under this Contract.

- (c) Allocation of sums related to Tranches

- (i) In case of:

- a partial voluntary prepayment of a Tranche, the Prepayment Amount shall be applied pro rata to each outstanding instalment, or, at the request of the Borrower, in inverse order of maturity,
- a partial compulsory prepayment of a Tranche, the Prepayment Amount shall be applied in reduction of the outstanding instalments in inverse order of maturity.

- (ii) Sums received by the Bank following a demand under Article 10.01 and applied to a Tranche, shall reduce the outstanding instalments in inverse order of maturity. The Bank may apply sums received between Tranches at its discretion.

- (iii) In case of receipt of sums which cannot be identified as applicable to a specific Tranche, and on which there is no agreement between the Bank and the Parent on behalf of the Borrowers on their application, the Bank may apply these between Tranches at its discretion.

**ARTICLE 6**

**Borrower undertakings and representations**

The undertakings in this Article 6 remain in force for so long as any amount is outstanding under this Contract or the Credit is in force.

**6.01 Use of Loan and availability of other funds**

Each of the Borrowers shall use all amounts borrowed by it under the Loan for the execution of the Project.

Each of the Borrowers shall ensure that it has available to it the other funds listed in Recital (2) and that such funds are expended, to the extent required, on the financing of the Project.

**6.02 Completion of Project**

Each Borrower shall carry out the Project in accordance with the Technical Description as may be modified from time to time with the approval of the Bank, and complete it by the final date specified therein.

**6.03 Increased cost of Project**

If the total cost of the Project exceeds the estimated figure set out in Recital (2), the Parent on behalf of the Borrowers shall obtain the finance to fund the excess cost without recourse to the Bank, so as to enable the Project to be completed in accordance with the Technical Description. The plans for funding the excess cost shall be communicated to the Bank without delay.

**6.04 Procurement procedure**

Each Borrower shall purchase equipment, secure services and order works for the Project (a) in so far as they apply to it or to the Project, in accordance with European Union law in general and in particular with the relevant European Union Directives and (b) in so far as European Union Directives do not apply, by procurement procedures which, to the satisfaction of the Bank, respect the criteria of economy and efficiency and, in case of public contracts, the principles of transparency, equal treatment and non-discrimination on the basis of nationality.

**6.05 Continuing Project undertakings**

Each Borrower shall:

- (a) **Maintenance:** maintain, repair, overhaul and renew all property forming part of the Project as required to keep it in good working order;
- (b) **Project assets:** unless the Bank shall have given its prior consent in writing retain title to and possession of all or substantially all the assets comprising the Project or, as appropriate, replace and renew such assets and maintain the Project in substantially continuous operation in accordance with its original purpose; provided that the Bank may withhold its consent only where the proposed action would prejudice the Bank's interests as lender to the Borrowers or would render the Project ineligible for financing by the Bank under its Statute or under Article 309 of the Treaty on the Functioning of the European Union;
- (c) **Insurance:** insure all works and property forming part of the Project with first class insurance companies in accordance with the most comprehensive relevant industry practice;
- (d) **Rights and Permits:** maintain in force all rights of way or use and all Authorisations necessary for the execution and operation of the Project; and
- (e) **Environment:**
  - (i) implement and operate the Project in compliance with Environmental Law;

- (ii) obtain and maintain requisite Environmental Approvals for the Project; and
  - (iii) comply with any such Environmental Approvals.
- (f) **Integrity:** take, within a reasonable timeframe, appropriate measures in respect of any member of its management bodies who has been convicted by a final and irrevocable court ruling of a Criminal Offence perpetrated in the course of the exercise of his/her professional duties, in order to ensure that such member is excluded from any of that Borrower's activity in relation to the Loan or the Project.

*B. General undertakings*

**6.06**     **Disposal of assets**

6.06A     Each Borrower shall not (and the Parent 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.

6.06B     Paragraph 6.06A above does not apply to any sale, lease, transfer or other disposal for fair market value and at arm's length:

- (a)     made in the ordinary course of trading of the disposing entity;
- (b)     of assets in exchange of other assets comparable or superior as to type, value and quality;
- (c)     of obsolete or redundant vehicles, plant and equipment for cash;
- (d)     of receivables being part of Permitted Receivables Disposals; or
- (e)     of assets not falling within paragraphs (a), (b), (c) and (d) above, provided that over the life of the Loan the aggregate value of the disposed asset and other disposals of assets not falling within paragraphs (a), (b), (c) and (d) above, shall not exceed 10 per cent of the total assets of the Group as reported in the latest audited consolidated financial statements.

6.06C     Notwithstanding anything to the contrary contained in this Article 6.06, each of the undertakings contained in this Article 6.06 are subject to all transactions contemplated under Article I (*The Mergers*) and Article II (*Effect of the Merger on Capital Stock*) of the Transaction Agreement.

**6.07**     **Financial Covenants**

So long as any part of the Loan remains outstanding, the Parent shall ensure that all the financial ratios set out in Schedule E are fulfilled.

**6.08**     **Limitations on distributions**

6.08A     Except as permitted under paragraphs 6.08B and 6.08C below, no Borrower shall (and the Parent shall ensure that no member of the Group will):

- (a)     declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);
- (b)     repay or distribute any dividend or share premium reserve;
- (c)     pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the direct or indirect shareholders of the Parent (other than in respect of financial services rendered by any such shareholder in the ordinary course of its business to the Parent or a Subsidiary);
- (d)     redeem, repurchase or repay any of its share capital or resolve to do so; or

- (e) reduce its share capital.

6.08B Paragraph 6.08A. above does not apply to:

- (i) reduction of share capital when mandatorily required under articles 2446 or 2447 of the Italian civil code (or any other applicable provision of law) (provided that the share capital is simultaneously reinstated at an amount not lower than the minimum amount required by any applicable law); or
- (ii) the payment of a dividend to any of the Parent, the Italian Subsidiary, the French Subsidiary or any of their wholly-owned Subsidiaries.

6.08C Notwithstanding paragraph A. above, the Parent may distribute dividends and/or redeem, repurchase or repay any of its share capital or resolve to do so if:

- (a) all payments by any Borrower under this Contract have been punctually made when due;
- (b) no Event of Default or Prepayment Event is continuing unremedied or unwaived; and
- (c) the Parent is in compliance with the financial covenants pursuant to Article 6.07.

6.08D Notwithstanding anything to the contrary contained in this Article 6.08, each of the undertakings contained in this Article 6.08 are subject to all transactions contemplated under Article I (*The Mergers*) and Article II (*Effect of the Merger on Capital Stock*) of the Transaction Agreement.

## 6.09 Change of Business

The Parent shall procure that no substantial change is made to the general nature of the business of the Parent or the Group: (i) from that carried on at the Effective Date; or (ii) following the implementation of the merger of Cypher Merger Sub Inc. with Cyberonics, Inc. as set out in the Transaction Agreement, from Completion.

## 6.10 Acquisition

6.10A No Borrower shall (and the Parent shall ensure that no other member of the Group will) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them).

6.10B Paragraph 6.10A does not apply to acquisition for cash consideration of all or the majority of the issued share capital of a limited liability company but only if:

- (a) no Event of Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;
- (b) the acquired company, business or undertaking is engaged in a business substantially the same as (or ancillary or related to) that carried on by the Group; and
- (c) the consideration (including associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability in each case 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 Contract and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in any such acquired companies or businesses at the time of acquisition (the “**Total Purchase Price**”) does not exceed in aggregate Euro 200,000,000.00 (two hundred million euros), or following, and subject to, Completion, USD 280,000,000.00 (two hundred and eighty million US dollars) or its equivalent over the life of the Tranches.

Any acquisition whose Individual Purchase Price exceeds in aggregate Euro 50,000,000.00 (fifty million euros), or following, and subject to, Completion, USD 75,000,000.00 (seventy-five million US dollars) or its equivalent will only be permitted under paragraph (c) above if the Parent has delivered to the Bank not later than 30 (thirty) Business Days before legally committing to make such acquisition a certificate signed by two directors of the Parent 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 Parent would have remained in compliance with its obligations under Article 6.07 if the covenant tests were 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 relevant period.

6.10C Notwithstanding anything to the contrary contained in this Article 6.10, each of the undertakings contained in this Article 6.10 are subject to all transactions contemplated under Article I (*The Mergers*) and Article II (*Effect of the Merger on Capital Stock*) of the Transaction Agreement.

#### 6.11 **Financial Indebtedness**

The Borrower shall ensure that the Subsidiary Financial Indebtedness does not exceed at any time 35% (thirty five per cent) of Group Financial Indebtedness.

For the purposes of this Article:

- (a) “**Group Financial Indebtedness**” means the Financial Indebtedness of the Group;
- (b) “**Subsidiary Financial Indebtedness**” means the aggregate Financial Indebtedness of each Subsidiary excluding the Financial Indebtedness of the Borrowers.

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 Indebtedness for Subsidiary Financial Indebtedness.

Notwithstanding anything to the contrary contained in this Article 6.11, each of the undertakings contained in this Article 6.11 are subject to all transactions contemplated under Article I (*The Mergers*) and Article II (*Effect of the Merger on Capital Stock*) of the Transaction Agreement.

#### 6.12 **Compliance with laws**

Each Borrower shall comply in all respects with all laws and regulations to which it or the Project is subject.

#### 6.13 **Merger**

No Borrower shall (and the Parent shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction other than a Permitted Transaction.

For the purposes of this Article 6.13 “**Permitted Transaction**” means:

- (a) a merger between a Borrower and any Subsidiary that is consolidated within the consolidated financial statements of the Parent, provided that such Borrower is in each case the surviving entity;
- (b) any solvent amalgamation or merger among members of the Group which are not a Borrower;

- (c) the solvent liquidation or reorganisation of any member of the Group which is not a Borrower so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group; and
- (d) the merger of Cypher Merger Sub Inc. with Cyberonics, Inc. in accordance with paragraph (a) of section 1.01 (*The Mergers*), section 1.02 (*Closing Date*), section 1.03 (*Effective Times*), section 1.04 (*Organizational Documents; Directors and Officers*), section 2.02 (*Conversion of Securities in the Cyberonics Merger*), section 2.05 (*Exchange of Cyberonics Certificates; Payment for Cyberonics Shares*) and section 2.06 (*Treatment of Cyberonics Equity Awards*) of the Transaction Agreement,

in each case provided that ratios specified in Article 6.07 are satisfied at any time.

Notwithstanding anything to the contrary contained in this Article 6.13, each of the undertakings contained in this Article 6.13 are subject to all transactions contemplated under Article I (*The Mergers*) and Article II (*Effect of the Merger on Capital Stock*) of the Transaction Agreement.

#### **6.14 Books and records**

Each Borrower shall ensure that it has kept and will continue to keep proper books and records of account, in which full and correct entries shall be made of all financial transactions and the assets and business of that Borrower, including expenditures in connection with the Project, in accordance with GAAP as in effect from time to time.

#### **6.15 General Representations and Warranties**

6.15A The Parent represents and warrants to the Bank that it is duly incorporated and validly existing as a public limited company under the laws of England and Wales and it has power to carry on its business as it is now being conducted and to own its property and other assets.

6.15B The French Subsidiary represents and warrants to the Bank it is duly incorporated and validly existing as a limited liability company (*société par actions simplifiée*) under the laws of France and it has power to carry on its business as it is now being conducted and to own its property and other assets.

6.15C The Italian Subsidiary represents and warrants to the Bank that it is duly incorporated and validly existing as a limited liability company (*società a responsabilità limitata*) under the laws of Italy and it has power to carry on its business as it is now being conducted and to own its property and other assets.

6.15D Each of the Borrowers represents and warrants to the Bank that:

- (a) it has the power to execute, deliver and perform its obligations under this Contract and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same by it;
- (b) this Contract constitutes its legally valid, binding and enforceable obligations;
- (c) the execution and delivery of, the performance of its obligations under and compliance with the provisions of this Contract do not and will not:
  - (i) contravene or conflict with any applicable law, statute, rule or regulation, or any judgement, decree or permit to which it is subject;
  - (ii) contravene or conflict with any agreement or other instrument binding upon it which might reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Contract;
  - (iii) contravene or conflict with any provision of its by-laws or memorandum and articles of association;

- (d) the latest available audited accounts of that Borrower (and, in case of the Parent, latest available audited accounts of the Parent) have been prepared on a basis consistent with previous years and have been approved by its auditors as representing a true and fair view of the results of its operations for that year and accurately disclose or reserve against all the liabilities (actual or contingent) of that Borrower;
- (e) there has been no Material Adverse Change since 30 June 2015;
- (f) no event or circumstance which constitutes an Event of Default has occurred and is continuing unremedied or unwaived;
- (g) no litigation, arbitration, administrative proceedings or investigation is current or to its knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against it or any of its subsidiaries any unsatisfied judgement or award;
- (h) it has obtained all necessary Authorisations in connection with this Contract and in order to lawfully comply with its obligations hereunder, and the Project and all such Authorisations are in full force and effect and admissible in evidence;
- (i) its payment obligations under this Contract rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;
- (j) it is in compliance with Article 6.05(e) and to the best of its knowledge and belief (having made due and careful enquiry) no Environmental Claim has been commenced or is threatened against it;
- (k) it is in compliance with all undertakings under this Article 6;
- (l) no financial covenants have been concluded with any other creditor of the Group which are more restrictive than the ones contained in the Contract; and
- (m) to the best of its knowledge, no funds invested in the Project by the Borrower or by its controlling entities or by another member of the Group are of illicit origin, including products of money laundering or linked to the financing of terrorism. The Borrower shall promptly inform the Bank if at any time it becomes aware of the illicit origin of any such funds.

The representations and warranties set out above shall survive the execution of this Contract and are, with the exception of the representation set out in paragraph (e) of Article 6.15D above, deemed repeated on each Disbursement Request, Disbursement Date and on each Payment Date.

## ARTICLE 7

### Guarantee and indemnity. Security

#### **7.01 Guarantee and indemnity**

#### **7.01A Guarantee and indemnity**

Each Co-debtor irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Bank punctual performance by each Borrower of all that Borrower's obligations under this Contract or other transactional documents;
- (b) undertakes with the Bank that whenever a Borrower does not pay any amount when due under or in connection with this Contract or other transactional documents, that Co-debtor shall immediately on demand pay that amount as if it was the principal Borrower; and

- (c) agrees with the Bank that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Bank immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under this Contract on the date when it would have been due. The amount payable by a Co-debtor under this indemnity will not exceed the amount it would have had to pay under this Article 7.01 if the amount claimed had been recoverable on the basis of a guarantee.

**7.01B Continuing guarantee**

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Borrower under this Contract, regardless of any intermediate payment or discharge in whole or in part.

**7.01C Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Borrower or any security for those obligations or otherwise) is made by the Bank in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Co-debtor under this Article 7.01 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

**7.01D Waiver of defences**

The obligations of each Co-debtor under this Article 7.01 will not be affected by an act, omission, matter or thing which, but for this Article, would reduce, release or prejudice any of its obligations under this Article 7.01 (without limitation and whether or not known to it or the Bank) including:

- (a) any time, waiver or consent granted to, or composition with, any Borrower or other person;
- (b) the release of any other Borrower or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Borrower or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of this Contract or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under this Contract or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under this Contract or any other document or security; or
- (g) any insolvency or similar proceedings.



7.01E **Immediate recourse**

Each Co-debtor waives any right it may have of first requiring the Bank (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Co-debtor under this Article 7.01. This waiver applies irrespective of any law or any provision of this Contract to the contrary.

7.01F **Appropriations**

Until all amounts which may be or become payable by the Borrowers under or in connection with this Contract have been irrevocably paid in full, the Bank (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Bank (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Co-debtor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Co-debtor or on account of any Co-debtor's liability under this Article 7.01.

7.01G **Deferral of Co-debtors' rights**

Until all amounts which may be or become payable by the Borrowers under or in connection with this Contract have been irrevocably paid in full and unless the Bank otherwise directs, no Co-debtor will exercise any rights which it may have by reason of performance by it of its obligations under this Contract or by reason of any amount being payable, or liability arising, under this Article 7.01:

- (a) to be indemnified by an Borrower;
- (b) to claim any contribution from any other guarantor of any Borrower's obligations under this Contract;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Bank under this Contract or of any other guarantee or security taken pursuant to, or in connection with, this Contract by the Bank;
- (d) to bring legal or other proceedings for an order requiring any Borrower to make any payment, or perform any obligation, in respect of which any Co-debtor has given a guarantee, undertaking or indemnity under Article 7.01A;
- (e) to exercise any right of set-off against any Borrower; and/or
- (f) to claim or prove as a creditor of any Borrower in competition with the Bank.

If a Co-debtor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Bank by the Borrowers under or in connection with this Contract to be repaid in full on trust for the Bank and shall promptly pay or transfer the same to the Bank or as the Bank may direct for application in accordance with Article 5.05(b).

7.01H **Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Bank.

7.01I **Limitation of the obligations of the French Subsidiary**

The obligations of the French Subsidiary as Co-debtor under Article 1.11 and under this Article 7.01 shall not exceed an amount equal to the maximum outstanding amount of any intercompany loans advanced or made available to the French Subsidiary by the Parent and the Italian Subsidiary out of the proceeds of the Credit.

7.01J **Borrowers' Agent**

- (a) Each Borrower (other than the Parent) by its execution of this Contract irrevocably appoints the Parent (acting through one or more authorised signatories) to act on its behalf as its agent in relation to this Contract and irrevocably authorises:
- (i) the Parent on its behalf to supply all information concerning itself contemplated by this Contract to the Bank and to give all notices and instructions (including, in the case of a Borrower, Disbursement Requests); and
  - (ii) the Bank to give any notice, demand or other communication to that Borrower pursuant to this Contract to the Parent, and in each case the Borrower shall be bound as though the Borrower itself had given the notices and instructions (including, without limitation, any Disbursement Requests) or received the relevant notice, demand or other communication.
- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Parent or given to the Parent under this Contract on behalf of another Borrower or in connection with this Contract shall be binding for all purposes on that Borrower as if that Borrower had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Parent and any other Borrower, those of the Parent shall prevail.

7.02 **Negative pledge**

So long as any part of the Loan remains outstanding, the Parent shall not and shall not permit that any of its Subsidiaries create on its own behalf or permit to subsist any Security Interest on, or with respect to, any of their present or future businesses, obligations, undertakings, assets or revenues (including any uncalled capital) with the exception of Permitted Security.

For the purpose of this Contract “**Security Interest**” shall mean any guarantee for the benefit of any company of the Group or any third party, mortgage, pledge, lien, charge, assignment, hypothecation, title retention, preferential right, priority or trust arrangement or security interest or any other agreement or arrangement having the effect of conferring security.

For the purpose of this Contract “**Permitted Security**” shall mean:

- (a) any Security Interest listed in Schedule F (Existing Security) except to the extent the principal amount secured by that Security exceeds the amount stated in that Schedule;
- (b) any Security Interest arising by operation of law and in the ordinary course of trading;
- (c) any guarantee comprising a netting or set-off arrangement entered into by the Parent or any of its Subsidiaries in the ordinary course of their banking arrangements for the purpose of netting debt and credit balances;
- (d) any Security Interest securing indebtedness the outstanding principal amount of which (when aggregate with the outstanding principal amount of any other indebtedness which has the benefit of Security Interest given by any member of the Group other than any permitted under (a) to (c) above) does not exceed in aggregate EUR 10,000,000.00 (ten million euros), or following, and subject to, Completion, USD 15,000,000.00 (fifteen million US dollars) (or its equivalent);

For the purpose of this Article 7.02 the Parent declares that at the date of the execution of this Contract no Security Interest other than Permitted Security exists over its assets or the assets of any of the companies of the Group.

**7.03 Pari passu**

Each of the Borrowers shall ensure that its payment obligations under this Contract rank, and will rank, not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally.

**7.04 Clauses by inclusion**

If, at any time while the Loan is outstanding, any member of the Group concludes with any other medium or long term financial creditor a financing agreement that includes a covenant or other provision imposing minimum financial ratios stricter than the ones indicated in Schedule E hereto, the Parent shall so inform the Bank and shall, at the request of the Bank, execute an agreement to amend this Contract so as to provide for an equivalent provision in favour of the Bank.

**ARTICLE 8**

**Information and Visits**

**8.01 Information concerning the Project**

- (a) The Parent (and, upon request of the Bank, the relevant Borrower) shall deliver to the Bank:
- (i) the information in content and in form, and at the times, specified in Schedule A.2 or otherwise as agreed from time to time by the parties to this Contract; and
  - (ii) any such information or further document concerning the financing, procurement, implementation, operation and environmental matters of or for the Project as the Bank may reasonably require within a reasonable time,
- provided always that if such information or document is not delivered to the Bank on time, and the Parent (and, upon request of the Bank, the relevant Borrower) does not rectify the omission within a reasonable time set by the Bank in writing, the Bank may remedy the deficiency, to the extent feasible, by employing its own staff or a consultant or any other third party, at the Parent's expense and the Borrowers shall provide such persons with all assistance necessary for the purpose;
- (b) The Borrowers shall submit for the approval of the Bank without delay any material change to the Project, also taking into account the disclosures made to the Bank in connection with the Project prior to the signing of this Contract, in respect of, inter alia, the price, design, plans, timetable or to the expenditure programme or financing plan for the Project;
- (c) The Borrowers shall promptly inform the Bank of:
- (i) any action or protest initiated or any objection raised by any third party or any genuine complaint received by any Borrower or any Environmental Claim that is to its knowledge commenced, pending or threatened against it with regard to environmental or other matters affecting the Project;
  - (ii) any fact or event known to any Borrower, which may substantially prejudice or affect the conditions of execution or operation of the Project;
  - (iii) a genuine allegation, complaint or information with regard to Criminal Offences related to the Project;
  - (iv) any non-compliance by it with any applicable Environmental Law; and

- (v) any suspension, revocation or modification of any Environmental Approval, and set out the action to be taken with respect to such matters.
- (d) The Borrowers shall provide to the Bank, if so requested:
  - (i) a certificate of its insurers showing fulfilment of the requirements of Article 6.05(c); and
  - (ii) annually, a list of policies in force covering the insured property forming part of the Project, together with confirmation of payment of the current premiums.

## 8.02 **Information concerning the Borrowers**

- (a) The Parent shall deliver to the Bank:
  - (i) as soon as they become available but in any event within 180 (one hundred and eighty) days after the end of each of its financial years its audited consolidated and unconsolidated annual report, balance sheet, profit and loss account and auditors report for that financial year together with a Compliance Certificate as set out in Schedule D.2 signed by two directors reported on by reputable independent auditors confirming compliance with the financial covenants pursuant to Article 6.07 and with evidence of such compliance and related calculations; and
  - (ii) as soon as they become publicly available but in any event within 120 days after the end of each of the relevant accounting periods its interim consolidated and unconsolidated semi-annual report, balance sheet and profit and loss account for the first half-year of each of its financial years together with a Compliance Certificate as set out in Schedule D.2 signed by two directors confirming compliance with the financial covenants pursuant to Article 6.07 and with evidence of such compliance and related calculations;
  - (iii) as soon as Completion occurs, a certificate signed by a director of the Parent certifying that the “Cyberonics Merger Effective Time” (as such term is defined in the Transaction Agreement) has occurred in accordance with the Transaction Agreement; and
  - (iv) from time to time, such further information on its general financial situation as the Bank may reasonably require or such certificates of compliance with the undertakings of Article 6 as the Bank may deem necessary;

and

- (b) Each of the Borrowers shall inform the Bank immediately of:
  - (i) any material alteration to its by-laws or memorandum and articles of association or shareholding structure and of any change of ownership of 5% or more of its shares after the Effective Date, other than in accordance with Article I (*The Mergers*) and Article II (*Effect of the Merger on Capital Stock*) of the Transaction Agreement;
  - (ii) any fact which obliges it to prepay any financial indebtedness or any European Union funding;
  - (iii) any event or decision that constitutes or may result in a Prepayment Event;
  - (iv) any intention on its part to grant any security over any of its assets in favour of a third party;
  - (v) any intention on its part to relinquish ownership of any material component of the Project;
  - (vi) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrowers under this Contract;

- (vii) any event listed in Article 10.01 having occurred or being threatened or anticipated;
- (viii) any investigations concerning the integrity of the members of any of the Borrowers' Board of Directors or other administrative body or managers;
- (ix) to the extent permitted by law, any material litigation, arbitration, administrative proceedings or investigation carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief, is current, imminent or pending against any Borrower or any of their controlling entities or members of any of the Borrowers' management bodies in connection with Criminal Offences related to the Loan or the Project;
- (x) any measure taken by the Borrowers pursuant to Article 6.05(f) of this Contract; and
- (xi) any litigation, arbitration or administrative proceedings or investigation which is current, threatened or pending and which might if adversely determined result in a Material Adverse Change.

### **8.03 Visits by the Bank**

Each Borrower shall allow persons designated by the Bank, as well as persons designated by other institutions or bodies of the European Union when so required by the relevant mandatory provisions of European Union law,

- (a) to visit the sites, installations and works comprising the Project,
- (b) to interview representatives of that Borrower, and not obstruct contacts with any other person involved in or affected by the Project; and
- (c) to review that Borrower's books and records in relation to the execution of the Project and to be able to take copies of related documents to the extent permitted by the law.

Each Borrower shall provide the Bank, or ensure that the Bank is provided, with all necessary assistance for the purposes described in this Article.

Each Borrower acknowledges that the Bank may be obliged to communicate information relating to any of the Borrowers and the Project to any competent institution or body of the European Union in accordance with the relevant mandatory provisions of European Union law.

## **ARTICLE 9**

### **Charges and expenses**

### **9.01 Taxes, duties and fees**

Each Borrower shall pay all Taxes, duties, fees and other impositions of whatsoever nature, including stamp duty and registration fees, arising out of the execution or implementation of this Contract or any related document and in the creation, perfection, registration or enforcement of any security for the Loan to the extent applicable.

Each Borrower shall pay all principal, interest, indemnities and other amounts due by it under this Contract gross without deduction of any national or local impositions whatsoever, save as may be required by applicable law. If any of the Borrowers is obliged under applicable law to make any such deduction, it will gross up the payment to the Bank so that after such deduction, the net amount received by the Bank is equivalent to the sum due.

**9.02** **Other charges**

Each Borrower shall bear all charges and expenses, including professional, banking or exchange charges incurred in connection with the preparation, execution, implementation, enforcement and termination of this Contract or any related document, any amendment, supplement or waiver in respect of this Contract or any related document, and in the amendment, creation, management, enforcement and realisation of any security for the Loan.

**9.03** **Increased costs, indemnity and set-off**

- (a) Each Borrower shall pay to the Bank any sums or expenses incurred or suffered by the Bank as a consequence of the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or compliance with any law or regulation made after the Effective Date, in accordance with or as a result of which (i) the Bank is obliged to incur additional costs in order to fund or perform its obligations under this Contract, or (ii) any amount owed to the Bank under this Contract or the financial income resulting from the granting of the Credit or the Loan by the Bank to the Borrower is reduced or eliminated.
- (b) Without prejudice to any other rights of the Bank under this Contract or under any applicable law, each Borrower shall indemnify and hold the Bank harmless from and against any loss incurred as a result of any payment or partial discharge that takes place in a manner other than as expressly set out in this Contract.
- (c) The Bank may set off any matured obligation due from any Borrower under this Contract (to the extent beneficially owned by the Bank) against any obligation (whether or not matured) owed by the Bank to that Borrower regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off in an amount estimated by it in good faith to be the amount of that obligation.

**ARTICLE 10**

**Events of Default**

**10.01** **Right to demand repayment**

Each Borrower shall repay all or part of the Loan (as requested by the Bank) forthwith, together with accrued interest and all other accrued or outstanding amounts under this Contract, upon written demand being made by the Bank in accordance with the following provisions.

**10.01A** **Immediate demand**

The Bank may make such demand immediately:

- (a) if any Borrower does not pay on the due date any amount payable pursuant to this Contract at the place and in the currency in which it is expressed to be payable, unless (i) its failure to pay is caused by an administrative or technical error or a Disruption Event and (ii) payment is made within 3 (three) Business Days of its due date;
- (b) if any information or document given to the Bank by or on behalf of any of the Borrowers or any representation, warranty or statement made or deemed to be made by any of the Borrowers in or pursuant to this Contract or in connection with the negotiation or performance of this Contract is or proves to have been incorrect, incomplete or misleading in any material respect;

- (c) if, following any default of any Borrower or any other member of the Group in relation to any loan, or any obligation arising out of any financial transaction, other than the Loan
- (i) any Borrower or any other member of the Group is required or is capable of being required or will, following expiry of any applicable contractual grace period, be required or be capable of being required to prepay, discharge, close out or terminate ahead of maturity such other loan or obligation; or
- (ii) any financial commitment for such other loan or obligation is cancelled or suspended,
- and such other loans or obligations or commitments falling under paragraphs (i) and/or (ii) above are in an aggregate principal amount in excess of EUR 5,000,000.00 (five million euros), or following, and subject to, Completion, USD 7,500,000.00 (seven million and five hundred thousand US dollars) or its equivalent in any other currency or currencies;
- (d) if any Borrower or any member of the Group is unable to pay its debts as they fall due, or suspends its debts, or makes or seeks to make a composition with its creditors;
- (e) if any corporate action, legal proceedings or other procedure or step is taken in relation to the suspension of payments, a moratorium of any indebtedness, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) or an order is made or an effective resolution is passed for the winding up of any Borrower or any member of the Group, or if any Borrower or any member of the Group takes steps towards a substantial reduction in its capital, is declared insolvent or ceases or resolves to cease to carry on the whole or any substantial part of its business or activities;
- (f) if an encumbrancer takes possession of, or a receiver, liquidator, administrator, administrative receiver or similar officer is appointed, whether by a court of competent jurisdiction or by any competent administrative authority or by any person, of or over, any part of the business or assets of any Borrower or any member of the Group or any property forming part of the Project;
- (g) if any Borrower or any member of the Group defaults in the performance of any obligation in respect of any other loan granted by the Bank or financial instrument entered into with the Bank;
- (g) if any Borrower or any member of the Group defaults in the performance of any obligation in respect of any other loan made to it from the resources of the Bank or the European Union;
- (h) if any distress, execution, sequestration or other process is levied or enforced upon the property of the Borrower or any property forming part of the Project and is not discharged or stayed within 14 (fourteen) days;
- (i) if a Material Adverse Change occurs, as compared with the Borrowers' condition at the Effective Date; or
- (j) if it is or becomes unlawful for any Borrower to perform any of its obligations under this Contract or other transactional documents or this Contract or other transactional documents is not effective in accordance with its terms or is alleged by any Borrower to be ineffective in accordance with its terms.

10.01B **Demand after notice to remedy**

The Bank may also make such demand:

- (a) if any Borrower fails to comply with any obligation under this Contract not being an obligation mentioned in Article 10.01A; or

(b) if any fact related to the Borrower or the Project stated in the Recitals materially alters and is not materially restored and if the alteration either prejudices the interests of the Bank as lender to the Borrower or adversely affects the implementation or operation of the Project, unless the non-compliance or circumstance giving rise to the non-compliance is capable of remedy and is remedied within 5 (five) Business Days from a notice served by the Bank on the Parent on behalf of the Borrowers.

**10.02 Other rights at law**

Article 10.01 shall not restrict any other right of the Bank at law to require prepayment of the Loan.

**10.03 Indemnity**

**10.03A Fixed Rate Tranches**

In case of demand under Article 10.01 in respect of any Fixed Rate Tranche, each Borrower shall pay to the Bank the amount demanded together with the Prepayment Indemnity on any amount of principal due to be prepaid. Such Prepayment Indemnity shall accrue from the due date for payment specified in the Bank's notice of demand and be calculated on the basis that prepayment is effected on the date so specified.

**10.03B Floating Rate Tranches**

In case of demand under Article 10.01 in respect of any Floating Rate Tranche, each Borrower shall pay to the Bank the amount demanded together with a sum equal to the present value of 0.15% (fifteen basis points) per annum calculated and accruing on the amount of principal due to be prepaid in the same manner as interest would have been calculated and would have accrued, if that amount had remained outstanding according to the original amortisation schedule of the Tranche, until the Maturity Date.

The value shall be calculated at a discount rate equal to the Redeployment Rate applied as of each relevant Payment Date.

**10.03C General**

Amounts due by any Borrower pursuant to this Article 10.03 shall be payable on the date of prepayment specified in the Bank's demand.

**10.04 Non-Waiver**

No failure or delay or single or partial exercise by the Bank in exercising any of its rights or remedies under this Contract shall be construed as a waiver of such right or remedy. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by law.

**ARTICLE 11**

**Law and jurisdiction, miscellaneous**

**11.01 Governing Law**

This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by English law.



**11.02**     **Jurisdiction**

- (a)     The courts of England have exclusive jurisdiction to settle any dispute (a “**Dispute**”) arising out of or in connection with this Contract (including a dispute regarding the existence, validity or termination of this Contract or the consequences of its nullity) or any non-contractual obligation arising out of or in connection with this Contract.
- (b)     The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

**11.03**     **Agent of Service**

Without prejudice to any other mode of service allowed under any relevant law, each Borrower (other than the Parent) hereby irrevocably appoints LivaNova PLC, at c/o Legalinx Limited, 1 Fetter Lane, London EC4A 1BR, United Kingdom as its agent of service for the purposes of accepting service on its behalf of any writ, notice, order, judgement or other legal process (and the Parent accepts that appointment). Each Borrower (other than the Parent) agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

**11.04**     **Place of performance**

Unless otherwise specifically agreed by the Bank in writing, the place of performance under this Contract shall be the seat of the Bank.

**11.05**     **Evidence of sums due**

In any legal action arising out of this Contract the certificate of the Bank as to any amount or rate due to the Bank under this Contract shall, in the absence of manifest error, be prima facie evidence of such amount or rate.

**11.06**     **Third party rights**

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

**11.07**     **Entire Agreement**

This Contract constitutes the entire agreement between the Bank and the Borrowers in relation to the provision of the Credit hereunder, and supersedes any previous agreement, whether express or implied, on the same matter.

**11.08**     **Invalidity**

If at any time any term of this Contract is or becomes illegal, invalid or unenforceable in any respect, or this Contract is or becomes ineffective in any respect, under the laws of any jurisdiction, such illegality, invalidity, unenforceability or ineffectiveness shall not affect:

- (a)     the legality, validity or enforceability in that jurisdiction of any other term of this Contract or the effectiveness in any other respect of this Contract in that jurisdiction; or
- (b)     the legality, validity or enforceability in other jurisdictions of that or any other term of this Contract or the effectiveness of this Contract under the laws of such other jurisdictions.



Notices and other communications, for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, may be made by hand delivery, registered letter or facsimile. Such notices and communications shall be deemed to have been received by the other party on the date of delivery in relation to a hand-delivered or registered letter or on receipt of transmission in relation to a facsimile.

Other notices and communications may be made by hand delivery, registered letter or facsimile or, to the extent agreed by the parties by written agreement, by email or other electronic communication.

Without affecting the validity of any notice delivered by facsimile according to the paragraphs above, a copy of each notice delivered by facsimile shall also be sent by letter to the relevant party on the next following Business Day at the latest.

Notices issued by any Borrower pursuant to any provision of this Contract shall, where required by the Bank, be delivered to the Bank together with satisfactory evidence of the authority of the person or persons authorised to sign such notice on behalf of the relevant Borrower and the authenticated specimen signature of such person or persons.

### **12.03 Recitals and Schedules**

The Recitals and following Schedules form part of this Contract:

Schedule A	Technical Description and Reporting
Schedule B	Definition of EURIBOR
Schedule C	Forms for Borrowers
Schedule D	Certificates to be provided by the Borrowers
Schedule E	Financial Ratios
Schedule F	Existing Security

**Project Specification and Reporting**  
**A.1 Technical Description (Article 6.02)**

**Purpose, Location**

The project concerns the company's research and development (R&D) of various new products and product improvements in heart failure with a particular focus on i) cardiac surgery (heart valves and cardiopulmonary), and ii) cardiac rhythm management. The project is covering the entire product development from pre-clinical studies up to clinical trials.

The project will be managed from Milan and implemented on the promoter's R&D sites in France and Italy.

**Description**

This project concerns developments for i) cardiac surgery ii) cardiac rhythm management and finally iii) disruptive technologies addressing heart failure (new ventures).

Cardiac surgery:

The R&D activities within the cardiopulmonary segment will focus on the development of new devices including disposables / accessories and life cycle management of existing flagship devices. Example projects would be a new infant and neonatal oxygenator, a new heater and cooler system needed for heart-lung machines, multi-parametric in-line blood monitor systems and new auto transfusion systems for low-bleeding surgeries.

For heart valves the promoter will focus on different sizes of the sutureless valve and different tissues valves.

Within the cardiac rhythm management the promoter intends to further exploit its SonR technology for the development of its CRT devices. This technology consists of a sensor encapsulated inside the tip of an electrostimulation lead, which is implanted in the patient and is used to optimize the delivery of cardiac resynchronisation therapy. The implementation of this technology resulted in a rise in the rate of patients responding to the therapy from 62% to 86%. In collaboration with Orange Business Services, Sorin is engaged in the development of the remote monitoring project, an innovative technology to access patient data from implanted devices while the patient is at home. The company is into the development of blood monitoring system based on its innovative lab-on-a-chip technology.

New Ventures:

In this area the promoter invests in disruptive technologies relating to heart diseases through acquiring shares in start-up companies active in this field. Current projects include i) neuromodulation and ii) percutaneous interventions. The project focuses on proof of concept studies as well as clinical trials to obtain the CE mark and FDA approval.

**Calendar**

The project will be implemented from January 2014 until December 2016.

**A.2 Information Duties under Article 8.01(a)**

1. Dispatch of information: designation of the person responsible

The information below has to be sent to the Bank under the responsibility of:

Company	<i>LivaNova PLC, Italian Branch</i>
Contact person	<i>Mr Maurizio Borelli</i>
Title	<i>Head of Treasury</i>
Function / Department	
Address	<i>Via Benigno Crespi,17 Italy, 20159 Milano</i>
Phone	<i>+ 39 02 69969 717</i>
Fax	<i>+ 39 02 69969 513</i>
Email	<i>maurizio.borelli@livanova.com</i>

The above-mentioned contact person(s) is (are) the responsible contact(s) for the time being.

The Borrower shall inform the EIB immediately in case of any change.

2. Information on the project's implementation

The Borrower shall deliver to the Bank the following information on project progress during implementation at the latest by the deadline indicated below.

<b>Document / information</b>	<b>Deadline</b>	<b>Frequency of reporting</b>
<p>Project Progress Report</p> <ul style="list-style-type: none"><li>- <i>A brief update on the technical description, explaining the reasons for significant changes vs. initial scope;</i></li><li>- <i>Update on the date of completion of each of the main project's components, explaining reasons for any possible delay;</i></li><li>- <i>Update on the cost of the project (actual and updated forecasts for the following years), explaining reasons for any significant cost variations vs. initial budgeted costs – refer to table1 below;</i></li><li>- <i>A description of any major issue with impact on the environment;</i></li><li>- <i>Update on the project's demand or usage and comments;</i></li><li>- <i>Any significant issue that has occurred and any significant risk that may affect the project's operation;</i></li><li>- <i>Any legal action concerning the project that may be on-going.</i></li></ul>	<i>31/01/2016</i>	<i>Intermediate</i>

Please use the format of the table 1 below to report past actual expenditures and actualised forecasts.

**Table 1:** Project cost summary (monitoring reference).

EUR m	Initial distribution	2014	2015	2016	TIC
<b>CS global</b>		<b>48.2</b>	<b>48.1</b>	<b>48.9</b>	<b>145.3</b>
CS Italy	65.2%	31.4	31.4	31.9	94.7
CS France	0.0%	0.0	0.0	0.0	0.0
<b>Cardiac Surgery</b>		31.4	31.4	31.9	94.7
<b>CRM global</b>		<b>58.9</b>	<b>59.9</b>	<b>58.8</b>	<b>177.7</b>
CRM Italy	15.0%	8.8	9.0	8.8	26.6
CRM France	69.4%	40.9	41.6	40.8	123.3
<b>Cardiac Rhythm Management</b>		49.7	50.6	49.6	149.9
<b>NV global</b>		<b>11.4</b>	<b>14.2</b>	<b>31.6</b>	<b>57.2</b>
NV Italy	3.7%	0.4	0.5	1.2	2.1
NV France	68.9%	7.9	9.8	21.8	39.5
<b>New Ventures</b>		8.3	10.3	23.0	41.6
Total Italy		40.6	40.9	41.9	123.4
Total France		48.8	51.4	62.6	162.8
<b>TOTAL</b>		<b>89.4</b>	<b>92.3</b>	<b>104.5</b>	<b>286.2</b>

3. Information on the end of works and first year of operation

The Borrower shall deliver to the Bank the following information on project completion and initial operation at the latest by the deadline indicated below.

Document / information	Date of delivery to the Bank
<p>Project Completion Report, including:</p> <ul style="list-style-type: none"> <li>- A brief description of the technical characteristics of the project as completed, explaining the reasons for any significant change;</li> <li>- The implementation results of each of the main project's components explaining reasons for any variation and/or delay;</li> <li>- The final cost of the project, explaining reasons for any possible cost variations vs. initial budgeted cost - refer to table1;</li> <li>- The number of people employed during the implementation of the R&amp;D project (2014-2016): yearly average workload (FTEs) actually generated by the project in Italy and France; Please provide the breakdown by BU and location;</li> <li>- The number of new jobs created (R&amp;D, operations) as a result of the R&amp;D project in Italy and France if any, and the actual total number of R&amp;D employees (FTEs) at the end of the project by segment (CS, CRM, NV) and by location (worldwide and Europe);</li> <li>- Update on the market trends for CS (HV and CP), CRM and NV and Sorin's market share and competitive position;</li> <li>- The following information:               <ul style="list-style-type: none"> <li>- Sorin's accounts for the period 2014-2016 (P&amp;L, Balance Sheet, Cash Flow statements);</li> <li>- The number of patent applications and the number of patents granted during the period 2014-2016; Please provide the breakdown per year and per segment CS (HV&amp;CP) and CRM; Any additional information regarding NV would also be appreciated;</li> <li>- the number of publications in the CRM segment (clinical publications); any additional information on the other segments would also be useful.</li> </ul> </li> <li>- A description of any major issue with impact on the environment;</li> <li>- Update on the project's demand or usage and comments;</li> <li>- Any significant issue that has occurred and any significant risk that may affect the project's operation;</li> <li>- Any legal action concerning the project that may be on-going.</li> </ul>	<p>30/06/2017</p>

Language of reports

English

**Definitions of EURIBOR**

## A. EURIBOR

“EURIBOR” means:

- (a) in respect of a relevant period of less than one month, the Screen Rate (as defined below) for a term of one month;
- (b) in respect of a relevant period of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and
- (c) in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period next longer than the length of the relevant period,

(the period for which the rate is taken or from which the rates are interpolated being the “**Representative Period**”).

For the purposes of paragraphs (b) and (c) above, “available” means the rates, for given maturities, that are calculated and published by Global Rate Set Systems Ltd (GRSS), or such other service provider selected by the European Money Markets Institute (EMMI), under the sponsorship of EMMI and EURIBOR ACI, or any successor to that function of EMMI and EURIBOR ACI as determined by the Bank.

“**Screen Rate**” means the rate of interest for deposits in EUR for the relevant period as published at 11h00, Brussels time, or at a later time acceptable to the Bank on the day (the “Reset Date”) which falls 2 (two) Relevant Business Days prior to the first day of the relevant period, on Reuters page EURIBOR 01 or its successor page or, failing which, by any other means of publication chosen for this purpose by the Bank.

If such Screen Rate is not so published, the Bank shall request the principal euro-zone offices of four major banks in the euro-zone, selected by the Bank, to quote the rate at which EUR deposits in a comparable amount are offered by each of them as at approximately 11h00, Brussels time, on the Reset Date to prime banks in the euro-zone interbank market for a period equal to the Representative Period. If at least 2 (two) quotations are provided, the rate for that Reset Date will be the arithmetic mean of the quotations.

If fewer than 2 (two) quotations are provided as requested, the rate for that Reset Date will be the arithmetic mean of the rates quoted by major banks in the euro-zone, selected by the Bank, at approximately 11h00, Brussels time, on the day which falls 2 (two) Relevant Business Days after the Reset Date, for loans in EUR in a comparable amount to leading European Banks for a period equal to the Representative Period.

If the rate resulting from the above is below zero, EURIBOR will be deemed to be zero.

If no rate is available as provided above, EURIBOR shall be the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank.



B. GENERAL

For the purposes of the foregoing definitions:

- (a) All percentages resulting from any calculations referred to in this Schedule will be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with halves being rounded up.
- (b) The Bank shall inform the relevant Borrower without delay of the quotations received by the Bank.
- (c) If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of EMMI and EURIBOR ACI (or any successor to that function of EMMI and EURIBOR ACI as determined by the Bank), the Bank may by notice to the relevant Borrower amend the provision to bring it into line with such other provisions.

## Forms for Borrower

## C.1 Form of Disbursement Request (Article 1.02B)

Disbursement Request [To be provided on paper bearing the relevant Borrower's letterhead]

Italy – GRUPPO SORIN R&amp;D (2013-0335)

Date: 

Please proceed with the following disbursement:

Loan Name (\*): Signature Date (\*): Contract FI number: 

## Currency &amp; amount requested

Currency	Amount

Proposed disbursement date: 

INTEREST	<b>Int. rate basis (Art. 3.01)</b>	<input type="text"/>	Reserved for the Bank	(contract currency)
	<b>Rate (% or Spread) OR (please indicate only ONE) Maximum Rate (% or Maximum Spread)</b>	<input type="text"/>	Total <b>Credit</b> Amount:	<input type="text"/>
	<b>Frequency (Art. 3.01)</b>	Annual <input type="checkbox"/> Semi-annual <input type="checkbox"/> Quarterly <input type="checkbox"/>	Disbursed to date:	<input type="text"/>
	<b>Payment Dates (Art. 5)</b>	<input type="text"/>	Balance <u>for</u> disbursement:	<input type="text"/>
CAPITAL	<b>Repayment frequency</b>	Annual <input type="checkbox"/> Semi-annual <input type="checkbox"/> Quarterly <input type="checkbox"/>	Current disbursement:	<input type="text"/>
	<b>Repayment methodology (Art. 4.01)</b>	Equal instalments <input type="checkbox"/> Constant annuities <input type="checkbox"/>	Balance <u>after</u> disbursement:	<input type="text"/>
	<b>First repayment date</b>	<input type="text"/>	Disbursement deadline:	<input type="text"/>
	<b>Maturity Date:</b>	<input type="text"/>	Max. number of disbursements:	<input type="text"/>
			Minimum Tranche size:	<input type="text"/>
		Total allocations to date:	<input type="text"/>	
		Conditions precedent:	Yes / No	

Relevant Borrower's account to be credited:

Acc. No: 

(please, provide IBAN format in case of disbursements in EUR, or appropriate format for the relevant currency)

Bank name, address: 

Please transmit information relevant to:

Relevant Borrower's authorised name(s) and signature(s):

**Certificates to be provided by the Borrowers**

D.1 Form of Certificate from Borrower (Article 1.04B)

To: European Investment Bank

From: [Borrowers]

Date:

Subject: Finance Contract between European Investment Bank and [Borrower] dated • (the “Finance Contract”)

FI number 83.445 (IT) Serapis number 2013-0335

---

Dear Sirs,

Terms defined in the Finance Contract have the same meaning when used in this letter.

For the purposes of Article 1.04 of the Finance Contract we hereby certify to you as follows:

- (a) no Prepayment Event has occurred and is continuing unremedied;
- (b) we are in compliance with the financial covenants pursuant to Article 6.07 and attached is evidence of such compliance and related calculations;
- (c) no security of the type prohibited under Article 7.02 has been created or is in existence;
- (d) there has been no material change to any aspect of the Project or in respect of which we are obliged to report under Article 8.01, save as previously communicated by us;
- (e) we have sufficient funds available to ensure the timely completion and implementation of the Project in accordance with Schedule A.1;
- (f) no event or circumstance which constitutes or would with the passage of time or giving of notice under the Finance Contract constitute an Event of Default has occurred and is continuing unremedied or unwaived;
- (g) no litigation, arbitration administrative proceedings or investigation is current or to our knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against us or any of our subsidiaries any unsatisfied judgement or award;
- (h) the representations and warranties to be made or repeated by us under Article 6.15 are true in all material respects; and
- (i) no Material Adverse Change has occurred, as compared with the situation at the Effective Date.

Yours faithfully,

For and on behalf of [Borrowers]

Date:

D.2 Form of Compliance Certificate

To: European Investment Bank

From: [Parent]

Date:

Subject: Finance Contract between European Investment Bank and [Borrowers] dated • ( (the “Finance Contract”)

FI number 83.445 (IT) Serapis number 2013-0335

---

Dear Sirs,

We refer to the Finance Contract. This is a Compliance Certificate. Terms defined in the Finance Contract have the same meaning when used in this Compliance Certificate.

We hereby confirm:

- (i) *[insert details and computations of covenants to be certified];*
- (ii) [no security of the type prohibited under Article 7.02 has been created or is in existence;]
- (iii) [no event or circumstance which constitutes or would with the passage of time or giving of notice under the Finance Contract constitute an Event of Default has occurred and is continuing unremedied or unwaived. *[If this statement cannot be made, this certificate should identify any potential event of default that is continuing and the steps, if any, being taken to remedy it].*

Yours faithfully,

For and on behalf of [Parent / reputable independent auditor]

[director]

[director]

**APPENDIX**

**Financial information**

[To be attached relevant financial statements and calculations of relevant financial items and the relevant financial ratios for the purposes of the Compliance Certificate]

## FINANCIAL RATIOS

For the purpose of this Contract:

**Accounting Period** shall mean a period of one year or six months ending an Accounting Date for which financial statements are required to be prepared under this Contract.

**Consolidated Net Worth** in respect of the Group shall mean the consolidated net worth of the Group determined in accordance with IFRS.

**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.

### Financial ratios

The Parent shall ensure that:

- (a) **Consolidated Net Financial Indebtedness to Consolidated EBITDA:** Consolidated Net Financial Indebtedness as at any Accounting Date shall not be more than 2.50x times the Consolidated EBITDA for the Test Period ending on that Accounting Date, **provided that** for the purposes of determining this ratio as of an Accounting Date falling on 30 June, “**Consolidated EBITDA**” shall mean the “**Consolidated EBITDA**” calculated in respect of the period of twelve months ending on the last day of the first semester of the Borrowers’ fiscal year
- (b) **Consolidated Net Financial Indebtedness to Consolidated Net Worth:** Consolidated Net Financial Indebtedness as at any Accounting Date shall not be more than 0.50 x times the Consolidated Net Worth as at that Accounting Date.
- (c) **Consolidated EBITDA to Consolidated Total Net Interest Payable:** Consolidated EBITDA for the Test Period ending on an Accounting Date shall not be lower than 6.30 x times the Consolidated Total Net Interest Payable for that Test Period.
- (d) **Consolidated Net Worth:** the Consolidated Net Worth shall at no times be lower, at any time, than USD 725,000,000.00.

### Financial testing

The financial ratios set out above shall be calculated starting 31 December 2014 in accordance with GAAP and tested by reference to each of the financial ratios and/or each Compliance Certificate delivered pursuant the Paragraph below.

### Compliance Certificate

The Parent shall supply to the Bank for the financial situation as of 30 June and as of 31 December of each year on 30 September and 30 June respectively a Compliance Certificate setting out (in reasonable detail) computations as to compliance with the financial ratios set out above as at the date at which those financial ratios were drawn up.

Each Compliance Certificate shall be signed by two directors of the Parent and shall be accompanied by a report signed by reputable independent auditors.

## Existing Security

Grantor	Beneficiary	Transaction	Amount as of 31/03/2014	Expiry	Type of Security
Sorin CRM SAS	BpiFrance	Term Loan	150,000.00	31/10/2019	Cash collateral
Sorin Group Italia Srl	Banca Regionale Europea	Mortgage Loan	1,307,000.00	10/01/2020	Mortgage
Sorin Site Management Srl	Banca Regionale Europea	Mortgage Loan	697,000.00	10/01/2020	Mortgage
Sorin Group Italia Srl	Mediocredito Italiano	Mortgage Loan	526,000.00	30/09/2021	Mortgage
Sorin Group Italia Srl	Mediocredito Italiano	Mortgage Loan	509,000.00	29/09/2026	Mortgage
<b>Total amount</b>			<b>3,189,000.00</b>		

**DEED OF INDEMNITY  
DIRECTORS**

THIS DEED OF INDEMNITY is made the     day of October 2015

**BETWEEN:**

- (1) LivaNova PLC, a company registered in England and Wales with company number 09451374 whose office is at 5 Merchant Square, London, United Kingdom, W2 1AY (the “**Company**”); and
- (2) [ • ] of 5 Merchant Square, London, United Kingdom, W2 1AY (the “**Indemnified Person**”).

**WHEREAS**

- (A) The Indemnified Person is a director of the Company.
- (B) The Company has agreed to indemnify the Indemnified Person on the terms and conditions set out in this Deed.
- (C) The Company has further agreed to use all reasonable endeavours to maintain appropriate directors’ and officers’ liability insurance for the benefit of the Indemnified Person.

**NOW THIS DEED WITNESSETH** as follows:

**1. INDEMNITY**

- 1.1 Subject to Clause 1.2 of this Deed, the Company shall, to the fullest extent permitted by law and without prejudice to any other indemnity to which the Indemnified Person may otherwise be entitled, indemnify and hold the Indemnified Person harmless in respect of all claims, actions and proceedings, whether civil, criminal or regulatory (“**Claims**”), and any losses, damages, penalties, liabilities, compensation or other awards arising in connection with any such Claims (“**Losses**”), whether instigated, imposed or incurred under the laws of England and Wales or the law of any other jurisdiction and arising out of, or in connection with, (i) the actual or purported exercise of, or failure to exercise, any of the Indemnified Person’s powers, duties or responsibilities as a director of the Company or any of its Subsidiaries (as defined in section 1159 of the Companies Act 2006 (the “**Companies Act**”), as amended, and including any modification or re-enactment of it for the time being in force) whether prior to, on, or after the date of this Deed, and (ii) the Indemnified Person accepting responsibility for the prospectus prepared by the Company in relation to the admission of the ordinary shares of the Company to the Official List of the UK Listing Authority, and to trading on the London Stock Exchange as a result of being named as a prospective director of the Company therein, subject to the remaining provisions of this Deed.
- 1.2 The indemnity in Clause 1.1 of this Deed shall be deemed not to provide for, or entitle the Indemnified Person to, any indemnification that would cause this Deed, or any part of it, to be treated as void under the Companies Act and, in particular, shall not provide directly or indirectly (to any extent) any indemnity against any liability incurred by the Indemnified Person:
  - (a) to the Company or any Associated Company (as defined in section 256 of the Companies Act); or

(b) to pay a fine imposed in criminal proceedings or a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising); or

(c)

(i) in defending any criminal proceedings in which the Indemnified Person is convicted;

(ii) in defending any civil proceedings brought by the Company, or an Associated Company, in which judgment is given against the Indemnified Person;

(iii) in connection with any application under section 661(3) or (4) or section 1157 of the Companies Act in which the court refuses to grant the Indemnified Person relief,

where, in any such case, any such conviction, judgment or refusal of relief has become final. Reference in this Clause 1.2 to a conviction, judgment or refusal of relief being “final” shall be construed in accordance with sections 234(4) and (5) of the Companies Act; or

(d) which has been finally judicially determined to have resulted from fraud or wilful misconduct by the Indemnified Person; or

(e) in defending any proceedings brought by a regulatory authority in which a penalty is imposed on the Indemnified Person.

1.3 Any indemnity payment by the Company to the Indemnified Person pursuant to Clause 1.1 is conditional upon compliance by the Indemnified Person with Clause 1.8, to the extent applicable in the circumstances.

1.4 Without prejudice to the generality of the indemnity set out in Clause 1.1 of this Deed, the Company agrees to fund all or part of the legal and other costs and expenses incurred or to be incurred by the Indemnified Person in defending any criminal or civil proceedings in connection with:

(a) defending Claims including, without limitation, Claims brought by, or at the request of, the Company or any Associated Company and any investigation into the affairs of the Company or any Associated Company by any judicial, governmental, regulatory or other body; or

(b) any application under section 661(3) or (4) or section 1157 of the Companies Act.

Any request for funding under this Clause 1.4 shall be made in writing by the Indemnified Person to the Company and made subject to such conditions as the board of directors of the Company from time to time (the “**Board**”) thinks fit. The Company shall provide the relevant funding within 30 days after receipt of any such written request.



- 1.5 Any funding given to the Indemnified Person pursuant to Clause 1.4 shall be treated as a loan from the Company to the Indemnified Person repayable on demand and otherwise as repayable on the terms set out in Clause 1.6.
- 1.6 Subject to Clause 1.7, in the event that:
- (a) judgment is given against the Indemnified Person in civil proceedings;
  - (b) judgment is given against the Indemnified Person in criminal proceedings; or
  - (c) the court refusing to grant the Indemnified Person relief on the application under section 661(3) or (4) or section 1157 of the Companies Act,
- the Indemnified Person shall repay to the Company any amounts advanced by the Company in relation to such matters pursuant to Clause 1.4 no later than the date on which such judgment, conviction or refusal of relief (as applicable) becomes final.
- References in this Clause 1.6 to a conviction, judgment or refusal of relief being “final” shall be construed in accordance with sections 205(3) and (4) of the Companies Act.
- 1.7 Any funding given to the Indemnified Person pursuant to Clause 1.4(a) to:
- (a) meet expenditure incurred or to be incurred by the Indemnified Person in defending the Indemnified Person in any investigation by a regulatory authority or against actions proposed to be taken by a regulatory authority, in each case in connection with any alleged negligence, default, breach of duty or breach of trust by the Indemnified Person in relation to the Company or Associated Company; or
  - (b) enable the Indemnified Person to avoid incurring any such expenditure aforementioned in (a) above,
- shall only be required to be repaid by the Indemnified Person pursuant to Clause 1.6 if that regulatory authority finally determines that the Indemnified Person has acted fraudulently, been grossly negligent or has engaged in wilful misconduct in relation to the relevant Claim or Claims.
- 1.8 If the Indemnified Person becomes aware of any circumstances which might give rise to the Company being required to make any payment under Clause 1.1 and/or advance funds under Clause 1.4, the Indemnified Person shall:
- (a) forthwith give written notice of such circumstances to the Company setting out all available information;
  - (b) not make any admission of liability, agreement or compromise with any person in relation to any such circumstances without the prior written consent of the Company, such consent not to be unreasonably withheld, conditioned or delayed;
  - (c) at the Company’s expense, take such action and give such information and access to documents and records to the Company and its professional advisers as the Company may reasonably request; and
  - (d) give to the Company all such assistance as the Company and/or its insurers may reasonably require in avoiding, disputing, resisting, settling

compromising, defending or appealing any claim and shall instruct such solicitors or other professional advisers that may have been nominated to act on behalf of the Company, any Subsidiary of the Company, or the Indemnified Person.

1.9 In the event of any payment by the Company to the Indemnified Person pursuant to the indemnity set out in Clause 1.1 of this Deed, the Company shall have subrogation rights against third parties, including, for the avoidance of doubt, any claim under any applicable directors' and officers' insurance policy, and the Indemnified Person shall execute all documentation required and shall do all things necessary to grant such subrogation rights to the Company, including:

- (a) executing any documents necessary to enable the Company to bring an action against any third party in the name of the Indemnified Person; and
- (b) providing assistance to the Company as a witness in respect of any claim against a third party.

1.10 For the avoidance of doubt:

- (a) if a company ceases to be a Subsidiary of the Company after the date of this Deed, the Company shall only be liable to indemnify the Indemnified Person in respect of liabilities in relation to that company which arose before the date on which that company ceased to be a Subsidiary of the Company; and
- (b) the Indemnified Person, as director of any company which becomes a Subsidiary of the Company after the date of this Deed, shall be indemnified only in respect of liabilities arising after the date on which that company became a Subsidiary of the Company.

## **2. ENTIRE AGREEMENT**

2.1 This Deed constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the Company and the Indemnified Person relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

2.2 This Deed shall remain in force until such time as any relevant limitation periods for bringing Claims against the Indemnified Person have expired, or for so long as the Indemnified Person remains liable for any Losses, notwithstanding that such Indemnified Person may have ceased to be a director of the Company or any of its Subsidiaries.

2.3 Each of the Company and the Indemnified Person acknowledges and agrees that in entering into this Deed it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Deed. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Deed.

2.4 Nothing in this Clause 2 shall operate to exclude any liability for fraud.

**3. DIRECTORS' AND OFFICERS' INSURANCE**

The Company shall use all reasonable endeavours to provide and maintain appropriate "directors and officers" liability insurance on customary terms and in customary amounts for a company such as the Company with securities listed both on the NASDAQ Global Select Market and the London Stock Exchange (including ensuring that premiums are properly paid) for the benefit of the Indemnified Person for so long as any Claims may lawfully be brought against the Indemnified Person.

**4. GOVERNING LAW**

This Deed shall be governed by, and interpreted in accordance with, the laws of England and Wales and each of the Company and the Indemnified Person hereby submit for all purposes in connection with this Deed to the exclusive jurisdiction of the Courts of England and Wales.

**5. GENERAL**

A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

**6. COUNTERPARTS**

This agreement may be executed in any number of counterparts each of which when executed by one or more of the parties hereto shall constitute an original but all of which shall constitute one and the same instrument.

\*\*\*\*\*

IN WITNESS whereof this Deed has been executed the day and year first above written.

**EXECUTED** )  
as a **DEED** by ) \_\_\_\_\_  
  
a director )  
for and on behalf of )  
**LIVANOVA PLC** )  
in the presence of )

Witness:  
Signature \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

SIGNED as a DEED by

[ • ]

in the presence of:

)

)

)

Witness:

Signature

\_\_\_\_\_

Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

**DEED OF INDEMNITY  
OFFICERS**

THIS DEED OF INDEMNITY is made the     day of     2015

**BETWEEN:**

- (1) LivaNova PLC, a company registered in England and Wales with company number 09451374 whose office is at 5 Merchant Square, London, United Kingdom, W2 1AY (the “**Company**”); and
- (2) [ • ] of 5 Merchant Square, London, United Kingdom, W2 1AY (the “**Indemnified Person**”).

**WHEREAS**

- (A) The Indemnified Person is [*describe nature of office*] at the Company (“**Officer**”).
- (B) The Company has agreed to indemnify the Indemnified Person on the terms and conditions set out in this Deed.
- (C) The Company has further agreed to use all reasonable endeavours to maintain appropriate directors’ and officers’ liability insurance for the benefit of the Indemnified Person.

**NOW THIS DEED WITNESSETH** as follows:

**1. INDEMNITY**

- 1.1 Subject to Clauses 1.2 and 1.3 of this Deed, the Company shall, to the fullest extent permitted by law and without prejudice to any other indemnity to which the Indemnified Person may otherwise be entitled, indemnify and hold the Indemnified Person harmless in respect of all claims, actions and proceedings, whether civil, criminal or regulatory (“**Claims**”), and any losses, damages, penalties, liabilities, compensation or other awards arising in connection with any such Claims (“**Losses**”), whether instigated, imposed or incurred under the laws of England and Wales or the law of any other jurisdiction and arising out of, or in connection with the actual or purported exercise of, or failure to exercise, any of the Indemnified Person’s powers, duties or responsibilities as an Officer of the Company or any of its Subsidiaries (as defined in section 1159 of the Companies Act 2006 (the “**Companies Act**”), as amended, and including any modification or re-enactment of it for the time being in force) whether prior to, on, or after, the date of this Deed, subject to the remaining provisions of this Deed.
- 1.2 The indemnity set out in Clause 1.1 shall only apply:
  - (a) to the Indemnified Person in relation to the period of time that he holds the position as Officer of the Company; and
  - (b) in respect of any Claims and Losses instigated, imposed or incurred by the Indemnified Person during the period of time he is an Officer of the Company.

- 1.3 The Company shall not indemnify the Indemnified Person against any liability:
- (a) which has been finally judicially determined to have resulted from fraud, gross negligence or wilful misconduct by the Indemnified Person; or
  - (b) for which payment has actually been made to or on behalf of the Indemnified Person under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or
  - (c) in connection with any Claims initiated by the Indemnified Person, including any Claim initiated by the Indemnified Person against the Company or its directors, officers, employees or other indemnified persons unless the board of directors of the Company from time to time (the “**Board**”) has authorised the Claim, prior to its initiation.
- 1.4 Any indemnity payment by the Company to the Indemnified Person pursuant to Clause 1.1 is conditional upon compliance by the Indemnified Person with Clause 1.8, to the extent applicable in the circumstances.
- 1.5 Without prejudice to the generality of the indemnity set out in Clause 1.1 of this Deed, the Company agrees to fund all or part of the legal costs and other costs and expenses incurred by the Indemnified Person in connection with any Claims. Any request for funding under this Clause 1.5 shall be made in writing by the Indemnified Person to the Company and made subject to such conditions as the Board thinks fit. The Company shall provide the relevant funding within 30 days after the receipt of any such written request.
- 1.6 Any funding given to the Indemnified Person pursuant to Clause 1.5 shall be treated as a loan from the Company to the Indemnified Person repayable on demand and otherwise as repayable on the terms set out in Clause 1.7.
- 1.7 In the event that:
- (a) judgment is given against the Indemnified Person in civil proceedings; or
  - (b) judgment is given against the Indemnified Person in criminal proceedings,
- and in each case, where it has been finally judicially determined that the Indemnified Person has acted fraudulently, been grossly negligent or engaged in wilful misconduct, the Indemnified Person shall repay to the Company any amounts advanced by the Company in relation to such matters pursuant to Clause 1.5 no later than the date on which such judgment, conviction or refusal of relief (as applicable) becomes final.
- References in this Clause 1.7 to a conviction, judgment or refusal of relief being “final” shall be construed in accordance with sections 205(3) and (4) of the Companies Act.
- 1.8 If the Indemnified Person becomes aware of any circumstances which might give rise to the Company being required to make any payment under Clause 1.1 and/or advance funds under Clause 1.5, the Indemnified Person shall:
- (a) forthwith give written notice of such circumstances to the Company setting out all available information;

- (b) not make any admission of liability, agreement or compromise with any person in relation to any such circumstances without the prior written consent of the Company, such consent not to be unreasonably withheld, conditioned or delayed;
  - (c) at the Company's expense, take such action and give such information and access to documents and records to the Company and its professional advisers as the Company may reasonably request; and
  - (d) give to the Company all such assistance as the Company and/or its insurers may reasonably require in avoiding, disputing, resisting, settling, compromising, defending or appealing any claim and shall instruct such solicitors or other professional advisers that may have been nominated to act on behalf of the Company, any Subsidiary of the Company, or the Indemnified Person.
- 1.9 In the event of any payment by the Company to the Indemnified Person pursuant to the indemnity set out in Clause 1.1 of this Deed, the Company shall have subrogation rights against third parties, including, for the avoidance of doubt, any claim under any applicable directors' and officers' insurance policy, and the Indemnified Person shall execute all documentation required and shall do all things necessary to grant such subrogation rights to the Company, including:
- (a) executing any documents necessary to enable the Company to bring an action against any third party in the name of the Indemnified Person; and
  - (b) providing assistance to the Company as a witness in respect of any claim against a third party.
- 1.10 For the avoidance of doubt:
- (a) if a company ceases to be a Subsidiary of the Company after the date of this Deed, the Company shall only be liable to indemnify the Indemnified Person in respect of liabilities in relation to that company which arose before the date on which that company ceased to be a Subsidiary of the Company; and
  - (b) the Indemnified Person, as an Officer of any company which becomes a Subsidiary of the Company after the date of this Deed, shall be indemnified only in respect of liabilities arising after the date on which that company became a Subsidiary of the Company.

## **2. ENTIRE AGREEMENT**

- 2.1 This Deed constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the Company and the Indemnified Person relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 2.2 This Deed shall remain in force until such time as any relevant limitation periods for bringing Claims against the Indemnified Person have expired, or for so long as the Indemnified Person remains liable for any Losses, notwithstanding that such Indemnified Person may have ceased to be an Officer of the Company or any of its Subsidiaries.



2.3 Each of the Company and the Indemnified Person acknowledges and agrees that in entering into this Deed it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Deed. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Deed.

2.4 Nothing in this Clause 2 shall operate to exclude any liability for fraud.

### **3. DIRECTORS' AND OFFICERS' INSURANCE**

The Company shall use all reasonable endeavours to provide and maintain appropriate "directors and officers" liability insurance on customary terms and in customary amounts for a company such as the Company with securities listed both on the NASDAQ Global Select Market and the London Stock Exchange (including ensuring that premiums are properly paid) for the benefit of the Indemnified Person for so long as any Claims may lawfully be brought against the Indemnified Person.

### **4. GOVERNING LAW**

This Deed shall be governed by, and interpreted in accordance with, the laws of England and Wales and each of the Company and the Indemnified Person hereby submit for all purposes in connection with this Deed to the exclusive jurisdiction of the Courts of England and Wales.

### **5. GENERAL**

A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

### **6. COUNTERPARTS**

This agreement may be executed in any number of counterparts each of which when executed by one or more of the parties hereto shall constitute an original but all of which shall constitute one and the same instrument.

\*\*\*\*\*

IN WITNESS whereof this Deed has been executed the day and year first above written.

**EXECUTED** )  
as a **DEED** by )

\_\_\_\_\_  
Director

\_\_\_\_\_ a director )

\_\_\_\_\_,  
for and on behalf of )  
**LIVANOVA PLC** )  
in the presence of )

Witness:  
Signature \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

SIGNED as a DEED by

[ • ] )

in the presence of: )

---

Witness:

Signature \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

October 19, 2015

Securities and Exchange Commission  
Washington, DC 20549

Ladies and Gentlemen:

We are currently principal accountants for Cyberonics, Inc. and, under the date of June 15, 2015, we reported on the consolidated financial statements of Cyberonics, Inc. as of and for the years ended April 24, 2015 and April 24, 2014, and the effectiveness of internal control over financial reporting as of April 24, 2015. On October 19, 2015, we were notified that LivaNova plc engaged PricewaterhouseCoopers, SpA as its principal accountant to audit the financial statements of LivaNova plc and its consolidated subsidiaries for the fiscal period beginning April 25, 2015 and ending December 31, 2015 and that the auditor-client relationship with KPMG LLP will cease upon completion by KPMG LLP of its review, in accordance with auditing standards generally accepted in the United States of America, applicable to the interim financial information of Cyberonics, Inc. to be included in the Transition Report on Form 10-Q to be filed by LivaNova plc with the Securities and Exchange Commission for the period beginning on April 25, 2015 and ending on October 19, 2015 and under the assumption that KPMG LLP is able to perform such review, which is contingent upon KPMG completing its independence review of LivaNova plc (inclusive of Sorin S.p.A.). We have read LivaNova plc's statements included under Item 4.01 of its Form 8-K dated October 19, 2015, and we agree with such statements, except that we are not in a position to agree or disagree with LivaNova plc's statement that the Audit Committee of LivaNova plc's board of directors approved the engagement of PricewaterhouseCoopers S.p.A. or with LivaNova plc's statements in Item 4.01(b).

Very truly yours,

/s/ KPMG LLP