

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

Form 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2016

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 001-37599

**LivaNova**

**LivaNova PLC**

(Exact name of registrant as specified in its charter)

England and Wales  
(State or other jurisdiction of  
incorporation or organization)  
5 Merchant Square, North Wharf Road  
London, United Kingdom  
(Address of principal executive offices)

98-1268150  
(I.R.S. Employer  
Identification No.)

W2 1AY  
(Zip Code)

(44) 203 786 5275

Registrant's telephone number, including area code:

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

Ordinary Shares — £1.00 par value per share  
*Title of Each Class of Stock*

The NASDAQ Stock Market LLC and the London Stock Exchange  
*Name of Each Exchange on Which Registered*

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

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

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

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

*Class*  
Ordinary Shares - £1.00 par value per share

*Outstanding at October 28, 2016*  
48,774,669

#### EXPLANATORY NOTE

LivaNova PLC, a public limited company organized under the laws of England and Wales (“LivaNova”) was formed on February 20, 2015, for the purpose of facilitating the business combination of Cyberonics, Inc., a Delaware corporation (“Cyberonics”), and Sorin S.p.A., a joint stock company organized under the laws of Italy (“Sorin”). On October 19, 2015, as further described herein, LivaNova became the holding company of the combined businesses of Cyberonics and Sorin, and LivaNova’s ordinary shares were listed for trading on the NASDAQ Global Market and admitted to listing on the standard segment of the United Kingdom Financial Conduct Authority’s Official List and to trading on the Main Market of the London Stock Exchange under the trading symbol “LIVN.” In this Quarterly Report on Form 10-Q, in accordance with generally accepted accounting principles in the United States, we are reporting the consolidated results of LivaNova for the quarterly period July 1, 2016 to September 30, 2016 and the year-to-date period January 1, 2016 to September 30, 2016. LivaNova, as the successor company to Cyberonics is utilizing as a comparative prior reporting period the historical results for Cyberonics and its consolidated subsidiaries for the transitional and final quarterly period July 25, 2015 to October 18, 2015 and for the transitional and final year-to-date period January 24, 2015 to October 18, 2015. These periods are equivalent to twelve weeks and thirty-eight weeks as compared to the normal Cyberonics’ thirteen and thirty-nine weeks and are considered transitional because on October 19, 2015 LivaNova became the successor organization to Cyberonics and has a fiscal year ending December 31. The period October 19, 2015 to December 31, 2015 represents post-Merger activity of Cyberonics and Sorin combined and the activity during this period was reported in the 10-KT for LivaNova for the period April 25, 2015 to December 31, 2015.

**LIVANOVA PLC**  
**TABLE OF CONTENTS**

<b>PART I. FINANCIAL INFORMATION</b>		<b>PAGE NO.</b>
<a href="#"><u>Item 1</u></a>	<a href="#"><u>Condensed Consolidated Financial Statements</u></a>	<a href="#"><u>6</u></a>
	<a href="#"><u>Condensed Consolidated Statements of Income (Loss)</u></a>	<a href="#"><u>6</u></a>
	<a href="#"><u>Condensed Consolidated Statements of Comprehensive Income (Loss)</u></a>	<a href="#"><u>7</u></a>
	<a href="#"><u>Condensed Consolidated Balance Sheets</u></a>	<a href="#"><u>8</u></a>
	<a href="#"><u>Condensed Consolidated Statements of Stockholders' Equity</u></a>	<a href="#"><u>9</u></a>
	<a href="#"><u>Condensed Consolidated Statements of Cash Flows</u></a>	<a href="#"><u>10</u></a>
	<a href="#"><u>Notes to the Condensed Consolidated Financial Statements</u></a>	<a href="#"><u>11</u></a>
<a href="#"><u>Item 2</u></a>	<a href="#"><u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u></a>	<a href="#"><u>42</u></a>
<a href="#"><u>Item 3</u></a>	<a href="#"><u>Quantitative and Qualitative Disclosures About Market Risk</u></a>	<a href="#"><u>53</u></a>
<a href="#"><u>Item 4</u></a>	<a href="#"><u>Controls and Procedures</u></a>	<a href="#"><u>53</u></a>
<b>PART II. OTHER INFORMATION</b>		
<a href="#"><u>Item 1</u></a>	<a href="#"><u>Legal Proceedings</u></a>	<a href="#"><u>54</u></a>
<a href="#"><u>Item 1A</u></a>	<a href="#"><u>Risk Factors</u></a>	<a href="#"><u>54</u></a>
<a href="#"><u>Item 2</u></a>	<a href="#"><u>Unregistered Sales of Equity Securities and Use of Proceeds</u></a>	<a href="#"><u>55</u></a>
<a href="#"><u>Item 6</u></a>	<a href="#"><u>Exhibits</u></a>	<a href="#"><u>56</u></a>

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

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

- Trademarks for our VNS therapy systems, the VNS Therapy® System, the VITARIA™ System and our proprietary Pulse generators products: Model 102 (Pulse™), Model 102R (Pulse Duo™), Model 103 (Demipulse®), Model 104 (Demipulse Duo®), Model 105 (AspireHC®) and the Model 106 (AspireSR®).
- Trademarks for our Oxygenators product systems: Inspire™, Heartlink™ and Connect™.
- Trademarks for our line of surgical tissue and mechanical valve replacements and repair products: Mitroflow™, Crown PRT™, Solo Smart™, Perceval™, Top Hat™, Reduced Series Aortic Valves™, Carbomedics Carbo-Seal™, Carbo-Seal Valsalva™, Carbomedics Standard™, Orbis™ and Optiform™, and Mitral valve repair products: Memo 3D™, Memo 3D ReChord™, AnnuloFlo™ and AnnuloFlex™.
- Trademarks for our implantable cardiac pacemakers and associated services: REPLY 200™, ESPRIT™, KORA 100™, KORA 250™, SafeR™, the REPLY CRT-P™, the **remedé**® System.
- Trademarks for our Implantable Cardioverter Defibrillators and associated technologies: the INTENSIA™, PLATINIUM™, and PARADYM™ product families.
- Trademarks for our cardiac resynchronization therapy devices, technologies services: SonR™, SonRtip™, SonR CRT™, the INTENSIA™, PARADYM RF™, PARADYM 2™ and PLATINIUM™ product families and the Respond CRT™ clinical trial.
- Trademarks for heart failure treatment product: Equilia™.
- Trademarks for our bradycardia leads: BEFLEX™ (active fixation) and XFINE™ (passive fixation).

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

## **“Safe Harbor” Statement under the Private Securities Litigation Reform Act of 1995**

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

### **Risks related to the Mergers:**

- failure to effectively integrate and/or manage newly acquired businesses, and the cost, time and effort required to integrate newly acquired businesses, all of which may be greater than anticipated;
- operating costs, customer loss or business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers, distributors or suppliers) being greater than expected following the Mergers;
- failure to retain certain key legacy employees of the Cyberonics or Sorin businesses; and
- changes in tax laws or interpretations that could increase our consolidated tax liabilities following the Mergers, including the risk that we could be treated as a domestic corporation for United States federal tax purposes (for further information, refer to “Note 20. Income Tax” to the consolidated financial statements accompanying this Quarterly Report on Form 10-Q).

### **Risks related to our business:**

- changes in our common stock price;
- changes in our profitability;
- regulatory activities and announcements, including the failure to obtain regulatory approvals for our new products;
- effectiveness of our internal controls over financial reporting;
- fluctuations in future quarterly operating results;
- failure to comply with, or changes in, laws, regulations or administrative practices affecting government regulation of our products, including, but not limited to, U.S. Food and Drug Administration (“FDA”) laws and regulations;
- failure to establish, expand or maintain market acceptance of our products for the treatment of our approved indications;
- any legislative or administrative reform to the healthcare system, including the U.S. Medicare or Medicaid systems or international reimbursement systems, that significantly reduces reimbursement for our products or procedures or denies coverage for such procedures, as well as adverse decisions by administrators of such systems on coverage or reimbursement issues relating to our products;
- failure to maintain the current regulatory approvals for our products’ approved indications;
- failure to obtain or maintain insurance coverage and reimbursement for our products’ approved indications;
- unfavorable results from clinical studies;
- variations in sales and operating expenses relative to estimates;
- our dependence on certain suppliers and manufacturers to provide certain materials, components and contract services necessary for the production of our products;

- product liability, intellectual property disputes, shareholder related matters, environmental proceedings, income tax disputes, and other related losses and costs;
- protection, expiration and validity of our intellectual property;
- changes in technology, including the development of superior or alternative technology or devices by competitors;
- failure to comply with applicable U.S. domestic laws and regulations, including federal and state privacy and security laws and regulations;
- failure to comply with non-U.S. law and regulations;
- non-U.S. operational and economic risks and concerns;
- failure to attract or retain key personnel;
- losses or costs from pending or future lawsuits and governmental investigations;
- changes in accounting rules that adversely affect the characterization of our consolidated financial position, results of operations or cash flows;
- changes in customer spending patterns;
- continued volatility in the global market and worldwide economic conditions, in particular the implementation of Brexit will likely cause increased economic volatility;
- changes in tax laws, including changes due to Brexit, or exposure to additional income tax liabilities;
- harsh weather or natural disasters that interrupt our business operations or the business operations of our hospital-customers; and
- the adoption of new therapies by the market requires significant time and expense and cannot be guaranteed.
- Other factors that could cause our actual results to differ from our projected results are described in (1) “Part II, Item 1A. Risk Factors” and elsewhere in this Quarterly Report on Form 10-Q, (2) our 2015 Form 10-KT, (3) our reports and registration statements filed and furnished from time to time with the SEC and (4) other announcements we make from time to time.

Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date hereof. We undertake no obligation to update or revise any forward-looking statements after the date they are made, whether as a result of new information, future events or otherwise. You should read the following discussion and analysis in conjunction with our unaudited consolidated financial statements and related notes included elsewhere in this report. Operating results for the three and nine months ended September 30, 2016 are not necessarily indicative of future results, including the full fiscal year. You should also refer to our “Annual Consolidated Financial Statements,” “Notes” thereto, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Risk Factors” contained in our 2015 Form 10-KT.

#### **Financial Information and Currency of Financial Statements**

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

**PART I. FINANCIAL INFORMATION**

**ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

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

	<b>Three Months Ended September 30, 2016</b>	<b>Twelve Weeks Ended October 18, 2015</b>	<b>Nine Months Ended September 30, 2016</b>	<b>Thirty-Eight Weeks Ended October 18, 2015</b>
Net sales	\$ 295,268	\$ 67,521	\$ 903,284	\$ 222,603
Cost of sales	106,454	9,536	360,675	26,564
Gross profit	<u>188,814</u>	<u>57,985</u>	<u>542,609</u>	<u>196,039</u>
Operating expenses:				
Selling, general and administrative	107,553	41,186	343,309	104,581
Research and development	32,175	14,739	94,076	35,233
Merger and Integration expenses	7,576	27,902	20,537	43,143
Restructuring expenses	4,381	—	37,219	—
Amortization of intangibles	11,775	510	33,959	1,452
Litigation related expenses	2,369	—	4,678	—
Total operating expenses	<u>165,829</u>	<u>84,337</u>	<u>533,778</u>	<u>184,409</u>
Income (loss) from operations	22,985	(26,352)	8,831	11,630
Interest income	(585)	(39)	(1,119)	(124)
Interest expense	3,495	125	6,665	154
Impairment of investment	—	—	—	2,064
Foreign exchange and other - (gain) loss	(1,216)	109	2	1
Income (loss) before income taxes	<u>21,291</u>	<u>(26,547)</u>	<u>3,283</u>	<u>9,535</u>
Income tax (benefit) expense	9,731	(1,456)	16,891	11,693
Losses from equity method investments	13,129	—	19,382	—
Net loss	<u>\$ (1,569)</u>	<u>\$ (25,091)</u>	<u>\$ (32,990)</u>	<u>\$ (2,158)</u>
Basic loss per share	\$ (0.03)	\$ (0.96)	\$ (0.67)	\$ (0.08)
Diluted loss per share	\$ (0.03)	\$ (0.96)	\$ (0.67)	\$ (0.08)
Shares used in computing basic loss per share	49,075	26,025	49,016	26,015
Shares used in computing diluted loss per share	49,075	26,025	49,016	26,015

See accompanying notes to the condensed consolidated financial statements

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

	<b>Three Months Ended September 30, 2016</b>	<b>Twelve Weeks Ended October 18, 2015</b>	<b>Nine Months Ended September 30, 2016</b>	<b>Thirty-Eight Weeks Ended October 18, 2015</b>
Net loss	\$ (1,569)	\$ (25,091)	\$ (32,990)	\$ (2,158)
Other comprehensive income (loss):				
Net change in unrealized loss on derivatives	2,042	—	(5,224)	—
Tax effect	(673)	—	1,513	—
Net of tax	1,369	—	(3,711)	—
Foreign currency translation adjustment, net of tax	(1,805)	569	32,598	256
Total other comprehensive income (loss)	(436)	569	28,887	256
Total comprehensive loss	\$ (2,005)	\$ (24,522)	\$ (4,103)	\$ (1,902)

See accompanying notes to the condensed consolidated financial statements

**LIVANOVA PLC AND SUBSIDIARIES'**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(UNAUDITED)**

(In thousands, except share data)

	September 30, 2016	December 31, 2015
<b>ASSETS</b>		
<i>Current Assets:</i>		
Cash and cash equivalents	\$ 63,632	\$ 112,613
Short-term Investments	—	6,997
Accounts receivable, net	284,345	272,352
Inventories	197,649	212,448
Prepaid taxes	49,854	42,425
Prepaid expenses and other current assets	51,850	26,579
<b>Total Current Assets</b>	<b>647,330</b>	<b>673,414</b>
Property, plant and equipment, net	245,120	244,587
Goodwill	731,144	745,356
Intangible assets, net	650,366	658,942
Investments	67,435	77,486
Deferred tax assets, net	6,010	153,509
Other assets	149,555	5,445
<b>Total Assets</b>	<b>\$ 2,496,960</b>	<b>\$ 2,558,739</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<i>Current Liabilities:</i>		
Current debt obligations	\$ 53,617	\$ 82,513
Accounts payable	104,549	109,588
Accrued liabilities	62,046	63,047
Income taxes payable	16,655	26,699
Accrued employee compensation and related benefits liability	80,028	77,274
<b>Total Current Liabilities</b>	<b>316,895</b>	<b>359,121</b>
Long-term debt obligations	90,938	91,791
Deferred income taxes liability	213,062	235,483
Long-term employee compensation and related benefits liability	32,008	31,139
Other long-term liabilities	27,170	29,743
<b>Total Liabilities</b>	<b>680,073</b>	<b>747,277</b>
Commitments and contingencies (Note 16)		
<i>Stockholders' Equity:</i>		
Ordinary Shares, £1.00 par value: unlimited shares authorized; 48,924,009 and 48,868,305 shares issued and outstanding at September 30, 2016 and December 31, 2015, respectively	75,538	75,444
Additional paid-in capital	1,751,466	1,742,032
Accumulated other comprehensive loss	(25,341)	(54,228)
Retained earnings	15,224	48,214
<b>Total Stockholders' Equity</b>	<b>1,816,887</b>	<b>1,811,462</b>
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$ 2,496,960</b>	<b>\$ 2,558,739</b>

See accompanying notes to the condensed consolidated financial statements

**LIVANOVA PLC AND SUBSIDIARIES'**  
**CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY**  
**(UNAUDITED)**  
**(In thousands)**

	Ordinary		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Earnings (Loss)	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2015	48,868	\$ 75,444	\$ 1,742,032	\$ (54,228)	\$ 48,214	\$ 1,811,462
Stock-based compensation plans	269	374	22,018	—	—	22,392
Shares repurchased	(213)	(280)	(12,584)	—	—	(12,864)
Net loss	—	—	—	—	(32,990)	(32,990)
Other comprehensive income	—	—	—	28,887	—	28,887
Balance at September 30, 2016	48,924	\$ 75,538	\$ 1,751,466	\$ (25,341)	\$ 15,224	\$ 1,816,887

See accompanying notes to the condensed consolidated financial statements

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

	Nine Months Ended September 30, 2016	Thirty-Eight Weeks Ended October 18, 2015
Cash Flows From Operating Activities:		
<b>Net loss</b>	<b>\$ (32,990)</b>	<b>\$ (2,158)</b>
Non-cash items included in net loss:		
Depreciation	30,193	4,570
Amortization	33,959	1,004
Stock-based compensation	15,575	21,281
Deferred income tax expense (benefit)	(10,224)	4,638
Loss from investments	19,382	2,064
Other	8,765	912
Changes in operating assets and liabilities:		
Accounts receivable	(11,040)	1,431
Inventories	20,607	(4,849)
Other current and non-current assets	(23,142)	(3,771)
Restructuring reserve	14,961	—
Accounts payable and accrued current and non-current liabilities	(16,698)	40,507
<b>Net cash provided by operating activities</b>	<b>49,348</b>	<b>65,630</b>
Cash Flow From Investing Activities:		
Purchase of short-term investments	(7,054)	(6,995)
Maturities of short-term investments	14,051	27,033
Purchase of property, plant and equipment and other	(26,772)	(4,272)
Intangible assets purchases	(1,934)	(1,000)
Purchases of equity and cost method investments	(8,059)	—
<b>Net cash provided by (used in) investing activities</b>	<b>(29,768)</b>	<b>14,766</b>
Cash Flows From Financing Activities:		
Short-term borrowing	6,060	—
Short-term repayments	(39,891)	—
Proceeds from long-term debt obligations	7,994	—
Repayment of long-term debt obligations	(11,354)	—
Repayment of trade receivable advances	(23,848)	—
Loans to equity method investees	(6,595)	—
Proceeds from exercise of options for common stock	7,888	5,305
Realized excess tax benefits - stock-based compensation	1,208	4,531
Purchase of ordinary stock	(11,053)	—
Purchase of treasury stock	—	(15,700)
Cash settlement of compensation-based stock units	—	(1,092)
<b>Net cash used in financing activities</b>	<b>(69,591)</b>	<b>(6,956)</b>
Effect of exchange rate changes on cash and cash equivalents	1,030	122
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>(48,981)</b>	<b>73,562</b>
Cash and cash equivalents at beginning of period	112,613	116,215
<b>Cash and cash equivalents at end of period</b>	<b>\$ 63,632</b>	<b>\$ 189,777</b>
Supplementary Disclosures of Cash Flow Information:		
Cash paid for interest	\$ 5,442	\$ 19
Cash paid for income taxes	\$ 38,947	\$ 8,272
Supplementary Disclosure of a Non-Cash Operating Transaction:		
Decrease to APIC related to share-based compensation options cashed out	\$ —	\$ (4,814)
Increase to liabilities related to share-based compensation options cashed-out	\$ —	\$ 4,814
Supplementary Disclosure of a Non-Cash Financing Transaction:		
Decrease to Ordinary shares at par value and APIC related to shares repurchased and unsettled	\$ (1,811)	
Increase to Current debt obligations related to unsettled shares	\$ 1,811	

See accompanying notes to the condensed consolidated financial statements

## LIVANOVA PLC AND SUBSIDIARIES

### NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

#### Note 1. Nature of Operations

**Background.** LivaNova PLC and its subsidiaries (collectively, the “Company”, “LivaNova”, “we” or “our”) was organized under the laws of England and Wales on February 20, 2015 for the purpose of facilitating the business combination of Cyberonics, Inc., a Delaware corporation (“Cyberonics”) and Sorin S.p.A., a joint stock company organized under the laws of Italy (“Sorin”). As a result of the business combination, LivaNova became the holding company of the combined businesses of Cyberonics and Sorin. This business combination became effective on October 19, 2015, at which time LivaNova’s ordinary shares were listed for trading on the NASDAQ Global Market (“NASDAQ”) and on the London Stock Exchange (the “LSE”) as a standard listing under the trading symbol “LIVN.” LivaNova PLC is headquartered in London, United Kingdom (“U.K.”).

**Description of the Business.** We are a global medical device company focused on the development and delivery of important therapeutic solutions for the benefit of patients, healthcare professionals and healthcare systems throughout the world. Working closely with medical professionals throughout the world in the field of Cardiac Surgery, Neuromodulation and Cardiac Rhythm Management, we design, develop, manufacture and sell innovative therapeutic solutions that are consistent with our mission to improve our patients’ quality of life, increase the skills and capabilities of healthcare professionals and minimize healthcare costs.

**Description of the Mergers.** On October 19, 2015, pursuant to the terms of a definitive Transaction Agreement entered into by LivaNova, Cyberonics, Sorin and Cypher Merger Sub (the “Merger Sub”), dated March 23, 2015, (the “Merger Agreement”) Sorin merged with and into LivaNova, with LivaNova continuing as the surviving company, immediately followed by the merger of Merger Sub with and into Cyberonics, with Cyberonics continuing as the surviving company and as a wholly owned subsidiary of LivaNova (the “Mergers”). Upon the consummation of the Mergers, the historical financial statements of Cyberonics became the Company’s historical financial statements. Accordingly, the historical financial statements of Cyberonics are included in the comparative prior periods.

The issuance of LivaNova ordinary shares in connection with the Mergers was registered under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to the Registration Statement on Form S-4 (File No. 333-203510), as amended, filed with the United States Securities and Exchange Commission (the “SEC”) by LivaNova and declared effective on August 19, 2015. Further, pursuant to Rule 12g-3(a) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), LivaNova is deemed to be a “successor” issuer to Cyberonics. As such, the ordinary shares of LivaNova are deemed to be registered under Section 12(b) of the Exchange Act, and LivaNova is subject to the informational requirements of the Exchange Act and the rules and regulations promulgated thereunder.

#### Note 2. Basis of Presentation, Use of Accounting Estimates and Significant Accounting Policies

**The Mergers:** On October 19, 2015, as further described herein, LivaNova became the holding company of the combined businesses of Cyberonics and Sorin, and LivaNova’s ordinary shares were listed for trading on the NASDAQ Global Market and admitted to listing on the standard segment of the United Kingdom Financial Conduct Authority’s Official List and to trading on the Main Market of the London Stock Exchange under the trading symbol “LIVN.” Based on the structure of the Mergers, management determined that Cyberonics is considered to be the accounting acquirer and predecessor for accounting purposes.

The purchase price allocation recorded and reported in the Transition Report on Form 10-KT for the fiscal period that began April 25, 2015 and ended December 31, 2015, as amended (the “2015 Form 10-KT”), was based on a preliminary acquisition valuation and includes the use of estimates based on information that was available to management at the time. The finalization of appraisals and estimates resulted in a change in the valuation of assets acquired, liabilities assumed, goodwill recognized and the related impact on deferred taxes and cumulative translation adjustments. During the quarters ended June 30, 2016 and September 30, 2016, we recorded adjustments to the estimated fair values of the assets acquired and liabilities assumed in the Mergers as a result of analysis of the facts and circumstances that existed at the time of the acquisition. Fair value estimates are based on a complex series of judgments about future events and uncertainties and rely heavily on estimates and assumptions. The judgments used to determine the estimated fair value assigned to each class of assets acquired and liabilities assumed can materially impact the results of operations. Refer to “Note 3. Business Combinations” for further information regarding the adjustments.

**Basis of Presentation.** The accompanying condensed consolidated financial statements of LivaNova have been prepared in accordance with generally accepted accounting principles in the United States of America (“U.S.” and such principles, “U.S. GAAP”) for interim financial information and the instructions to Form 10-Q and Article 10 of regulation S-X. The accompanying condensed consolidated balance sheet of LivaNova at December 31, 2015 has been derived from audited financial statements contained in our transitional report on form 10-KT for the period ended December 31, 2015, but do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. In the opinion of management, the condensed consolidated financial statements reflect all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation of the operating results of LivaNova and its subsidiaries, for the three and nine months ended September 30, 2016, and are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2016. The financial information presented herein should be read in conjunction with the audited consolidated financial statements and notes thereto accompanying our Transition Report on Form 10-KT for the fiscal period that began April 25, 2015 and ended December 31, 2015, as amended.

**Fiscal Year-End.** Prior to the Mergers, Cyberonics, LivaNova’s predecessor, utilized a 52/53-week fiscal year that ended on the last Friday in April. After the Mergers that consummated on October 19, 2015, Cyberonics, as a subsidiary of LivaNova PLC, changed to a calendar year ending December 31st.

**Reporting Periods.** In this Quarterly Report on Form 10-Q, we are reporting the results of our operations for the three and nine months ended September 30, 2016, which consist of the combined results of operations of Cyberonics and Sorin. Since LivaNova is the successor company to Cyberonics, we are presenting the results of Cyberonics’ operations for the twelve and thirty-eight weeks ended October 18, 2015, as the prior year equivalent periods. The twelve and thirty-eight weeks ended October 18, 2015 were selected for comparative purposes as they were the closest periods to the three and nine months ended September 30, 2016 (with approximately a two week difference) as it was impracticable and cost prohibitive to recast Cyberonics’ prior year financial information in order to present the three and nine months ended September 30, 2016.

**Foreign Currency Translation and Remeasurement.** We translate the assets and liabilities of its non-U.S. dollar functional currency subsidiaries into U.S. dollars using exchange rates in effect at the end of each period. Revenue and expenses for these subsidiaries are translated using rates that approximate those in effect during the period. Gains and losses from these translations are recognized in foreign currency translation included in AOCI in shareholders’ equity. Our subsidiaries that use the U.S. dollars as their functional currency remeasure their assets and liabilities that are denominated in a currency other than the U.S. dollars, at exchange rates in effect at the end of each period, while their inventories, property and nonmonetary assets and liabilities denominated in a currency other than the U.S. dollars, at historical rates.

**Consolidation.** The accompanying condensed consolidated operating statements for the three and nine months ended September 30, 2016, include the operating results for LivaNova PLC and the LivaNova PLC Employee Benefit Trust (the “Trust”), which consist of the combined results of operations of Cyberonics and Sorin. The accompanying condensed consolidated operating results for the twelve and thirty-eight weeks ended October 18, 2015 include the results of operations for Cyberonics and its wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated.

**Use of Estimates.** The preparation of our condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in such financial statements and accompanying notes. These estimates are based on management’s best knowledge of current events and actions we may undertake in the future. Estimates are used in accounting for, among other items, valuation and amortization of intangible assets, goodwill, amortization of intangible assets, measurement of deferred tax assets and liabilities, uncertain income tax positions, stock-based compensation, obsolete and slow-moving inventories, allowance for doubtful accounts, and in general, allocations to provisions and the fair value of assets and liabilities recorded in a business combination. Actual results could differ materially from those estimates.

**Merger, Integration and Restructuring Charges.** As a result of the Mergers, we incurred merger, integration and restructuring charges and reported merger and integration expenses and restructuring expenses separately as operating expenses in the consolidated statements of income (loss).

**Merger Expenses.** Merger expenses consisted of expenses directly related to the Mergers, such as professional fees for legal services, accounting services, due diligence, a fairness opinion and the preparation of registration and regulatory filings in the United States and Europe, as well as investment banking fees.

**Integration Expenses.** Integration expenses consisted primarily of consultancy fees with regard to: our systems integration, organization structure integration, finance, synergy and tax planning, the transition to U.S. GAAP for Sorin activity, our LSE listing and certain re-branding efforts.

**Restructuring Expenses.** After the consummation of the Mergers between Cyberonics and Sorin in October 2015, we initiated several restructuring plans (the “Restructuring Plans”) to combine our business operations. We identify costs incurred and liabilities assumed for the Restructuring Plans. The Restructuring Plans are intended to leverage economies of scale, eliminate duplicate corporate expenses and streamline distributions, logistics and office functions in order to reduce overall costs.

**Reclassifications.** The following reclassifications have been made to conform the prior period consolidated financial statements to current year presentations:

**Amortization Expense.** Amortization expense of \$0.5 million and \$1.5 million for the twelve and thirty-eight weeks ended October 18, 2015 were reclassified and reported separately in the consolidated statement of income (loss) rather than included with Research and Development expense.

**Accrued Employee Compensation and Related Benefits.** In the consolidated balance sheet, accruals amounting to \$17.5 million in total were reclassified from Other Current Liabilities to Accrued Employee Compensation and Related Benefit Liability.

**Cash and Cash Equivalents.** We consider all highly liquid investments with an original maturity of three months or less, consisting of demand deposit accounts and money market mutual funds, to be cash equivalents and are carried in the balance sheet at cost, which approximated their fair value. We carried \$41.1 million in money market mutual funds at December 31, 2015 and none at September 30, 2016.

**U.S. Medical Device Excise Tax (“MDET”).** Section 4191 of the Internal Revenue Code enacted by the Health Care and Education Reconciliation Act of 2010, in conjunction with the Patient Protection and Affordable Care Act, established a 2.3% excise tax on medical devices sold domestically beginning on January 1, 2013, with this excise tax now suspended from January 1, 2016 through December 31, 2017. We included the cost of MDET in cost of sales on the consolidated statements of income for the applicable reporting periods. The MDET tax expense amounted to \$0.9 million and \$2.9 million for the twelve and thirty-eight weeks ended October 18, 2015.

**Italian Medical Device Payback (“IMDP”).** The Italian Parliament introduced new rules for entities that supply goods and services to the Italian National Healthcare System. The new healthcare law is expected to impact the business and financial reporting of companies operating in the medical technology sector that sell medical devices in Italy. A key provision of the law is a ‘payback’ measure, requiring companies selling medical devices in Italy to make payments to the Italian state if medical device expenditures exceed regional maximum ceilings. Companies are required to make payments equal to a percentage of expenditures exceeding maximum regional caps. There is considerable uncertainty about how the law will operate and what the exact timeline is for finalization. Our current assessment of the IMDP involves significant judgment regarding the expected scope and actual implementation terms of the measure as the latter have not been clarified to date by Italian authorities. We account for the estimated cost of the IMDP as a deduction from revenue. The estimated cost of the IMDP amounted to \$0.2 million and \$0.7 million for the three and nine months ended September 30, 2016, respectively.

**Income Taxes.** LivaNova, organized as a public limited company under the laws of England and Wales, operates through various subsidiaries in a number of countries throughout the world. Our provision for income taxes is based on the tax laws and rates applicable in the jurisdictions in which we operate and earn income. We use significant judgment and estimates in accounting for our income taxes. We recognize deferred tax assets and liabilities for the anticipated future tax effects of temporary differences between the financial statements basis and the tax basis of our assets and liabilities, which are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Income tax expense compared to pre-tax income yields an effective tax rate.

**Segments.** Prior to the Mergers, Cyberonics had one operating and reportable segment. Upon completion of the Mergers, we reorganized our reporting structure and aligned our segments and the underlying divisions and businesses. We currently function in three operating segments; the historical Cyberonics operations are included in the Neuromodulation segment while the historical Sorin businesses comprise the Cardiac Surgery (“CS”) and the Cardiac Rhythm Management (“CRM”) segments. Refer to “Note 22. Geographic and Segment Information” for additional information.

### Note 3. Business Combination

On October 19, 2015, and pursuant to the terms of the Merger Agreement, Sorin merged with and into LivaNova, with LivaNova continuing as the surviving company, immediately followed by the merger of Merger Sub with and into Cyberonics, with Cyberonics continuing as the surviving company and as a wholly owned subsidiary of LivaNova. Following the completion of the Mergers, LivaNova became the holding company of the combined businesses of Cyberonics and Sorin, and LivaNova's ordinary shares were listed, under the ticker symbol "LIVN," on NASDAQ and admitted for listing on the standard segment of the U.K. Financial Authority's Official List and trading on the LSE.

The estimated fair value of the assets acquired and liabilities assumed in the Mergers, as adjusted in the table below, are based on information that became available during the measurement period. We recognized adjustments to the provisional amounts with a corresponding adjustment to goodwill in the reporting period in which the adjustments were determined.

The measurement period ended and the fair values of the Mergers were finalized by October 19, 2016.

Goodwill is calculated as the excess of the consideration transferred over the fair value of assets acquired and liabilities assumed. Goodwill represents growth opportunities and expected cost synergies of the combined company. We assigned goodwill arising from the Mergers to the Cardiac Surgery, Cardiac Rhythm Management and Neuromodulation reporting units. This assignment was made by taking into consideration market participant rates of return for each acquired reporting unit, Cardiac Surgery and Cardiac Rhythm Management, in order to assess their respective fair values. The remaining goodwill, allocated to Neuromodulation, which is the accounting acquirer's existing business unit, is supported by the synergies derived from the Mergers.

The following table summarizes the fair value of the assets acquired and liabilities assumed in the Mergers on October 19, 2015, including the measurement period adjustments recognized since the fair values were presented in our report on Form 10-K/T for the transitional period ended December 31, 2015 (in thousands):

	October 19, 2015	Adjustments	October 19, 2015 (as adjusted)
Total fair value of consideration transferred	\$ 1,589,083	\$ —	\$ 1,589,083
Estimated Fair Value of Assets Acquired and Liabilities Assumed:			
Cash and cash equivalents	12,495	—	12,495
Accounts receivable	224,466	—	224,466
Inventories	233,832	—	233,832
Other current assets	60,674	(84)	60,590
Property, plant and equipment	207,639	(1,121)	206,518
Intangible assets	688,729	—	688,729
Equity investments	67,059	(72)	66,987
Other assets	7,483	(1,328)	6,155
Deferred tax assets	135,370	(121,234)	14,136
Total assets acquired	1,637,747	(123,839)	1,513,908
Current portion of debt and other obligations	110,601	—	110,601
Other current liabilities	237,855	830	238,685
Long-term debt	128,458	—	128,458
Deferred tax liabilities	279,328	(148,640)	130,688
Other long-term liabilities	55,567	—	55,567
Total liabilities assumed	811,809	(147,810)	663,999
Goodwill	\$ 763,145	\$ (23,971)	\$ 739,174

The measurement period adjustments shown in the table above were recorded in the quarters ended June 30, 2016 and September 30, 2016, and reflect changes in the estimated fair values of certain assets and liabilities, primarily related to deferred income taxes as a result of new information on facts and circumstances that existed at the time of acquisition. Adjustments were made to deferred income taxes as a result of the allocation of fair value to the legal entities. In addition, deferred income taxes were aggregated and presented on a net basis by jurisdiction.

We recorded reductions or (increases) to the following expenses due to the measurement period adjustments that were recorded during the nine months ended September 30, 2016 (in thousands):

	<b>Three Months Ended September 30, 2016</b>	<b>Nine Months Ended September 30, 2016</b>
Amortization of intangible assets	\$ 193	\$ 1,844
Depreciation	1,539	2,790
Other costs	—	(40)
Income tax	(3,232)	(3,756)
Net	<u>\$ (1,500)</u>	<u>\$ 838</u>

The valuation of the intangible assets acquired in the Mergers and related amortization periods are as follows (in thousands, except years):

	<b>Valuation as of October 19, 2015</b>	<b>Amortization period in years</b>
Customer relationships	\$ 464,019	16-18
Developed technology	211,091	9-15
Sorin trade-name	13,619	4
	<u>\$ 688,729</u>	

#### *Proforma results of operations*

The following pro forma information presents the results of LivaNova as if the Mergers were consummated on April 26, 2014 and had been included in our consolidated statement of income (loss) for the twelve and thirty-eight weeks ended October 18, 2015 (in thousands, except per share data):

	<b>Twelve Weeks Ended October 18, 2015</b>	<b>Thirty-Eight Weeks Ended October 18, 2015</b>
Net Sales	\$ 295,099	\$ 901,493
Net Loss	(51,984)	(81,433)
Basic and diluted net loss per share	\$ (1.07)	\$ (1.68)

The unaudited pro forma combined results of operations for the twelve and thirty-eight weeks ended October 18, 2015 have been prepared by adjusting the historical results of Cyberonics for these same periods to include the historical results of Sorin. The unaudited pro forma information included for Sorin for the twelve weeks ended October 18, 2015 is based on the accounts of Sorin for the three months ended September 30, 2015 and the information for the thirty-eight weeks ended October 18, 2015 includes the accounts of Sorin for the nine months ended September 30, 2015.

The unaudited pro forma information reflects the effect of purchase accounting adjustments and the elimination of merger-related transactions expenses, among other items. This supplemental pro forma information has been prepared for comparative purposes and does not purport to be indicative of what would have occurred had the acquisition been made on April 26, 2014, and it is not indicative of any future results.

#### **Note 4. Reorganization Plans**

Our 2015 and 2016 Reorganization Plans (the "Plans") were initiated October 2015 and March 2016, respectively, in conjunction with the completion of the Mergers. These Plans are intended to leverage economies of scale, streamline distribution and logistics and strengthen operational and administrative effectiveness in order to reduce overall costs. Costs associated with these Plans were reported as restructuring expenses in the operating results of our consolidated statement of income (loss). We expect to complete these plans in the first half of fiscal year 2018. There were no restructuring expenses in the comparative prior year periods.

We estimate that the Plans will result in a net reduction of approximately 190 personnel of which 115 have occurred as of September 30, 2016. The Plans also include the closure of our R&D facility in Meylan, France and consolidation of its research and development ("R&D") capabilities into our Clamart, France facility.

The Reorganization Plans' accrual detail is as follows (in thousands):

	<b>Employee severance and other termination costs</b>	<b>Other</b>	<b>Total</b>
Balance as of December 31, 2015	\$ 6,919	\$ —	\$ 6,919
Restructuring charges	34,288	2,931	37,219
Cash payments	(21,066)	(591)	(21,657)
Balance as of September 30, 2016	<u>\$ 20,141</u>	<u>\$ 2,340</u>	<u>\$ 22,481</u>

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

	<b>Three Months Ended September 30, 2016</b>	<b>Nine Months Ended September 30, 2016</b>
Cardiac Surgery	\$ 916	\$ 5,878
Cardiac Rhythm Management	571	16,592
Neuromodulation	2,882	7,017
Other	12	7,732
Total	<u>\$ 4,381</u>	<u>\$ 37,219</u>

#### Note 5. Accounts Receivable and Allowance for Bad Debt

Accounts receivable, net, consisted of the following (in thousands):

	<b>September 30, 2016</b>	<b>December 31, 2015</b>
Trade receivables from third parties	\$ 291,620	\$ 274,005
Allowance for bad debt	(7,275)	(1,653)
	<u>\$ 284,345</u>	<u>\$ 272,352</u>

During the nine months ended September 30, 2016, we increased our allowance for bad debt primarily due to certain receivables in Greece whose probability of recoverability became doubtful during the quarter ended June 30, 2016.

#### Note 6. Inventories

Inventories consisted of the following (in thousands):

	<b>September 30, 2016</b>	<b>December 31, 2015</b>
Raw materials	\$ 52,658	\$ 52,482
Work-in-process	40,725	44,369
Finished goods	104,266	115,597
	<u>\$ 197,649</u>	<u>\$ 212,448</u>

The step-up in inventory basis of \$35.0 million that resulted from the Mergers was fully amortized as of June 30, 2016 and is recorded in cost of sales in the consolidated statement of net income (loss). Inventories are reported net of the provision for obsolescence, which totaled \$7.5 million and \$3.6 million at September 30, 2016 and December 31, 2015, respectively. The provision reflects normal obsolescence and inventory turnover while the comparatively lower provision as of December 31, 2015 was positively conditioned by Sorin inventories which were fair valued as of the acquisition date.

## Note 7. Property, Plant and Equipment (“PP&E”)

PP&E consisted of the following (in thousands):

	September 30, 2016	December 31, 2015
Land	\$ 16,321	\$ 15,662
Building and building improvements	101,898	82,014
Machinery equipment, software, furniture and fixtures	175,000	140,364
Capital investment-in-process	21,668	42,210
Other	7,896	8,634
Total	322,783	288,884
Accumulated depreciation	(77,663)	(44,297)
	\$ 245,120	\$ 244,587

Depreciation expense for LivaNova was \$10.7 million and \$30.2 million for the three and nine months ended September 30, 2016, respectively, and \$1.6 million and \$4.6 million for legacy Cyberonics for the twelve and thirty-eight weeks ended October 18, 2015, respectively. During the nine months ended September 30, 2016, the increases in our investments in PP&E were primarily due to costs associated with manufacturing and office facilities, R&D equipment, in addition to general infrastructure and information technology system improvements.

## Note 8. Goodwill and Intangible Assets

Detail of finite-lived and indefinite-lived intangible assets is as follows (in thousands):

	September 30, 2016	December 31, 2015
Finite-lived intangible assets:		
Developed technology	\$ 216,334	\$ 213,873
Customer relationships	461,966	444,472
Trademarks and trade names	13,393	13,030
Other intangible assets	2,104	11
Total	693,797	671,386
Accumulated amortization	(43,431)	(12,444)
Net	\$ 650,366	\$ 658,942
Indefinite-lived intangible assets:		
Goodwill	\$ 731,144	\$ 745,356

The amortization periods for our finite-lived intangible assets as of September 30, 2016:

	Minimum life in years	Maximum life in years
Developed technology	7	15
Customer relationships	16	18
Trademarks and trade names	4	4
Other intangible assets	5	10

The estimated future aggregate amortization of our finite-lived intangible assets remaining at September 30, 2016 is as follows (in thousands):

Year ending December 31,	
2016	\$ 11,845
2017	47,661
2018	47,665
2019	47,665
2020	47,664
Thereafter	447,866

Detail of goodwill movements by segment is as follows (in thousands):

	<u>Neuromodulation</u>	<u>Cardiac Surgery</u>	<u>Cardiac Rhythm Management</u>	<u>Total Goodwill</u>
Balance as of December 31, 2015	\$ 315,943	\$ 412,541	\$ 16,872	\$ 745,356
Measurement period adjustments, net	—	(25,728)	1,757	(23,971)
Effect of changes in currency exchange rates	—	10,040	(281)	9,759
Balance as of September 30, 2016	<u>\$ 315,943</u>	<u>\$ 396,853</u>	<u>\$ 18,348</u>	<u>\$ 731,144</u>

We assigned goodwill arising from the Mergers to the Cardiac Surgery, Cardiac Rhythm Management and Neuromodulation reporting units.

We test goodwill for impairment on an annual basis or when events or changes in circumstances indicate that a potential impairment exists. If our operating performance or our anticipated business outlook deteriorates, our reporting units' estimated fair value could decline below their carrying value, resulting in an impairment of goodwill. Likewise, if the market conditions or anticipated performance for our Cardiac Rhythm Management reporting unit deteriorates, it is possible that the estimated fair value of this reporting unit could be less than its carrying value when we perform our annual impairment analysis in our fourth quarter of 2016.

Factors that could have a negative impact on the fair value of our reporting units include, but are not limited to:

- Decreases in revenue as a result of the inability of our sales force to effectively market and promote our products;
- Increased competition, patent expirations or new technologies or treatments;
- Declines in anticipated growth rates;
- The outcome of litigation, legal proceedings, investigations or other claims resulting in significant cash outflows;
- Sustained decline in our stock price

Adverse changes in one or more of these factors could reduce the estimated fair value of our reporting unit below its carrying value in future periods.

## Note 9. Accrued Liabilities

Accrued liabilities consisted of the following (in thousands):

	September 30, 2016	December 31, 2015
Restructuring related expense	\$ 22,481	\$ 6,919
Derivatives	6,267	1,815
Provisions for agents, returns and other	7,490	7,199
Advances received on customer receivables	1,329	24,494
Product warranty obligations	2,124	2,119
Royalty costs	2,152	1,316
Clinical study costs	1,815	2,004
Insurance	114	2,566
Other	18,274	14,615
	<u>\$ 62,046</u>	<u>\$ 63,047</u>

## Note 10. Product Warranties

We include warranty obligations with current accrued liabilities in the consolidated balance sheet. Changes in the carrying amount of our warranty obligation consisted of the following (in thousands):

As of December 31, 2015	\$ 2,119
Product warranty accrual	247
Settlements	(266)
Effect of changes in currency exchange rates	24
As of September 30, 2016	<u>\$ 2,124</u>

## Note 11. Other Long-Term Liabilities

Other long-term liabilities consisted of the following (in thousands):

	September 30, 2016	December 31, 2015
Uncertain tax positions	\$ 13,358	\$ 13,048
Government grant deferred revenue	4,027	3,918
Earnout for contingent payments <sup>(1)</sup>	1,435	3,457
Unfavorable operating leases <sup>(2)</sup>	1,932	2,513
Financial derivatives <sup>(3)</sup>	1,929	1,793
Other	4,489	5,014
	<u>\$ 27,170</u>	<u>\$ 29,743</u>

- (1) The earnout for contingent payments represents contingent payments we assumed during the Mergers for two acquisitions completed by Sorin prior to the Mergers. The first acquisition, in September 2015, was of Cellplex PTY Ltd. in Australia; the second acquisition was of the commercial activities of a local distributor in Colombia. The contingent payments for the first acquisition are based on achievement of sales targets by the acquiree through June 30, 2018 and the contingent payments for the second acquisition are based on sales of cardiopulmonary disposable products and heart lung machines of the acquiree through December 2019. Refer to "Note 13. Fair Value Measurements."
- (2) The unfavorable operating leases represents the adjustment to recognize Sorin's future lease obligations at their estimated fair value in conjunction with the Mergers.
- (3) Financial derivatives represent forward interest rate swap contracts, which hedge our long-term European Investment Bank debt. Refer to "Note 15. Derivatives and Risk Management."

## Note 12. Investments

*Short-Term Investments.* As of December 31, 2015 our short-term investment consisted of \$7.0 million held-to-maturity commercial paper with maturities over three months but less than twelve months which were carried at cost plus accrued interest. The commercial paper matured during the quarter ended September 30, 2016, and was not rolled over, as a result, we had no short-term investments at quarter end.

*Cost-Method Investments.* Our cost-method investments are shown in long-term assets in the consolidated balance sheets and consist of our equity positions in the following privately-held companies (in thousands):

	September 30, 2016	December 31, 2015
ImThera Medical, Inc. - convertible preferred shares and warrants <sup>(1)</sup>	\$ 12,000	\$ 12,000
Rainbow Medical Ltd. <sup>(2)</sup>	3,950	3,847
MD Start II	560	—
Total	\$ 16,510	\$ 15,847

(1) ImThera Medical, Inc. is a private U.S. company developing a neurostimulation device system for the treatment of obstructive sleep apnea.

(2) Rainbow Medical Ltd. is a private Israeli venture capital company that seeds and grows companies developing medical devices in a diverse range of medical fields.

*Equity Method Investments.* Our equity-method investments are shown in long-term assets of our condensed consolidated balance sheets and consist of our equity position in the following entities (in thousands, except for percent ownership):

	% Ownership <sup>(1)</sup>	September 30, 2016	December 31, 2015
Caisson Interventional LLC <sup>(2)</sup>	49.1%	\$ 17,629	\$ 13,712
Highlife S.A.S. <sup>(2)</sup>	38.0%	7,002	8,363
MicroPort Sorin CRM (Shanghai) Co. Ltd.	49.0%	6,516	8,959
Respicardia, Inc. <sup>(3)</sup>	19.6%	19,761	30,586
Other		17	19
Total <sup>(4)</sup>		\$ 50,925	\$ 61,639

(1) Ownership percentages as of September 30, 2016.

(2) We have outstanding loans to Caisson Interventional LLC and to Highlife S.A.S that amount to \$9.1 million, which are included in Other Assets (long-term) on the consolidated balance sheet. We invested an additional \$7.5 million in Caisson Series B Preferred Units upon achievement of a previously agreed upon milestone.

(3) Respicardia is a privately funded U.S. company developing an implantable device designed to restore a more natural breathing pattern during sleep in patients with central sleep apnea ("CSA") by transvenously stimulating the phrenic nerve.

(4) The total difference between the carrying amount of the investments and the amount of underlying equity in the net assets of the investees was \$47.1 million at September 30, 2016.

*Respocardia.* During the quarter ended September 30, 2016, we declined to exercise or extend our option to purchase all of the issued and outstanding shares of Respocardia held by other investors as we preferred to continue as a minority investor instead of becoming a strategic acquirer as taken into consideration with our overall portfolio management program. Our analysis indicated that our carrying value in Respocardia might not be recoverable and the decrease in value of our investment was other than temporary. We estimated the fair value of our investment in Respocardia using information about past events, current conditions, and forecasts and an estimate of future cash flows. The estimated fair value was below our carrying cost and we impaired our investment in Respocardia by \$9.2 million, which essentially represents the purchase option's carrying value on the date we declined to exercise our option. This loss is included in Losses from Equity Method Investments in the consolidated statement of income (loss). In addition, during the quarter ended September 30, 2016, we started the process that will result in the cancellation of our distributor agreement with Respocardia in the fourth quarter ending December 31, 2016. The distributor agreement is a key component in the determination of whether our influence over Respocardia is significant. We accounted for Respocardia as an equity method investment through September 30, 2016 and will reevaluate our accounting method as of the date of the complete cancellation of the distributor agreement.

*Caisson.* In July 2016, we invested \$7.5 million in Caisson Series B Preferred Units upon their achievement of a previously agreed upon milestone. This investment raised our interest in Caisson by 5.4% to 49.1%. There were no other changes with respect of our interest in, and control of, Caisson, therefore we continue to account for this investment under the equity method of accounting.

We adjusted the carrying amount of our equity-method investments for our share of the investees' losses and amortization of basis differences in the amount of \$3.9 million and \$10.1 million during the three and nine months ended September 30, 2016, respectively. In addition, we adjusted the carrying amount of certain of our equity-method investments for foreign currency translation gains of \$0.3 million and \$1.4 million during the three and nine months ended September 30, 2016, respectively, which are reflected in the consolidated statements of other comprehensive income (loss). Our share of the investee losses, the amortization of basis differences and the impairment of Respocardia were reflected in "Losses from equity method investments" in the consolidated statements of income (loss).

*Other Assets.* "Other assets" in the long-term section of the consolidated balance sheet includes \$136.8 million in deferred tax expense related to the inter-company sale of intangible assets which is discussed further in "Note 20. Income Taxes". Other assets also include the cash surrender value of company-owned life insurance policies, which are based on the fair values in a mutual fund portfolio, amounting to \$1.8 million and \$1.8 million at September 30, 2016 and December 31, 2015, respectively.

### **Note 13. Fair Value Measurements**

Fair value is defined as the exit price, or the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The authoritative guidance for fair value measurements establishes a three-tier fair value hierarchy, categorizing the inputs used to measure fair value. The hierarchy can be described as follows:

*Level 1.* Observable inputs such as quoted prices in active markets.

*Level 2.* Inputs other than the quoted prices in active markets that are observable either directly or indirectly. To measure the fair value of its derivative transactions (transactions to hedge exchange risk and interest rate risk), we calculate the mark-to-market of each transaction using prices quoted in active markets (e.g., the spot exchange rate of a currency for forward exchange transactions) and observable market inputs processed for the measurement (e.g., the fair value of an interest rate swap using the interest rate curve), or the measurement of an exchange rate option (with the processing of listed prices and observable variables such as volatility). For all level 2 valuations, we use the information provided by a third-party as a source for obtaining quoted observable prices and to process market variables.

*Level 3.* Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions. When a determination is made to classify an asset or liability within Level 3, the determination is based upon the significance of the unobservable inputs to the overall fair value measurement. The fair value of assets using Level 3 input are based on our own judgments about the assumptions that market participants would use in pricing the asset and on observable market data, when available. We generally consider: (a) sale prices for similar assets, (b) discounted estimated future cash flows using an appropriate discount rate and/or (c) estimated replacement cost.

We review the fair value hierarchy classification on a quarterly basis. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain securities within the fair value hierarchy. There were no transfers between Level 1, Level 2, or Level 3 during the nine months ended September 30, 2016 or the thirty-eight weeks ended October 18, 2015.

*Assets and Liabilities That Are Measured at Fair Value on a Recurring Basis*

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

	Fair Value as of September 30, 2016	Fair Value Measurements Using Inputs Considered as:		
		Level 1	Level 2	Level 3
Assets:				
Derivative Assets - freestanding hedges (FX)	\$ 1,249	\$ —	\$ 1,249	\$ —
Total assets	\$ 1,249	\$ —	\$ 1,249	\$ —
Liabilities:				
Derivative Liabilities - designated as cash flow hedges (FX)	\$ 3,943	\$ —	\$ 3,943	\$ —
Derivative Liabilities - designated as cash flow hedges (interest rate swaps)	2,994	—	2,994	—
Derivative Liabilities - freestanding hedges (FX)	1,259	—	1,259	—
Earnout for contingent payments <sup>(1)</sup>	1,435	—	—	1,435
Total Liabilities	\$ 9,631	\$ —	\$ 8,196	\$ 1,435

	Fair Value as of December 31, 2015	Fair Value Measurements Using Inputs Considered as:		
		Level 1	Level 2	Level 3
Assets:				
Derivative Assets - designated as cash flow hedges (FX)	\$ 839	\$ —	\$ 839	\$ —
Total Assets	\$ 839	\$ —	\$ 839	\$ —
Liabilities:				
Derivative Liabilities - designated as cash flow hedges (interest rate swaps)	\$ 2,876	\$ —	\$ 2,876	\$ —
Derivative Liabilities - freestanding hedges (interest rate swaps)	24	—	24	—
Derivative Liabilities - freestanding hedges (FX)	1,547	—	1,547	—
Earnout for contingent payments <sup>(1)</sup>	3,457	—	—	3,457
Total Liabilities	\$ 7,904	\$ —	\$ 4,447	\$ 3,457

(1) This contingent payment arose as a result of acquisitions by Sorin, prior to the Mergers, see “Note 11. Other Long-Term Liabilities” for further information.

*Assets and Liabilities that are Measured at Fair Value on a Nonrecurring Basis*

Our investment in entities accounted for under the cost-method and the equity method have no quoted market prices. These investments and our non-financial assets such as: goodwill, intangible assets, and PP&E, are remeasured at fair value if there is an indication of impairment and recorded at fair value only when the impairment is recognized. We classify the measurement input for these assets as Level 3 inputs within the fair value hierarchy.

During the quarter ended September 30, 2016, we recorded a \$9.2 million impairment of our equity-method investment in Respicardia, Inc. Refer to “Note 12. Investments” for further information.

During the thirty-eight weeks ended October 18, 2015, we fully impaired certain finite-lived intangible assets and PP&E for a loss of \$0.4 million and \$0.6 million, respectively, which was primarily related to R&D projects that no longer factored into our future product plans.

*Short-Term Financial Instruments Not Measured at Fair Value*

The carrying values of our cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities approximate their fair values due to the short-term nature of these items. The balance of our investments in short-term securities consisted of commercial paper carried at cost plus accrued interest which approximates its fair value. Refer to “Note 12. Investments” for further information.

The carrying value of our long-term debt including the short-term portion, as of September 30, 2016, was \$113.0 million which we believe approximates fair value.

**Note 14. Financing Arrangements**

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

	September 30, 2016	December 31, 2015	Maturity	Interest Rate
European Investment Bank <sup>(1)</sup>	\$ 92,925	\$ 99,426	June 2021	0.98%
Banca del Mezzogiorno <sup>(2)</sup>	8,170	8,851	December 2019	0.50%
Mediocredito Italiano	7,278	—	December 2023	0.50%
Bpifrance (ex-Oséo) <sup>(3)</sup>	2,190	2,621	October 2019	2.58%
Novalia SA (Vallonie) <sup>(4)</sup>	844	1,192	March 2020 - June 2033	0.00% - 3.42%
Mediocredito Italiano - mortgages <sup>(5)</sup>	846	944	September 2021-2026	0.87% - 1.37%
Mediocredito Italiano - Intesa Sanpaolo	719	—	December 2023	0.50% - 3.07%
Total long-term facilities	112,972	113,034		
Less current portion of long-term debt	22,034	21,243		
Total long-term debt	<u>\$ 90,938</u>	<u>\$ 91,791</u>		

- (1) In July 2014, Sorin obtained a European Investment Bank (“EIB”) loan to support product development projects in Italy and France for the Cardiac Surgery (the “CS”) and Cardiac Rhythm Management (the “CRM”) Business Units, and in addition, for the support of New Ventures therapeutic solutions aimed at treating heart failure and mitral valve regurgitation. The interest rate for the EIB loan is reset by the lender each quarter based on the Euribor. Interest payments are quarterly and principal payments are at six months. The variable interest rate for this debt was hedged with interest rate swap agreements. Refer to “Note 15. Derivatives and Risk Management.”
- (2) In January 2015, Sorin obtained loans to support R&D projects as a part of the Large Strategic Project program of the Italian Ministry of Education, Universities and Research. One loan is subsidized by Cassa Depositi e Prestiti, at a fixed rate of 0.5%, and a second loan provided by GE Capital Interbanca, at a floating interest rate of the 6-month Euribor rate plus 3.3%.
- (3) In 2012, Sorin obtained a loan with Bpifrance, a French government entity that provides financial support for R&D.
- (4) In 2010, Sorin obtained loans, at various fixed interest rates, from Novalia SA, a finance company in the Wallonia Region in Belgium, to support several R&D projects.
- (5) In 2014, Sorin assumed real estate mortgage loans with the acquisition of the cannulae business. The loans are due to Mediocredito Italiano and are secured by a mortgage on our building located at our Cantù manufacturing site in Italy.

During the quarter, we entered into two term loans as part of the Fondo Innovazione Tecnologica program implemented by the Italian Ministry of Education, University and Research through Mediocredito Italiano Bank. The first loan, has a fixed interest rate of 0.50% per annum, with principal and interest payments due half yearly, starting December 31, 2016 and ending December 31, 2023. The second loan has a floating interest rate using the six month Euribor rate plus 3.30%, with principal and accumulated interest due half yearly starting June 30, 2021 and ending December 31, 2023.

The outstanding principal amount of short-term debt (revolving credit agreements) consisted of the following (in thousands, except interest rates):

	September 30, 2016	December 31, 2015	Interest Rate
Intesa San Paolo Bank	\$ 7,813	\$ 20,630	0.300%
BNL BNP Paribas	3,348	18,459	0.250%
Unicredit Banca	12,277	15,201	0.194%
BNP Paribas (Brazil)	3,164	2,225	14.13%
French Government	2,088	2,030	—
Banco de Bogota	802	—	2.95%
Other short-term facilities	2,091	2,725	
Total short-term facilities	31,583	61,270	
Current portion of long-term debt	22,034	21,243	
Total current debt	53,617	82,513	
Total debt	\$ 144,555	\$ 174,304	

### Note 15. Derivatives and Risk Management

Due to the global nature of our operations, we are exposed to foreign currency exchange rate fluctuations. In addition, due to certain loans with floating interest rates, we are also subject to the impact of changes in interest rates on our interest payments. We enter into foreign currency exchange rate (“FX”) forward contracts and interest rate swap contracts to reduce the impact of foreign currency rate and interest rate fluctuations on net revenues and cash flow. We measure all outstanding derivatives each period end at fair value and report the fair value as either financial assets or liabilities in the consolidated balance sheets. We do not enter into derivative contracts for speculative purposes. Derivatives that are not designated as hedging instruments are referred to as freestanding derivatives with changes in fair value included in earnings. If a derivative is designated as a hedging instrument and qualifies for hedge accounting then, depending on hedge effectiveness, we account for changes in the fair value of the derivative either immediately in earnings, for the ineffective portion, or in other comprehensive income for the effective portion. Accumulated hedge gains and losses in other comprehensive income are transferred to earnings upon settlement, termination or cancellation of the hedge contract. We measure hedge effectiveness each quarter end and if a derivative that qualified for hedge accounting is later determined to be ineffective, in whole or in part, due to changes in the underlying hedged transaction, the fair value of the portion of the derivative determined to be ineffective will be recognized as a gain or loss in earnings for the applicable period.

#### *Freestanding Derivative Foreign Currency Forward Contracts*

The gross notional amount of derivative FX forward contracts, not designated as hedging instruments, outstanding at September 30, 2016 and December 31, 2015 was \$422.4 million and \$254.4 million, respectively. These contracts are FX forward contracts designed to offset the FX effects in earnings of intercompany loans denominated in a variety of foreign currencies versus the euro, which settle monthly or quarterly, and are renewed or not in accordance with the underlying outstanding intercompany loan amounts.

The amount and location of the net gains (losses) in the condensed consolidated statements of income (loss) related to open and settled freestanding FX contracts (in thousands):

Derivatives Not Designated as Hedging Instruments	Location of gains / (losses) in the statement of net income (loss)	Three Months Ended September 30, 2016	Nine Months Ended September 30, 2016
FX forward contracts <sup>(1)</sup>	Foreign exchange and other	\$ (1,802)	\$ 428

(1) There were no derivative FX contracts opened or settled during the thirty-eight weeks ended October 18, 2015.

## Cash Flow Hedges

### Foreign Currency Risk

We utilize foreign currency exchange rate (“FX”) derivative contracts designed to hedge the variability of cash flows associated with our 12 month forecast of revenues denominated in British Pound and Japanese Yen. These contracts are settled when the earnings process has completed and the receivables collected. These contracts are designated as cash flow hedges.

There was no hedge ineffectiveness and there were no components of the FX derivative contracts excluded in the measurement of hedge effectiveness during the nine months ended September 30, 2016.

During the nine months ended September 30, 2016, we discontinued and settled certain of our FX derivative contracts due to changes in our foreign currency revenue forecast that resulted in a gain of \$0.2 million reclassified to earnings from accumulated other comprehensive income.

### Interest Rate Risk

In July 2014, Sorin entered into a European Investment Bank (“EIB”) long-term loan agreement that matures in June 2021 with variable interest payments due quarterly based on the Euribor 3 month floating interest rate. To minimize the impact of changes in the interest rate we entered into an interest rate swap agreement program to swap the EIB floating-rate interest payments for fixed-rate interest payments. The interest rate swap contracts qualify for, and are designated as, cash flow hedges.

There was no interest rate swap hedge ineffectiveness or component of the swap contract excluded in the measurement of hedge effectiveness during the nine months ended September 30, 2016.

The notional amount of interest rate swap contracts designated as cash flow hedges is as follows (in thousands):

<b>Notional amounts:</b>	<b>September 30, 2016</b>		<b>December 31, 2015</b>	
Foreign currency exchange rate contracts	\$	90,087	\$	66,900
Interest rate swap contracts		74,407		79,625
<b>Total</b>	<b>\$</b>	<b>164,494</b>	<b>\$</b>	<b>146,525</b>

After-tax net gain (loss) associated with open FX cash flow hedging contracts recorded in the ending balance of AOCI and the net amount expected to be reclassified to earnings in the next 12 months:

	<b>September 30, 2016</b>		<b>Net amount expected to be reclassified to earnings in next 12 months</b>	
Foreign currency exchange rate contracts	\$	(3,003)	\$	(3,003)
Interest rate swap contracts		180		38
<b>Total</b>	<b>\$</b>	<b>(2,823)</b>	<b>\$</b>	<b>(2,965)</b>

There were no FX or interest rate swap derivative contracts outstanding for the thirty-eight weeks ended October 18, 2015.

Gains (losses) posted to other comprehensive income (“OCI”) and the amount reclassified to earnings for derivative contracts designated as cash flow hedges is as follows (in thousands):

Description of derivative contract	Location in earnings of reclassified gain or loss	Three Months Ended September 30, 2016		Nine Months Ended September 30, 2016	
		Gains (Losses) Recognized in OCI	Gains (Losses) Reclassified from OCI to Earnings:	Gains (Losses) Recognized in OCI	Gains (Losses) Reclassified from OCI to Earnings:
FX derivative contracts	Foreign Exchange and Other	\$ 2,535	\$ 2,795	\$ (5,932)	\$ 2,943
FX derivative contracts	SG&A	—	(1,876)	—	(3,437)
Interest rate swap contracts	Interest expense	263	(163)	(38)	(252)
Total		\$ 2,798	\$ 756	\$ (5,970)	\$ (746)

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

September 30, 2016	Asset Derivatives		Liability Derivatives	
	Balance Sheet Location	Fair Value (1)	Balance Sheet Location	Fair Value (1)
<b>Derivatives designated as hedging instruments</b>				
Interest rate contracts	Prepaid expenses and other current assets	\$ —	Accrued liabilities	\$ 1,065
Interest rate contracts	Other assets (long term)	—	Other long-term liabilities	1,929
Foreign currency exchange rate contracts	Prepaid expenses and other current assets	—	Accrued liabilities	3,943
Total derivatives designated as hedging instruments		—		6,937
<b>Derivatives not designated as hedging instruments</b>				
Foreign currency exchange rate contracts	Prepaid expenses and other current assets	1,249	Accrued liabilities	1,259
Total derivatives not designated as hedging instruments		1,249		1,259
Total derivatives		\$ 1,249		\$ 8,196

December 31, 2015	Asset Derivatives		Liability Derivatives	
Derivatives designated as hedging instruments	Balance Sheet Location	Fair Value <sup>(1)</sup>	Balance Sheet Location	Fair Value <sup>(1)</sup>
Interest rate contracts	Prepaid expenses and other current assets	\$ —	Accrued liabilities	\$ 1,083
Interest rate contracts	Other assets (long term)	—	Other long-term liabilities	1,793
Foreign currency exchange rate contracts	Prepaid expenses and other current assets	839	Accrued liabilities	—
Total derivatives designated as hedging instruments		839		2,876
<b>Derivatives not designated as hedging instruments</b>				
Interest rate contracts	Prepaid expenses and other current assets	—	Accrued liabilities	24
Foreign currency exchange rate contracts	Prepaid expenses and other current assets	—	Accrued liabilities	1,547
Total derivatives not designated as hedging instruments		—		1,571
Total derivatives		\$ 839		\$ 4,447

(1) For the classification of input used to evaluate the fair value of our derivatives, refer to “Note 13. Fair Value Measurements.”

## Note 16. Commitments and Contingencies

### 3T Heater Cooler

**FDA Warning Letter.** On December 31, 2015, LivaNova received a Warning Letter (the “Warning Letter”) dated December 29, 2015 from the U.S. Food and Drug Administration (“FDA”) alleging certain violations of FDA regulations applicable to medical device manufacturers at the Company’s Munich, Germany and Arvada, Colorado facilities.

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

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

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

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

The Warning Letter had no impact on our consolidated financial position, results of operations or cash flows in our fiscal year ended December 31, 2015, and the impact on our consolidated financial position, results of operations or cash flows for the nine months ended September 30, 2016 was not material. Although we have started to see an impact to sales outside the U.S., we continue to believe that the Warning Letter and the FDA's concerns will be resolved without a material impact on our consolidated financial position, results of operations or cash flows for our fiscal year 2016.

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

Also on October 13, 2016, the Company issued a Field Safety Notice Update for US users of 3T heater-cooler devices to proactively and voluntarily contact facilities to facilitate implementation of the CDC and FDA recommendations. Discussions regarding the execution of the Field Safety Notice Update continue with FDA. Pending the outcome of those discussions, the Company is currently unable to determine the outcome or impact of the CDC and FDA safety communications on its future revenues, results of operations, earnings, cash flows or financial condition.

***Baker, Miller et al v. LivaNova PLC.*** On February 12, 2016, LivaNova was alerted that a class action complaint had been filed in the U.S. District Court for the Middle District of Pennsylvania with respect to the Company's 3T Heater Cooler devices, naming as evidence, in part, the Warning Letter issued by the FDA in December 2015. The named plaintiffs to the complaint are two individuals who underwent open heart surgeries at WellSpan York Hospital and Penn State Milton S. Hershey Medical Center in 2015, and the complaint alleges that: (i) patients were exposed to a harmful form of bacteria, known as nontuberculous mycobacterium ("NTM"), from LivaNova's 3T Heater Cooler devices; and (ii) LivaNova knew or should have known that design or manufacturing defects in 3T Heater Cooler devices can lead to NTM bacterial colonization, regardless of the cleaning and disinfection procedures used (and recommended by the Company). Named plaintiffs seek to certify a class of plaintiffs consisting of all Pennsylvania residents who underwent open heart surgery at WellSpan York Hospital and Penn State Milton S. Hershey Medical Center between 2011 and 2015 and who are currently asymptomatic for NTM infection (approximately 3,600 patients).

The putative class action, which has not been certified, seeks: (i) declaratory relief finding the 3T Heater Cooler devices are defective and unsafe for intended uses; (ii) medical monitoring; (iii) general damages; and (iv) attorneys' fees. On March 21, 2016, the plaintiffs filed a First Amended Complaint adding Sorin Group Deutschland GmbH and Sorin Group USA, Inc. as defendants. On September 29, 2016 the Court dismissed LivaNova PLC from the case, and on October 11, 2016, the Court denied the Company's motion to dismiss Sorin Group Deutschland GmbH and Sorin Group USA, Inc. from the lawsuit.

The Company has recently been served with additional similar lawsuits related to surgical cases in which a 3T Heater Cooler device was allegedly used. Six complaints have been filed in Pennsylvania State Court in York, PA (five against the Company and Wellspan York Hospital, and one solely against the Company, all related to surgical cases at York Hospital), one complaint has been filed in Pennsylvania State Court in Dauphin County, PA against the Company and Milton S. Hershey Medical Center related to a surgical case at Hershey Medical Center and one complaint has been filed in Pennsylvania State Court against the Company and University of Pennsylvania related to a surgical case at Penn Presbyterian Hospital. Nine complaints have been filed in the U.S. District Court for the District of South Carolina related to surgical cases at Greenville Health System Hospital in Greenville, SC. One additional case has been filed against the Company in the U.S. District Court for the Southern District of Iowa related to a surgical case at the University of Iowa Hospital. Finally, on October 30, 2016, the Company learned of a class action petition brought against the Montreal Heart Institute and LivaNova PLC in the Province of Quebec, Canada related to surgical cases at the Montreal Heart Institute. The Company has not yet been served with the complaint in this case.

At LivaNova, patient safety is of the utmost importance, and significant resources are dedicated to the delivery of safe, high-quality products. We intend to vigorously defend each of these claims. Given the early stage of this matters, we cannot, however, give any assurances that additional legal proceedings making the same or similar allegations will not be filed against LivaNova PLC or one of its subsidiaries, nor that the resolution of these complaints or other related litigation in connection therewith will not have a material adverse effect on our business, results of operations, financial condition and/or liquidity.

## Other Matters

**SNIA Litigation.** Sorin S.p.A. was created as a result of a spin-off (the “Sorin spin-off”) from SNIA S.p.A. (“SNIA”). The Sorin spin-off, which spun off SNIA’s medical technology division, became effective on January 2, 2004. Pursuant to the Italian Civil Code, in a spin-off transaction, the parent and the spun-off company can be held jointly liable up to the actual value of the shareholders’ equity conveyed or received (we estimate that the value of the shareholders’ equity received was approximately €573 million) for certain indebtedness or liabilities of the pre-spin-off company:

- for “debt” (*debiti*) of the pre-spin-off company that existed at the time of the spin-off (this joint liability is secondary in nature and, consequently, arises only when such indebtedness is not satisfied by the company owing such indebtedness);
- for “liabilities” (*elementi del passivo*) whose allocation between the parties to the spin-off cannot be determined based on the spin-off plan.

Sorin believes and has argued before the relevant fora that Sorin is not jointly liable with SNIA for its alleged SNIA debts and liabilities. Specifically, between 1906 and 2010, SNIA’s subsidiaries Caffaro Chimica S.r.l. and Caffaro S.r.l. and their predecessors (the “SNIA Subsidiaries”), conducted certain chemical operations (the “Caffaro Chemical Operations”), at sites in Torviscosa, Brescia and Colleferro, Italy (the “Caffaro Chemical Sites”). These activities allegedly resulted in substantial and widely dispersed contamination of soil, water and ground water caused by a variety of hazardous substances released at the Caffaro Chemical Sites. In 2009 and 2010, SNIA and the SNIA Subsidiaries filed for insolvency. In connection with SNIA’s Italian insolvency proceedings, the Italian Ministry of the Environment and the Protection of Land and Sea (the “Italian Ministry of the Environment”), sought compensation from SNIA in an aggregate amount of €3.4 billion for remediation costs relating to the environmental damage at the Caffaro Chemical Sites allegedly caused by the Caffaro Chemical Operations. The amount was based on certain clean-up activities and precautionary measures set forth in three technical reports prepared by ISPRA, the technical agency of the Ministry of Environment. In addition to disputing liability, the Company also disputes the amount being claimed and the basis for its estimation by Italian authorities, and that issue also remains in dispute. No final remediation plan has been approved at any time by the Italian authorities.

In September 2011, the Bankruptcy Court of Udine, and in July 2014, the Bankruptcy Court of Milan each held (in proceedings to which our Company is not part) that the Italian Ministry of the Environment and other Italian government agencies (the “Public Administrations”) were not creditors of either SNIA or its SNIA Subsidiaries in connection with their claims in the context of their Italian insolvency proceedings. LivaNova (as the successor to Sorin in the litigation) believes these findings are and will be influential (although not formally binding) upon other Italian courts, including civil courts. Public Administrations have appealed both decisions in those insolvency proceedings: in January 2016 the Court of Udine rejected the appeal brought by the Italian Public Administrations. The Public Administrations have appealed that second loss in pending proceedings before the Italian Supreme Court. The appeal by the Public Administrations before the Court of Milan remains pending.

In January 2012, SNIA filed a civil action against Sorin in the Civil Court of Milan asserting provisions of the Italian Civil Code relating to potential joint liability of a parent and a spun-off company in the context of a spin-off, as described above. Those proceedings seek to determine Sorin’s joint liability with SNIA for damages allegedly related to the Caffaro Chemical Operations (as described below). SNIA’s civil action against Sorin also named the Public Administrations Italian Ministry of the Environment and other Italian government agencies, as defendants, in order to have them bound to the final ruling. The Public Administrations that had also sought compensation from SNIA for alleged environmental damage subsequently counterclaimed against Sorin, seeking to have Sorin declared jointly liable towards those Public Administrations alongside SNIA, and on the same legal basis. SNIA and the Public Administrations also requested the court to declare inapplicable to the Sorin spin-off the cap on potential joint liability of parties to a spin-off otherwise provided for by the Italian Civil Code. The cap, if applied, would limit any joint liability to the actual value of the shareholders’ equity received. The Public Administrations have argued before the court that the Sorin spin-off was planned prior to the date such caps were enacted under the Italian Civil Code (although executed after such caps were introduced into Italian law) and should therefore not be applied to the Sorin spin-off.

Sorin has vigorously contested all of SNIA's claims against Sorin as well as those claims brought by the Public Administrations. A favorable decision pertaining to the case was delivered in Judgment No. 4101/2016 on April 1, 2016 (the "Decision"). In its Decision, the Court of Milan dismissed all legal actions of SNIA and of the Public Administrations against Sorin (now LivaNova), further requiring the Public Administrations to pay Sorin €300,000, as legal fees (of which €50,000 jointly with SNIA).

On June 21, 2016, the Public Administrations filed an appeal against the above decision before the Court of Appeal of Milan. To date SNIA has not filed an appeal in this case. The first hearing of the appeal proceedings was scheduled for November 22, 2016; the Court of Appeals afterwards adjourned the first hearing to December 20, 2016.

LivaNova (as successor to Sorin in the litigation) continues to believe that the risk of material loss relating to the SNIA litigation is not probable as a result of the reasoning contained in, and legal conclusions reached in, the recent court decisions described above. We also believe that the amount of potential losses relating to the SNIA litigation is, in any event, not estimable given that the underlying damages, related remediation costs, allocation and apportionment of any such responsibility, which party is responsible for which time period, all remain issues in dispute and that no final decision on a remediation plan has been approved. As a result, LivaNova has not made any accrual in connection with the SNIA litigation.

Pursuant to European Union, United Kingdom and Italian cross-border merger regulations applicable to the Mergers, legacy Sorin liabilities, including any potential liabilities arising from the claims against Sorin relating to the SNIA litigation, are assumed by LivaNova as successor to Sorin. Although LivaNova believes the claims against Sorin in connection with the SNIA litigation are without merit and continues to contest them vigorously, there can be no assurance as to the outcome. A finding during any appeal or novel proceedings that Sorin or LivaNova is liable for relating to the environmental damage at the Caffaro Chemical Sites or its alleged cause(s) could have a material adverse effect on our consolidated financial position, results of operations or cash flows.

**Environmental Remediation Order.** On July 28, 2015, Sorin and other direct and indirect shareholders of SNIA received an administrative order from the Italian Ministry of the Environment (the "Environmental Remediation Order"), directing them to promptly commence environmental remediation efforts at the Caffaro Chemical Sites (as described above). LivaNova believes that the Environmental Remediation Order is without merit. LivaNova (as successor to Sorin) believes that it should not be liable for damages relating to the Caffaro Chemical Operations pursuant to the Italian statute on which the Environmental Remediation Order relies because, inter alia, the statute does not apply to activities occurring prior to 2006, the date on which the statute was enacted (Sorin was spun off from SNIA in 2004). Additionally, LivaNova believes that Sorin should not be subject to the Environmental Remediation Order because Italian environmental regulations only permit such an order to be imposed on an "operator" of a remediation site, and Sorin has never operated any activity of whatsoever nature at any of the industrial sites concerned and, further, has never been identified in any legal proceeding as an operator at any of these Caffaro Chemical Sites, and could not and in fact did not cause any environmental damage at any of the Caffaro Chemical Sites.

Accordingly, LivaNova (as successor to Sorin) alongside other parties, challenged the Environmental Remediation Order before the Administrative Court of Lazio in Rome (the "TAR"). A hearing was held on February 3, 2016.

On March 21, 2016 the TAR issued several judgments, annulling the Environmental Remediation Order, one for each of the addressees of the Environmental Remediation Order, including LivaNova. Those judgments were based on the fact that (i) the Environmental Remediation Order lacks any detailed analysis of the causal link between the alleged damage and the activities of the Company, which is a pre-condition to imposition of the measures proposed in the Environmental Remediation Order, (ii) the situation of the Caffaro site does not require urgent safety measures, because no new pollution events have occurred and no additional information/evidence of a situation of contamination exists and (iii) the Environmental Remediation Order was not enacted using the correct legal basis, and in any event the Ministry failed to verify the legal elements that could have led to a conclusion of legal responsibility of the addressees of the Environmental Remediation Order.

LivaNova has welcomed the decisions. The TAR decisions described above have nonetheless been appealed by the Ministry before the Council of State. No information on the timing of the first hearing of this appeal is presently available.

**Andrew Hagerty v. Cyberonics, Inc.** On December 5, 2013, the United States District Court for the District of Massachusetts (“District Court”) unsealed a qui tam action filed by former employee Andrew Hagerty against Cyberonics under the False Claims Act (the “False Claims Act”) and the false claims statutes of 28 different states and the District of Columbia (*United States of America et al ex rel. Andrew Hagerty v. Cyberonics, Inc.* Civil Action No. 1:13-cv-10214-FDS). The False Claims Act prohibits the submission of a false claim or the making of a false record or statement to secure reimbursement from, or limit reimbursement to, a government-sponsored program. A “qui tam” action is a lawsuit brought by a private individual, known as a relator, purporting to act on behalf of the government. The action is filed under seal, and the government, after reviewing and investigating the allegations, may elect to participate, or intervene, in the lawsuit. Typically, following the government’s election, the qui tam action is unsealed.

Previously, in August 2012, Mr. Hagerty filed a related lawsuit in the same court and then voluntarily dismissed that lawsuit immediately prior to filing this qui tam action. In addition to his claims for wrongful and retaliatory discharge stated in the first lawsuit, the qui tam lawsuit alleges that Cyberonics violated the False Claims Act and various state false claims statutes while marketing its VNS Therapy System, and seeks an unspecified amount consisting of treble damages, civil penalties, and attorneys’ fees and expenses.

In October 2013, the United States Department of Justice declined to intervene in the qui tam action, but reserved the right to do so in the future. In December 2013, the District Court unsealed the action. In April 2014, Cyberonics filed a motion to dismiss the qui tam complaint, alleging a number of deficiencies in the lawsuit. In May 2014, the relator filed a First Amended Complaint. Cyberonics filed another motion to dismiss in June 2014, and the parties completed their briefing on the motion in July 2014. On April 6, 2015, the District Court dismissed all claims filed by Andrew Hagerty under the False Claims Act, but did not dismiss the claims for wrongful and retaliatory discharge. On July 28, 2015, Cyberonics filed its answer to the surviving claims in Mr. Hagerty’s first Amended Complaint and asserted its demand for arbitration pursuant to Mr. Hagerty’s employment documents.

In August 2015, Mr. Hagerty filed a Motion Seeking Leave to file a Second Amended Complaint responding to certain deficiencies noted by the District Court when dismissing claims in his First Amended Complaint alleging that Cyberonics submitted, or caused the submission of false claims under the False Claims Act. On September 4, 2015, Cyberonics filed our Brief in Opposition to Hagerty’s Motion for Leave to file a Second Amended Complaint. Mr. Hagerty filed a Reply Brief in support of his Motion for Leave to file a Second Amended Complaint on September 11, 2015. On September 16, 2015, the District Court heard oral arguments on (a) Mr. Hagerty’s motion seeking to amend his complaint, and (b) Cyberonics’ pending motion demanding arbitration on the claims relating to wrongful and retaliatory discharge. On November 17, 2015, the District Court (1) denied Mr. Hagerty’s Motion for Leave to File a Second Amended Complaint (accordingly, the previously dismissed claims remain dismissed); (2) granted Cyberonics’ Motion to Compel Arbitration of the two remaining claims (for retaliatory discharge under the False Claims Act and for wrongful termination/retaliation under Massachusetts law); and (3) stayed the pending case (in order to consolidate all issues for appeal pending resolution of the arbitration). On or about February 22, 2016, Mr. Hagerty dismissed, without prejudice, his individual claims that were ordered to arbitration. Subsequently, on or about March 21, 2016, Mr. Hagerty filed an appeal of the previously dismissed FCA claims with the U.S. First Circuit Court of Appeals (“Appeals Court”). Both Mr. Hagerty and the Company filed written briefs with the Appeals Court and on September 30, 2016, the Company received notice that the Appeals Court scheduled oral arguments before it on November 8, 2016.

We believe that our commercial practices were and are in compliance with applicable legal standards, and we will continue to defend this case vigorously. We make no assurance as to the resources that will be needed to respond to these matters or the final outcome, and we cannot estimate a range of potential loss or damages.

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

The preliminary challenges filed for 2004, 2005 and 2006 were heard and all denied at the first jurisdictional level, and subsequently, the Company filed an appeal against the decisions in the belief that all the decisions are incorrect in their reasoning and radically flawed. The appeal submitted against the first-level decision for 2005 was rejected. The second-level decision, relating to the 2005 notice of assessment, was appealed to the Italian Supreme Court (Corte di Cassazione) where we argued that the assessment should be deemed null and void and illegitimate because of a false application of regulations. The

Court's decision is pending. The appeal we submitted against the first-level negative decision for 2004 assessment was accepted by the Commissione Tributaria Regionale di Bologna in June 2016, allowing our tax deduction. We expect the Italian Revenue Agency will file an appeal against this decision to the Supreme Court

In November 2012, the Internal Revenue Office served a notice of assessment for 2007 and, in July 2013, served a notice of assessment for 2008, wherein the Internal Revenue Office claimed an increase in taxable income due to a reduction (similar to the previous notices of assessment for 2004, 2005 and 2006) of the losses reported by Sorin Group Italia S.r.l. for the 2002, 2003 and 2004 tax periods and utilized in 2007 and 2008. Both notices of assessment were challenged within the statutory deadline. The Provincial Tax Court of Milan suspended the decision for 2007 until the litigation regarding years 2004, 2005 and 2006 are defined.

The total amount of losses in dispute is €62.6 million or \$71.3 million. At the time of the Cyberonics-Sorin merger, LivaNova carefully reassessed its exposure on this complex tax litigation, taking into account the recent general adverse trend to taxpayers on litigations with Italian tax authorities. Although the Company's defensive arguments are strong, the negative Court trend experienced so far by Sorin (four consecutive negative judgments received and one positive judgment received to date) as well as the fact of the ultimate outcome being dependent on the last possible Court level, i.e. the Italian Supreme Court, which is entitled to resolve only on procedural and legal aspects of the case but not on its substance, led LivaNova to leave unchanged (in euro) the previously recognized risk provision of \$18.9 million.

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

## **Note 17. Stockholders' Equity**

### *Share repurchase plans.*

On August 1, 2016, the Board of Directors ("BOD") authorized a share repurchase plan pursuant to an authority granted by shareholders at the 2016 annual general meeting held on June 15, 2016. The repurchase program authorized by the BOD is structured to enable us to buy back up to \$30 million of ordinary shares on NASDAQ in the period up to and including December 31, 2016 and an aggregate of \$150 million of ordinary shares (inclusive of the \$30 million of ordinary shares set out above) also on NASDAQ up to and including December 31, 2018. As of September 30, 2016, 212,860 shares had been repurchased under this plan totaling \$12.9 million at an average price per share of \$60.44. All the repurchased shares have been canceled and are no longer considered issued.

*Comprehensive income.*

The table below presents the change in each component of accumulated other comprehensive income (loss), net of tax and the reclassifications out of accumulated other comprehensive income into net earnings for the nine months ended September 30, 2016 and the thirty-eight weeks ended October 18, 2015 (in thousands):

	<b>Change in Unrealized Gain (Loss) on Cash Flow Hedging Derivatives</b>	<b>Foreign Currency Translation Adjustments Gain (Loss) <sup>(1)</sup></b>	<b>Total</b>
As of December 31, 2015	\$ 888	\$ (55,116)	\$ (54,228)
Other comprehensive income (loss) before reclassifications, before tax	(5,970)	32,598	26,628
Tax benefit (expense)	1,792	—	1,792
Other comprehensive income (loss) before reclassifications, net of tax	(4,178)	32,598	28,420
Reclassification of (gain)/loss from accumulated other comprehensive income, before tax	746	—	746
Tax effect	(279)	—	(279)
Reclassification of (gain)/loss from accumulated other comprehensive income, after tax	467	—	467
Net current-period other comprehensive income (loss), net of tax	(3,711)	32,598	28,887
<b>As of September 30, 2016</b>	<b>\$ (2,823)</b>	<b>\$ (22,518)</b>	<b>\$ (25,341)</b>
As of January 23, 2015	\$ —	\$ (2,924)	\$ (2,924)
Other comprehensive income (loss) before reclassifications, before tax	—	256	256
<b>As of October 18, 2015</b>	<b>\$ —</b>	<b>\$ (2,668)</b>	<b>\$ (2,668)</b>

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

**Note 18. Stock-Based Incentive Plans**

*Stock-Based Incentive Plans*

On October 16, 2015, the sole shareholder of LivaNova approved the adoption of the LivaNova 2015 Incentive Award Plan (the “2015 Plan”). The Plan became effective as of October 19, 2015. Incentive awards may be granted under the 2015 Plan in the form of stock options, stock appreciation rights, restricted stock, restricted stock units, other stock- and cash-based awards and dividend equivalents. As of September 30, 2016, there were approximately 7,135,639 shares available for future grants under the 2015 Plan.

### Stock-Based Compensation

Amounts of stock-based compensation recognized in the consolidated statement of income (loss), by expense category are as follows (in thousands):

	<b>Three Months Ended September 30, 2016</b>	<b>Twelve Weeks Ended October 18, 2015</b>	<b>Nine Months Ended September 30, 2016</b>	<b>Thirty-Eight Weeks Ended October 18, 2015</b>
Cost of goods sold	\$ 153	\$ 931	\$ 838	\$ 1,214
Selling, general and administrative	4,645	9,219	13,679	13,026
Research and development	223	5,531	782	7,041
Merger-related expense	(253)	—	276	—
<b>Total stock-based compensation expense</b>	<b>\$ 4,768</b>	<b>\$ 15,680</b>	<b>\$ 15,575</b>	<b>\$ 21,281</b>
Income tax benefit, related to awards, recognized in the consolidated statements of income	833	5,019	3,806	6,492
<b>Total expense, net of income tax benefit</b>	<b>\$ 3,935</b>	<b>\$ 10,661</b>	<b>\$ 11,769</b>	<b>\$ 14,789</b>

Amounts of stock-based compensation expense recognized in the consolidated statement of income (loss) by type of arrangement are as follows (in thousands):

	<b>Three Months Ended September 30, 2016</b>	<b>Twelve Weeks Ended October 18, 2015</b>	<b>Nine Months Ended September 30, 2016</b>	<b>Thirty-Eight Weeks Ended October 18, 2015</b>
Service-based stock option awards and SAR's	\$ 1,983	\$ 7,191	\$ 6,567	\$ 9,401
Service-based restricted and restricted stock unit awards	2,517	6,282	8,419	9,099
Performance-based restricted stock and restricted stock unit awards	268	2,207	589	2,781
<b>Total stock-based compensation expense</b>	<b>\$ 4,768</b>	<b>\$ 15,680</b>	<b>\$ 15,575</b>	<b>\$ 21,281</b>

## Note 19. Employee Retirement Benefit Plans

We sponsor various retirement plans. Prior to the Mergers, we did not sponsor any defined benefit pension plans. As a result of the Mergers, we assumed several defined benefit pension plans covering certain employees in the U.S., Italy, Germany, Japan and France. In the U.S., we assumed a frozen cash balance retirement plan that is a contributory, defined benefit plan that describes the benefit in terms of a stated account balance, which is partially dependent on the employer's promised interest rate. In Italy and France, we assumed a severance pay defined benefit plan that obligates the employer to compensate employees with severance pay in case of resignation, dismissal or retirement. In other jurisdictions we assumed non-contributory, defined benefit plans designated to provide a guaranteed minimum retirement benefits to eligible employees. We carried forward Cyberonics' defined contribution plans after the Mergers, which consisted of the Cyberonics, Inc. Employee Retirement Savings Plan, that qualifies under Section 401(k) of the IRC, covering U.S. employees, the Cyberonics, Inc. Non-Qualified Deferred Compensation Plan (the "Deferred Compensation") covering certain U.S. middle and senior management and the Belgium Defined Contribution Pension Plan for Cyberonics' Belgium employees.

### *Defined Benefit Plan Net Periodic Benefit Cost*

The net periodic benefit cost of the defined benefit pension plans includes the following components (in thousands):

	U.S. Pension Benefits		Non-U.S. Pension Benefits	
	Three Months Ended September 30, 2016	Nine Months Ended September 30, 2016	Three Months Ended September 30, 2016	Nine Months Ended September 30, 2016
Service cost	\$ —	\$ —	\$ 199	\$ 587
Interest cost	105	287	140	419
Expected return on plan assets	(71)	(211)	(3)	(13)
Amortization of net actuarial loss	449	877	(5)	54
Net periodic benefit cost	<u>\$ 483</u>	<u>\$ 953</u>	<u>\$ 331</u>	<u>\$ 1,047</u>

### *Defined Contribution Plans*

We incurred expenses for our defined contribution plans of \$2.3 million and \$7.0 million for the three and nine months ended September 30, 2016, respectively, and \$0.5 million and \$1.6 million, respectively for the twelve and thirty-eight weeks ended October 18, 2015.

## Note 20. Income Taxes

Our effective tax rates were 45.7% and 514.5% for the three and nine months ended September 30, 2016, respectively. The effective tax rate for the nine months ended September 30, 2016, differed from the U.K. statutory rate of 20%, (which is the tax rate for the location of our worldwide headquarters), primarily due to the recording of valuation allowances of \$23.9 million related to certain tax jurisdictions, including France and the U.K., in which we did not record tax benefits generated by their operating losses, as well as the tax expense generated by profitable operations in higher tax jurisdiction, such as the U.S. and Germany, offset by tax savings from our inter-co financing as part of our 2015 tax restructuring.

A valuation allowance is established if it is more-likely-than-not that all or a portion of the deferred tax assets, such as net operating loss carryforwards, will not be realized. We have experienced significant operating losses in certain entities with sufficient uncertainty regarding future taxable income in these entities such that a valuation allowance is required to fully offset the NOL carryforwards.

In fiscal year 2016, we consolidated certain of our intangible assets into an entity organized under the laws of England and Wales. Because the intangible assets were sold and purchased inter-company, the tax expense on the inter-company gain is deferred, and as a result, in the quarter ended June 30, 2016, we recorded the deferred tax expense as an asset, in the amount of \$156.4 million, and we recorded a deferred tax liability of the same amount. The deferred expense is recorded in the consolidated balance sheet as Other Current Assets and Other Assets, Long-Term, in the amount of \$19.6 million and \$136.8 million, respectively. These assets are being amortized to current income tax expense in the consolidated statement of net income (loss) over an 8 year period, which represents the estimated useful life of the intangible assets that were consolidated into the U.K. entity. As taxes become payable on the intercompany gain the deferred tax credit will be offset against current tax liabilities.

The effective tax rate for the three months ended September 30, 2016 differed from the U.K. statutory rate of 20% primarily due to the recording of valuation allowances and the results of our profitable operations in higher tax jurisdiction, such as the U.S. and Germany.

Effective tax rates for the historical Cyberonics activity for the twelve and thirty-eight weeks ended October 18, 2015 were 5% and 123%, respectively. The effective tax rate for the twelve weeks ended October 18, 2015 was primarily comprised of the U.S. federal income tax rate of 35%, plus state and foreign (other than U.S.) income taxes and non-deductible transaction costs. The effective tax rate for the thirty-eight weeks ended October 18, 2015 was primarily comprised of the U.S. federal income tax rate of 35%, plus state and foreign (other than U.S.) income taxes and non-deductible transaction costs.

In April 2016, the Guardia di Finanza, the Italian enforcement agency, under the authority of the Minister of Economy and Finance, commenced an audit of Sorin Group Italia Srl for tax years 2012 through 2015. At this time we are unable to predict the results of the audit.

In April 2016, the U.S. Internal Revenue Service (“IRS”) and U.S. Treasury Department issued new rules that materially change the manner in which the determination is made as to whether the U.S. anti-inversion rules under Section 7874 will apply. The new rules have the effect of linking with the Mergers certain future acquisitions of U.S. businesses made in exchange for LivaNova equity, and such linkage may impact LivaNova’s ability to engage in particular acquisition strategies. For example, the new temporary regulations would impact certain acquisitions of U.S. companies in an exchange for stock in LivaNova during the 36 month period beginning October 19, 2015 by excluding from the Section 7874 calculations the portion of shares of LivaNova that are allocable to the legacy Cyberonics shareholders. This new rule would generally have the effect of increasing the otherwise applicable Section 7874 fraction with respect to future acquisitions of a U.S. business, thereby increasing the risk that such acquisition could cause LivaNova to be treated as a U.S. corporation for U.S. federal income tax purposes.

For further information relating to the impact of Section 7874 on LivaNova, refer to the section entitled “*The IRS may not agree with the conclusion that LivaNova should be treated as a foreign corporation for U.S. federal tax purposes, and LivaNova may be required to pay substantial U.S. federal income taxes*” and the subsequent related risk factors included in “Part I, Item 1A. Risk Factors” in the 2015 Form 10-KT.

On October 13, 2016, the U.S. IRS and U.S. Treasury Department released final regulations under Section 385. The regulation establishes extensive documentation requirements that must be satisfied for a debt instrument to constitute debt for U.S. federal tax purposes and re-characterizes a debt instrument as equity if the instrument is issued in one of a number of specified transactions. The final rules will not have a material impact on our current intercompany transactions or structure.

## Note 21. Income Per Share

The following table sets forth the computation of basic and diluted net loss per share of common/ordinary stock, (in thousands, except per share data):

	<u>Three Months Ended September 30, 2016</u>	<u>Twelve Weeks Ended October 18, 2015</u>	<u>Nine Months Ended September 30, 2016</u>	<u>Thirty-Eight Weeks Ended October 18, 2015</u>
<b>Numerator:</b>				
Net loss	\$ (1,569)	\$ (25,091)	\$ (32,990)	\$ (2,158)
<b>Denominator:</b>				
Basic weighted average shares outstanding	49,075	26,025	49,016	26,015
Add effects of stock options <sup>(1)</sup>	—	—	—	—
Diluted weighted average shares outstanding	49,075	26,025	49,016	26,015
Basic loss per share	\$ (0.03)	\$ (0.96)	\$ (0.67)	\$ (0.08)
Diluted loss per share	\$ (0.03)	\$ (0.96)	\$ (0.67)	\$ (0.08)

- (1) Excluded from the computation of diluted earnings per share for the three months ended September 30, 2016 were average outstanding options and stock appreciation rights (“SARs”) to purchase 198 thousand ordinary shares of LivaNova because to include them would be anti-dilutive due to the net loss during the period. Excluded from the computation of diluted earnings per share for the nine months ended September 30, 2016 were average outstanding restricted share units, options and SAR’s to purchase 153 thousand ordinary shares of LivaNova because to include them would be anti-dilutive due to the net loss during the period. Excluded from the computation of diluted earnings per share for the twelve and thirty-eight weeks ended October 18, 2015 were outstanding options to purchase 179 thousand and 219 thousand of Cyberonics shares, respectively (traded previous to the Mergers under trading symbol “CYBX”) because to include them would have been anti-dilutive due to the net loss during the periods.

## Note 22. Geographic and Segment Information

### Segment Information

We identify operating segments based on the way we manage, evaluate and internally report our business activities for purposes of allocating resources and assessing performance.

In July 2016, we announced a new organizational structure, the introduction of new talent into the executive leadership team, and the appointment of a Chief Operating Officer (“COO”), who started on October 3, 2016, and will be responsible for driving innovative product development, commercialization and geographic expansion across the global organization with a focus on margin expansion and profitable growth. We are transitioning the organization to a regional focus with regional leaders in the US, Europe, and the rest of world. Supporting the regions will be our three product franchises: Neuromodulation, Cardiac Surgery, and Cardiac Rhythm Management. The product franchise leaders will be responsible for product R&D and marketing on a global basis. We believe a regional focus will allow a number of tangible benefits, namely the ability to share resources, faster decision-making, improved market access capabilities, and greater focus on the needs of physicians, hospitals, and patients. Our new operating structure and the introduction of new talent into the leadership team will facilitate an evolution of our goals and decision making processes in the near to immediate term; accordingly, we will continue to monitor the way we manage, evaluate and internally report our business activities and the corresponding impact this could have on our segment reporting.

Upon completion of the Mergers, in October 2015, we reorganized our reporting structure and aligned our segments and the underlying divisions and businesses. The historical Cyberonics operations are included in the Neuromodulation segment, and the historical Sorin businesses are included in the Cardiac Surgery and the Cardiac Rhythm Management segments. This change had no impact on the reported historical Cyberonics results for the thirteen weeks ended July 24, 2015.

The Cardiac Surgery segment generates its revenue from the development, production and sale of cardiovascular surgery products. Cardiac Surgery products include oxygenators, heart-lung machines, autotransfusion, mechanical heart valves and tissue heart valves. The Cardiac Rhythm Management segment generates its revenue from the development, manufacturing

and marketing of products for the diagnosis, treatment, and management of heart rhythm disorders and heart failure. Cardiac Rhythm Management products include high-voltage defibrillators CRT-D and low-voltage pacemakers. The Neuromodulation segment generates its revenue from the design, development and marketing of neuromodulation therapy for the treatment of drug-resistant epilepsy and treatment resistant depression. Neuromodulation products include the VNS Therapy System, which consists of an implantable pulse generator, a lead that connects the generator to the vagus nerve, surgical equipment to assist with the implant procedure, equipment to enable the treating physician to set the pulse generator stimulation parameters for the patient, instruction manuals and magnets to suspend or induce stimulation manually.

Corporate expenses include shared services for finance, legal, human resources and information technology. Corporate business development (“New Ventures”) is focused on new growth platforms and identification of other opportunities for expansion. In the tables below, these organizations are reported together in “Other.”

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

Net sales and operating income (loss) by reportable segment are as follows (in thousands):

<b>Net Sales:</b>	<b>Three Months Ended September 30, 2016</b>	<b>Twelve Weeks Ended October 18, 2015</b>	<b>Nine Months Ended September 30, 2016</b>	<b>Thirty-Eight Weeks Ended October 18, 2015</b>
Cardiac Surgery	\$ 148,518	\$ —	\$ 453,012	\$ —
Cardiac Rhythm Management	56,768	—	188,057	—
Neuromodulation	89,504	67,521	260,901	222,603
Other	478	—	1,314	—
<b>Total Net Sales</b>	<b>\$ 295,268</b>	<b>\$ 67,521</b>	<b>\$ 903,284</b>	<b>\$ 222,603</b>

<b>Segment Income (Loss) from Operations:</b>	<b>Three Months Ended September 30, 2016</b>	<b>Twelve Weeks Ended October 18, 2015</b>	<b>Nine Months Ended September 30, 2016</b>	<b>Thirty-Eight Weeks Ended October 18, 2015</b>
Cardiac Surgery	\$ 18,383	\$ —	\$ 31,251	\$ —
Cardiac Rhythm Management	(4,299)	—	(14,133)	—
Neuromodulation	47,049	2,060	134,871	56,225
Other	(12,047)	—	(46,765)	—
<b>Total Reportable Segments’ Income from Operations</b>	<b>49,086</b>	<b>2,060</b>	<b>105,224</b>	<b>56,225</b>
Merger and Integration expenses	7,576	27,902	20,537	43,143
Restructuring expenses	4,381	—	37,219	—
Amortization of intangibles	11,775	510	33,959	1,452
Litigation related expenses	2,369	—	4,678	—
<b>Operating Income (Loss)</b>	<b>\$ 22,985</b>	<b>\$ (26,352)</b>	<b>\$ 8,831</b>	<b>\$ 11,630</b>

The following table presents our assets by reportable segment (in thousands):

<b>Assets:</b>	<b>September 30, 2016</b>	<b>December 31, 2015</b>
Cardiac Surgery	\$ 1,357,087	\$ 1,472,108
Cardiac Rhythm Management	386,005	432,758
Neuromodulation	643,061	539,698
Other	110,807	114,175
<b>Total Assets</b>	<b>\$ 2,496,960</b>	<b>\$ 2,558,739</b>

The following tables present the depreciation and amortization expense and capital expenditures by reportable segment (in thousands):

<b>Depreciation and Amortization Expense: <sup>(1)</sup></b>	<b>Three Months Ended September 30, 2016</b>	<b>Twelve Weeks Ended October 18, 2015</b>	<b>Nine Months Ended September 30, 2016</b>	<b>Thirty-Eight Weeks Ended October 18, 2015</b>
Cardiac Surgery	\$ 15,781	\$ —	\$ 44,511	\$ —
Cardiac Rhythm Management	6,342	—	16,585	—
Neuromodulation	233	3,584	2,927	5,574
Other	128	—	128	—
<b>Total</b>	<b>\$ 22,484</b>	<b>\$ 3,584</b>	<b>\$ 64,151</b>	<b>\$ 5,574</b>

(1) Amortization of intangibles, as disclosed separately in the consolidated statement of income (loss), is included in the amortization by Segment above.

<b>Capital expenditures:</b>	<b>Three Months Ended September 30, 2016</b>	<b>Twelve Weeks Ended October 18, 2015</b>	<b>Nine Months Ended September 30, 2016</b>	<b>Thirty-Eight Weeks Ended October 18, 2015</b>
Cardiac Surgery	\$ 6,465	\$ —	\$ 16,774	\$ —
Cardiac Rhythm Management	1,591	—	2,786	—
Neuromodulation	1,781	1,391	5,602	4,272
Other	2,435	—	3,766	—
<b>Total</b>	<b>\$ 12,272</b>	<b>\$ 1,391</b>	<b>\$ 28,928</b>	<b>\$ 4,272</b>

### Geographic Information

We operate under three geographic regions: United States, Europe, and Rest of World. Accordingly, the geographic information for the prior years has been restated to present these regions.

Net sales to external customers by geography are determined based on the country the products are shipped to and are as follows (in thousands):

	<b>Three Months Ended September 30, 2016</b>	<b>Twelve Weeks Ended October 18, 2015</b>	<b>Nine Months Ended September 30, 2016</b>	<b>Thirty-Eight Weeks Ended October 18, 2015</b>
United States	\$ 123,810	\$ 58,353	\$ 362,358	\$ 185,454
Europe <sup>(1) (2)</sup>	91,245	5,772	301,727	22,958
Rest of World	80,213	3,396	239,199	14,191
<b>Total <sup>(3)</sup></b>	<b>\$ 295,268</b>	<b>\$ 67,521</b>	<b>\$ 903,284</b>	<b>\$ 222,603</b>

(1) Net sales to external customers include \$8.8 million and \$27.9 million in the United Kingdom for the three and nine months ended September 30, 2016, respectively. Prior to the Mergers, we were domiciled in the United States.

(2) Includes those countries in Europe where LivaNova has a direct sales presence. Countries where sales are made through distributors are included in Rest of World.

(3) No single customer represented over 10% of our consolidated net sales. Except for the U.S. and France, no country's sales exceeded 10% of our consolidated net sales. French sales were \$28.9 million and \$95.9 million for the three and nine months ended September 30, 2016, respectively.

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

	September 30, 2016	December 31, 2015
United States	\$ 61,261	\$ 57,806
Europe <sup>(1)</sup>	142,002	148,708
Rest of World	41,857	38,073
Total	\$ 245,120	\$ 244,587

(1) Property, plant and equipment, net includes \$3.0 million and \$2.4 million in the United Kingdom at September 30, 2016 and at December 31, 2015, respectively.

### Note 23. New Accounting Pronouncements

In May 2014, the FASB issued ASC Update No. 2014-09, Revenue from Contracts with Customers (Topic 606): Update No. 2014-09 requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers and will replace most existing revenue recognition guidance when it becomes effective. This new standard is effective for annual reporting periods beginning after December 15, 2017, and interim periods within that reporting period. Early application is not permitted, and the standard permits the use of either the retrospective or cumulative effect transition method. We are evaluating the effect this standard will have on our financial statements and related disclosures. We have not yet selected a transition method, nor has it determined the effect of the standard on its ongoing financial reporting.

In September 2015, the FASB issued ASC Update No. 2015-16, Business Combination (Topic 805): Simplifying the Accounting for Measurement-Period Adjustments. This accounting guidance requires that an acquirer recognize adjustments to provisional amounts that are identified during the measurement period with a corresponding adjustment to goodwill in the reporting period in which the adjustment amounts are determined. The effect on earnings of changes in depreciation, amortization or other income effects, if any, as a result of the change to the provisional amounts will be recorded in the same period's financial statements, calculated as if the accounting had been completed at the acquisition date. This guidance should be applied prospectively to adjustments to provisional amounts that occur after the effective date. This guidance is effective for fiscal years beginning after December 15, 2015 and interim periods within those fiscal years. We adopted this guidance January 1, 2016 and as a result of the adoption we reduced goodwill by \$24.0 million for the nine months ended September 30, 2016.

In January 2016, the FASB issued ASC Update No. 2016-01, Financial Instruments-Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities. Update 2016-01 requires entities to measure equity investments that do not result in consolidation and are not accounted for under the equity method to be measured at fair value with changes recognized in net income. However, an entity may elect to measure equity investments that do not have readily determinable fair values at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer. The amendments, in addition, reduce complexity of the impairment assessment of equity investments without readily determinable fair values with regard to the other-than-temporary impairment guidance. The amendments also require separate presentation of financial assets and financial liabilities by measurement category and form of financial asset and liability. This guidance is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. Early application of certain provisions is permitted. We are currently evaluating the effect this standard will have on our consolidated financial statements and related disclosures.

In February 2016, the FASB issued ASC Update No. 2016-02, Leases (new Topic 842, superseded Topic 840): This guidance requires lessees to recognize most leases on their balance sheets as lease liabilities with corresponding right-of-use assets. While many aspects of lessor accounting remain the same, the new standard makes some changes, such as eliminating today's real estate-specific guidance. The new standard requires lessees and lessors to classify most leases using a principle generally consistent with that of "IAS 17 - Leases," which is similar to U.S. GAAP but without the use of bright lines. The standard also changes what is considered initial direct costs. Entities are required to use a modified retrospective approach for leases that exist or are entered into after the beginning of the earliest comparative period in the financial statements. The standard is effective for annual periods beginning after December 15, 2018 and interim periods within that year. Early adoption is permitted. We are currently evaluating the effect this standard will have on our consolidated financial statements and related disclosures.

In March 2016, the FASB issued ASC Update No. 2016-09, Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting. This update simplifies the accounting for certain income tax aspects of share-based payment transactions, including: the recognition of excess tax benefits and tax deficiencies as income tax expense or benefit in the income statement, the treatment of the tax effects of exercised or vested awards as discrete items in the reporting period in which they occur and the recognition of excess tax benefits regardless of whether the benefit reduces taxes payable in the current period. The amendments related to the timing of when excess tax benefits should be applied using a modified retrospective transition method by means of a cumulative-effect adjustment to equity as of the beginning of the period in which the guidance is adopted. In addition, simplification includes the classification of all excess tax benefits on the statement of cash flows as an operating activity; the entity may elect to apply this cash flow simplification using either a prospective or a retrospective transition method. The amendments in this Update are effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods; early adoption is permitted in any interim or annual period. We are currently evaluating the effect this standard will have on our consolidated financial statements and related disclosures.

In June 2016, the FASB issued ASC Update No. 2016-13, Financial Instruments—Credit Losses (Topic 326): The amendments in this update require a financial asset (or a group of financial assets) measured at amortized cost basis to be presented at the net amount expected to be collected. The measurement of expected credit losses is based on relevant information about past events, including historical experience, current conditions, and reasonable and supportable forecasts that affect the collectibility of the reported amount. An entity must use judgment in determining the relevant information and estimation methods that are appropriate in its circumstances. The initial allowance for credit losses is added to the purchase price rather than being reported as a credit loss expense. Only subsequent changes in the allowance for credit losses are recorded as a credit loss expense for these assets. In addition, credit losses relating to available-for-sale debt securities should be recorded through an allowance for credit losses. The amendments limit the amount of the allowance for credit losses to the amount by which fair value is below amortized cost, require that credit losses be presented as an allowance rather than as a write-down and will allow an entity to record reversals of credit losses in current period earnings in situations in which the estimate of credit losses declines in current period. Current GAAP prohibits reflecting those improvements in current period earnings. The amendments in this update are effective for annual periods beginning after December 15, 2019, including interim periods within those fiscal years. Early adoption is permitted as of the fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. The modified-retrospective approach is generally applicable through a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the guidance is effective. We are currently evaluating the effect this standard will have on our consolidated financial statements and related disclosures.

In August 2016, the FASB issued ASC Update No. 2016-15, Classification of Certain Cash Receipts and Cash Payments (Topic 230 -Statement of Cash Flows): The amendments provide guidance in the presentation and classification of certain cash receipts and cash payments in the statement of cash flows including debt prepayment or debt extinguishment costs, settlement of zero-coupon debt instruments, contingent consideration payments made after a business combination, proceeds from the settlement of insurance claims, proceeds from the settlement of corporate-owned life insurance policies, and distributions received from equity method investees. The amendments are effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years with early adoption permitted. The amendments should be applied using a retrospective transition method to each period presented. We are currently evaluating the impact of adopting these provisions on its consolidated financial statements.

In October 2016, the FASB issued ASC Update No. 2016-16, Income Taxes - Intra-Entity Transfers of Assets Other Than Inventory (Topic 740): This update simplifies the accounting for the income tax consequences of transfers of assets from one unit of a corporation to another unit or subsidiary by eliminating an accounting exception that prevents the recognition of current and deferred income tax consequences for such “intra-entity transfers” until the assets have been sold to an outside party. The amendment should be applied using a modified retrospective transition method by means of a cumulative-effect adjustment directly to retained earnings as of the beginning of the period in which the guidance is adopted. The rule takes effect for annual periods after Dec. 15, 2017, including interim periods within those annual reporting periods; early adoption is permitted. We are currently evaluating the effect this standard will have on our consolidated financial statements and related disclosures.

## Note 24. Subsequent Events

*Financing arrangement.* In October 2016, we entered into a \$40.0 million revolving credit facility for two years with Barclays Bank PLC for general corporate purposes. The maximum interest for this facility is the Libor rate plus 0.95%.

*Departure of Chief Executive Officer.* On November 2, 2016, the Company announced the November 1, 2016 resignation of André-Michel Ballester as Chief Executive Officer and as a member of the Board of Directors of LivaNova Plc effective on December 31, 2016. Mr. Ballester will receive a payment in lieu of notice as described in his service agreement filed with the Securities and Exchange Commission as Exhibit 10.7 to the Form 8-K filed on October 19, 2015. He will also be eligible to receive a bonus for fiscal year 2016 consistent with the Company's Annual Executive Bonus Program. In addition, Mr. Ballester and the Company have agreed that Mr Ballester will provide consulting services to assist the Company until the end of 2020. Mr Ballester will forfeit all equity awards that have not vested by the end of 2017. None of the costs associated with these severance arrangements have been accounted for in the quarter ended September 30, 2016.

*Appointment of New Chief Executive Officer.* On November 2, 2016, the Company also announced that its Chief Operating Officer, Damien McDonald, had been appointed Chief Executive Officer and a member of the Board of Directors of the Company effective January 1, 2017.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with our condensed consolidated financial statements and related notes which appear elsewhere in this document. This discussion and analysis is intended to assist in providing an understanding of our financial condition, changes in financial condition and results of operations and is organized as follows:

- **Business Overview.** This section provides a general description of our business and recent events.
- **Results of Operations.** This section provides an analysis of the results of our operations for the three and nine months ended September 30, 2016.
- **Liquidity and Capital Resources.** This section provides an analysis of our liquidity, capital resources, cash flows and contractual commitments.

The capitalized terms used below have been defined in the notes to our condensed consolidated financial statements. In the following text, the terms "we," "our," "our company" and "us" may refer, as the context requires, to LivaNova PLC or collectively to LivaNova PLC and its subsidiaries.

### ***Business Overview***

LivaNova (formerly known as Sand Holdco PLC and Sand Holdco Limited) is a public limited company organized under the laws of England and Wales. Headquartered in London, United Kingdom ("U.K."), LivaNova, is a global medical device company focused on the development and delivery of important therapeutic solutions for the benefit of patients, healthcare professionals and healthcare systems throughout the world. Working closely with medical professionals in the fields of Cardiac Surgery, Cardiac Rhythm Management and Neuromodulation, we design, develop, manufacture and sell innovative therapeutic solutions that are consistent with our mission to improve our patients' quality of life, increase the skills and capabilities of healthcare professionals and minimize healthcare costs.

We operate our business through three segments, which we call Business Units: Neuromodulation, Cardiac Surgery and Cardiac Rhythm Management. Each Business Unit corresponds to one of our three main therapeutic areas resulting from the strategic combination of Cyberonics and Sorin and aligned to best serve our customers and capitalize upon the benefits of the Mergers. The historical Cyberonics operations are included under the Neuromodulation Business Unit, and the historical Sorin businesses are included in our Cardiac Surgery and Cardiac Rhythm Management Business Units.

Corporate activities include corporate business development, which we refer to as the New Ventures Organization or New Ventures. New Ventures is focused on new growth platforms and identification of other opportunities for expansion and investment.

For further information regarding the Mergers our business segments, historical financial information and our methodology for the presentation of financial results, please refer to the condensed consolidated financial statements and accompanying notes of this Quarterly Report on Form 10-Q as well as to our 2015 annual report on Form 10-KT.

## **Cardiac Surgery Business Unit**

LivaNova's Cardiac Surgery ("CS") Business Unit is engaged in the development, production and sale of cardiovascular surgery products, including oxygenators, heart-lung machines, perfusion tubing systems, cannulae and accessories and systems for autotransfusion and autologous blood washing, as well as implantable prostheses for the replacement or repair of heart valves. Cardiac Surgery consists of two sub-categories, Cardiopulmonary and Heart Valves. Cardiopulmonary products include oxygenators, heart-lung machines, perfusion tubing systems, cannulae and accessories and systems for autotransfusion and autologous blood washing. Heart Valve products include a comprehensive line of surgical tissue and mechanical valve replacements and repair products for damaged or diseased heart valves.

### ***Cardiopulmonary Recent Developments***

In December 2015, we received an FDA Warning Letter (the "Warning Letter") alleging certain violations of FDA regulations applicable to our Munich, Germany and Arvada, Colorado manufacturing facilities. On October 13, 2016 the Centers for Disease Control and Prevention ("CDC") and FDA separately released safety notifications regarding the 3T heater-cooler devices and the Company issued a Field Safety Notice Update for US users of 3T heater-cooler devices to proactively and voluntarily contact facilities to facilitate implementation of the CDC and FDA recommendations. Furthermore, we have received additional lawsuits related to the 3T heater-cooler device during the third quarter ended September 30, 2016. For further information, please refer to "Note 16. Commitments and Contingencies" in our consolidated financial statements included in this Quarterly Report on Form 10-Q.

### ***Heart Valve Recent Developments***

In January 2016, we announced FDA approval of our Perceval valve. Perceval is the only sutureless biological aortic replacement valve on the market today with a unique self-anchoring frame that enables the surgeon to replace the diseased valve without suturing it into place. While we have been selling Perceval in other parts of the world, we began commercial distribution of the device in the United States with the first implant announced on March 8, 2016. To date, the Perceval valve has been implanted in more than 15,000 patients in over 310 hospitals worldwide.

In addition, in early February 2016, we announced that we had received FDA approval of CROWN PRT valve for the treatment of aortic valve disease. The CROWN PRT is a stented aortic bioprosthesis technology and features a surgeon-friendly design, with optimized hemodynamics with patented PRT, designed to enhance valve durability. We anticipate launching CROWN PRT in the U.S. later this year.

## **Cardiac Rhythm Management Business Unit**

The Cardiac Rhythm Management ("CRM") Business Unit develops, manufactures and markets products for the diagnosis, treatment, and management of heart rhythm disorders and heart failure. These products include implantable devices, leads and delivery systems and information systems for the management of patients with CRM devices.

### ***CRM Recent Developments***

The 2015 and the 2016 Reorganization Plans (the "Plans") were initiated October 2015 and March 2016, respectively, and were initiated in conjunction with the Mergers. These Plans are intended to leverage economies of scale, streamline distribution and logistics and strengthen operational and administrative effectiveness in order to reduce overall costs. Costs associated with these Plans were reported as restructuring expense in the operating results of our consolidated statement of income (loss). As part of these Plans, certain activities previously undertaken within the New Ventures organization will be integrated into and combined with the CRM Business Unit. We estimate that these Plans will result in a net reduction in the workforce at our manufacturing and R&D facility located in Clamart, France. This plan also includes the closure of our R&D facility in Meylan, France and consolidation of the R&D capabilities into the Clamart facility.

In November 2015, we launched the PLATINIUM implantable cardiac defibrillator ("ICD") in Europe. In September 2016, we announced the launch in the U.S. During 2015, we continued the development of our IS4 PLATINIUM CRTD with SonR dedicated to the use of quadripolar left ventricular catheters with IS-4 compatibilities. The development of new ranges of leads for defibrillation and left ventricular stimulation also enjoyed significant progress with the completion of the pre-qualification phase.

In June 2015, we announced the European launch of a full body MRI conditional pacemaker, the KORA 250. The KORA 250 is equipped with our proprietary Automatic MRI mode. In addition, the device is designed to proactively manage comorbidities, including a pacing mode that manages all types of atrioventricular block ("AV"), referred to as "SafeR", and the ability to monitor patients for severe sleep apnea using Sleep Apnea Monitoring ("SAM"). In the first quarter of 2016, the KORA 250 was approved and launched in Japan.

In June 2013, following FDA approval to initiate a clinical trial under an Investigational Device Exemption (“IDE”), the first patients were enrolled in the United States in the Respond CRT clinical trial (cardiac resynchronization therapy). The purpose of this trial is to assess the safety and effectiveness of the SonR CRT™ system in patients affected by advanced heart failure. In October 2014, Sorin announced having completed enrollment in the Respond CRT™ clinical trial, enrolling 1,039 patients in the study. In May 2016 we announced results from the Respond CRT™ clinical trial, showing that a 35% risk reduction in heart failure hospitalization was associated with SonR. In August 2016, we announced the results from the 18-month follow-up period that confirm significant long term risk reduction in heart failure hospitalization.

### **Neuromodulation Business Unit**

Our Neuromodulation Business Unit designs, develops and markets neuromodulation-based medical devices for the treatment of epilepsy and depression. Through this Business Unit, we market our proprietary implantable VNS Therapy Systems that deliver vagus nerve stimulation therapy for the treatment of epilepsy and depression. In July 2005, the FDA approved our VNS Therapy System for the adjunctive long-term treatment of chronic or recurrent depression for patients 18 years of age or older who have not had an adequate response to multiple anti-depressant treatments. Regulatory bodies in the European Economic Authority (“EEA”), Canada, Brazil, Mexico, Australia, Israel and certain other international markets have approved our VNS Therapy products for the treatment of chronic or recurrent depression in patients who are in a treatment-resistant or treatment-intolerant depressive episode. Reimbursement for the use of VNS Therapy to treat TRD is significantly limited in most countries in which it is available.

#### ***Neuromodulation Recent Developments***

In June 2015, the FDA approved AspireSR® for commercialization in the United States. Growth of VNS Therapy products has been strong during the period following this approval. Acceptance of the new product, as evidenced by the proportion of generators sold, has been high, and pricing obtained for the product has been at a premium due to the unique nature of the device.

### **New Ventures**

The New Ventures group was created to invest in significant, new growth opportunities. The three significant unmet clinical needs the New Ventures group is seeking to address are: heart failure, sleep apnea and mitral valve regurgitation.

#### ***New Ventures Recent Developments***

*Heart failure.* In the heart failure area, New Ventures is currently managing three internal neurostimulation projects, being Equilia, VITARIA and Intense, each aimed at treating heart failure through vagus nerve stimulation. Equilia is a first-generation device that benefited from the legacy Sorin business’ acquisition of the Belgian company, Neurotech SA in 2012, which enhanced Sorin’s technical expertise and intellectual property in the field of neurostimulation. The successful implantation of the first Equilia neurostimulation system device occurred in February 2015 as part of the Vanguard (Vagal Nerve Stimulation Safeguarding Heart Failure) clinical trial. The aim of the system is to treat heart failure through stimulation of the vagus nerve.

In February 2015, the legacy Cyberonics business received CE Mark approval of the VITARIA System for patients who have moderate to severe heart failure (New York Heart Association Class II/III) with left ventricular dysfunction (ejection fraction < 40 per cent.) and who remain symptomatic despite stable, optimal heart failure drug therapy. The VITARIA System provides a specific method of VNS called autonomic regulation therapy (“ART”), and it includes the same elements as the VNS Therapy System - pulse generator, lead, programming wand and software, programming computer, tunneling tool and accessory pack, but without the patient kit with magnets. Cyberonics conducted a pilot study, ANTHEM-HF, outside the United States, which concluded during the quarter ended 24 October 2014. The study results support the safety of ART delivered by the VITARIA System. Cyberonics submitted the results to its European Notified Body, DEKRA, and on 20 February 2015, it received CE Mark approval. Cyberonics also initiated a second pilot study, ANTHEM-HfpEF, to study ART in patients experiencing symptomatic heart failure with preserved ejection fraction. This pilot study is currently underway outside the United States.

The other principal New Ventures heart failure initiative, Intense, is a broader project that is partially subsidized by the French government through Banque Publique d’Investissement.

With the completion of the Mergers, the New Ventures group is continuing to evaluate the appropriate course of action for each project, which could include future development efforts such as additional clinical trials or re-evaluation of certain projects.

*Sleep Apnea.* In October 2014, Sorin invested \$20 million in Respicardia, a U.S.-based developer of implantable therapies designed to improve Respiratory Rhythm Management and cardiovascular health. Respicardia’s remedé System is an

implantable device system designed to restore a more natural breathing pattern during sleep in patients with central sleep apnea (CSA) by transvenously stimulating the phrenic nerve. The remedé System received CE Mark certification in 2010 and is currently available in certain countries in Europe. Results from a randomized, controlled pivotal trial were reported at the European Society of Cardiology - Heart Failure meeting in May 2016. Investigators reported that patients in the treatment group were significantly more likely to have a reduction in AHI of  $\geq 50\%$  between baseline and 6 months ( $p < 0.001$ ) compared to patients in the control group. This result was matched by significant improvements in other apnea-related parameters and quality of life measures. The device was well-tolerated, with 91% of patients free from serious adverse events associated with implantation. In September 2016, Respicardia applied for U.S. FDA market approval. In September 2016 we elected not to exercise our option to purchase the outstanding shares of Respicardia as the investment no longer met our objective for substantial ongoing involvement taken into consideration with our overall portfolio management program. As a result, we recorded an impairment of \$9.2 million equal to the amount of the carrying value of the option. Also in September 2016, we started the process to terminate our exclusive distribution agreement with Respicardia.

Cyberonics completed an investment of \$12.0 million in ImThera Medical, Inc. (“ImThera”) by December 2013. ImThera is a privately held company developing an implantable neurostimulation device system for the treatment of obstructive sleep apnea (OSA). The aura6000<sup>®</sup> System stimulates the hypoglossal nerve to treat OSA. In November 2014, ImThera announced that the U.S. FDA approved an IDE for their pivotal clinical study and patient enrollment has commenced. In May 2015 the first subjects were implanted in the pivotal study.

*Mitral valve regurgitation.* Sorin invested in three mitral valve startups: (i) Cardiosolutions Inc., a startup headquartered in the United States developing an innovative Spacer technology for treating mitral regurgitation, (ii) Highlife S.A.S. (“Highlife”), headquartered in France, and (iii) Caisson Interventional LLC (“Caisson”), headquartered in the United States. Highlife and Caisson are companies focused on developing devices for treating mitral regurgitation through percutaneous replacement of the native mitral valve. Although both ventures are focused on mitral valve replacement, their devices differ significantly in both the delivery system (transapical versus transfemoral) and the anchoring system. In the quarter ended September 30, 2016, we invested an additional \$7.5 million in Caisson. In the quarter ended March 31, 2016 we loaned an additional \$2.8 million to Highlife and in the quarter ended June 30, 2016 we loaned an additional \$1.0 million to Caisson.

### **Significant Accounting Policies and Critical Accounting Estimates**

There have been no material changes to our critical accounting policies from the information provided in “Part II, Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in our 2015 Form 10-KT. The accompanying unaudited condensed consolidated financial statements of historical Cyberonics and its consolidated subsidiaries have been prepared in accordance with U.S. GAAP on an interim basis.

New accounting pronouncements are disclosed in “Note 23. New Accounting Pronouncements” in the consolidated financial statements.

### **Other**

On June 23, 2016, the United Kingdom held a referendum in which voters approved an exit from the European Union, commonly referred to as “Brexit,” which has caused and may continue to cause significant volatility in capital and currency markets worldwide. Asset valuations, currency exchange rates and credit ratings may be especially subject to increased market volatility. The full impact of Brexit remains uncertain. A process of negotiation, which is likely to take two years or longer, will determine the future terms of the U.K.’s relationship with the European Union. It is unclear at this stage what financial, trade and legal implications the withdrawal of the U.K. from the European Union would have and how such withdrawal would affect us. Management will continue to monitor and assess the potential impact of this event on an ongoing basis.

## Results of Operations

The merger of Cyberonics and Sorin on October 19, 2015 was considered a business combination with Cyberonics considered the acquirer of Sorin using the acquisition method of accounting. As a result, Sorin's assets and liabilities were combined at their estimated fair values. In addition, LivaNova became the holding company of the combined businesses of Cyberonics and Sorin and the "successor" company to Cyberonics for accounting and Exchange Act reporting purposes. LivaNova is reporting, in this Quarterly Report on Form 10-Q, the results for LivaNova and its consolidated subsidiaries for the period January 1, 2016 to September 30, 2016, which is the first, second and third quarters of the fiscal year ended December 31, 2016. In addition, LivaNova reported the historical results of Cyberonics and its consolidated subsidiaries for the thirteen and thirty-eight weeks ended October 18, 2015 as the comparative prior fiscal year periods, which consisted of the thirteen weeks ended April 24, 2015, or the fourth quarter of Cyberonics' fiscal year ended April 24, 2015 and the twenty-five weeks ended October 18, 2015, or the first and second quarter of the transitional fiscal year that ended December 31, 2015.

Upon completion of the Mergers we reorganized our reporting structure and aligned our segments and the underlying divisions and businesses. The Cyberonics operations and historical data are now included in the Neuromodulation segment, and the Sorin operations are included in the Cardiac Surgery and the CRM segments. Refer to "Note 22. Geographic and Segment Information" to the consolidated financial statements included in this Quarterly Report on Form 10-Q for additional discussion related to our segment reporting.

### Net Sales

The table below illustrates net sales by operating segment (in thousands, except for percentages):

	<b>Three Months Ended September 30, 2016</b>	<b>Twelve Weeks Ended October 18, 2015 <sup>(1)</sup></b>	<b>\$ Increase</b>	<b>% Change</b>
Cardiac Surgery	\$ 148,518	\$ —	\$ 148,518	—%
Cardiac Rhythm Management	56,768	—	56,768	—%
Neuromodulation	89,504	67,521	21,983	32.6%
Corporate and New Ventures	478	—	478	—%
<b>Total</b>	<b>\$ 295,268</b>	<b>\$ 67,521</b>	<b>\$ 227,747</b>	

  

	<b>Nine Months Ended September 30, 2016</b>	<b>Thirty-Eight Weeks Ended October 18, 2015 <sup>(1)</sup></b>	<b>\$ Increase</b>	<b>% Change</b>
Cardiac Surgery	\$ 453,012	\$ —	\$ 453,012	—%
Cardiac Rhythm Management	188,057	—	188,057	—%
Neuromodulation	260,901	222,603	38,298	17.2%
Corporate and New Ventures	1,314	—	1,314	—%
<b>Total</b>	<b>\$ 903,284</b>	<b>\$ 222,603</b>	<b>\$ 680,681</b>	

(1) The equivalent prior period data uses unaudited historical Cyberonics' data.

The Cardiac Surgery and CRM segment sales occurred from January 1, 2016 to September 30, 2016, as a result of the Mergers on October 19, 2015.

Neuromodulation net sales for the three months ended September 30, 2016 increased \$22.0 million, or 32.6%, as compared to the twelve weeks ended October 18, 2015, with a generator unit sales volume increase of 22.8%. The revenue growth was due to an increase in revenue of 28.3% in the U.S. market and a 59.7% increase in revenue in non-U.S. markets. These increases were partially due to an extra week this year as compared to the previous year and partially due to increased demand.

Neuromodulation net sales for the nine months ended September 30, 2016 increased by \$38.3 million or 17.2%, as compared to the thirty-eight weeks ended October 18, 2015, with a generator unit sales volume increase of 5.5%. The revenue growth was due to an increase in revenue of 19.1% in the U.S. market and a 7.7% increase in revenue in non-U.S. markets. These increases were partially due to an extra week this year as compared to the previous year and partially due to increased demand. The decrease in international unit volume was primarily due to the drop-off of sales activity in Venezuela.

The table below illustrates net sales by market geography (in thousands):

	Three Months Ended September 30, 2016				Twelve Weeks Ended October 18, 2015
	Neuromodulation	Cardiac Surgery	Cardiac Rhythm Management	New Ventures and Corporate	Neuromodulation
United States	\$ 74,864	\$ 46,768	\$ 2,178	\$ —	\$ 58,353
Europe <sup>(1)</sup>	8,489	38,009	44,747	—	5,772
Rest of World	6,151	63,741	9,843	478	3,396
Total	<u>\$ 89,504</u>	<u>\$ 148,518</u>	<u>\$ 56,768</u>	<u>\$ 478</u>	<u>\$ 67,521</u>

  

	Nine Months Ended September 30, 2016				Thirty-Eight Weeks Ended October 18, 2015
	Neuromodulation	Cardiac Surgery	Cardiac Rhythm Management	New Ventures and Corporate	Neuromodulation
United States	\$ 220,892	133,995	7,471	\$ —	\$ 185,454
Europe <sup>(1)</sup>	24,208	128,229	149,141	149	22,958
Rest of World	15,801	190,788	31,445	1,165	14,191
Total	<u>\$ 260,901</u>	<u>\$ 453,012</u>	<u>\$ 188,057</u>	<u>\$ 1,314</u>	<u>\$ 222,603</u>

(1) Includes those countries in Europe where LivaNova has a direct sales presence. Countries where sales are made through distributors are included in Rest of World.

### ***Cost of Sales and Expenses***

The table below illustrates our cost of sales and major expenses as a percentage of sales for the three and nine months ended September 30, 2016 as compared to the twelve and thirty-eight weeks ended October 18, 2015. We developed the equivalent prior period data using unaudited historical Cyberonics' data:

	<b>Three Months Ended September 30, 2016</b>	<b>Twelve Weeks Ended October 18, 2015</b>	<b>% Change</b>
Cost of sales	36.1%	14.1%	22.0 %
Selling, general and administrative	36.4%	61.0%	(24.6)%
Research and development	10.9%	21.8%	(10.9)%
Merger and integration expenses	2.6%	41.3%	(38.7)%
Restructuring expenses	1.5%	—%	1.5 %
Amortization of intangibles	4.0%	0.8%	3.2 %
Litigation related expenses	0.8%	—%	0.8 %

	<b>Nine Months Ended September 30, 2016</b>	<b>Thirty-Eight Weeks Ended October 18, 2015</b>	<b>% Change</b>
Cost of sales	39.9%	11.9%	28.0 %
Selling, general and administrative	38.0%	47.0%	(9.0)%
Research and development	10.4%	15.8%	(5.4)%
Merger and integration expenses	2.3%	19.4%	(17.1)%
Restructuring expenses	4.1%	—%	4.1 %
Amortization of intangibles	3.8%	0.7%	3.1 %
Litigation related expenses	0.5%	—%	0.5 %

### ***Cost of Sales***

Cost of sales consisted primarily of direct labor, allocated manufacturing overhead, the acquisition cost of raw materials and components. Amortization of the inventory step-up in basis recorded at the Mergers is included in cost of sales.

Our cost of sales as a percentage of net sales increased to 36.1% and 39.9% for the three and nine months ended September 30, 2016, respectively, as compared to 14.1% and 11.9% reported for Cyberonics' historical data for the twelve and thirty-eight weeks ended October 18, 2015, respectively. The year over year increases were primarily due to the inclusion of Sorin's business activities after the Mergers. We recorded no amortization of the inventory step-up in basis for the three months ended September 30, 2016, while the inventory step-up amortization accounted for 3.9% of our cost of sales as a percent of net sales for the nine months ended September 30, 2016.

### ***Selling, General and Administrative ("SG&A") Expenses***

SG&A expenses are comprised of sales, marketing, general and administrative activities. SG&A expenses exclude expenses incurred in connection with the merger between Cyberonics and Sorin, integration costs after the Mergers and restructuring costs under the 2015 and 2016 Restructuring Plans initiated after the Mergers. Also excluded from SG&A expense is amortization of intangible assets.

SG&A expenses as a percentage of net sales were 36.4% and 38.0%, for the three and nine months ended September 30, 2016, respectively, as compared to 61.0% and 47.0% for the twelve and thirty-eight weeks ended October 18, 2015, respectively. These reductions in costs as a percent of net sales was due to our integration and re-organization efforts that have capitalized on synergies between Cyberonics and Sorin. In addition, in May 2016 we received a grant of \$4.7 million from the Italian government, the Regione Emilia Romagna, as a reimbursement and offset to the costs Sorin incurred as a consequence of the earthquake of May 2012 in Italy, which we recorded as a reduction to SG&A expenses for the quarter ended June 30, 2016.

#### ***Research and Development (“R&D”) Expenses***

R&D expenses consist of product design and development efforts, clinical trial programs and regulatory activities. R&D expenses as a percentage of net sales were 10.9% and 10.4% for the three and nine months ended September 30, 2016, respectively and were 21.8% and 15.8% for the twelve and thirty-eight weeks ended October 18, 2015, respectively. These decreases were due to the completion of certain R&D projects and the reduction of R&D work as a result of our ongoing review of projects and priorities in conjunction with the 2015 and 2016 Reorganization Plans.

#### ***Merger and Integration Expenses***

Our merger and integration expenses consisted primarily of consulting costs associated with: computer systems integration efforts, organization structure integration, synergy and tax planning, as well as the integration of internal controls for the two legacy organizations. In addition, integration expenses include retention bonuses, branding and renaming efforts and lease cancellation penalties in Milan and Brussels.

During the three and nine months ended September 30, 2016, we incurred \$7.6 million and \$20.5 million, respectively, in merger and integration expenses, which we reported as a separate operating expense in our consolidated statement of income (loss). For the twelve and thirty-eight weeks ended October 18, 2015 our merger and integration expenses were \$27.9 million and \$43.1 million, respectively.

#### ***Restructuring Expenses***

Restructuring expenses were primarily due to our efforts under our 2015 and 2016 Reorganization Plans to leverage economies of scale, eliminate duplicate corporate expenses and streamline distributions, logistics and office functions in order to reduce overall costs, which we reported as a separate operating expense in our consolidated statement of income (loss). We incurred restructuring expenses of \$4.4 million and \$37.2 million in the three and nine months ended September 30, 2016, respectively.

#### ***Amortization of intangible assets***

We incurred amortization expense of \$11.8 million and \$34.0 million for the three and nine months ended September 30, 2016, respectively, and \$0.5 million and \$1.5 million for the twelve and thirty-eight weeks ended October 18, 2015, respectively. The fiscal year 2016 amounts represent amortization expense of intangible property, primarily intellectual property and customer relationships acquired at fair value in the Mergers. Amortization is reported as a separate item in the consolidated statement of income (loss) and does not include amortization of the step-up in the fair value of inventory that resulted from the Mergers, which is included in cost of sales in the consolidated statement of income (loss).

#### ***Goodwill Impairment***

We test goodwill for impairment on an annual basis or when events or changes in circumstances indicate that a potential impairment exists. If our operating performance or our anticipated business outlook deteriorates, our reporting units' estimated fair value could decline below their carrying value, resulting in an impairment of goodwill. Likewise, if the market conditions or anticipated performance for our Cardiac Rhythm Management reporting unit deteriorates, it is possible that the estimated fair value of this reporting unit could be less than its carrying value when we perform our annual impairment analysis in our fourth quarter of 2016.

Factors that could have a negative impact on the fair value of our reporting units include, but are not limited to:

- Decreases in revenue as a result of the inability of our sales force to effectively market and promote our products;
- Increased competition, patent expirations or new technologies or treatments;
- Declines in anticipated growth rates;
- The outcome of litigation, legal proceedings, investigations or other claims resulting in significant cash outflows;
- Sustained decline in our stock price

Adverse changes in one or more of these factors could reduce the estimated fair value of our reporting unit below its carrying value in future periods.

#### ***Litigation Related Expenses***

We segregate and report separately certain litigation expenses in the consolidated statements of net income (loss). For the three and nine months ended September 30, 2016, we reported \$2.4 million and \$4.7 million, respectively, of litigation expenses related to the FDA Warning Letter regarding our 3T Heater Cooler devices we manufactured at our Munich facility, the SNIA S.p.A litigation regarding potential liabilities arising from claims for environmental damage and the termination of two agents.

#### ***Interest Expense, net of interest income***

We incurred interest expense, net of interest income, of \$2.9 million and \$5.5 million for the three and nine months ended September 30, 2016, respectively and interest income, net of interest expense of \$86 thousand and \$30 thousand for the twelve and thirty-eight weeks ended October 18, 2015, respectively. Interest expense for the three and nine months ended September 30, 2016, was primarily due to interest on taxes payable related to our inter-company sale of intellectual property undertaken during the second quarter ended June 30, 2016 and interest expense related to the debt acquired in the Mergers.

#### ***Foreign Exchange and Other, Net***

Our FX gains and losses are primarily due to inter-company debt and third party financial assets and liabilities, partially hedged by FX derivative contracts. For the nine months ended September 30, 2016 and the thirty-eight weeks ended October 18, 2015 there were no material net foreign exchange gains or losses.

#### ***Income Taxes***

Our effective tax rates were 46% and 514% for the three and nine months ended September 30, 2016, respectively. The effective tax rate for the nine months ended September 30, 2016 differed from the U.K. statutory rate of 20%, which is the tax rate for the location of our worldwide headquarters, primarily due to the recording of valuation allowances of \$23.9 million related to certain tax jurisdictions, including France and the U.K., in which we did not record tax benefits generated by their operating losses, as well as the tax expense generated by profitable operations in higher tax jurisdiction, such as the U.S. and Germany, offset by tax savings from our inter-co financing entered as part of our 2015 tax restructuring.

A valuation allowance is established if it is more-likely-than-not that all or a portion of the deferred tax assets, such as net operating loss carryforwards, will not be realized. We have experienced significant operating losses in certain entities with sufficient uncertainty regarding future taxable income in these entities such that a valuation allowance is required to fully offset the NOL carryforwards.

In fiscal year 2016 we consolidated certain of our intangible assets into an entity organized under the laws of England and Wales. Because the intangible assets were sold and purchased inter-company, the tax expense on the inter-company gain is deferred and as a result, in the quarter ended June 30, 2016, we recorded the deferred tax expense as an asset, in the amount of \$156.4 million, and we recorded a deferred tax liability of the same amount. The deferred expense is recorded in the consolidated balance sheet as Other Current Assets and Other Assets, Long-Term, in the amount of \$19.6 million and \$136.8 million, respectively. These assets are being amortized to current income tax expense in the consolidated statement of net income (loss) over an 8 year period, which represents the estimated useful life of the intangible assets that were consolidated into the U.K. entity. As taxes become payable on the intercompany gain the deferred tax credit will be offset against current tax liabilities.

The effective tax rate for the three months ended September 30, 2016 differed from the U.K. statutory rate of 20% primarily due to the recording of valuation allowances and the results of our profitable operations in higher tax jurisdiction, such as the U.S. and Germany.

Effective tax rates for historical Cyberonics activity for the twelve and thirty-eight weeks ended October 18, 2015 were 5% and 123%, respectively. The effective tax rates were primarily comprised of the U.S. federal income tax rate of 35%, plus state and foreign income taxes and non-deductible transaction costs.

In April 2016, the Guardia di Finanza, the Italian enforcement agency, under the authority of the Minister of Economy and Finance, commenced an audit of Sorin Group Italia Srl for tax years 2012 through 2015. At this time we are unable to predict the results of the audit.

In April 2016, the U.S. Internal Revenue Service (“IRS”) and U.S. Treasury Department issued new rules that materially change the manner in which the determination is made as to whether the U.S. anti-inversion rules under Section 7874 will apply. The new rules have the effect of linking with the Mergers certain future acquisitions of U.S. businesses made in exchange for LivaNova equity, and such linkage may impact LivaNova’s ability to engage in particular acquisition strategies. For example, the new temporary regulations would impact certain acquisitions of U.S. companies in an exchange for stock in LivaNova during the 36 month period beginning October 19, 2015 by excluding from the Section 7874 calculations the portion of shares of LivaNova that are allocable to the legacy Cyberonics shareholders. This new rule would generally have the effect of increasing the otherwise applicable Section 7874 fraction with respect to future acquisitions of a U.S. business, thereby increasing the risk that such acquisition could cause LivaNova to be treated as a U.S. corporation for U.S. federal income tax purposes.

For further information relating to the impact of Section 7874 on LivaNova, refer to the section entitled “*The IRS may not agree with the conclusion that LivaNova should be treated as a foreign corporation for U.S. federal tax purposes, and LivaNova may be required to pay substantial U.S. federal income taxes*” and the subsequent related risk factors included in “Part I, Item 1A. Risk Factors” in the 2015 Form 10-KT.

On October 13, 2016, the U.S. IRS and U.S. Treasury Department released final regulations under Section 385. The regulation establishes extensive documentation requirements that must be satisfied for a debt instrument to constitute debt for U.S. federal tax purposes and re-characterizes a debt instrument as equity if the instrument is issued in one of a number of specified transactions. The final rules will not have a material impact on our intercompany transactions or structure.

#### **Losses from Equity Method Investments**

We recognized losses of \$13.1 million and \$19.4 million during the three and nine months ended September 30, 2016, primarily for the impairment of Respicardia and our share of investee losses at Highlife, Caisson, Respicardia and MicroPort SorinCRM.

During the quarter ended September 30, 2016, we declined to exercise or extend our option to purchase all of the issued and outstanding shares of Respicardia held by other investors as we preferred to continue as a minority investor instead of becoming a strategic acquirer as taken into consideration with our overall portfolio management program. Our analysis indicated that our carrying value in Respicardia might not be recoverable and the decrease in value of our investment was other than temporary. We estimated the fair value of our investment in Respicardia using information about past events, current conditions, and forecasts and an estimate of future cash flows. The estimated fair value was below our carrying cost and we impaired our investment in Respicardia by \$9.2 million, which essentially is representative of the purchase option’s carrying value on the date we declined to exercise our option. This loss is included in Losses from Equity Method Investments in the consolidated statement of income (loss). In addition, during the quarter ended September 30, 2016, we started the process that will result in the cancellation of our distributor agreement with Respicardia in the fourth quarter ending December 31, 2016. The distributor agreement is a key component in the determination of whether our influence over Respicardia is significant. We accounted for Respicardia as an equity method investment through September 30, 2016 and will reevaluate our accounting method as of the date of the formal cancellation of the distributor agreement.

#### **Liquidity and Capital Resources**

Based on our current business plan, we believe that our existing cash, investments and future cash generated from operations will be sufficient to fund our expected operating needs, working capital requirements, R&D opportunities, capital expenditures and debt service requirements over the next 12 months. We regularly review our capital needs and consider various investing and financing alternatives to support our requirements. Refer to “Note 14. Financing Arrangements” in the consolidated financial statements in this Quarterly Report on Form 10-Q for additional information regarding our debt. Our liquidity could be adversely affected by factors affecting future operating results, including those referred to in “Item 1A. Risk Factors” above.

No provision has been made for income taxes on unremitted earnings of our foreign controlled subsidiaries (non-U.K. locations) as of September 30, 2016. In the event of the distribution of those earnings in the form of dividends, a sale of the subsidiaries or certain other transactions, we may be liable for income taxes. However, the tax liability on future distributions should not be significant as most jurisdictions with unremitted earnings have various participation exemptions or no withholding tax.

## Cash Flows

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

	Nine Months Ended September 30, 2016	Thirty-Eight Weeks Ended October 18, 2015
Operating activities	\$ 49,348	\$ 65,630
Investing activities	(29,768)	14,766
Financing activities	(69,591)	(6,956)
Effect of exchange rate changes on cash and cash equivalents	1,030	122
Net increase (decrease)	\$ (48,981)	\$ 73,562

### Operating Activities

Cash provided by our consolidated operating activities during the nine months ended September 30, 2016 was \$49.3 million. During the nine months ended September 30, 2016, we incurred a net loss of \$33.0 million, which included the non-cash expenses amounting to \$97.6 million offset by the utilization of \$15.3 million in cash for our operating assets and liabilities. Accounts receivables increased by \$11.0 million, before FX affects, due to increased revenues. Inventories decreased \$20.6 million, before FX affects, due to the amortization of the inventory step-up recognized for the Mergers of \$35.0 million, offset by the inventory build-up for the Platinum range of implantable cardiac defibrillators and cardiac resynchronization therapy devices in the CRM Business Unit, which was launched in November 2015 in Europe and Japan, and by the inventory build-up in preparation for the CS Business Unit launch in the U.S. of the Perceval sutureless heart valve, which followed FDA approval in January 2016. An increase in other current and non-current assets of \$23.1 million, before FX affects, was primarily due to an increase in our VAT tax receivables and to the recording of the \$4.7 million grant receivable related to the May 2012 Italian earthquake. For the cash flow presentation, we netted the equal and opposite cash flow effects of the tax consequences of the intercompany sale of intangible assets to our subsidiary in the U.K., which resulted in an increase in our current and non-current assets and an increase in deferred tax liabilities of \$156.4 million. Accounts payable and accrued current and non-current liabilities has increased by \$16.7 million primarily due to increased activity driving trade payables.

During the thirty-eight weeks ended October 18, 2015, cash flow provided by historical Cyberonics operations, the Neuromodulation Business Unit, was \$65.6 million, due to net loss of \$2.2 million offset by non-cash operating expenses of \$34.5 million and a contribution of \$33.3 million due to operating assets and liabilities. Accounts payable and accrued liabilities increased by \$40.5 million primarily due to professional fees related to the Mergers. Inventories increased by \$4.8 million due to a build-up of inventory to ensure an adequate supply of products and to increase our Costa Rica manufacturing facility inventory.

### Investing Activities

Cash used in investing activities of \$29.8 million during the nine months ended September 30, 2016 was primarily for purchases of property, plant and equipment for manufacturing and R&D initiatives to support operational excellence initiatives and new product development as well as administrative integration initiatives. We invested \$7.5 million in the preferred shares of a private medical start-up company, Caisson Interventional, LLC. Caisson's purpose is the development and commercialization of a percutaneous mitral valve replacement system.

Cash received during the thirty-eight weeks ended October 18, 2015 of \$14.8 million, for investing activities, was primarily a result of the transfer of \$27.0 million cash equivalents from short-term investments. The increase in cash was partly offset by \$7.0 million for the purchase of commercial paper. In addition we invested \$4.3 million in the purchase of manufacturing equipment and infrastructure improvements.

### Financing Activities

We utilized cash of \$69.6 million for financing activities during the nine months ended September 30, 2016, primarily as a result of repayment of debt of \$51.2 million, repayment of our trade accounts receivable factoring (advances) of \$23.8 million and share repurchases of \$11.1 million, offset by borrowing of \$14.1 million.

On August 1, 2016, the Board of Directors (“BOD”) authorized a share repurchase plan pursuant to an authority granted by shareholders at the 2016 annual general meeting held on June 15, 2016. The repurchase program authorized by the BOD is structured to enable the Company to approve the buyback of up to \$30 million of ordinary shares on NASDAQ in the period up to and including December 31, 2016 and an aggregate of \$150 million of ordinary shares (inclusive of the \$30 million of Ordinary Shares set out above) also on NASDAQ up to and including December 31, 2018. As of September 30, 2016, 212,860 shares have been repurchased under this plan at an average price per share of \$60.44. Included in the total shares repurchased were 30,000 shares for which the settlement process was completed in November and were recorded as an accrued liability at September 30, 2016.

Cash utilized for financing activities during the thirty-eight weeks ended October 18, 2015 was \$7.0 million, primarily the result of our purchase of treasury shares for \$15.7 million offset by the collection of \$5.3 million from stock option exercises.

#### **Debt and Capital**

As of September 30, 2016 our total debt of \$144.6 million was 8.0% of total equity of \$1.8 billion.

*Debt Acquired in the Mergers.* At the consummation of the Mergers on October 19, 2015, LivaNova acquired all of the outstanding debt of Sorin in the aggregate principal amount of \$203.0 million payable to various financial and non-financial institutions. Prior to the Mergers, Cyberonics had no debt.

*Factoring.* We included an obligation, under Accrued Liabilities in the consolidated balance sheet, for the amount of our outstanding advance on customer receivables of \$1.3 million and \$24.5 million as of September 30, 2016 and December 31, 2015, respectively.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to certain market risks as part of our ongoing business operations, including risks from foreign currency exchange rates, interest rate risks and concentration of procurement suppliers that could adversely affect our consolidated financial position, results of operations or cash flows. We manage these risks through regular operating and financing activities and, at certain times, derivative financial instruments. Quantitative and qualitative disclosures about these risks are included in our 2015 Form 10-KT in “Part II, Item 7A Management’s Discussion and Analysis of Financial Condition and Results of Operations.” There have been no material changes from the information provided therein.

### **ITEM 4. CONTROLS AND PROCEDURES**

#### **Disclosure Controls and Procedures**

##### **(a) Evaluation of Disclosure Controls and Procedures**

We maintain a system of disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act, that are designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. This information is also accumulated and communicated to management, including our Chief Executive Officer (“CEO”) and Chief Financial Officer (“CFO”), as appropriate, to allow timely decisions regarding required disclosure. Our management, under the supervision and with the participation of our CEO and CFO, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the most recent fiscal quarter reported herein. Based on that evaluation, our CEO and CFO concluded that our disclosure controls and procedures were effective as of September 30, 2016.

##### **(b) Changes in Internal Control Over Financial Reporting**

On October 19, 2015, the Mergers were consummated between Cyberonics and Sorin. The Company has incorporated internal controls over significant processes to the extent that it believes appropriate and necessary considering the level of integration during the period since the Mergers. As a result of the Mergers, the internal control over financial reporting utilized by Cyberonics prior to the Mergers became the internal control over financial reporting of our company, and we are currently in the process of evaluating and integrating Sorin’s historical internal controls over financial reporting.

Except for the paragraph above, no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-5(f) under the Exchange Act) occurred during the quarter ended September 30, 2016, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

### **PART II - OTHER INFORMATION**

## ITEM 1. LEGAL PROCEEDINGS

For a description of our material pending legal and regulatory proceedings and settlements, refer to “Note 16. Commitments and Contingencies – *Litigation and Regulatory Proceedings*” in our consolidated financial statements included in this Report on Form 10-Q.

### ITEM 1A. RISK FACTORS

Our business faces many risks. Any of the risks referenced below or elsewhere in this Quarterly Report on Form 10-Q or our other SEC filings could have a material impact on our business and consolidated financial position or results of operations. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also impair our business operations.

For additional detailed discussion of risk factors that should be understood by any investor contemplating investment in our stock, please refer to “Part I. Item 1A. Risk Factors” in our 2015 Form 10-KT and elsewhere as described in this Quarterly Report on Form 10-Q.

***The results of the United Kingdom’s referendum on withdrawal from the European Union may have a negative effect on global economic conditions, financial markets and our business, which could reduce the price of our ordinary shares.***

We are a multinational company headquartered in London with worldwide operations, including significant business operations in Europe. In June 2016, a majority of voters in the United Kingdom elected to withdraw from the European Union in a national referendum. The referendum was advisory, and the terms of any withdrawal are subject to a negotiation period that could last at least two years after the government of the United Kingdom formally initiates a withdrawal process. Nevertheless, the referendum has created significant uncertainty about the future relationship between the United Kingdom and the European Union, and has given rise to calls for certain regions within the United Kingdom to preserve their place in the European Union by separating from the United Kingdom as well as for the governments of other European Union member states to consider withdrawal.

These developments, or the perception that any of them could occur, have had and may continue to have a material adverse effect on global economic conditions and the stability of global financial markets, and could significantly reduce global market liquidity and restrict the ability of key market participants to operate in certain financial markets. Asset valuations, currency exchange rates and credit ratings may be especially subject to increased market volatility. Lack of clarity about future United Kingdom laws and regulations as the United Kingdom determines which European Union laws to replace or replicate in the event of a withdrawal, including financial laws and regulations, tax and free trade agreements, intellectual property rights, supply chain logistics, environmental, health and safety laws and regulations, immigration laws and employment laws, could increase costs, depress economic activity and restrict our access to capital. If the United Kingdom and the European Union are unable to negotiate acceptable withdrawal terms or if other European Union member states pursue withdrawal, barrier-free access between the United Kingdom and other European Union member states or among the European economic area overall could be diminished or eliminated. Any of these factors could have a material adverse effect on our business, financial condition and results of operations and reduce the price of our ordinary shares.

***The adoption of new therapies by the market requires significant time and expense in therapy education efforts, and such adoption may be delayed by a variety of factors and cannot be guaranteed.***

LivaNova, as a result of internal research and development or investments in technologies, will introduce new products or new therapies to the market over time. Introducing a new product to the market requires significant expense and resources in order to support the adoption of the new product or treatment option in the market, as a significant amount of effort needs to be undertaken to train and educate health care professionals, patients, and payors on the disease to be treated, the benefits of the new product or therapy, and the clinical data in support of the therapy. In such situations, LivaNova will need to create therapy awareness programs, train and educate health care professionals on the clinical need and benefits of the new therapy, and conduct additional market access activities in order to obtain reimbursement approvals and medical codes for the new product or therapy. There are various factors that could delay the adoption of the new therapy, including the need to create new clinical pathways to identify potential patients, screen potential patients, and provide therapy to the new patients, as well as resource constraints or reimbursement constraints at the medical hospitals or institutions to support new infrastructure for the adoption

of the new therapy. We cannot guarantee the adoption of new therapies, or the timing of adoption, by the market or that it will not materially adversely affect our sales projections, consolidated earnings, financial condition, operations, and/or cash flows.

## ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Period	Total Number of Shares Purchased <sup>(1)</sup>	Average Price Paid per Share <sup>(2)</sup>	Total number of Shares Purchased as Part of Publicly Announced Plans or Programs <sup>(3)</sup>	Approximate dollar value of Shares that may yet be Purchased under the Plans or Programs <sup>(3)</sup>
September 1 - September 30, 2016	212,860	60.435	212,860	\$ 137,132,000

(1) Total number of shares purchased includes shares purchased as part of a publicly announced plan.

(2) Shares are purchased at market price.

(3) In August 2016, the Board of Directors authorized a share repurchase program of up to \$150.0 million of our ordinary stock. As of September 30, 2016, we had repurchased 212,860 shares under this plan.

## ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

## ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

## ITEM 5. OTHER INFORMATION

None.

## ITEM 6. EXHIBITS

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

Exhibit Number	Document Description	Report or Registration Statement	SEC File or Registration Number	Exhibit Reference
2.1	Transaction Agreement, dated March 23, 2015, by and among LivaNova PLC (f/k/a Sand Holdco Limited), Cyberonics, Inc., Sorin S.p.A. and Cypher Merger Sub, Inc.	LivaNova PLC Registration Statement on Form S-4, filed on April 20, 2015, as amended	333-203510	2.1
3.1	Articles of Association of LivaNova PLC	LivaNova PLC Current Report on Form 8-K, 001-37599 filed on October 19, 2015		3.1
31.1*	Certification of the Chief Executive Officer of LivaNova PLC pursuant to Section 302 of the Sarbanes-Oxley Act of 2002			
31.2*	Certification of the Chief Financial Officer of LivaNova PLC pursuant to Section 302 of the Sarbanes-Oxley Act of 2002			
32.1*	Certification of the Chief Executive Officer and Chief Financial Officer of LivaNova PLC pursuant to Section 906 of the Sarbanes-Oxley Act of 2002			
10.48*	Letter Agreement dated July 1, 2016 between Mr Douglas Manko and Cyberonics Inc, a wholly owned subsidiary of LivaNova Plc			
10.49*	Amendment Agreement between Mr Jacques Gutedel, dated July 6, 2016 and LivaNova Switzerland S.A., a subsidiary of LivaNova (the "2016 Amendment Agreement") to amend Mr Gutedel's existing employment agreement dated March, 1, 2009.			
10.50	Service Agreement dated October 3, 2016 between Mr Damien McDonald and LivaNova Plc	LivaNova Plc Current Report on Form 8-K filed on August 1, 2016	001-37599	10.1
10.51	Side Letter effective October 3, 2016 between Mr Damien McDonald and LivaNova Plc	LivaNova Plc Current Report on Form 8-K filed on August 1, 2016	001-37599	10.2
10.52	Termination and Settlement Agreement dated August 3, 2016 between Mr Michel Darnaud and LivaNova France SAS	LivaNova Plc Current Report on Form 8-K filed on August 5, 2016	001-37599	10.1
10.53	Consulting Agreement effective August 4, 2016 between LivaNova France SAS and Mr Michel Darnaud	LivaNova Plc Current Report on Form 8-K filed on August 5, 2016	001-37599	10.2
10.54	Form of Share Repurchase Contract approved by shareholders at the 2016 Annual Meeting of Shareholders	LivaNova Plc Proxy Statement on Schedule 14A filed on May 16, 2016	001-37599	Annex A
10.55	Form of Rule 10b5-1 Repurchase Plan approved by shareholders at the 2016 Annual Meeting of Shareholders	LivaNova Plc Proxy Statement on Schedule 14A filed on May 16, 2016	001-37599	Annex B



## INDEX TO EXHIBITS

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10.48*	Letter Agreement dated July 1, 2016 between Mr Douglas Manko and Cyberonics Inc, a wholly owned subsidiary of LivaNova Plc			
10.49*	Amendment Agreement between Mr Jacques Gutedel, dated July 6, 2016 and LivaNova Switzerland S.A., a subsidiary of LivaNova (the "2016 Amendment Agreement") to amend Mr Gutedel's existing employment agreement dated March, 1, 2009.			
10.50	Service Agreement dated October 3, 2016 between Mr Damien McDonald and LivaNova Plc	LivaNova Plc Current Report on Form 8-K filed on August 1, 2016	001-37599	10.1
10.51	Side Letter effective October 3, 2016 between Mr Damien McDonald and LivaNova Plc	LivaNova Plc Current Report on Form 8-K filed on August 1, 2016	001-37599	10.2
10.52	Termination and Settlement Agreement dated August 3, 2016 between Mr Michel Darnaud and LivaNova France SAS	LivaNova Plc Current Report on Form 8-K filed on August 5, 2016	001-37599	10.1
10.53	Consulting Agreement effective August 4, 2016 between LivaNova France SAS and Mr Michel Darnaud	LivaNova Plc Current Report on Form 8-K filed on August 5, 2016	001-37599	10.2
10.54	Form of Share Repurchase Contract approved by shareholders at the 2016 Annual Meeting of Shareholders	LivaNova Plc Proxy Statement on Schedule 14A filed on May 16, 2016	001-37599	Annex A

10.55	Form of Rule 10b5-1 Repurchase Plan approved by shareholders at the 2016 Annual Meeting of Shareholders	LivaNova Plc Proxy Statement on Schedule 001-37599 14A filed on May 16, 2016	Annex B
10.56	Board approval of Share Repurchase Program on August 2, 2016	LivaNova Plc Current Report on Form 8-K 001-37599 filed on August 2, 2016	
10.57*	\$40m Revolving Facility Agreement between LivaNova Plc and Barclays Bank Plc		
21.1*	List of Subsidiaries of LivaNova PLC		
24.1*	Power of Attorney (included on the Signature Page to this Quarterly Report on Form 10-Q)		
101*	Interactive Data Files Pursuant to Rule 405 of Regulation S-T: (i) the Condensed Consolidated Statement of Income for the three and nine months ended September 30, 2016 and the twelve and thirty-eight weeks ended October 18, 2015, (ii) the Condensed Consolidated Statement of Comprehensive Income for the three and nine months ended September 30, 2016 and the twelve and thirty-eight weeks ended October 18, 2015, (iii) the Condensed Consolidated Balance Sheet as of September 30, 2016 and December 31, 2015, (iv) the Condensed Consolidated Statement of Stockholders' Equity for the nine months ended September 30, 2016, (v) the Condensed Consolidated Statement of Cash Flows for the nine months ended September 30, 2016 and the thirty-eight weeks ended October 18, 2015, and (vi) the Notes to the Condensed Consolidated Financial Statements.		

July 1, 2016

Douglas J. Manko  
27514 Hurston Glen Lane  
Katy, TX 77494

Dear Doug:

We are delighted to offer you employment with Cyberonics, Inc., a wholly-owned subsidiary of LivaNova PLC. (the "Company") in the position of Chief Accounting Officer, reporting to Vivid Sehgal, Chief Financial Officer. Your employment will commence with the Company on July 18, 2016. We are confident that your background and accomplishments will complement the outstanding team we have assembled, and we are very excited about the prospect of having you join the Company.

The terms of our offer are set forth as follows:

**Base Salary:** You will be paid a bi-weekly salary of \$11,347, equivalent to \$295,022 annually.

**Annual Bonus:** You will be eligible to participate in the Company's annual bonus program. The target amount of your annual bonus is 40% of your annual base salary. Your actual bonus can be more or less than the target amount based on our achievement of annual performance objectives. For 2016, we will guarantee you at least 50% of your target bonus amount prorated for the period of your employment.

**Equity Award:** You are eligible to receive an equity award following commencement of employment. The issuance of an equity award is subject to the approval of the Compensation Committee of the Company's Board of Directors. At the next opportunity following commencement of your employment, the Company will recommend approval of an equity award having a grant-date value as determined according to U.S. Generally Accepted Accounting Principles equivalent to 100% of your annual base salary.

**Designated Insider:** LivaNova PLC is a public company with shares traded on the NASDAQ Stock Exchange and the London Stock Exchange (LIVN). As such, all transactions in LivaNova securities, including common stock, stock options and other securities offered by LivaNova, are subject to the Securities Exchange Act of 1934. As a consequence of the information to which you will have access as an employee in this position, you will be classified as a "Designated Insider." Upon acceptance of this offer, all your transactions involving LivaNova stock will be subject to LivaNova Policy LE 001, Insider Trading, regarding compliance with applicable securities regulations.

**Benefits:** In addition to the terms set forth above, the position you are being offered is eligible to participate in a variety of employee benefits, which currently include medical, vision and dental insurance coverage, basic life and accidental death and dismemberment insurance, short- and long-term disability coverage, a 401(k) retirement savings plan, and more, all in accordance with each plan's provisions. Instructions on where to locate information concerning these benefits are available on request. Please keep in mind that each of these benefits and the plans governing them may be modified periodically throughout your employment at the Company's discretion.

The Company complies with the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990, which requires us to verify proof of identity and evidence of employment eligibility to work within the United States. On your first day of employment you will be expected to complete an I-9 Form, and present appropriate original documents in order to fulfill this federal obligation. Your employment with the Company is conditioned upon continued compliance with these requirements.

In addition, this employment offer is contingent upon satisfactory completion of a pre-employment background investigation which, depending on your position, may include but not be limited to, a review of academic records, employment history, consumer credit, criminal history, driving record, references, and drug screening, all of which have been initiated following your verbal acceptance of our offer. The results of the pre-employment background investigation must be satisfactory to the Company in its sole discretion. The Company may withdraw this offer without further obligation to you.

This letter is not a legally binding agreement, express or implied, to employ you and does not guarantee employment with the Company for any specific duration. You or the Company may terminate the employment relationship at will, with or without cause, at any time and for any reason. This letter is not intended to alter the employment-at-will relationship between you and the Company in any way. It does, however, supersede any other written and/or verbal representations made by any representative of the Company relative to your employment with the Company.

In the event of a dispute concerning this employment offer or your employment relationship with the Company, you and the Company agree to submit the matter to binding arbitration before a single arbitrator under the then-current rules of the American Arbitration Association.

If the terms and conditions of this offer of employment are acceptable to you, please sign this conditional offer letter. Should we not receive your signed offer letter by July 5, 2016, we will assume that it is not acceptable and that you have declined the offer.

We hope you look favorably upon this offer and choose to join the team.

Sincerely,

David S. Wise

Accepted and Agreed:

Date:  
Douglas J. Manko

## Amendment Agreement

This Amendment Agreement ("**Amendment**") is made effective as of the 6<sup>th</sup> day of July, 2016 (the "**Effective Date**") by and between LivaNova Switzerland S.A., with offices at World Trade Center Lausanne, Avenue Gratte-Paille 2, CP 476, CH-1000 Lausanne 30 Grey ("**Company**") and Jacques Gutedel, Gurnmenweg 4, Rurnisberg 4539, Switzerland ("**Employee**").

**Whereas**, Employee and the Company made an Employment Agreement effective as of March 1, 2009 (as amended from time to time, the "**Employment Agreement**");

**Whereas**, Employee and the Company made a letter agreement styled, "Change in Control Severance Payment," (the "**Severance Agreement**") effective as of February 26, 2015; and

**Whereas**, Employee and the Company now desire to amend the Employment Agreement and the Severance Agreement on the terms hereafter set forth;

**Now, therefore**, for a good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Employee and the Company agree as follows.

1. Section 2.1 of the Employment Agreement is amended to state that Employee shall be employed and appointed by the Company as President, Europe, Canada & Australia, reporting to the Company's Chief Operating Officer.
2. Section 4.1 of the Employment Agreement is amended to state that Employee's Base Salary shall be CHF 500,000.
3. Section 4.2 of the Employment Agreement is amended to state that Employee's Variable Bonus shall be 75% of his Base Salary.
4. The Company agrees to pay Employee a total of CHF 1,500,400 (the "**Severance Payment**"), as follows:
  - a. CHF 400,000 on July 1, 2018;
  - b. CHF 500,000 on July 1, 2019; and
  - c. CHF 600,400 on July 1, 2020;

To be eligible to receive the foregoing amounts, the Employee must continue to be employed on the specified dates; provided that if the Company terminates the Employee without Good Cause at any time prior to July 1, 2020, any portion of the Severance Payment not already paid will become due and payable within 30 days. As used in this Section 4, "**Good Cause**" means Employee's conviction of a felony or Employee's willful or grossly negligent fraud, dishonesty, misappropriation, or neglect of duties, exclusively.

In addition, if Employee's responsibilities are materially diminished within the two-year period following a Change of Control, any portion of the Severance Payment not already paid will become due and payable within 30 days. As used in this Section 4, "**Change of Control**" means the sale of all or substantially all the assets of the Company; any merger, consolidation or acquisition of the Company with, by or into an unaffiliated corporation, entity or person; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of the Company in one or more related transactions.

The Severance Payment shall be payable without setoff, counterclaim or any deduction whatsoever; provided that the Company may set off a claim that is recognized by the Employee.

5. Employee and the Company agree that the Severance Agreement is terminated as of the Effective Date.

6. This Amendment shall be governed by, interpreted and construed in accordance with the applicable laws of Switzerland. The parties hereto hereby irrevocably submit to the exclusive jurisdiction of the courts of Switzerland in any action or proceeding to enforce this Amendment or arising out of or relating to this Amendment and irrevocably waive any objection to such proceedings on the grounds of an inconvenient forum.

Place, Date

Place, Date

**LivNova Switzerland S.A.**

**Employee**

**21\_October 2016**  
**LIVANOVA PLC**  
(as the Borrower)

and

**BARCLAYS BANK PLC**  
(as the Lender)

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**USD 40,000,000 REVOLVING FACILITY AGREEMENT**

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99 Bishopsgate  
London EC2M 3XF  
United Kingdom  
Tel: +44.20.7710.1000  
[www.lw.com](http://www.lw.com)

**CONTENTS**

<b>Clause</b>	<b>Page</b>
1. Definitions and Interpretation	1
2. The Facility	15
3. Purpose	15
4. Conditions of Utilisation	15
5. Utilisation	16
6. Repayment	17
7. Prepayment and Cancellation	17
8. Interest	21
9. Interest Periods	22
10. Changes to the Calculation of Interest	22

11. Fees 23
12. Tax Gross Up and Indemnities 25
13. Increased Costs 29
14. Other Indemnities 31
15. Mitigation by the Lender 32
16. Costs and Expenses 32
17. Representations 33
18. Information Undertakings 38
19. General Undertakings 39
20. Events of Default 45
21. Changes to the Lender 49
22. Assignments and transfer by the Borrower 49
23. Conduct of Business by the Lender 49
24. Payment Mechanics 50
25. Set-Off 52
26. Notices 52
27. Calculations and Certificates 54
28. Partial Invalidity 54
29. Remedies and Waivers 54
30. Amendments and Waivers 54
31. Confidential Information 54
32. Confidentiality of Funding Rates and Reference Bank Quotations 57
33. Counterparts 58
34. Governing Law 59
35. Enforcement 59

Schedule 1 conditions precedent60

Schedule 2 Utilisation Request61

Schedule 3 Existing Security62

Schedule 4 Timetables63

[EU-DOCS\16362830.5]

**THIS AGREEMENT** is dated 21 October 2016 and made between:

- (1) **LivaNova PLC** incorporated in England and Wales with company registration no. 09451374 as borrower (the "**Borrower**"); and
- (2) **Barclays Bank PLC** as lender (the "**Lender**").

**IT IS AGREED** as follows:

## **SECTION 1 INTERPRETATION**

### 1. **Definitions and Interpretation**

#### 1. **Definitions**

In this Agreement:

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

"**Accounting Principles**" means generally accepted accounting principles in the United Kingdom.

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

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

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

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

- (a) the amount of any outstanding Loans; and
- (b) in relation to any proposed Utilisation, the amount of any Loans that are due to be made on or before the proposed Utilisation Date,  
other than any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

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

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

exceeds:

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

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

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

**"Commitment"** means USD 40,000,000 to the extent not cancelled or reduced under this Agreement.

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

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

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 31 (Confidential Information); or
- (b) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (c) is known by the Lender before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Group and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"CTA"** means the Corporation Tax Act 2009.

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

**"Disruption Event"** means either or both of:

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

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

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

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

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

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

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

**"Environmental Permits"** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.

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

**"Excluded Guarantee"** means:

- (a) any counter-indemnity obligation in respect of a performance or similar bond guaranteeing performance by a member of the Group under any public tender or other contract entered into in the ordinary course of trade; or
- (b) any guarantee or indemnity granted or arising under legislation relating to tax or corporate law under which any member of the Group assumes general liability for the obligations of another member of the Group.

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

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

**"FATCA"** means:

- (g) sections 1471 to 1474 of the Code or any associated regulations;
- (h) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (i) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

**"FATCA Application Date"** means:

- (j) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (k) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (l) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

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

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

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

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

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

- (m) moneys borrowed;
- (n) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (o) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (p) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;
- (q) 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 agreement other than a Permitted Receivables Disposal);
- (r) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and lease back arrangements and sale and purchase agreements having deferred payment terms longer than terms customary on the market) having the financial effect of a borrowing;
- (s) 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);
- (t) 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
- (u) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

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

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

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

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

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

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

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

- (v) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (w) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time for dollars.

**"ITA"** means the Income Tax Act 2007.

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

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

- (a) the applicable Screen Rate as of the Specified Time for dollars and for a period equal in length to the Interest Period of that Loan; or
  - (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),
- and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

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

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

**"Margin"** means 0.75 per cent. per annum.

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

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole; or
- (b) the ability of the Borrower to perform its obligations under the Finance Documents; or
- (c) the validity or enforceability of the rights or remedies of the Lender under any of the Finance Documents.

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

- (a) is listed in Schedule 5 (*Material Companies*); or
- (b) has an operating profit representing 10 per cent. or more of the consolidated operating profit of the Group (determined in accordance with IFRS) or has turnover (excluding intra-group items) representing 10 per cent., or more of the turnover of the Group, calculated on a consolidated basis.

Compliance with the conditions set out in paragraph (b) above shall be determined by reference to the latest consolidated financial statements of the Group. However, if a Subsidiary has been acquired since the date as

at which the latest consolidated financial statements of the Group were prepared, the financial statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary.

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

- (a) subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

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

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

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

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

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

- (a) no Event of Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;
- (b) the acquired company, business or undertaking is engaged in a business substantially the same as (or ancillary or related to) that carried on by the Group;
- (c) the consideration (including associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability, remaining in the acquired company (or any such business) at the date of acquisition (the "**Individual Purchase Price**") when aggregated with the consideration (including associated costs and expenses) for any other acquisition permitted under this Agreement and any Financial Indebtedness or other assumed actual or contingent liability, remaining in any such acquired companies or businesses at the time of acquisition (the "**Total Purchase Price**") does not exceed USD 280,000,000 or its equivalent in aggregate over the life of the Facility.

Any acquisition whose Individual Purchase Price exceeds USD 75,000,000 or its equivalent will only be permitted under paragraph (c) above if the Borrower has delivered to the Lender not later than 30 (thirty)

Business Days before legally committing to make such acquisition a certificate signed by two directors of the Borrower to which is attached a copy of the latest audited accounts (or if not available, management accounts) of the target company or business.

Such certificate must give calculations showing in reasonable detail that the Borrower would have remained in compliance with the financial covenants set out in Schedule 6 (*Financial Covenants*) 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 period.

**"Permitted Guarantee"** means:

- (a) any guarantee comprising a netting or set-off arrangements entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (b) any indemnity given in the ordinary course of the documentation of an acquisition which is a Permitted Acquisition which indemnity is in a customary form and subject to customary limitations;
- (c) the guarantee of any Financial Indebtedness permitted by this Agreement; or
- (d) any Excluded Guarantee.

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

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

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

**"Permitted Security"** means:

- (a) any Security listed in Schedule 3 (*Existing Security*) except to the extent the principal amount secured by that Security exceeds the amount stated in that Schedule;
- (b) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (c) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:

- (i) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
  - (ii) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,  
excluding, in each case, any Security under a credit support arrangement in relation to a hedging transaction;
- (d) any lien arising by operation of law and in the ordinary course of trading;
- (e) any Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
- (i) the Security was not created in contemplation of the acquisition of that asset by a member of the Group;
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
  - (iii) the Security is removed or discharged within 2 (two) months of the date of acquisition of such asset;
- (f) any Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security is created prior to the date on which that company becomes a member of the Group, if:
- (i) the Security was not created in contemplation of the acquisition of that company;
  - (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
  - (iii) the Security is removed or discharged within 2 (two) months of that company becoming a member of the Group;
- (g) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group; or
- (h) any Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security given by any member of the Group other than any permitted under paragraphs (a) to (g) above) does not exceed USD 15,000,000 (or its equivalent in another currency or currencies).

**"Permitted Transaction"** means:

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

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

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

"**Quotation Day**" means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period unless market practice differs in the relevant market in which case the Quotation Day will be determined by the Lender in accordance with market practice in the relevant market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

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

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

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

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

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

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

"**Repeating Representations**" means each of the representations set out in Clauses 17.1 (*Status*) to 17.6 (*Governing law and enforcement*), 17.10 (*No default*) to 17.12 (*Financial statements*), 17.18 (*Pari passu ranking*) to 17.20 (*Legal and beneficial ownership*) and 17.24 (*Centre of main interests and establishments*) to 17.26 (*Sanctions*).

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

"**Restricted Party**" means a person that is:

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

**"Rollover Loan"** means one or more Loans:

- (d) made or to be made on the same day that a maturing Loan is due to be repaid; and
- (e) the aggregate amount of which is equal to or less than the amount of the maturing Loan.

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

**"Sanctions Authority"** means:

- (a) the United Nations;
- (b) the United States of America;
- (c) the European Union;
- (d) the United Kingdom of Great Britain and Northern Ireland; and
- (e) the governments and official institutions or agencies of any of paragraphs (a) to (d) above, including OFAC, the US Department of State, and Her Majesty's Treasury.

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

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

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

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

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

- (f) which is controlled, directly or indirectly, by the first mentioned company or corporation;
  - (g) more than half the issued share capital (which gives rise to voting rights) of which is beneficially owner, directly or indirectly, by the first mentioned company or corporation; or
  - (h) with is a Subsidiary of another Subsidiary of the first mentioned company or corporation,
- and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs, exercise a dominant influence over it and/or to control the composition of its board of directors or equivalent body and is fully consolidated in the consolidated financial statements on a line-by-line basis for such period.

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

"**Termination Date**" means the date falling 2 (two) years after the date of this Agreement.

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

"**US**" means the United States of America.

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

"**Utilisation**" means a utilisation of the Facility.

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

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

"**VAT**" means:

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

## 1. **Construction**

- (a) Unless a contrary indication appears, any reference in this Agreement to:
  - (i) the "**Lender**", the "**Borrower**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
  - (ii) "**assets**" includes present and future properties, revenues and rights of every description;
  - (iii) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

- (iv) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (v) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (vi) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (vii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (viii) a time of day is a reference to London time.
- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
  - (c) Section, Clause and Schedule headings are for ease of reference only.
  - (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
  - (e) A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been remedied or waived.

2. **Third party rights**

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

**SECTION 2**  
**THE FACILITY**

1. **The Facility**

1. **The Facility**

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

2. **Purpose**

1. **Purpose**

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

2. **Monitoring**

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

3. **Conditions of Utilisation**

1. **Initial conditions precedent**

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

2. **Further conditions precedent**

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

- (a) in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan and, in the case of any other Loan, no Default is continuing or would result from the proposed Loan; and
- (b) the Repeating Representations to be made by the Borrower are true.

3. **Maximum number of Loans**

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

**SECTION 3  
UTILISATION**

4. **Utilisation**

1. **Delivery of a Utilisation Request**

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

2. **Completion of a Utilisation Request**

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
  - (i) the proposed Utilisation Date is a Business Day within the Availability Period;
  - (ii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
  - (iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*).
- (b) Only one Loan may be requested in each Utilisation Request.

3. **Currency and amount**

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

4. **Lender's participation**

If the conditions set out in this Agreement have been met, and subject to Clause 6.1 (*Repayment of Loans*) the Lender shall make each Loan available in dollars by the Utilisation Date through its Facility Office.

5. **Cancellation of Commitment**

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

**SECTION 4**

**REPAYMENT, PREPAYMENT AND CANCELLATION**

5. **Repayment**

1. **Repayment of Loans**

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

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

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

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

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

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

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

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

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

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

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

6. **Prepayment and Cancellation**

1. **Illegality**

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

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) upon the Lender notifying the Borrower, the Available Commitment of the Lender will be immediately cancelled; and
- (c) the Borrower shall repay the Loans on the last day of the Interest Period for each Loan occurring after the Lender has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law) and the Commitment shall be cancelled in the amount of the participations repaid.

2. **Change of control**

- (a) The Borrower shall promptly inform the Lender if a Change-of-Control Event has occurred or is likely to occur. At any time after the occurrence of a Change-of-Control Event, the Lender may, by notice to the Borrower, cancel the Available Commitment and demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Agreement.
- (b) In addition, if the Borrower has informed the Lender that a Change-of-Control Event is about to occur, or if the Lender has reasonable cause to believe that a Change-of-Control Event is about to occur, the Lender may request that the Borrower consults with it. Such consultation shall take place within 30 (thirty) days from the date of the Lender's request. After the earlier of (a) the lapse of 30 (thirty) days from the date of such request for consultation, and (b) upon the occurrence of the anticipated Change-of-Control Event the Lender may, by notice to the Borrower, cancel the Available Commitment and demand prepayment of the Loan, together with accrued interest and all other amounts accrued or outstanding under this Agreement.
- (c) The Borrower shall effect payment of the amount demanded on the date specified by the Lender, such date being a date falling not less than 30 (thirty) days from the date of the demand.

For the purposes of this clause:

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

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

3. **Voluntary cancellation**

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

4. **Voluntary prepayment of Loans**

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

5. **Right of replacement or repayment and cancellation**

(a) If:

- (i) any sum payable to the Lender by the Borrower is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*); or
- (ii) the Lender claims indemnification from the Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13.1 (*Increased costs*), the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Lender notice of cancellation of the Commitment and its intention to procure the repayment of the Loans.

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

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

6. **Application of Prepayments**

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

- (i) first, in cancellation of Available Commitment; and
- (ii) secondly, in prepayment of Utilisations and cancellation of the Commitment.

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

7. **Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Breakage Costs, without premium or penalty.
- (c) Unless a contrary indication appears in this Agreement, any part of the Facility which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Commitment cancelled under this Agreement may be subsequently reinstated.
- (f) If all or part of the Loan is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of the Commitment (equal to the amount which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

**SECTION 5  
COSTS OF UTILISATION**

7. **Interest**

1. **Calculation of interest**

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

- (a) Margin; and
- (b) LIBOR.

2. **Payment of interest**

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

3. **Default interest**

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

- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 2 (two) per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

4. **Notification of rates of interest**

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

8. **Interest Periods**

1. **Selection of Interest Periods**

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

2. **Non-Business Days**

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

9. **Changes to the Calculation of Interest**

1. **Unavailability of Screen Rate**

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:
  - (i) dollars; or
  - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate, the applicable LIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of that Loan.

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

2. **Calculation of Reference Bank Rate**

- (a) Subject to paragraph (b) below, if LIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about noon on the Quotation Day, none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

3. **Market disruption**

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

4. **Cost of funds**

- (a) If this Clause 10.4 applies, the rate of interest on the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin; and
  - (ii) the rate notified by the Lender to the Borrower as soon as practicable and in any event within 5 (five) Business Days of the first day of that Interest Period (or, if earlier, on the date falling 10 (ten) Business Days before the date on which interest is due to be paid in respect of that Interest Period), as reasonably determined by the Lender to be a suitable reference rate for its general lending activities (on an actual or notional basis) from whatever source it may reasonably select.
- (b) If this Clause 10.4 applies and the Lender or the Borrower so requires, the Lender and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of the Lender and the Borrower, be binding on all Parties.

5. **Breakage Costs**

- (a) The Borrower shall, within three Business Days of demand by the Lender, pay to the Lender its Breakage Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) The Lender shall, as soon as reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its Breakage Costs for any Interest Period in which they accrue.

10. **Fees**

1. **Commitment fee**

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

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

2. **Utilisation fee**

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

- (i) 0.10 per cent. on the total outstanding principal amount of each Loan for each day on which the aggregate outstanding amount of all Loans is equal to or greater than 33 per cent. but less than or equal to 66 per cent. of the Commitment; and
- (ii) 0.20 per cent. on the outstanding principal amount of each Loan for each day on which the aggregate outstanding amount of all Loans is greater than 66 per cent. of the Commitment.

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

## SECTION 6

### ADDITIONAL PAYMENT OBLIGATIONS

11. **Tax Gross Up and Indemnities**

1. **Definitions**

(a) In this Agreement:

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

(i) a person:

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

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

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

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

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

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

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

2. **Tax gross-up**

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from it shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due the payment could have been made to the Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date the Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a lender under this Agreement (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority.
- (e) If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lender a statement under section 975 of the ITA or other evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

3. **Tax indemnity**

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

- (b) Paragraph (a) above shall not apply:
- (i) with respect to any Tax assessed on the Lender:
    - (A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
    - (B) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or
  - (ii) to the extent a loss, liability or cost:
    - (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*);
    - (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) but was not so compensated solely because the exclusion in paragraph (d) of Clause 12.2 (*Tax gross-up*) applied; or
    - (C) relates to a FATCA Deduction required to be made by a Party.
- (c) If the Lender makes, or intends to make, a claim under paragraph (a) above shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

#### 4. **Tax Credit**

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

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
  - (b) the Lender has obtained and utilised that Tax Credit,
- the Lender shall pay an amount to the Borrower which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

#### 5. **Stamp taxes**

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

#### 6. **VAT**

- (a) All amounts expressed to be payable under a Finance Document by the Borrower to the Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly if VAT is or becomes chargeable on any supply made by the Lender to the Borrower under a Finance Document and the Lender is required to account to the relevant tax authority for the VAT, the Borrower must pay to the

Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and the Lender must promptly provide an appropriate VAT invoice to the Borrower).

- (b) Where a Finance Document requires the Borrower to reimburse or indemnify the Lender for any cost or expense, the Borrower shall reimburse or indemnify (as the case may be) the Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (c) Any reference in this Clause 12.6 to either Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).
- (d) In relation to any supply made by the Lender to the Borrower, if reasonably requested by the Lender, the Borrower must promptly provide the Lender with details of the Borrower's VAT registration and such other information as is reasonably requested in connection with the Lender's VAT reporting requirements in relation to such supply.

7. **FATCA Information**

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by the other Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party;
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
  - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- (b) If a Party confirms to the other Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige the Lender to do anything, and paragraph (a)(iii) above shall not oblige the Borrower to do anything, which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.

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

8. **FATCA Deduction**

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the other Party.

12. **Increased Costs**

1. **Increased costs**

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Lender, pay the amount of any Increased Costs reasonably incurred by it or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; (ii) compliance with any law or regulation made after the date of this Agreement; or (iii) the implementation of, or compliance with Basel III and/or CRD IV or any law or regulation to the extent that it implements or applies Basel III and/or CRD IV.
- (b) In this Agreement "**Increased Costs**" means:
  - (i) a reduction in the rate of return from the Facility or on the Lender's (or its Affiliate's) overall capital;
  - (ii) an additional or increased cost; or
  - (iii) a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by the Lender or any of its Affiliates to the extent that it is attributable to the Lender having entered into the Commitment or funding or performing its obligations under any Finance Document.
- (c) In this Agreement
  - (i) "**Basel III**" means:
    - (A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated; and

- (B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
  - (C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III"; and
- (ii) "**CRD IV**" means the capital requirements specified in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 and Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

2. **Increased cost claims**

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

3. **Exceptions**

- (a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
- (i) attributable to a Tax Deduction required by law to be made by the Borrower;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;
  - (iii) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied); or
  - (iv) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.
- (b) In this Clause 13.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 12.1 (*Definitions*).

13. **Other Indemnities**

1. **Currency indemnity**

- (a) If any sum due from the Borrower under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
- (i) making or filing a claim or proof against the Borrower;
  - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
- the Borrower shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency

into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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

2. **Other indemnities**

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

- (a) the occurrence of any Event of Default;
- (b) a failure by the Borrower to pay any amount due under a Finance Document on its due date;
- (c) funding, or making arrangements to fund, a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

3. **Indemnity to the Lender**

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

- (a) investigating any event which it reasonably believes is a Default;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

14. **Mitigation by the Lender**

1. **Mitigation**

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

2. **Limitation of liability**

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

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

15. **Costs and Expenses**

1. **Transaction expenses**

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

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

(b) any other Finance Documents executed after the date of this Agreement.

2. **Amendment costs**

If:

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

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

the Borrower shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement.

3. **Enforcement costs**

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

## SECTION 8

### REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

16. **Representations**

The Borrower makes the representations and warranties set out in this Clause 17 to the Lender on the date of this Agreement.

1. **Status**

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

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

2. **Binding obligations**

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*), legal, valid, binding and enforceable obligations.

3. **Non-conflict with other obligations**

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

- (a) any law or regulation applicable to it;
- (b) its or any of its Subsidiaries' constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets.

4. **Power and authority**

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

5. **Validity and admissibility in evidence**

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents; and
  - (b) to make the Finance Documents admissible in evidence in its jurisdiction of incorporation,
- have been obtained or effected and are in full force and effect.

6. **Governing law and enforcement**

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

7. **Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 20.7 (*Insolvency proceedings*); or
  - (b) creditors' process described in Clause 20.8 (*Creditors' process*),
- has been taken or, to its knowledge, threatened in relation to a member of the Group; and none of the circumstances described in Clause 20.6 (*Insolvency*) applies to a member of the Group.

8. **No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

9. **Deduction of Tax**

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

10. **No default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which might have a Material Adverse Effect.

11. **No misleading information**

- (a) Any factual information provided by any member of the Group to the Lender was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) The financial projections provided by the Group to the Lender have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
- (c) Nothing has occurred since the date that any such information was provide or been omitted from such information provided and no information has been given or withheld that results in the information provided being untrue or misleading in any material respect.

12. **Financial statements**

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- (b) Its Original Financial Statements fairly represent its financial condition as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Borrower).
- (c) There has been no material adverse change in the business or consolidated financial condition of the Group since 31 December 2015.
- (d) Its most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*):
  - (i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and
  - (ii) give a true and fair view of (if audited) or fairly represent (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- (e) Since the date of the most recent financial statements delivered pursuant to Clause 18.1 (*Financial statements*) there has been no material adverse change in the business, assets or financial condition of the Group.

13. **No proceedings pending or threatened**

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

14. **No breach of laws**

- (a) It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

15. **Environmental laws**

- (a) Each member of the Group is in compliance with Clause 19.3 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.
- (c) The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for.

16. **Taxation**

- (a) It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, any member of the Group (or its equivalent in any other currency) or more is reasonably likely to arise.
- (c) It is resident for Tax purposes only in England and Wales.

17. **Security and Financial Indebtedness**

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

18. **Pari passu ranking**  
Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.
19. **Good title to assets**  
It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.
20. **Legal and beneficial ownership**  
It and each of its Subsidiaries is the sole legal and beneficial owner of the assets which are material in the context of its business and which are required by it in order to carry on its business as it is being conducted.
21. **Intellectual Property**  
It and each of its Subsidiaries:
- (a) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted;
  - (b) does not (nor does any of its Subsidiaries), in carrying on its businesses, infringe any Intellectual Property of any third party in any respect; and
  - (c) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it.
22. **Accounting Reference Date**  
The Accounting Reference Date of each member of the Group is 31 December.
23. **No adverse consequences**
- (a) It is not necessary under the laws of its Relevant Jurisdictions:
    - (i) in order to enable the Lender to enforce its rights under any Finance Document; or
    - (ii) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,that the Lender should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.
  - (b) The Lender is not and will not be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdictions by reason only of the execution, performance and/or enforcement of any Finance Document.
24. **Centre of main interests and establishments**  
For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated

in England and Wales and it has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction (other than Italy).

25. **Anti-corruption law**

Each member of the Group has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

26. **Sanctions**

(a) Neither it nor any of its Subsidiaries, nor any directors, officers or employees of it or any of its Subsidiaries:

- (i) is a Restricted Party or is engaging in or has engaged in any transaction or conduct that could result in it becoming a Restricted Party;
- (ii) is subject to any claim, proceeding, formal notice or investigation with respect to Sanctions;
- (iii) is engaging in any transaction that evades or avoids, or has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions applicable to it; or
- (iv) is engaging, directly or indirectly, in any trade, business or other activities with or for the benefit of any Restricted Party where such trade, business or activity is in breach of Sanctions.

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

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

27. **Repetition**

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

17. **Information Undertakings**

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

1. **Financial statements**

The Borrower shall supply to the Lender:

- (a) as soon as the same become available, but in any event within 180 days after the end of each of its financial years its audited consolidated financial statements for that financial year; and
- (b) as soon as the same become available, but in any event within 90 days after the end of each half of each of its financial years its consolidated financial statements for that financial half year.

2. **Requirements as to financial statements**

- (a) Each set of financial statements delivered by the Borrower pursuant to Clause 18.1 (*Financial statements*) shall be certified in accordance with applicable laws and the rules of any relevant stock exchange.
- (b) The Borrower shall procure that each set of financial statements delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using the Accounting Principles.

3. **Notification of default**

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

4. **Information: miscellaneous**

The Borrower shall supply to the Lender:

- (a) all documents dispatched by the Borrower to its shareholders (or any class of them) or its creditors (or any class of them) at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any material litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect; and
- (c) promptly, such further information regarding the financial condition, assets, business and operations of any member of the Group as the Lender may reasonably request.

5. **"Know your customer" checks**

If:

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

obliges the Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not

already available to it, the Borrower shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Lender, or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

18. **General Undertakings**

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

1. **Authorisations**

The Borrower shall promptly:

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

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

2. **Compliance with laws**

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

3. **Environmental compliance**

The Borrower shall (and it shall ensure that each member of the Group will):

- (a) comply with all Environmental Law;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law, where failure to do so has or is reasonably likely to have a Material Adverse Effect.

4. **Environmental claims**

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

- (a) any Environmental Claim against any member of the Group which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

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

5. **Pari passu ranking**

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

6. **Insurance**

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

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

7. **Intellectual Property**

The Borrower shall (and it shall procure that each other member of the Group will):

(a) preserve and maintain the subsistence and validity of its material Intellectual Property necessary for the business of the relevant Group member;

(b) use reasonable endeavours to prevent any infringement in any material respect of such Intellectual Property;

(c) make registrations and pay all registration fees and taxes necessary to maintain such Intellectual Property in full force and effect and record its interest in that Intellectual Property;

(d) not use or permit such Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of such Intellectual Property or imperil the right of any member of the Group to use such property; and

(e) not discontinue the use of such Intellectual Property,

where failure to do so, in the case of paragraphs (a) and (b) above, or, in the case of paragraphs (d) and (e) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

8. **Access**

If an Event of Default is continuing or the Lender reasonably suspects an Event of Default is continuing or may occur, the Borrower shall, and it shall ensure that each member of the Group will permit the Lender and/or its accountants or other professional advisers and contractors free access at all reasonable times and on reasonable notice at the risk and cost of the Borrower to (a) the premises, assets, books, accounts and records of each member of the Group and (b) meet and discuss matters with senior management.

9. **Preservation of assets**

The Borrower shall (and it shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

10. **Taxation**

(a) The Borrower shall (and it shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (i) such payment is being contested in good faith;
- (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Lender under Clause 18.1 (*Financial statements*); and
- (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

(b) The Borrower shall not (and it shall ensure that each member of the Group will not) change its residence for Tax purposes.

11. **Anti-corruption law**

(a) The Borrower shall not (and it shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

(b) The Borrower shall (and it shall ensure that each other member of the Group will):

- (i) conduct its businesses in compliance with applicable anti-corruption laws; and
- (ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

12. **Sanctions**

The Borrower shall ensure that no member of the Group may:

(a) use, lend, contribute or otherwise make available any part of the proceeds of any Utilisation or other transaction contemplated:

- (i) for the purpose of financing any trade, business or other activities involving, or for the benefit of, any Restricted Party; or
- (ii) in any other manner that would result in any person being in breach of any Sanctions or becoming a Restricted Party;

(b) engage in any transaction that evades or avoids or breaches directly or indirectly, any Sanctions applicable to it; or

(c) fund all or part of any payment in connection with a Finance Document out of proceeds derived from business or transactions with a Restricted Party, or from any action which is in breach of any Sanctions.

13. **Negative pledge**

- (a) The Borrower shall not (and it shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) The Borrower shall not (and it shall ensure that no other member of the Group will):
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any other member of the Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Permitted Security:

14. **Loans or credit**

- (a) Except as permitted under paragraph (b) below, the Borrower shall not (and it shall ensure that no other member of the Group will) be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to a Permitted Loan.

15. **Acquisitions**

- (a) Except as permitted under paragraph (b) below, the Borrower shall not (and it shall ensure that no other member of the Group will) acquire a company or any shares or securities or a business or undertaking (or any interest in any of them).
- (b) Paragraph (a) above does not apply to an acquisition that is a Permitted Acquisition.

16. **Merger**

- (a) The Borrower shall not (and it shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction.
- (b) Paragraph (a) above does not apply to any Permitted Transaction.

17. **No Guarantees or indemnities**

- (a) Except as permitted under paragraph (b) below, the Borrower shall not (and it shall ensure that no other member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
- (b) Paragraph (a) does not apply to a guarantee which is a Permitted Guarantee.

18. **Financial Indebtedness**

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

For the purposes of this Clause 19.18:

- (a) "**Group Financial Indebtedness**" means the Financial Indebtedness of the Group excluding, in each case, Financial Indebtedness of the Group incurred under any Excluded Guarantee;
- (b) "**Subsidiary Financial Indebtedness**" means the aggregate Financial Indebtedness of each Subsidiary excluding, in each case, the Financial Indebtedness of the Borrower and the Financial Indebtedness of the Group incurred under any Excluded Guarantee.

For the avoidance of doubt and notwithstanding anything to the contrary, intra-group debt shall not constitute or in any way be included in the definition of Financial Indebtedness or Subsidiary Financial Indebtedness.

19. **Disposal of assets**

- (a) Except as permitted under paragraph (b) below, the Borrower shall not (and it shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal for fair market value and at arm's length:
  - (i) made in the ordinary course of trading of the disposing entity;
  - (ii) of assets in exchange of other assets comparable or superior as to type, value and quality;
  - (iii) of obsolete or redundant vehicles, plant and equipment for cash;
  - (iv) of receivables being part of Permitted Receivables Disposals; or
  - (v) of assets not falling within paragraphs (i) to (iv) above, provided that over the life of the Facility the aggregate value of the disposed assets and other disposals of assets not falling within paragraphs (i) to (iv) above, shall not exceed 10 per cent. of the total assets of the Group as reports in the latest audited consolidated Financial Statements.

20. **Change of business**

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group from that carried on at the date of this Agreement.

21. **Arm's length basis**

The Borrower shall not (and it shall ensure that no other member of the Group will) enter into any transaction with any person except on arm's length terms and for full market value.

22. **Amendments**

- (a) The Borrower shall not (and it shall ensure that no other member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of any document delivered to the Lender pursuant to Clause 4.1 (*Initial conditions precedent*) except in writing:
  - (i) in accordance with Clause 30 (*Amendments and Waivers*);
  - (ii) prior to or on the first Utilisation Date, with the prior written consent of the Lender; or

(iii) after the first Utilisation Date, in a way which could not be reasonably expected materially and adversely to affect the interests of the Lender.

(b) The Borrower shall promptly supply to the Lender a copy of any document relating to any of the matters referred to in paragraphs (i) to (iii) above.

23. **Accounting practices**

The Borrower shall not change its Accounting Reference Date nor its accounting policies.

19. **Events of Default**

Each of the events or circumstances set out in Clause 20 is an Event of Default (save for Clause 20.17 (*Acceleration*)).

1. **Non-payment**

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a Disruption Event; and
- (b) payment is made within 5 (five) Business Days of its due date.

2. **Information Undertakings**

Any requirement of Clause 18 (*Information Undertakings*) is not satisfied.

3. **Other obligations**

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 20.1 (*Non-payment*) and Clause 18 (*Information Undertakings*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 10 (ten) Business Days, of the earlier of (A) the Lender giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

4. **Misrepresentation**

Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on its behalf under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

5. **Cross default**

- (a) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).

- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 20.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than USD 7,500,000 (or its equivalent in any other currency or currencies).

6. **Insolvency**

- (a) A member of the Group:
  - (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) suspends making payments on any of its debts; or
  - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding the Lender) with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of any member of the Group.

7. **Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group which is not the Borrower;
  - (b) a composition, compromise, assignment or arrangement with any creditor of any member of the Group;
  - (c) the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group which is not the Borrower), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the Group or any of its assets; or
  - (d) enforcement of any Security over any assets of any member of the Group,
- or any analogous procedure or step is taken in any jurisdiction.

This Clause 20.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 10 (ten) Business Days of commencement.

8. **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Group and is not discharged within 10 (ten) Business Days of commencement.

9. **Unlawfulness and invalidity**

- (a) It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.

(b) Any obligation or obligations of the Borrower under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable.

(c) Any Finance Document ceases to be in full force.

10. **Cessation of business**

Any Material Subsidiary suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

11. **Change of ownership**

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

12. **Audit qualification**

The Borrower's auditors qualify the audited annual consolidated financial statements of the Borrower or the Group on the grounds of inadequate or unreliable information or being unable to prepare the accounts on a going concern basis or otherwise which could reasonably be expected to be materially adverse to the interests of the Lender.

13. **Expropriation**

The authority or ability of any Material Subsidiary to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Material Subsidiary or any of its assets.

14. **Repudiation and rescission of agreements**

The Borrower rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document.

15. **Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any member of the Group or its assets which have or are reasonably likely to have a Material Adverse Effect.

16. **Material adverse change**

The occurrence of any event or change of condition, as compared with the condition at the date of this Agreement, affecting respectively the Borrower and/or any of its Subsidiaries, which, in the reasonable opinion of the Lender, materially impairs the ability respectively of the Borrower and/or any of its Subsidiaries to perform the financial and other obligations under this Agreement.

17. **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Lender may, by notice to the Borrower:

- (a) cancel the Commitment whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender.

**SECTION 9  
CHANGES TO PARTIES**

20. **Changes to the Lender**

1. **Assignments and transfers by the Lender**

Subject to this Clause 21, the Lender may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,  
to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets.

2. **Conditions of assignment or transfer**

- (a) The consent of the Borrower is required for an assignment or transfer by the Lender, unless the assignment or transfer is:
  - (i) to an Affiliate or Related Fund of the Lender; or
  - (ii) made at a time when an Event of Default is continuing.
- (b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent five Business Days after the Lender has requested it unless consent is expressly refused by the Borrower within that time.
- (c) An assignment will only be effective on receipt by the Borrower of written confirmation from the potential assignee that it will assume the same obligations as it would have been under if it was an original party hereto.

21. **Assignments and transfer by the Borrower**

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

22. **Conduct of Business by the Lender**

No provision of this Agreement will:

- (a) interfere with the right of the Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige the Lender to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige the Lender to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

**SECTION 11**  
**ADMINISTRATION**

23. **Payment Mechanics**

1. **Payments to the Lender**

- (a) On each date on which the Borrower is required to make a payment under a Finance Document, it shall make the same available to the Lender (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Lender specifies.

2. **Distributions to the Borrower**

The Lender may (with the consent of the Borrower or in accordance with Clause 25 (*Set-off*)) apply any amount received by it in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

3. **Partial payments**

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
  - (i) **first**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
  - (ii) **secondly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
  - (iii) **thirdly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

4. **No set-off by the Borrower**

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

5. **Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

6. **Currency of account**

- (a) Subject to paragraphs (b) and (c) below, dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

7. **Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Borrower); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the relevant market and otherwise to reflect the change in currency.

8. **Disruption to payment systems etc.**

If either the Lender determines (in its discretion) that a Disruption Event has occurred or the Lender is notified by the Company that a Disruption Event has occurred:

- (a) the Lender may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facility as the Lender may deem necessary in the circumstances;
- (b) the Lender shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes; and
- (c) any such changes agreed upon by the Lender and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding as an amendment to (or, as the case may

be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 30 (*Amendments and Waivers*).

24. **Set-Off**

The Lender may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by it) against any matured obligation owed by it to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

25. **Notices**

1. **Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

2. **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

(a) in the case of the Borrower, that identified with its name below; and

(b) in the case of the Lender, that identified with its name below,

or any substitute address or fax number or department or officer as one Party may notify to the other by not less than five Business Days' notice.

3. **Delivery**

(a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 26.2 (*Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).

(c) Any communication or document which becomes effective, in accordance with paragraphs (a) to (b) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

4. **Notification of address and fax number**

Promptly upon changing its address or fax number, each Party shall notify the other Party.

5. **Electronic communication**

- (a) Any communication to be made between the Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if the Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between the Borrower and the Lender may only be made in that way to the extent that they agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between the Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by the Borrower to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 26.5.

6. **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

26. **Calculations and Certificates**

1. **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

2. **Certificates and Determinations**

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

3. **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days.

27. **Partial Invalidity**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

28. **Remedies and Waivers**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of the Lender shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

29. **Amendments and Waivers**

Any term of the Finance Documents may be amended or waived only with the consent of the Lender and the Borrower.

30. **Confidential Information**

1. **Confidentiality**

The Lender agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 31.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

2. **Disclosure of Confidential Information**

The Lender may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as it shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such

requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

(b) to any person:

- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (iii) appointed by the Lender or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes; or
- (vii) with the consent of the Borrower;

in each case, such Confidential Information as the Lender shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and b(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information; and
- (C) in relation to paragraphs (b)(v) and (b)(vi) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no

requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances.

3. **Entire agreement**

This Clause 31 constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

4. **Inside information**

The Lender acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and undertakes not to use any Confidential Information for any unlawful purpose.

5. **Notification of disclosure**

The Lender agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 31.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 31.

6. **Continuing obligations**

The obligations in this Clause 31 are continuing and, in particular, shall survive and remain binding on the Lender for a period of twelve months from the earlier of the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available.

31. **Confidentiality of Funding Rates and Reference Bank Quotations**

1. **Confidentiality and disclosure**

- (a) The Lender and the Borrower agree to keep each Funding Rate (and, in the case of the Lender, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c), (d) and (e) below.
- (b) The Borrower may disclose any Funding Rate or Reference Bank Quotation on an average basis to the extent that such information is required to be disclosed by any applicable law or regulation.

- (c) The Lender may disclose any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause 8.4 (*Notification of rates of interest*).
- (d) The Lender may disclose any Funding Rate or any Reference Bank Quotation, and the Borrower may disclose any Funding Rate, to:
  - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
  - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender or the Borrower, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender or the Borrower, as the case may be, it is not practicable to do so in the circumstances; and
  - (iv) any person with the consent of the Lender or Reference Bank, as the case may be.
- (e) The Lender's obligations in this Clause 32 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.4 (*Notification of rates of interest*) **provided that** (other than pursuant to paragraph (b)(i) above) the Lender shall not include the details of any individual Reference Bank Quotation as part of any such notification.

## 2. **Related obligations**

- (a) The Lender and the Borrower acknowledge that each Funding Rate (and, in the case of the Lender, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Lender and the Borrower undertake not to use any Funding Rate or, in the case of the Lender, any Reference Bank Quotation for any unlawful purpose.

- (b) The Lender and the Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
  - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 32.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
  - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 32.

3. **No Event of Default**

No Event of Default will occur under Clause 20.3 (*Other obligations*) by reason only of the Borrower's failure to comply with this Clause 32.

32. **Counterparts**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

**SECTION 12  
GOVERNING LAW**

33. **Governing Law**

This Agreement is governed by English law.

34. **Enforcement**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

Schedule 1

Schedule 2

**conditions precedent**

1. **The Borrower**

- (k) A copy of the constitutional documents of the Borrower.
- (l) A copy of a resolution of the board of directors of the Borrower:
  - (iii) approving the terms of, and the transactions contemplated by, the Finance Documents and resolving that it execute the Finance Documents;
  - (iv) authorising a specified person or persons to execute the Finance Documents on its behalf; and

(v) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents.

(m) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.

(n) A certificate of the Borrower (signed by a director) confirming that borrowing the Commitment would not cause any borrowing or similar limit binding on it to be exceeded.

(o) A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. **Legal opinion**

A legal opinion of Latham & Watkins, legal advisers to the Lender in England, substantially in the form distributed to the Lender prior to signing this Agreement.

3. **Other documents and evidence**

(p) A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

(q) The Original Financial Statements of the Group.

(r) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.

Schedule 3

Schedule 4

**Utilisation Request**

From: **LivaNova PLC**

To: **Barclays Bank PLC**

Dated:

Dear Sirs

**LivaNova Facility Agreement  
dated [ ] (the "Agreement")**

4. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

5. We wish to borrow a Loan in US Dollars on the following terms:

Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)  
Amount: [ ] or, if less, the Available Commitment  
Interest Period: [ ]

6. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
7. [This Loan is to be made in [whole]/[part] for the purpose of refinancing [identify maturing Loan]/[The proceeds of this Loan should be credited to [account]].
8. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
**LivaNova PLC**

Schedule 5

	Schedule 6	Existing Security	Total Principal Amount of Indebtedness Secured
<i>Name of Borrower</i>	<i>Security</i>		
Sorin CRM SAS	Cash collateral		€150,000
Sorin Group Italia Srl	Mortgage		€526,000
Sorin Group Italia Srl	Mortgage		€509,000

Schedule 7 **Timetables**

Delivery of a duly completed Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> ))	U-3 9.30am
LIBOR is fixed	Quotation Day 11:00 a.m.
Reference Bank Rate calculated by reference to available quotations in accordance with Clause 10.2 ( <i>Calculation of Reference Bank Rate</i> )	Noon on the Quotation Day

|EU-DOCS\16362830.4||

Schedule 8

Schedule 9

**Material Companies**

Cyberonics Inc., USA

Sorin Group Italia srl, Italy

Sorin CRM SAS, France

LivaNova France SAS, France

Sorin Group USA Inc.

Schedule 10 **Financial Covenants**

The Borrower shall ensure that for the purposes of any certificate issued pursuant to the definition of "Permitted Acquisition" that:

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

The financial ratios shall be calculated in accordance with the Accounting Principles.*[Signature page to Revolving Facility Agreement]*

||  
||

For the purpose of this Schedule:

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

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

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

- (a) the net revenues of the Group;
- (b) plus other revenues and income, changes in inventory of work in progress, semi-finished goods and finished goods and increase in Borrower-produced additions to non-current assets; and
- (c) minus cost of raw materials and other materials, cost of services used and miscellaneous operating costs.

**"Consolidated Net Financial Indebtedness"** shall mean at any time:

- (a) the aggregate at that time of Financial Indebtedness of the members of the Group from sources external to the Group (including guarantees for an aggregate amount exceeding USD 33,000,000.00 (thirty-three million US dollars) at that times); less
- (b) the aggregate amount at that time of:
  - (i) cash;
  - (ii) debt securities issued or guaranteed by any member state of the OECD;
  - (iii) debt securities issued by leading entities and listed on national stock exchanges of any member of the European Union;
  - (iv) receivables from derivative financial instruments; and
  - (v) deposits or notes purchased in respect of the credit enhancements of securitisation programmes up to an aggregate amount not exceeding USD 33,000,000.00 (thirty-three million US dollars) for each financial year.

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

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

- (a) interest accrued during such period as an obligation of any member of the Group (whether or not paid or capitalised during or deferred for payment after such period); less
- (b) any interest received or receivable by any member of the Group (after deducting any applicable withholding tax) in such period.

**"Test Period"** shall mean a period of six or, as the case may be, twelve months starting on 1 January of a financial year and ending on an Accounting Date in that financial year.

**SIGNATURES**

**THE BORROWER**

**LivaNova PLC**

By:

Address:

Fax:

**THE LENDER**

**BARCLAYS BANK PLC**

By:

Address:

Fax:

Attention:

LIST OF SUBSIDIARIES  
EXHIBIT 21  
LivaNova PLC and Subsidiaries  
As of September 30, 2016

<b><u>Company</u></b>	<b><u>Jurisdiction of Formation</u></b>
LivaNova Plc	United Kingdom
LivaNova Plc (Italian Branch)	Italy
Sorin Group Italia S.r.l. (IT)	Italy
LivaNova Singapore Pte Ltd (SG)	Singapore
LivaNova Scandinavia AB (SE)	Scandinavia
LivaNova Finland OY (FI)	Finland
Sorin Group Deutschland GmbH (DE)	Germany
LivaNova Norway AS (NO)	Norway
MD START SA (CH)	Switzerland
MD START I KG (DE)	Germany
LivaNova Holding S.r.l. (IT)	Italy
Alcard Indústria Mecânica Ltda (Brazil)	Brazil
Reced Indústria Mecânica Ltda (Brazil)	Brazil
Sorin Medical (Shanghai) Co. Ltd	China
Sorin Group Czech Republic (Cz)	Czech Republic
Sorin Medical Devices (Suzhou) Co. Ltd	China
LivaNova Colombia Sas	Colombia
Sorin Group Rus LLC	Russia
Sorin CRM SAS (FR)	France
LivaNova Portugal, Lda (PT)	Portugal
Sorin Group France SAS (FR)	France
LivaNova Holding SAS (FR)	France
Sorin Group DR, SRL (Rep. Dominicana)	Dominican Republic
LivaNova Nederland N.V. (NL)	Netherlands
LivaNova Espana, S.L. (ES)	Spain
LivaNova Belgium SA (BE)	Belgium
LivaNova Japan K.K. (JP)	Japan
LivaNova UK Limited (GB)	United Kingdom
LivaNova Australia PTY Limited (AU)	Australia
LivaNova Austria GmbH (A)	Austria
LivaNova Poland Sp. Z o.o.	Poland
LivaNova India Private Limited (India)	India
Cyberonics France SARL (F)	France
Livn US 1, LLC (USA)	USA
Livn UK Holdco Limited (UK)	United Kingdom
Livn UK Limited 2 Co (UK)	United Kingdom
Livn Luxco 2 sarl (LU)	Luxembourg
Livn Irishco 2 UC (IRL)	Ireland
Sorin Group USA Inc. (US)	USA

Sorin CRM USA Inc. (US)	USA
California Medical Laboratories (CalMed) Inc. (US)	USA
Livn US Holdco, Inc. (USA)	USA
Livn UK Limited 3 Co. (UK)	United Kingdom
Livn US 3 Llc (USA)	USA
Livn US Lp (USA)	USA
Cyberonics Inc.	USA
Cyberonics Holdings LLC (USA)	USA
Cyberonics Netherlands CV (NL)	Netherlands
Cyberonics Spain SL (ES)	Spain
Cyberonics Latam SRL (Costa Rica)	Costa Rica
LivaNova Site Management S.r.l. (IT)	Italy
LivaNova Switzerland SA (CH)	Switzerland
Sobedia Energia (IT)	Italy
LivaNova Canada Corp. (CA)	Canada
Livn Luxco Sarl (LU)	Luxembourg
Livn Irishco Unlimited Company (IRL)	Ireland
Livn Irishco 3 Unlimited Company (IRL)	Ireland
LivaNova IP Limited (UK)	United Kingdom

## CERTIFICATION

I, André-Michel Ballester, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2016, filed by LivaNova PLC and its consolidated subsidiaries;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2016

/s/ ANDRÉ-MICHEL BALLESTER

André-Michel Ballester

Chief Executive Officer

*(Principal Executive Officer)*

## CERTIFICATION

I, Vivid Sehgal, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2016, filed by LivaNova PLC and its consolidated subsidiaries;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2016

/s/ VIVID SEHGAL

Vivid Sehgal

Chief Financial Officer

(Principal Financial Officer)

**CERTIFICATION OF THE  
CHIEF EXECUTIVE OFFICER AND  
CHIEF FINANCIAL OFFICER  
OF LIVANOVA PLC  
PURSUANT TO 18 U.S.C. SECTION 1350**

Each of André-Michel Ballester, Chief Executive Officer of LivaNova PLC (the “Company”), and Vivid Sehgal, Chief Financial Officer of the Company, each hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

(a) the Quarterly Report on Form 10-Q for the quarter ended September 30, 2016 for LivaNova PLC and its consolidated subsidiaries, as filed with the Securities and Exchange Commission on the date hereof (the “Report”) fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(b) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 2, 2016

/s/ ANDRÉ-MICHEL BALLESTER

\_\_\_\_\_  
André-Michel Ballester

Chief Executive Officer

*(Principal Executive Officer)*

/s/ VIVID SEHGAL

\_\_\_\_\_  
Vivid Sehgal

Chief Financial Officer

*(Principal Financial Officer)*

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as a part of this report or on a separate disclosure document.