

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

Form 10-Q

(Mark One)

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

For the quarterly period ended: June 30, 2019

or

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

For the transition period from _____ to _____

Commission file number: 001-37599

LivaNova

LivaNova PLC

(Exact name of registrant as specified in its charter)

England and Wales **98-1268150**
(State or other jurisdiction of (I.R.S. Employer
incorporation or organization) Identification No.)

20 Eastbourne Terrace
London , United Kingdom **W2 6LG**
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **(44) (0) 203 325-0660**

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

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

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

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

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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

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

<i>Class</i>	<i>Outstanding at July 29, 2019</i>
Ordinary Shares - £1.00 par value per share	48,391,670

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

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

- Trademarks for our VNS therapy systems, the VNS Therapy[®] System, the VITARIA[®] System and our proprietary pulse generator products: Model 102 (Pulse[®]), Model 102R (Pulse Duo[®]), Model 103 (Demipulse[®]), Model 104 (Demipulse Duo[®]), Model 105 (AspireHC[®]), Model 106 (AspireSR[®]) and Model 1000 (SenTiva[™]).
- Trademarks for our Cardiopulmonary product systems: S5[®] heart-lung machine, S3[®] heart-lung machine, Inspire[™], Heartlink[™], XTRA[®] Autotransfusion System, 3T Heater-Cooler[®], Connect[™] and Revolution[®].
- Trademarks for our line of surgical tissue and mechanical valve replacements and repair products: Mitroflow[®], Crown PRT[®], Solo Smart[™], Perceval[®], Miami Instruments[™], Top Hat[®], Reduced Series Aortic Valves[™], Carbomedics[®] Carbo-Seal[®], Carbo-Seal Valsalva[®], Carbomedics[®] Standard[™], Orbis[™] and Optiform[®], Memo 3D[®], Memo 3D[®] ReChord[™], MEMO 4D[®], MEMO 4D[®] ReChord[™], AnnuloFlo[®], AnnuloFlex[®], Bicarbon Slimline[™], Bicarbon Filtline[™] and Bicarbon Overline[®].
- Trademarks for our extracorporeal life support systems: TandemLife[®], TandemHeart[®], TandemLung[®], ProtekDuo[®], and LifeSPARC[™].
- Trademarks for our obstructive sleep apnea system: ImThera[®] and Aura6000[®].

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

NOTE ABOUT FORWARD LOOKING STATEMENTS

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

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

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

Other factors that could cause our actual results to differ from our projected results are described in (1) “Part II, Item 1A. Risk Factors” and elsewhere in this Quarterly Report on Form 10-Q, (2) our Annual Report on Form 10-K for the fiscal year ended December 31, 2018 (“2018 Form 10-K”), (3) our reports and registration statements filed and furnished from time to time with the Securities and Exchange Commission (“SEC”) and (4) other announcements we make from time to time.

Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date hereof. We undertake no obligation to update or revise any forward-looking statements after the date they are made, whether as a result of new information, future events or otherwise. You should read the following discussion and analysis in conjunction with our unaudited condensed consolidated financial statements and related notes included elsewhere in this report. Operating results for the three and six months ended June 30, 2019 are not necessarily indicative of future results, including the full fiscal year. You should also refer to our “Annual Consolidated Financial Statements,” “Notes” thereto, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Risk Factors” contained in our 2018 Form 10-K.

Financial Information and Currency of Financial Statements

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

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Net sales	\$ 277,169	\$ 287,498	\$ 527,970	\$ 537,896
Costs and expenses:				
Cost of sales - exclusive of amortization	74,942	91,993	159,196	176,591
Product remediation	5,113	1,542	8,060	5,257
Selling, general and administrative	127,213	123,439	252,917	227,600
Research and development	34,544	34,215	78,119	65,967
Merger and integration expenses	4,378	4,409	7,629	7,369
Restructuring expenses	1,332	476	3,865	2,357
Impairment of intangible assets	50,295	—	50,295	—
Amortization of intangibles	9,228	9,817	18,544	18,618
Operating (loss) income from continuing operations	(29,876)	21,607	(50,655)	34,137
Interest income	224	232	473	679
Interest expense	(4,054)	(3,006)	(5,716)	(5,117)
Gain on acquisition	—	—	—	11,484
Foreign exchange and other losses	(1,851)	(70)	(1,122)	(343)
(Loss) income from continuing operations before tax	(35,557)	18,763	(57,020)	40,840
Income tax (benefit) expense	(6,164)	(1,030)	(12,778)	2,863
Losses from equity method investments	—	(265)	—	(627)
Net (loss) income from continuing operations	(29,393)	19,528	(44,242)	37,350
Net income (loss) from discontinued operations, net of tax	178	(4,462)	178	(9,011)
Net (loss) income	\$ (29,215)	\$ 15,066	\$ (44,064)	\$ 28,339
Basic (loss) income per share:				
Continuing operations	\$ (0.61)	\$ 0.40	\$ (0.92)	\$ 0.77
Discontinued operations	0.01	(0.09)	0.01	(0.18)
	\$ (0.60)	\$ 0.31	\$ (0.91)	\$ 0.59
Diluted (loss) income per share:				
Continuing operations	\$ (0.61)	\$ 0.40	\$ (0.92)	\$ 0.76
Discontinued operations	0.01	(0.09)	0.01	(0.18)
	\$ (0.60)	\$ 0.31	\$ (0.91)	\$ 0.58
Shares used in computing basic (loss) income per share	48,342	48,487	48,295	48,406
Shares used in computing diluted (loss) income per share	48,342	49,338	48,295	49,263

See accompanying notes to the condensed consolidated financial statements

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Net (loss) income	\$ (29,215)	\$ 15,066	\$ (44,064)	\$ 28,339
Other comprehensive income (loss):				
Net change in unrealized gain (loss) on derivatives	215	801	205	(456)
Tax effect	(52)	(192)	(50)	111
Net of tax	163	609	155	(345)
Foreign currency translation adjustment, net of tax	15,376	(58,154)	11,147	(47,601)
Total other comprehensive income (loss)	15,539	(57,545)	11,302	(47,946)
Total comprehensive (loss) income	\$ (13,676)	\$ (42,479)	\$ (32,762)	\$ (19,607)

See accompanying notes to the condensed consolidated financial statements

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

	June 30, 2019	December 31, 2018
ASSETS		
<i>Current Assets:</i>		
Cash and cash equivalents	\$ 44,511	\$ 47,204
Accounts receivable, net of allowance of \$11,891 at June 30, 2019 and \$11,598 at December 31, 2018	256,121	256,135
Inventories	168,669	153,535
Prepaid and refundable taxes	74,275	46,852
Prepaid expenses and other current assets	24,868	29,571
Total Current Assets	568,444	533,297
Property, plant and equipment, net	185,098	191,400
Goodwill	961,715	956,815
Intangible assets, net	721,033	770,439
Operating lease assets (Note 11)	56,831	—
Investments	25,095	24,823
Deferred tax assets	97,622	68,146
Other assets	5,821	4,781
Total Assets	\$ 2,621,659	\$ 2,549,701
LIABILITIES AND STOCKHOLDERS' EQUITY		
<i>Current Liabilities:</i>		
Current debt obligations	\$ 37,725	\$ 28,794
Accounts payable	88,516	76,735
Accrued liabilities and other	140,728	124,285
Current litigation provision liability	256,581	161,851
Taxes payable	11,571	22,530
Accrued employee compensation and related benefits	60,788	82,551
Total Current Liabilities	595,909	496,746
Long-term debt obligations	174,376	139,538
Contingent consideration	133,072	161,381
Litigation provision liability	36,750	132,210
Deferred tax liabilities	108,766	68,189
Long-term operating lease liabilities (Note 11)	47,377	—
Long-term employee compensation and related benefits	26,986	25,264
Other long-term liabilities	15,095	22,635
Total Liabilities	1,138,331	1,045,963
Commitments and contingencies (Note 12)		
<i>Stockholders' Equity:</i>		
Ordinary Shares, £1.00 par value: unlimited shares authorized; 49,380,284 shares issued and 48,391,071 shares outstanding at June 30, 2019; 49,323,418 shares issued and 48,205,783 shares outstanding at December 31, 2018	76,217	76,144
Additional paid-in capital	1,717,220	1,705,111
Accumulated other comprehensive loss	(13,174)	(24,476)
Accumulated deficit	(295,643)	(251,579)
Treasury stock at cost, 989,213 ordinary shares at June 30, 2019; 1,117,635 ordinary shares at December 31, 2018	(1,292)	(1,462)
Total Stockholders' Equity	1,483,328	1,503,738
Total Liabilities and Stockholders' Equity	\$ 2,621,659	\$ 2,549,701

See accompanying notes to the condensed consolidated financial statements

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

	Six Months Ended June 30,	
	2019	2018
Operating Activities:		
Net (loss) income	\$ (44,064)	\$ 28,339
Non-cash items included in net (loss) income:		
Impairment of intangible assets	50,295	—
Amortization	18,544	18,609
Deferred tax expense (benefit)	15,897	(9,909)
Stock-based compensation	15,596	14,220
Depreciation	15,287	16,624
Remeasurement of contingent consideration to fair value	(10,600)	(5,546)
Amortization of operating lease assets	6,334	—
Amortization of income taxes payable on intercompany transfers of property	3,233	5,166
Gain on acquisition	—	(11,484)
Other	2,699	1,375
Changes in operating assets and liabilities:		
Accounts receivable, net	(277)	21,799
Inventories	(14,284)	(11,285)
Other current and non-current assets	1,529	(15,786)
Accounts payable and accrued current and non-current liabilities	(29,129)	(5,104)
Taxes payable	(43,008)	1,234
Restructuring reserve	(5,473)	284
Net cash (used in) provided by operating activities	(17,421)	48,536
Investing Activities:		
Purchases of property, plant and equipment	(10,796)	(12,486)
Acquisitions, net of cash acquired	(10,750)	(279,863)
Purchases of intangible assets	(1,022)	(745)
Proceeds from asset sales	401	13,222
Purchase of investment	(287)	—
Proceeds from the sale of CRM business franchise, net of cash disposed	—	186,682
Net cash used in investing activities	(22,454)	(93,190)
Financing Activities:		
Proceeds from long-term debt obligations	53,777	—
Repayment of long-term debt obligations	(12,125)	(12,240)
Shares repurchased from employees for minimum tax withholding	(5,714)	(7,130)
Debt issuance costs	(3,688)	—
Proceeds from share issuances under ESPP	2,574	—
Change in short-term borrowing, net	2,355	(17,971)
Proceeds from short-term borrowing (maturities greater than 90 days)	—	240,000
Repayment of short-term borrowing (maturities greater than 90 days)	—	(190,000)
Payment of deferred consideration - acquisition of Caisson Interventional, LLC	—	(14,073)
Proceeds from exercise of stock options	323	2,731
Other	(445)	(390)
Net cash provided by financing activities	37,057	927
Effect of exchange rate changes on cash and cash equivalents	125	(2,508)
Net decrease in cash and cash equivalents	(2,693)	(46,235)
Cash and cash equivalents at beginning of period	47,204	93,615
Cash and cash equivalents at end of period	\$ 44,511	\$ 47,380

See accompanying notes to the condensed consolidated financial statements

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

Note 1. Unaudited Condensed Consolidated Financial Statements

Basis of Presentation

The accompanying condensed consolidated financial statements of LivaNova as of, and for the three and six months ended June 30, 2019 and 2018, have been prepared in accordance with U.S. GAAP for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. The accompanying condensed consolidated balance sheet of LivaNova at December 31, 2018 has been derived from audited financial statements contained in our 2018 Form 10-K, but does not include all of the information and footnotes required by U.S. GAAP for complete financial statements. In the opinion of management, the condensed consolidated financial statements reflect all adjustments (consisting of only normal recurring adjustments) considered necessary for a fair statement of the operating results of LivaNova and its subsidiaries, for the three and six months ended June 30, 2019 and are not necessarily indicative of the results that may be expected for the year ending December 31, 2019. The financial information presented herein should be read in conjunction with the audited consolidated financial statements and notes thereto accompanying our 2018 Form 10-K.

Reclassifications

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

We have reclassified certain amounts reported in “Note 3. Discontinued Operations” for the three and six months ended June 30, 2018. These corrections had no net impact to our previously reported net loss from discontinued operations for the three and six months ended June 30, 2018.

Gross profit, as previously presented for the six months ended June 30, 2018, excluded amortization of certain intangible assets. For the six months ended June 30, 2018, \$6.9 million of such amortization expense should have been included in cost of sales. The Company has determined that this misclassification error was not material to any prior annual or interim periods. For comparability among periods, the Company no longer presents gross profit within its condensed consolidated statements of income (loss) for all periods.

Significant Accounting Policies

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

On January 1, 2019, we adopted ASC Update (“ASU”) No 2016-02, *Leases*, including subsequent related accounting updates (collectively referred to as “Topic 842”), which supersedes the previous accounting model for leases. We adopted the standard using the modified retrospective approach with an effective date as of January 1, 2019. Prior year financial statements were not recast under the new standard. In addition, we elected the package of practical expedients permitted under the transition guidance within the new standard, which among other things, allowed us to carry forward our historical assessment of whether contracts are or contain leases and lease classification. We also elected the practical expedient to account for lease and non-lease components together as a single combined lease component, which is applicable to all asset classes. We did not, however, elect the practical expedient related to using hindsight in determining the lease term as this was not relevant following our election of the modified retrospective approach.

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

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

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

For additional information refer to “Note 11. Leases.”

Note 2. Business Combinations

TandemLife

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

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

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

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

The purchase price allocation for the TandemLife acquisition was finalized during the second quarter of 2019 and is presented in the following table, including certain measurement period adjustments (in thousands):

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

- (1) During the third quarter of 2018, measurement period adjustments were recorded based upon new information regarding future estimates of R&D expenses that existed as of the acquisition date. In addition, during the first quarter of 2019, measurement period adjustments related to finalizing our tax attributes were recorded, which resulted in an increase of \$3.3 million in deferred tax assets and a commensurate decrease to goodwill.
- (2) The amounts are included in intangible assets, net in the condensed consolidated balance sheets at June 30, 2019 and December 31, 2018. Trade names and developed technology are amortized over remaining useful lives of 15 and 2 years, respectively.
- (3) The fair value of IPR&D was determined using the income approach, which is a valuation technique that provides a fair value estimate based on the market participant expectations of cash flows the asset would generate. The cash flows were discounted commensurate with the level of risk associated with the asset. The discount rates were developed after assigning

a probability of success to achieving the projected cash flows based on the current stage of development, inherent uncertainty in reaching certain regulatory milestones and risks associated with commercialization of the product.

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

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

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

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

For a reconciliation of the beginning and ending balance of the contingent consideration refer to “Note 8. Fair Value Measurements.”

Miami Instruments

On June 12, 2019, we acquired the minimally invasive cardiac surgery instruments business from Miami Instruments, LLC (“Miami Instruments”) for cash consideration of up to \$17.0 million. The related operations have been integrated into our Cardiovascular business franchise as part of our Heart Valves portfolio. Cash of \$10.8 million was paid at closing with up to \$6.0 million in contingent consideration based on achieving certain milestones. In connection with this acquisition, we recognized \$14.7 million in developed technology and IPR&D intangible assets and \$1.5 million in goodwill.

Note 3. Discontinued Operations

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

We completed the CRM Sale on April 30, 2018 to MicroPort Cardiac Rhythm B.V. and MicroPort Scientific Corporation for total cash proceeds of \$195.9 million, less cash transferred of \$9.2 million, subject to a closing working capital adjustment. In conjunction with the sale, we entered into transition services agreements to provide certain support services generally for up to twelve months from the closing date of the sale. The services include, among others, accounting, information technology, human resources, quality assurance, regulatory affairs, supply chain, clinical affairs and customer support. During three and six months ended June 30, 2019, we recognized income of \$0.2 million and \$0.8 million, respectively, for providing these services. Income recognized related to the transition services agreements is recorded as a reduction to the related expenses in the associated expense line items in the condensed consolidated statements of income (loss).

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Net sales	\$ —	\$ 17,259	\$ —	\$ 77,366
Costs and expenses:				
Cost of sales	(43)	5,168	(43)	27,306
Selling, general and administrative expenses	26	11,072	26	42,898
Research and development	(161)	5,296	(161)	16,577
Restructuring expenses	—	—	—	651
Revaluation gain on assets and liabilities held for sale	—	—	—	(1,213)
Loss on sale of CRM	—	214	—	214
Operating income (loss) from discontinued operations	178	(4,491)	178	(9,067)
Foreign exchange and other gains	—	23	—	102
Income (loss) from discontinued operations, before tax	178	(4,468)	178	(8,965)
Income tax benefit	—	(6)	—	(1,165)
Losses from equity method investments	—	—	—	(1,211)
Net income (loss) from discontinued operations	\$ 178	\$ (4,462)	\$ 178	\$ (9,011)

Cash flows attributable to our discontinued operations are included in our condensed consolidated statements of cash flows. For the six months ended June 30, 2018, CRM's capital expenditures were \$0.9 million and stock-based compensation expense was \$2.1 million.

Note 4. Restructuring

We initiate restructuring plans to leverage economies of scale, streamline distribution and logistics and strengthen operational and administrative effectiveness in order to reduce overall costs. Costs associated with these plans were reported as restructuring expenses in the operating results of our condensed consolidated statements of income (loss).

Our 2015 and 2016 Reorganization Plans (the "Prior Plans") were initiated October 2015 and March 2016, respectively, in conjunction with the completion of the merger of Cyberonics, Inc. and Sorin S.p.A. in October 2015. The Prior Plans include the closure of the R&D facility in Meylan, France and consolidation of its R&D capabilities into the Clamart, France facility. We completed the Prior Plans during 2018.

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

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

	Employee Severance and Other Termination Costs	Other	Total
Balance at December 31, 2018	\$ 10,195	\$ 3,069	\$ 13,264
Charges	3,809	56	3,865
Cash payments and other	(9,922)	(2,946)	(12,868)
Balance at June 30, 2019 ⁽¹⁾	\$ 4,082	\$ 179	\$ 4,261

(1) Cumulatively, we have recognized a total of \$103.1 million in restructuring expense inclusive of discontinued operations under the Prior Plans and the 2018 Plan.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Cardiovascular	\$ 316	\$ 398	\$ 738	\$ 1,739
Neuromodulation	53	11	485	17
Other	963	67	2,642	601
Total	\$ 1,332	\$ 476	\$ 3,865	\$ 2,357

Note 5. Product Remediation Liability

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

At December 31, 2016, we recognized a liability for a product remediation plan related to our 3T Heater-Cooler device (“3T device”). The remediation plan we developed consists primarily of a modification of the 3T device design to include internal sealing and the addition of a vacuum system to new and existing devices. These changes are intended to address regulatory actions and to reduce further the risk of possible dispersion of aerosols from 3T devices in the operating room. We concluded that it was probable that a liability had been incurred upon management’s approval of the plan and the commitments made by management to various regulatory authorities globally in November and December 2016, and furthermore, the cost associated with the plan was reasonably estimable. The deployment of this solution for commercially distributed devices has been dependent upon final validation and verification of the design changes and approval or clearance by regulatory authorities worldwide, including FDA clearance in the U.S. It is reasonably possible that our estimate of the remediation liability could materially change in future periods due to the various significant assumptions involved such as customer behavior, market reaction and the timing of approvals or clearance by regulatory authorities worldwide.

In April 2017, we obtained CE Mark in Europe for the design change of the 3T device, and in May 2017 we completed our first vacuum canister and internal sealing upgrade on a customer-owned device. We are currently implementing the vacuum canister and internal sealing upgrade program in as many countries as possible until all devices are upgraded. On October 11, 2018, after review of information provided by us, the FDA concluded that we could commence the vacuum canister and internal sealing upgrade program in the U.S.

As part of the remediation plan, we continue to offer a no-charge deep disinfection service (deep cleaning service) for 3T device users as we receive the required regulatory approvals. On April 12, 2018, the FDA agreed to allow us to move forward with the deep cleaning service in the U.S., adding to the growing list of countries around the world in which we offer this service. Also, we are continuing to offer the loaner program for 3T devices, initiated in the fourth quarter of 2016, to provide existing 3T device users with a new loaner 3T device at no charge pending regulatory approval and implementation of the vacuum system addition and deep disinfection service worldwide. This loaner program began in the U.S. and is being made available progressively on a global basis, prioritizing and allocating devices to 3T device users based on pre-established criteria.

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

Balance at December 31, 2018	\$ 14,745
Adjustments	2,669
Remediation activity	(6,840)
Effect of changes in foreign currency exchange rates	(89)
Balance at June 30, 2019 ⁽¹⁾	\$ 10,485

(1) At June 30, 2019, the product remediation liability balance is included within accrued liabilities and other on the condensed consolidated balance sheet.

We recognized product remediation expenses during the three and six months ended June 30, 2019, of \$5.1 million and \$8.1 million, respectively, and \$1.5 million and \$5.3 million, respectively, during the three and six months ended June 30, 2018. Product remediation expenses include internal labor costs, costs to remediate certain inspectional observations made by the FDA at our Munich facility and costs associated with the incorporation of the modification of the 3T device design into the next

generation 3T device. These costs and related legal costs are expensed as incurred and are not included within the product remediation liability presented above. At June 30, 2019, our balance sheet includes a \$293.3 million provision related to litigation involving our 3T device. For further information, please refer to “Note 12. Commitments and Contingencies.”

Note 6. Intangible Assets

Intangible Asset Impairment

During the second quarter of 2019, we determined that LivaNova will experience a delay in the estimated commercialization date of the Company’s obstructive sleep apnea product currently under development. This delay constituted a triggering event that required evaluation of the IPR&D asset arising from the ImThera Medical Inc. (“ImThera”) acquisition for impairment. Based on the assessment performed, we determined that the IPR&D asset was impaired and as a result, recorded an impairment of \$50.3 million, which is included in our Neuromodulation segment. The new carrying value of the IPR&D asset as of June 30, 2019 is \$112.0 million. The estimated fair value of IPR&D was determined using the income approach. Future delays in commercialization or changes in management estimates could result in further impairment.

Note 7. Investments

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

Equity Investments Without Readily Determinable Fair Values	June 30, 2019	December 31, 2018
Respicardia Inc. ⁽¹⁾	\$ 17,706	\$ 17,706
Ceribell, Inc.	3,000	3,000
Rainbow Medical Ltd.	1,114	1,119
MD Start II	1,139	1,144
Highlife S.A.S.	1,079	1,084
Other	770	770
	24,808	24,823
Equity method investments ⁽²⁾	287	—
	\$ 25,095	\$ 24,823

- (1) Respicardia Inc. (“Respicardia”) is a privately funded U.S. company developing an implantable device designed to restore a more natural breathing pattern during sleep in patients with central sleep apnea by transvenously stimulating the phrenic nerve. We have a loan outstanding to Respicardia, with a carrying amount of \$0.6 million as of June 30, 2019 and December 31, 2018, which is included in prepaid expenses and other current assets in the condensed consolidated balance sheet.
- (2) During the second quarter of 2019, we invested in equity securities that we account for under the equity method of accounting due to our deemed ability to exercise significant influence. We invested an initial amount of \$287 thousand and are required to fund up to approximately €5.0 million (approximately \$5.7 million as of June 30, 2019) based on cash calls.

Note 8. Fair Value Measurements

We review the fair value hierarchy classification on a quarterly basis. Changes in the ability to observe valuation inputs may result in a reclassification of levels for certain securities within the fair value hierarchy. There were no transfers between Level 1, Level 2, or Level 3 during the six months ended June 30, 2019 and 2018.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

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

	Fair Value as of June 30, 2019	Fair Value Measurements Using Inputs Considered as:		
		Level 1	Level 2	Level 3
Assets:				
Derivative assets - freestanding instruments (foreign currency exchange rate "FX")	\$ 654	\$ —	\$ 654	\$ —
	<u>\$ 654</u>	<u>\$ —</u>	<u>\$ 654</u>	<u>\$ —</u>
Liabilities:				
Derivative liabilities - designated as cash flow hedges (FX)	\$ 769	\$ —	\$ 769	\$ —
Derivative liabilities - designated as cash flow hedges (interest rate swaps)	663	—	663	—
Derivative liabilities - freestanding instruments (FX)	388	—	388	—
Contingent consideration ⁽¹⁾	176,227	—	—	176,227
	<u>\$ 178,047</u>	<u>\$ —</u>	<u>\$ 1,820</u>	<u>\$ 176,227</u>

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

(1) The contingent consideration liability represents contingent payments primarily related to five completed acquisitions, including: Inversiones Drilltex SAS ("Drilltex"), Caisson, ImThera, TandemLife and Miami Instruments. See the table below for additional information.

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

Total contingent consideration liability at December 31, 2018	\$	179,911
Additions ⁽¹⁾		7,184
Payments		(234)
Changes in fair value ^{(2) (3)}		(10,600)
Effect of changes in foreign currency exchange rates		(34)
Total contingent consideration liability at June 30, 2019		176,227
Less current portion of contingent consideration liability at June 30, 2019 ⁽⁴⁾		43,155
Long-term portion of contingent consideration liability at June 30, 2019	\$	133,072

(1) See “Note 2. Business Combinations” for additional discussion.

(2) The change in fair value includes a decrease of \$17.8 million primarily due to the delay in timing of anticipated regulatory approval and commercialization for ImThera. While the probability of payment remains unchanged from the time of acquisition, the projected years of payment for the regulatory milestone-based payment and the sales-based earnout have been updated to occur between 2023-2024 and 2024-2028, respectively. See “Note 6. Intangible Assets” for additional discussion.

(3) During the six months ended June 30, 2019, the change in fair value resulted in a decrease of \$5.8 million and \$4.9 million recorded to cost of sales - exclusive of amortization and research and development, respectively.

(4) On July 15, 2019, we achieved a regulatory milestone specified in our TandemLife acquisition and, therefore, will be required to pay \$19.0 million during the third quarter of 2019 to settle the related contingent consideration liability. As of June 30, 2019, approximately \$17.6 million was included in the current portion of contingent consideration related to this milestone.

Note 9. Financing Arrangements

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

	June 30, 2019	December 31, 2018	Maturity	Interest Rate
2017 European Investment Bank ⁽¹⁾	\$ 103,570	\$ 103,570	June 2026	3.72%
2019 Debt Facility ⁽²⁾	50,631	—	March 2022	1.40% - 3.98%
2014 European Investment Bank ⁽³⁾	37,916	47,606	June 2021	1.05%
Mediocredito Italiano	6,951	7,623	December 2023	0.50% - 2.94%
Bank of America, U.S.	2,499	—	January 2021	4.51%
Banca del Mezzogiorno	1,358	2,718	December 2019	0.50% - 2.99%
Region Wallonne	678	742	December 2023 and June 2033	0.75% - 1.24%
Mediocredito Italiano - mortgages and other	548	582	September 2021 and September 2026	0.69% - 1.19%
Other	39	—		
Total long-term facilities	204,190	162,841		
Less current portion of long-term debt	29,814	23,303		
Total long-term debt	\$ 174,376	\$ 139,538		

(1) The 2017 European Investment Bank (“2017 EIB”) loan was obtained to support certain product development projects. The interest rate for the 2017 EIB loan is reset by the lender each principal payment date based on LIBOR. Interest payments are paid quarterly and principal payments are paid semi-annually.

(2) The facility agreement with Bank of America Merrill Lynch International DAC, Barclays Bank PLC, BNP Paribas (London Branch) and Intesa Sanpaolo S.P.A. provides a multicurrency term loan facility in an aggregate amount of \$350 million and terminates on March 26, 2022 (the “2019 Debt Facility”).

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

On March 26, 2019, we entered into the 2019 Debt Facility. Borrowings under the facility bear interest at a rate of LIBOR plus 1.6% for borrowings in U.S. dollars and EURIBOR plus 1.4% for Euro-denominated borrowings. Proceeds from the facility are used for general corporate and working capital purposes, excluding acquisitions, dividends and share buybacks. Available borrowings under the 2019 Debt Facility commenced on March 26, 2019 and extend through March 26, 2020. The 2019 Debt Facility contains financial covenants that require LivaNova to maintain a maximum consolidated net debt to EBITDA ratio, a minimum interest coverage ratio and a maximum consolidated net debt to net worth ratio. LivaNova must also maintain a minimum amount of consolidated net worth. The 2019 Debt Facility also contains customary representations and warranties, covenants, and events of default. At June 30, 2019, LivaNova was in compliance with all covenants.

On July 25, 2019, we entered into a €40.0 million (approximately \$44.6 million as of July 25, 2019) credit facility agreement with Banca Nazionale del Lavoro SpA for working capital needs. The credit facility has a term of two years and borrowings bear interest at Euribor plus 0.8%.

Revolving Credit

The outstanding principal amount of our short-term unsecured revolving credit agreements and other agreements with various banks was \$7.9 million and \$5.5 million, at June 30, 2019 and December 31, 2018, respectively, with interest rates ranging from 0.15% to 8.50% and loan terms ranging from five days to 15 days as of June 30, 2019.

Note 10. Derivatives and Risk Management

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

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

Freestanding FX Derivative Contracts

The gross notional amount of FX derivative contracts, not designated as hedging instruments, outstanding at June 30, 2019 and December 31, 2018 was \$198.4 million and \$320.2 million, respectively. These derivative contracts are designed to offset the FX effects in earnings of various intercompany loans, our 2014 EIB loan, the Euro-denominated borrowings under the 2019 Debt Facility and trade receivables. We recorded net gains (losses) for these freestanding derivatives of \$1.0 million and \$(4.1) million for the three months ended June 30, 2019 and 2018, respectively, and net gains (losses) of \$4.7 million and \$(11.7) million for the six months ended June 30, 2019 and 2018, respectively. These gains and (losses) are included in foreign exchange and other losses on our condensed consolidated statements of income (loss).

Cash Flow Hedges

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

Description of Derivative Contract	June 30, 2019	December 31, 2018
FX derivative contracts to be exchanged for British Pounds	\$ 8,186	\$ 9,629
FX derivative contracts to be exchanged for Japanese Yen	28,100	23,985
FX derivative contracts to be exchanged for Canadian Dollars	1,900	7,637
FX derivative contracts to be exchanged for Euros	31,058	29,768
Interest rate swap contracts	30,356	38,115
	<u>\$ 99,600</u>	<u>\$ 109,134</u>

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

Description of Derivative Contract	After-Tax Net Loss in AOCI as of June 30, 2019	Amount Expected to be Reclassified to Earnings in Next 12 Months
FX derivative contracts	\$ (621)	\$ (621)
Interest rate swap contracts	(168)	(84)
	<u>\$ (789)</u>	<u>\$ (705)</u>

Pre-tax gains (losses) for derivative contracts designated as cash flow hedges recognized in other comprehensive income (loss) ("OCI") and the amount reclassified to earnings from AOCI (in thousands):

		Three Months Ended June 30,			
		2019		2018	
Description of Derivative Contract	Location in Earnings of Reclassified Gain or Loss	Gains Recognized in OCI	Gains (Losses) Reclassified from AOCI to Earnings	Losses Recognized in OCI	(Losses) Gains Reclassified from AOCI to Earnings
FX derivative contracts	Foreign exchange and other gains	\$ 313	\$ 489	\$ (25)	\$ (1,358)
FX derivative contracts	SG&A	—	(418)	—	549
Interest rate swap contracts	Interest expense	—	27	—	(17)
		<u>\$ 313</u>	<u>\$ 98</u>	<u>\$ (25)</u>	<u>\$ (826)</u>

		Six Months Ended June 30,			
		2019		2018	
Description of Derivative Contract	Location in Earnings of Reclassified Gain or Loss	Gains Recognized in OCI	Gains (Losses) Reclassified from AOCI to Earnings	Gains Recognized in OCI	(Losses) Gains Reclassified from AOCI to Earnings
FX derivative contracts	Foreign exchange and other gains	\$ 1,622	\$ 2,131	\$ 189	\$ (512)
FX derivative contracts	SG&A	—	(728)	—	1,174
Interest rate swap contracts	Interest expense	—	14	—	(17)
		<u>\$ 1,622</u>	<u>\$ 1,417</u>	<u>\$ 189</u>	<u>\$ 645</u>

We offset fair value amounts associated with our derivative instruments on our condensed consolidated balance sheets that are executed with the same counterparty under master netting arrangements. Our netting arrangements include a right to set off or net together purchases and sales of similar products in the settlement process.

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

June 30, 2019		Asset Derivatives		Liability Derivatives	
Derivatives Designated as Hedging Instruments	Balance Sheet Location	Fair Value ⁽¹⁾	Balance Sheet Location	Fair Value ⁽¹⁾	
Interest rate swap contracts			Accrued liabilities	\$	460
Interest rate swap contracts			Other long-term liabilities		203
FX derivative contracts			Accrued liabilities		769
Total derivatives designated as hedging instruments					<u>1,432</u>
Derivatives Not Designated as Hedging Instruments					
FX derivative contracts	Accrued liabilities	\$ 654	Accrued liabilities		388
Total derivatives not designated as hedging instruments		<u>654</u>			<u>388</u>
Total derivatives		<u>\$ 654</u>		<u>\$</u>	<u>1,820</u>
December 31, 2018		Asset Derivatives		Liability Derivatives	
Derivatives Designated as Hedging Instruments	Balance Sheet Location	Fair Value ⁽¹⁾	Balance Sheet Location	Fair Value ⁽¹⁾	
Interest rate swap contracts			Accrued liabilities	\$	536
Interest rate swap contracts			Other long-term liabilities		329
FX derivative contracts			Accrued liabilities		1,354
Total derivatives designated as hedging instruments					<u>2,219</u>
Derivatives Not Designated as Hedging Instruments					
FX derivative contracts	Prepaid expenses and other current assets	\$ 236	Accrued liabilities		3,173
Total derivatives not designated as hedging instruments		<u>236</u>			<u>3,173</u>
Total derivatives		<u>\$ 236</u>		<u>\$</u>	<u>5,392</u>

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

Note 11. Leases

We have operating leases primarily for (i) office space, (ii) manufacturing, warehouse and research and development facilities and (iii) vehicles. Our leases have remaining lease terms up to 12 years, some of which include options to extend the leases, and some of which include options to terminate the leases at our sole discretion. The components of operating lease assets, liabilities and costs are as follows (in thousands):

Operating Lease Assets and Liabilities	June 30, 2019	
Assets		
Operating lease right-of-use assets	\$	56,831
Liabilities		
Accrued liabilities and other	\$	10,926
Long-term operating lease liabilities		47,377
Total lease liabilities	\$	58,303

Operating Lease Cost	Three Months Ended June 30, 2019	Six Months Ended June 30, 2019
Operating lease cost	\$ 3,469	\$ 7,209
Variable lease cost	255	426
Short-term lease cost	194	280
Total lease cost	\$ 3,918	\$ 7,915

Contractual maturities of our lease liabilities as of June 30, 2019, are as follows (in thousands):

2019	\$	6,379
2020		11,119
2021		9,192
2022		8,074
2023		6,826
Thereafter		22,294
Total lease payments		63,884
Less: Amount representing interest		5,581
Present value of lease liabilities	\$	58,303

Lease Term and Discount Rate	June 30, 2019	
Weighted Average Remaining Lease Term (in years)		7.5
Weighted Average Discount Rate		2.3%

Other Information (in thousands)	Three Months Ended June 30, 2019	Six Months Ended June 30, 2019
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows for leases	\$ 2,507	\$ 6,349
Operating lease assets obtained in exchange for lease liabilities	\$ 2,485	\$ 2,950

Disclosures Related to Periods Prior to Adoption of Topic 842

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

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

Note 12. Commitments and Contingencies

FDA Warning Letter

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

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

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

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

We continue to work diligently to remediate the FDA’s inspectional observations for the Munich facility, as well as the additional issues identified in the Warning Letter. We take these matters seriously and are responding to the FDA’s requests.

CDC and FDA Safety Communications and Company Field Safety Notice

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

Also on October 13, 2016, concurrent with the CDC’s HAN and FDA’s Safety Communication, we issued a Field Safety Notice Update for U.S. users of 3T devices to proactively and voluntarily contact facilities to aid in implementation of the CDC and FDA recommendations. In the fourth quarter of 2016, we initiated a program to provide existing 3T device users with a

new loaner 3T device at no charge pending regulatory approval and implementation of additional risk mitigation strategies worldwide, including a vacuum canister and internal sealing upgrade program and a deep disinfection service. This loaner program began in the U.S. and is being made available progressively on a global basis, prioritizing and allocating devices to 3T device users based on pre-established criteria. We anticipate that this program will continue until we are able to address customer needs through a broader solution that includes implementation of the risk mitigation strategies described above. We are currently implementing the vacuum and sealing upgrade program in as many countries as possible until all devices are upgraded. On October 11, 2018, after review of information provided by us, the FDA concluded that we could commence the vacuum and sealing upgrade program in the U.S. Furthermore, we continue to offer a no-charge deep disinfection service (deep cleaning service) for 3T device users as we receive the required regulatory approvals. On April 12, 2018, the FDA agreed to allow us to move forward with the deep cleaning service in the U.S. adding to the growing list of countries around the world in which we offer this service.

On December 31, 2016, we recognized a liability for our product remediation plan related to our 3T device. We concluded that it was probable that a liability had been incurred upon management's approval of the plan and the commitments made by management to various regulatory authorities globally in November and December 2016, and furthermore, the cost associated with the plan was reasonably estimable. At June 30, 2019, the product remediation liability was \$10.5 million. Refer to "Note 5. Product Remediation Liability" for additional information.

Litigation

Product Liability

The Company is currently involved in litigation involving our 3T device. The litigation includes a class action complaint in the U.S. District Court for the Middle District of Pennsylvania, federal multi-district litigation in the U.S. District Court for the Middle District of Pennsylvania, various U.S. state court cases and cases in jurisdictions outside the U.S. The class action, filed in February 2016, consists of all Pennsylvania residents who underwent open heart surgery at WellSpan York Hospital and Penn State Milton S. Hershey Medical Center between 2011 and 2015 and who currently are asymptomatic for NTM infection. Members of the class seek declaratory relief that the 3T devices are defective and unsafe for intended uses, medical monitoring, damages, and attorneys' fees.

On March 29, 2019, we announced a settlement framework that provides for a comprehensive resolution of the personal injury cases pending in the multi-district litigation in U.S. federal court, the related class action pending in federal court, as well as certain cases in state courts across the United States. The agreement, which makes no admission of liability, is subject to certain conditions, including acceptance of the settlement by individual claimants and provides for a total payment of up to \$225 million to resolve the claims covered by the settlement. Per the agreed-upon terms, the first payment of \$135 million was paid into a qualified settlement fund in July 2019, and the remainder will be paid in January 2020. Cases covered by the settlement will be dismissed as amounts are disbursed to individual plaintiffs from the qualified settlement fund.

Cases in state courts in the U.S. and in jurisdictions outside the U.S. continue to progress. As of July 30, 2019, including the cases encompassed in the settlement framework described above, we are aware of approximately 215 filed and unfiled claims worldwide, with the majority of the claims in various federal or state courts throughout the United States. The complaints generally seek damages and other relief based on theories of strict liability, negligence, breach of express and implied warranties, failure to warn, design and manufacturing defect, fraudulent and negligent misrepresentation or concealment, unjust enrichment, and violations of various state consumer protection statutes.

In the fourth quarter of 2018, we recognized a \$294.1 million provision, which represented our best estimate of the Company's liability for these matters. At June 30, 2019, the provision is \$293.3 million. While the amount accrued represents our best estimate, the actual liability for resolution of these matters remains uncertain and may vary from our estimate.

On July 24, 2019, the Company entered into agreements with its insurance carriers to recover \$33.8 million under the Company's product liability insurance policies. The insurance recovery proceeds are due within 30 days of the execution of the agreements, and as such, the Company expects to receive the proceeds during the third quarter of 2019. The Company has not recorded a receivable for insurance recovery proceeds under the insurance policies as of June 30, 2019.

Environmental Liability

SNIA Litigation

Our subsidiary, Sorin S.p.A. ("Sorin") was created as a result of a spin-off (the "Sorin spin-off") from SNIA S.p.A. ("SNIA") in January, 2004. SNIA subsequently became insolvent and the Italian Ministry of the Environment and the Protection of Land and Sea (the "Italian Ministry of the Environment"), sought compensation from SNIA in an aggregate amount of

approximately \$4 billion for remediation costs relating to the environmental damage at chemical sites previously operated by SNIA's other subsidiaries.

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

In January 2012, SNIA filed a civil action against Sorin in the Civil Court of Milan asserting joint liability of a parent and a spun-off company. On April 1, 2016, the Court of Milan dismissed all legal actions of SNIA and of the Public Administrations further requiring the Public Administrations to pay Sorin approximately \$332,000 for legal fees. The Public Administrations appealed the 2016 Decision to the Court of Appeal of Milan. On March 5, 2019, the Court of Appeal issued a partial decision on the merits: declaring Sorin/LivaNova jointly liable with SNIA for SNIA's environmental liabilities in an amount up to the fair value of the net worth received by Sorin as a result of the Sorin spin-off. Additionally the Court issued a separate order, staying the proceeding until a Panel of three experts can assess the environmental damages, the cost of clean-up, and the costs that the Public Administrations already has borne for the clean-up of the Sites to allow the Court to decide on the second claim of the Public Administrations against LivaNova, i.e., to refund the Public Administrations for the SNIA environmental liabilities. In the interim, we are appealing the decision to the Supreme Court.

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

Opposition to Merger Proceedings

On July 28, 2015, the Public Administrations filed an opposition proceeding before the Commercial Division of the Court of Milan to the merger of Sorin and Cyberonics, Inc., the predecessor companies to LivaNova. The Court authorized the merger and the Public Administrations did not appeal that decision. The proceeding then continued as a civil case, with the Public Administrations seeking damages. The Commercial Court of Milan delivered a decision in October 2016, fully rejecting the Public Administrations' request and awarding us approximately €400,000 (approximately \$455,000 as of June 30, 2019) in damages for frivolous litigation and legal fees. The Public Administrations appealed to the Court of Appeal of Milan. On May 15, 2018, the Court of Appeal of Milan confirmed its decision authorizing the merger but annulled the penalty for frivolous litigation and reduced the overall contribution to legal fees to €84,000 (approximately \$96,000 as of June 30, 2019) for legal fees. The Public Administrations subsequently filed an appeal with the Supreme Court against the decision of the Court of Appeal of Milan. The proceedings before the Supreme Court are presently pending, and no decision is expected in 2019. We have not recognized an expense in connection with this matter because any potential loss is not currently probable or reasonably estimable. In addition, we cannot reasonably estimate a range of potential loss, if any, that may result from this matter.

Patent Litigation

On May 11, 2018, Neuro and Cardiac Technologies LLC ("NCT"), a non-practicing entity, filed a complaint in the United States District Court for the Southern District of Texas asserting that the VNS Therapy System, when used with the SenTiva Model 1000 generator, infringes the claims of U.S. Patent No. 7,076,307 owned by NCT. The complaint requests damages that include a royalty, costs, interest, and attorneys' fees. On November 12, 2018, we petitioned the Patent Trial and Appeal Board of the U. S. Patent and Trademark Office (the "Patent Office") for an *inter partes review* ("IPR") of the validity of the '307 patent. The Patent Office instituted an IPR of all the challenged claims. The Court has stayed the litigation pending the outcome of the IPR proceeding. We have not recognized an expense in connection with this matter because any potential loss is not currently probable or reasonably estimable. In addition, we cannot reasonably estimate a range of potential loss, if any, that may result from this matter.

Tax Litigation

In a tax audit report received on October 30, 2009, the Regional Internal Revenue Office of Lombardy (the "Internal Revenue Office") informed Sorin Group Italia S.r.l. that, among several issues, it was disallowing in part (for a total of €102.6 million (approximately \$116.8 million as of June 30, 2019), related to tax years 2002 through 2006) a tax-deductible write down of the investment in the U.S. company, Cobe Cardiovascular Inc., which Sorin Group Italia S.r.l. recognized in 2002 and deducted in five equal installments, beginning in 2002. In December 2009, the Internal Revenue Office issued notices of assessment for 2004. In December 2010 and October 2011, the Internal Revenue Office issued notices of assessment for 2005

and 2006, respectively. We challenged all three notices of assessment (for 2004, 2005 and 2006) before the relevant Provincial Tax Courts.

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

The appeals submitted against the first-level decisions for 2005 and 2006 were rejected. We appealed these adverse decisions to the Italian Supreme Court. On November 16, 2018, the Supreme Court returned the decisions for years 2005 and 2006 to the previous-level Court (Regional Tax Court) due to lack of substance of the motivation given in the 2nd level judgments that were appealed.

In November 2012, the Internal Revenue Office served a notice of assessment for 2007, and in July 2013, served a notice of assessment for 2008. In these matters the Internal Revenue Office claims an increase in taxable income due to a reduction (similar to the previous notices of assessment for 2004, 2005 and 2006) of the losses reported by Sorin Group Italia S.r.l. for the 2002, 2003 and 2004 tax periods, and subsequently utilized in 2007 and 2008. We challenged both notices of assessment. The Provincial Tax Court of Milan has stayed its decision for years 2007 and 2008 pending resolution of the litigation regarding years 2004, 2005, and 2006.

The total amount of losses in dispute is €62.6 million (approximately \$71.3 million as of June 30, 2019). We have continuously reassessed our potential exposure in these matters, taking into account the recent, and generally adverse, trend to Italian taxpayers in this type of litigation. Although we believe that our defensive arguments are strong, noting the adverse trend in some of the court decisions, we have recognized a reserve for an uncertain tax position for the full amount of the potential liability. On May 31, 2019, we filed an application to settle the litigation according to law N. 136/2018 and paid the required settlement balance of €1.9 million (approximately \$2.2 million as of June 30, 2019). As per law N. 136/2018, the Italian Revenue Agency will review the settlement and decide to accept or reject the application by July 31, 2020. Until the settlement is accepted by the Italian Revenue Agency, we will continue to reserve for the full amount of the potential liability, by recognizing a €15.4 million reserve for uncertain tax position (\$17.5 million as of June 30, 2019), net of the settlement payment.

Other Matters

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

Note 13. Stockholders' Equity

The tables below present the condensed consolidated statement of stockholders' equity as of and for the three and six months ended June 30, 2019 and 2018 (in thousands):

	Ordinary Shares	Ordinary Shares - Amount	Additional Paid-In Capital	Treasury Stock	Accumulated Other Comprehensive (Loss) Income	Retained Deficit	Total Stockholders' Equity
March 31, 2019	49,329	\$ 76,151	\$ 1,707,117	\$ (1,321)	\$ (28,713)	\$ (266,428)	\$ 1,486,806
Stock-based compensation plans	51	66	10,103	29	—	—	10,198
Net loss	—	—	—	—	—	(29,215)	(29,215)
Other comprehensive income	—	—	—	—	15,539	—	15,539
June 30, 2019	49,380	\$ 76,217	\$ 1,717,220	\$ (1,292)	\$ (13,174)	\$ (295,643)	\$ 1,483,328
March 31, 2018	48,628	\$ 75,224	\$ 1,738,044	\$ (375)	\$ 54,910	\$ (48,821)	\$ 1,818,982
Stock-based compensation plans	33	45	6,218	266	—	—	6,529
Net income	—	—	—	—	—	15,066	15,066
Other comprehensive loss	—	—	—	—	(57,543)	—	(57,543)
June 30, 2018	48,661	\$ 75,269	\$ 1,744,262	\$ (109)	\$ (2,633)	\$ (33,755)	\$ 1,783,034

	Ordinary Shares	Ordinary Shares - Amount	Additional Paid- In Capital	Treasury Stock	Accumulated Other Comprehensive (Loss) Income	Retained Deficit	Total Stockholders' Equity
December 31, 2018	49,323	\$ 76,144	\$ 1,705,111	\$ (1,462)	\$ (24,476)	\$ (251,579)	\$ 1,503,738
Stock-based compensation plans	57	73	12,109	170	—	—	12,352
Net loss	—	—	—	—	—	(44,064)	(44,064)
Other comprehensive income	—	—	—	—	11,302	—	11,302
June 30, 2019	<u>49,380</u>	<u>\$ 76,217</u>	<u>\$ 1,717,220</u>	<u>\$ (1,292)</u>	<u>\$ (13,174)</u>	<u>\$ (295,643)</u>	<u>\$ 1,483,328</u>
December 31, 2017	48,290	\$ 74,750	\$ 1,735,048	\$ (133)	\$ 45,313	\$ (39,664)	\$ 1,815,314
Adoption of ASU No. 2016-16	—	—	—	—	—	(22,430)	(22,430)
Share issuances	300	422	—	(422)	—	—	—
Stock-based compensation plans	71	97	9,214	446	—	—	9,757
Net income	—	—	—	—	—	28,339	28,339
Other comprehensive loss	—	—	—	—	(47,946)	—	(47,946)
June 30, 2018	<u>48,661</u>	<u>\$ 75,269</u>	<u>\$ 1,744,262</u>	<u>\$ (109)</u>	<u>\$ (2,633)</u>	<u>\$ (33,755)</u>	<u>\$ 1,783,034</u>

The table below presents the change in each component of AOCI, net of tax, and the reclassifications out of AOCI into net income for the six months ended June 30, 2019 and 2018 (in thousands):

	Change in Unrealized Gain (Loss) on Derivatives	Foreign Currency Translation Adjustments Gain (Loss) ⁽¹⁾	Total
As of December 31, 2018	\$ (944)	\$ (23,532)	\$ (24,476)
Other comprehensive income before reclassifications, before tax	1,622	11,147	12,769
Tax expense	(390)	—	(390)
Other comprehensive income before reclassifications, net of tax	1,232	11,147	12,379
Reclassification of gain from accumulated other comprehensive income (loss), before tax	(1,417)	—	(1,417)
Reclassification of tax expense	340	—	340
Reclassification of gain from accumulated other comprehensive income (loss), after tax	(1,077)	—	(1,077)
Net current-period other comprehensive gain, net of tax	155	11,147	11,302
As of June 30, 2019	\$ (789)	\$ (12,385)	\$ (13,174)
As of December 31, 2017	\$ (919)	\$ 46,232	\$ 45,313
Other comprehensive income (loss) before reclassifications, before tax	189	(38,590)	(38,401)
Tax expense	(45)	—	(45)
Other comprehensive income (loss) before reclassifications, net of tax	144	(38,590)	(38,446)
Reclassification of gain from accumulated other comprehensive income (loss), before tax	(645)	(9,011) ⁽²⁾	(9,656)
Reclassification of tax expense	156	—	156
Reclassification of gain from accumulated other comprehensive income (loss), after tax	(489)	(9,011)	(9,500)
Net current-period other comprehensive loss, net of tax	(345)	(47,601)	(47,946)
As of June 30, 2018	\$ (1,264)	\$ (1,369)	\$ (2,633)

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

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

Note 14. Stock-Based Incentive Plans

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Service-based restricted stock units (“RSUs”)	\$ 3,875	\$ 2,634	\$ 6,845	\$ 4,790
Service-based stock appreciation rights (“SARs”)	2,900	2,675	4,908	4,023
Market performance-based restricted stock units	838	959	1,389	1,305
Operating performance-based restricted stock units	798	1,185	1,769	2,032
Employee stock purchase plan	313	—	685	—
Total stock-based compensation expense	\$ 8,724	\$ 7,453	\$ 15,596	\$ 12,150

During the six months ended June 30, 2019, we issued stock-based compensatory awards with terms approved by the Compensation Committee of our Board of Directors. The awards with service conditions generally vest ratably over four years, subject to forfeiture unless service conditions are met. Market performance-based awards cliff vest after three years subject to the rank of our total shareholder return for the three-year period ending December 31, 2021 relative to the total shareholder

returns for a peer group of companies. Operating performance-based awards cliff vest after three years subject to the achievement of certain thresholds of cumulative adjusted free cash flow for the three year period ending December 31, 2021. Compensation expense related to awards granted during 2019 for the three and six months ended June 30, 2019 was \$3.1 million and \$3.2 million, respectively.

On January 1, 2019, we initiated the LivaNova Global Employee Share Purchase Plan (“ESPP”). Compensation expense related to the ESPP for the three and six months ended June 30, 2019 was \$0.3 million and \$0.7 million, respectively.

Stock-based compensation agreements issued during the six months ended June 30, 2019, representing potential shares and their weighted average grant date fair values by type follows (shares in thousands, fair value in dollars):

	Six Months Ended June 30, 2019	
	Shares	Weighted Average Grant Date Fair Value
Service-based SARs	592	\$ 31.22
Service-based RSUs	278	\$ 93.25
Market performance-based RSUs	44	\$ 100.41
Operating performance-based RSUs	44	\$ 96.59

Note 15. Income Taxes

Our effective income tax rate from continuing operations for the three and six months ended June 30, 2019 was 17.3% and 22.4%, respectively, compared with (5.5)% and 7.0% the three and six months ended June 30, 2018, respectively. Our effective income tax rate fluctuates based on, among other factors, changes in pretax income in countries with varying statutory tax rates, changes in valuation allowances, changes in tax credits and incentives, and changes in unrecognized tax benefits associated with uncertain tax positions.

Compared with the three and six months ended June 30, 2018, the change in the effective tax rate for the three and six months ended June 30, 2019 was primarily attributable to the establishment of a valuation allowance for a portion of the U.S. federal and state net operating losses, partly offset by a release of uncertain tax positions.

We operate in multiple jurisdictions throughout the world, and our tax returns are periodically audited or subjected to review by tax authorities. As a result, there is an uncertainty in income taxes recognized in our financial statements. Tax benefits totaling \$17.2 million and \$22.9 million were unrecognized as of June 30, 2019 and December 31, 2018, respectively. It is reasonably possible that, within the next twelve months, due to the settlement of uncertain tax positions with various tax authorities and the expiration of statutes of limitations, unrecognized tax benefits could decrease by up to approximately \$1.3 million.

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

Note 16. Net Income Per Share

Reconciliation of the shares used in the basic and diluted earnings per share computations for the three and six months ended June 30, 2019 and 2018 are as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Basic weighted average shares outstanding	48,342	48,487	48,295	48,406
Add effects of share-based compensation instruments ⁽¹⁾	—	851	—	857
Diluted weighted average shares outstanding	48,342	49,338	48,295	49,263

- (1) Excluded from the computation of diluted earnings per share for the three months ended June 30, 2019 and 2018 were stock options, SARs and restricted share units totaling 3.1 million and 0.7 million, respectively, and 3.2 million and 0.8 million for the six months ended June 30, 2019 and 2018, respectively, because to include them would have been anti-dilutive under the treasury stock method.

Note 17. Geographic and Segment Information

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

The Cardiovascular segment generates its revenue from the development, production and sale of cardiopulmonary products, heart valves and advanced circulatory support. Cardiopulmonary products include oxygenators, heart-lung machines, autotransfusion systems, perfusion tubing systems, cannulae and other related accessories. Heart valves include mechanical heart valves, tissue heart valves and related repair products. Advanced circulatory support includes temporary life support product kits that can include a combination of pumps, oxygenators, and cannulae. On June 12, 2019, we acquired certain assets from Miami Instruments, which are integrated into our Cardiovascular business franchise as part of our Heart Valves portfolio.

Our Neuromodulation segment generates its revenue from the design, development and marketing of neuromodulation therapy systems for the treatment of drug-resistant epilepsy and treatment-resistant depression (“TRD”). Neuromodulation products include the VNS Therapy System, which consists of an implantable pulse generator, a lead that connects the generator to the vagus nerve, and other accessories. Our Neuromodulation segment also includes an implantable device for the treatment of obstructive sleep apnea that stimulates multiple tongue muscles via the hypoglossal nerve, which opens the airway while a patient is sleeping.

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

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Cardiopulmonary				
United States	\$ 41,403	\$ 42,139	\$ 80,526	\$ 80,584
Europe	34,320	35,916	69,881	72,786
Rest of world	54,856	58,584	101,742	108,399
	130,579	136,639	252,149	261,769
Heart Valves				
United States	4,678	6,147	9,034	12,683
Europe	10,672	11,863	21,185	23,979
Rest of world	18,001	15,792	28,805	28,182
	33,351	33,802	59,024	64,844
Advanced Circulatory Support				
United States	7,944	5,468	15,977	5,468
Europe	192	353	311	353
Rest of world	178	194	274	194
	8,314	6,015	16,562	6,015
Cardiovascular				
United States	54,025	53,754	105,537	98,735
Europe	45,184	48,132	91,377	97,118
Rest of world	73,035	74,570	130,821	136,775
	172,244	176,456	327,735	332,628
Neuromodulation				
United States	80,551	89,395	157,437	167,387
Europe	12,996	11,943	23,655	22,234
Rest of world	10,722	9,315	17,826	14,876
	104,269	110,653	198,918	204,497
Other				
	656	389	1,317	771
Totals				
United States	134,576	143,149	262,974	266,122
Europe ⁽¹⁾	58,180	60,075	115,032	119,352
Rest of world	84,413	84,274	149,964	152,422
Total ⁽²⁾	\$ 277,169	\$ 287,498	\$ 527,970	\$ 537,896

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

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

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

Operating Income from Continuing Operations	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Cardiovascular	\$ 10,120	\$ 16,337	\$ 11,109	\$ 26,595
Neuromodulation ⁽¹⁾	619	57,211	22,250	95,945
Other	(25,677)	(37,239)	(53,976)	(60,059)
Total reportable segment (loss) income from continuing operations	(14,938)	36,309	(20,617)	62,481
Merger and integration expenses	4,378	4,409	7,629	7,369
Restructuring expenses	1,332	476	3,865	2,357
Amortization of intangibles	9,228	9,817	18,544	18,618
Operating (loss) income from continuing operations	(29,876)	21,607	(50,655)	34,137
Interest income	224	232	473	679
Interest expense	(4,054)	(3,006)	(5,716)	(5,117)
Gain on acquisition	—	—	—	11,484
Foreign exchange and other losses	(1,851)	(70)	(1,122)	(343)
(Loss) income from continuing operations before tax	\$ (35,557)	\$ 18,763	\$ (57,020)	\$ 40,840

(1) Results for the three and six months ended June 30, 2019 include the impairment of intangible assets of \$50.3 million.

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

Assets	June 30, 2019	December 31, 2018
Cardiovascular	\$ 1,571,953	\$ 1,532,825
Neuromodulation	716,531	731,840
Other	333,175	285,036
Total assets	\$ 2,621,659	\$ 2,549,701

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

Capital expenditures	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Cardiovascular	\$ 4,835	\$ 4,594	\$ 8,386	\$ 7,725
Neuromodulation	127	500	530	847
Other	951	1,256	1,880	2,699
Discontinued operations	—	—	—	925
Total	\$ 5,913	\$ 6,350	\$ 10,796	\$ 12,196

The changes in the carrying amount of goodwill by reportable segment for the six months ended June 30, 2019 were as follows (in thousands):

	Neuromodulation	Cardiovascular	Other	Total
December 31, 2018	\$ 398,539	\$ 515,859	\$ 42,417	\$ 956,815
Goodwill as a result of acquisitions	—	1,550	—	1,550
Measurement period adjustments	—	(3,326)	—	(3,326)
Foreign currency adjustments	675	6,001	—	6,676
June 30, 2019	\$ 399,214	\$ 520,084	\$ 42,417	\$ 961,715

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

PP&E	June 30, 2019	December 31, 2018
United States	\$ 65,079	\$ 68,862
Europe	109,807	112,376
Rest of world	10,212	10,162
Total	\$ 185,098	\$ 191,400

Note 18. Supplemental Financial Information

Inventories consisted of the following (in thousands):

	June 30, 2019	December 31, 2018
Raw materials	\$ 46,403	\$ 40,387
Work-in-process	20,446	15,999
Finished goods	101,820	97,149
	\$ 168,669	\$ 153,535

Inventories are reported net of the provision for obsolescence. This provision, which reflects normal obsolescence and includes components that are phased out or expired, totaled \$11.0 million and \$11.6 million at June 30, 2019 and December 31, 2018, respectively.

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

	June 30, 2019	December 31, 2018
Contingent consideration ⁽¹⁾	\$ 43,155	\$ 18,530
CRM purchase price adjustment payable to MicroPort Scientific Corporation	14,891	14,891
Operating lease liabilities ⁽²⁾	10,926	—
Product remediation ⁽³⁾	10,485	13,945
Legal and administrative costs	8,777	9,189
Provisions for agents, returns and other	4,052	4,934
Restructuring related liabilities ⁽⁴⁾	4,261	9,393
Other amounts payable to MicroPort Scientific Corporation	2,857	9,319
Derivative contract liabilities ⁽⁵⁾	963	5,063
Other accrued expenses	40,361	39,021
	\$ 140,728	\$ 124,285

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

(2) Refer to “Note 11. Leases”

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

(4) Refer to “Note 4. Restructuring”

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

As of June 30, 2019 and December 31, 2018, contract liabilities of \$5.6 million and \$4.8 million, respectively, are included within accrued liabilities and other and other long-term liabilities on the condensed consolidated balance sheets.

Note 19. New Accounting Pronouncements

Adoption of New Accounting Pronouncements

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

Issue Date & Standard	Description	Date of Adoption	Effect on Financial Statements or Other Significant Matters
<u>February 2016</u> ASU No. 2016-02, Leases (Topic 842) and subsequent amendments	The standard requires lessees to recognize most leases on the balance sheet as lease liabilities with corresponding right-of-use (“ROU”) assets and to provide enhanced disclosures. Furthermore, from a lessor perspective, certain of our agreements that allow the customer to use, rather than purchase, our medical devices met the criteria of being a lease in accordance with the new standard.	January 1, 2019	Adoption of the new standard resulted in the recognition of ROU assets and lease liabilities of approximately \$60 million as of January 1, 2019. Refer to “Note 11. Leases.”
<u>June 2018</u> ASU No. 2018-07, Compensation—Stock Compensation (Topic 718): <i>Improvements to Nonemployee Share-Based Payment Accounting</i>	This update simplifies the accounting for non-employee share-based payment transactions.	January 1, 2019	There was no material impact to our condensed consolidated financial statements as a result of adopting this ASU.

Future Adoption of New Accounting Pronouncements

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

Issue Date & Standard	Description	Projected Date of Adoption	Effect on Financial Statements or Other Significant Matters
<u>June 2016</u> ASU No. 2016-13, <i>Financial Instruments—Credit Losses</i> (Topic 326)	The amendments in this update require a financial asset (or a group of financial assets) measured at amortized cost basis to be presented at the net amount expected to be collected. The modified-retrospective approach is generally applicable through a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the guidance is effective. Early adoption is permitted.	January 1, 2020	We are currently evaluating the effect this standard will have on our condensed consolidated financial statements and related disclosures.
<u>January 2017</u> ASU No. 2017-04, <i>Intangibles-Goodwill and Other</i> (Topic 350): <i>Simplifying the Test for Goodwill Impairment</i>	This update removes step 2 of the goodwill impairment test that compares the implied fair value of goodwill with its carrying amount. Instead, an impairment test is performed by comparing the fair value of a reporting unit with its carrying amount. An impairment charge will be recorded by the amount a reporting unit's carrying amount exceeds its fair value. Early adoption is permitted.	January 1, 2020	We are currently evaluating the effect this standard will have on our condensed consolidated financial statements and related disclosures.
<u>August 2018</u> ASU No. 2018-13, <i>Fair Value Measurement</i> (Topic 820): <i>Changes to the Disclosure Requirements for Fair Value Measurement</i>	This update removes, modifies and adds certain disclosure requirements related to fair value measurements. Early adoption is permitted.	January 1, 2020	We do not expect the adoption of this update to have a material effect on our condensed consolidated financial statement disclosures.
<u>August 2018</u> ASU No. 2018-14, <i>Compensation—Retirement Benefits—Defined Benefit Plans—General</i> (Subtopic 715-20): <i>Changes to the Disclosure Requirements for Defined Benefit Plans</i>	This update adds and removes certain disclosure requirements related to defined benefit plans. This ASU is to be implemented on a retrospective basis for all periods presented with early adoption permitted.	January 1, 2021	We do not expect the adoption of this update to have a material effect on our condensed consolidated financial statement disclosures.
<u>August 2018</u> ASU No. 2018-15, <i>Intangibles—Goodwill and Other—Internal-Use Software</i> (Subtopic 350-40): <i>Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract</i>	This update clarifies and aligns the accounting for implementation costs for hosting arrangements with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. This ASU is to be applied either retrospectively or prospectively with early adoption permitted.	January 1, 2020	We do not expect the adoption of this update to have a material effect on our condensed consolidated financial statements.

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

The following discussion and analysis should be read in conjunction with our condensed consolidated financial statements and related notes which appear elsewhere in this document and with our 2018 Form 10-K. Our discussion and analysis may contain forward-looking statements that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including those set forth under "Risk Factors" in Item 1A of our 2018 Form 10-K and elsewhere in this Quarterly Report on Form 10-Q.

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

Business Overview

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

Acquisition

On June 12, 2019, we acquired the minimally invasive cardiac surgery instruments business from Miami Instruments for cash consideration of up to \$17.0 million. The related operations have been integrated into our Cardiovascular business franchise as part of our Heart Valves portfolio. Cash of \$10.8 million was paid at closing with up to \$6.0 million in contingent consideration based on achieving certain milestones. In connection with this acquisition, we recognized \$14.7 million in developed technology and IPR&D intangible assets and \$1.5 million in goodwill.

Sale of the CRM Business Franchise

We completed the CRM Sale on April 30, 2018 for total cash proceeds of \$195.9 million, less cash transferred of \$9.2 million, subject to a closing working capital adjustment. The results of operations of CRM are reflected as discontinued operations for all periods presented in this Quarterly Report on Form 10-Q. Refer to "Note 3. Discontinued Operations" to the condensed consolidated financial statements in this Quarterly Report on Form 10-Q.

Business Franchises

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

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

Cardiovascular Update

Our Cardiovascular business franchise is engaged in the development, production and sale of cardiopulmonary products, heart valves and advanced circulatory support products. Cardiopulmonary products include oxygenators, heart-lung machines, autotransfusion systems, perfusion tubing systems, cannulae and other related accessories. Heart valves include mechanical heart valves, tissue heart valves and related repair products. Advanced circulatory support includes temporary life support product kits that can include a combination of pumps, oxygenators, and cannulae.

Product Remediation Plan

On December 29, 2015, the FDA issued a Warning Letter alleging certain violations of FDA regulations applicable to medical device manufacturers at our Munich, Germany and Arvada, Colorado facilities and issued inspectional observations on FDA's Form-483 applicable to our Munich, Germany facility.

The Warning Letter further stated that our 3T devices and other devices we manufactured at our Munich facility are subject to refusal of admission into the U.S. until resolution of the issues set forth by the FDA in the Warning Letter. The FDA has informed us that the import alert is limited to the 3T devices, but that the agency reserves the right to expand the scope of the import alert if future circumstances warrant such action. The Warning Letter did not request that existing users cease using the

3T device, and manufacturing and shipment of all of our products other than the 3T device remain unaffected by the import limitation. To help clarify these issues for current customers, we issued an informational Customer Letter in January 2016 and that same month agreed with the FDA on a process for shipping 3T devices to existing U.S. users pursuant to a certificate of medical necessity program.

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

We continue to work diligently to remediate the FDA's inspectional observations for the Munich facility, as well as the additional issues identified in the Warning Letter. We take these matters seriously and are responding timely and fully to the FDA's requests. For further information, please refer to "Note 5. Product Remediation Liability" in our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

Product Liability

The Company is currently involved in litigation involving our 3T device. The litigation includes a class action complaint in the U.S. District Court for the Middle District of Pennsylvania, federal multi-district litigation in the U.S. District Court for the Middle District of Pennsylvania, various U.S. state court cases and cases in jurisdictions outside the U.S. The class action, filed in February 2016, consists of all Pennsylvania residents who underwent open heart surgery at WellSpan York Hospital and Penn State Milton S. Hershey Medical Center between 2011 and 2015 and who currently are asymptomatic for NTM infection. Members of the class seek declaratory relief that the 3T devices are defective and unsafe for intended uses, medical monitoring, damages, and attorneys' fees.

On March 29, 2019, we announced a settlement framework that provides for a comprehensive resolution of the personal injury cases pending in the multi-district litigation in U.S. federal court, the related class action pending in federal court, as well as certain cases in state courts across the United States. The agreement, which makes no admission of liability, is subject to certain conditions, including acceptance of the settlement by individual claimants and provides for a total payment of up to \$225 million to resolve the claims covered by the settlement. Per the agreed-upon terms, the first payment of \$135 million was paid into a qualified settlement fund in July 2019, and the remainder will be paid in January 2020. Cases covered by the settlement will be dismissed as amounts are disbursed to individual plaintiffs from the qualified settlement fund.

Cases in state courts in the U.S. and in jurisdictions outside the U.S. continue to progress. As of July 30, 2019, including the cases encompassed in the settlement framework described above, we are aware of approximately 215 filed and unfiled claims worldwide, with the majority of the claims in various federal or state courts throughout the United States. The complaints generally seek damages and other relief based on theories of strict liability, negligence, breach of express and implied warranties, failure to warn, design and manufacturing defect, fraudulent and negligent misrepresentation or concealment, unjust enrichment, and violations of various state consumer protection statutes.

In the fourth quarter of 2018, we recognized a \$294.1 million provision, which represented our best estimate of the Company's liability for these matters. At June 30, 2019, the provision is \$293.3 million. For further information refer to "Note 12. Commitments and Contingencies."

Heart Valves

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

Advanced Circulatory Support

On July 15, 2019, we announced FDA clearance for a new generation of the Advanced Circulatory Support pump and controller, the LifeSPARC system. We expect full commercial release by the end of 2019.

Cardiopulmonary

On July 16, 2019, we announced that we had launched Bi-Flow, our innovative arterial femoral cannula. Bi-Flow received CE Mark approval earlier in the year and is the only bidirectional arterial cannula designed to prevent leg ischemia during cardiac surgery procedures requiring femoral artery cannulation.

Neuromodulation Update

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

Depression

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

Significant Accounting Policies and Critical Accounting Estimates

In addition to our critical accounting policies provided in “Part II, Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in our 2018 Form 10-K, refer to “Significant Accounting Policies” within “Note 1. Unaudited Condensed Consolidated Financial Statements” included in this Quarterly Report on Form 10-Q.

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

New accounting pronouncements are disclosed in “Note 19. New Accounting Pronouncements” contained in the condensed consolidated financial statements in this Quarterly Report on Form 10-Q.

Other

Brexit

On June 23, 2016, the UK held a referendum in which voters approved an exit from the EU, commonly referred to as “Brexit.” On March 29, 2017, the UK government gave formal notice of its intention to leave the EU and began the process of negotiating the future terms of the UK’s relationship with the EU. Brexit could adversely affect UK, regional (including European) and worldwide economic and market conditions and could contribute to instability in global financial and foreign exchange markets, including volatility in the value of the British Pound and Euro. We have foreign exchange exposure management programs designed to help minimize the impact from foreign currency exchange rate movements. For the three months ended June 30, 2019 and 2018, net sales generated from our European operations constituted approximately 21.0% and 20.9%, respectively, of total net sales. For the six months ended June 30, 2019 and 2018, net sales generated from our European operations constituted approximately 21.8% and 22.2%, respectively.

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

The notification does not change the application of existing tax laws and does not establish a clear framework for what the ultimate outcome of the negotiations and legislative process will be. Various tax reliefs and exemptions that apply to transactions between EU Member States under existing tax laws may cease to apply to transactions between the UK and EU Member States when the UK ultimately withdraws from the EU. It is unclear at this stage if or when any new tax treaties between the UK and the EU or individual EU Member States will replace those reliefs and exemptions. It is also unclear at this stage what financial, trade and legal implications will ensue from Brexit and how Brexit may ultimately affect us, our customers, suppliers, vendors, or our industry.

We and several of our wholly owned subsidiaries that are domiciled either in the UK, various EU Member States, or in the U.S., are party to intercompany transactions and agreements under which we receive various tax reliefs and exemptions in accordance with applicable international tax laws, treaties and regulations. If certain treaties applicable to our transactions and

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

We will not account for the impact of Brexit in our income tax provisions until changes in tax laws or treaties between the UK and the EU or individual EU Member States with the UK and/or the U.S. are enacted, or the withdrawal becomes effective.

European Union State Aid Challenge

On October 26, 2017, the European Commission (“EC”) announced that an investigation will be opened with respect to the UK’s controlled foreign company (“CFC”) rules. The CFC rules under investigation provide group finance exemptions (“GFE”) to entities controlled by UK parent companies that are subject to lower tax rates if the activities being undertaken by the CFC relate to financing. On April 2, 2019, the EC concluded that “when financing income from a foreign group company, channeled through an offshore subsidiary, is financed with UK connected capital and there are no UK activities involved in generating the finance profits, the group finance exemption is justified and does not constitute State aid under EU rules.” However, in relation to Significant People Functions, “when financing income from a foreign group company, channeled through an offshore subsidiary, derives from UK activities, the group finance exemption is not justified and constitutes State aid under EU rules.” Her Majesty’s Revenue and Customs (“HMRC”) has stated that they do not consider the timing and form of the UK’s exit from the EU will have a practical impact on the requirement to recover the alleged aid. On June 14, 2019, the UK filed an appeal to the Commission’s decision. HMRC will still proceed to identify Chapter 9 claims and collect the alleged state aid during the appeal process. Based upon our assessment of the issue and the limited level of UK activities involved in our financing, no uncertain tax position reserve has been recognized related to this matter.

Results of Operations

We are reporting, in this Quarterly Report on Form 10-Q, the results for LivaNova and its consolidated subsidiaries for the three and six months ended June 30, 2019, as compared to the three and six months ended June 30, 2018.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2019	2018	2019	2018
Net sales	\$ 277,169	\$ 287,498	\$ 527,970	\$ 537,896
Costs and expenses:				
Cost of sales - exclusive of amortization	74,942	91,993	159,196	176,591
Product remediation	5,113	1,542	8,060	5,257
Selling, general and administrative	127,213	123,439	252,917	227,600
Research and development	34,544	34,215	78,119	65,967
Merger and integration expenses	4,378	4,409	7,629	7,369
Restructuring expenses	1,332	476	3,865	2,357
Impairment of intangible assets	50,295	—	50,295	—
Amortization of intangibles	9,228	9,817	18,544	18,618
Operating (loss) income from continuing operations	(29,876)	21,607	(50,655)	34,137
Interest income	224	232	473	679
Interest expense	(4,054)	(3,006)	(5,716)	(5,117)
Gain on acquisition	—	—	—	11,484
Foreign exchange and other losses	(1,851)	(70)	(1,122)	(343)
(Loss) income from continuing operations before tax	(35,557)	18,763	(57,020)	40,840
Income tax (benefit) expense	(6,164)	(1,030)	(12,778)	2,863
Losses from equity method investments	—	(265)	—	(627)
Net (loss) income from continuing operations	(29,393)	19,528	(44,242)	37,350
Net income (loss) from discontinued operations, net of tax	178	(4,462)	178	(9,011)
Net (loss) income	\$ (29,215)	\$ 15,066	\$ (44,064)	\$ 28,339

Net Sales

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

	Three Months Ended June 30,			Six Months Ended June 30,		
	2019	2018	% Increase (Decrease)	2019	2018	% Increase (Decrease)
Cardiopulmonary						
United States	\$ 41,403	\$ 42,139	(1.7)%	\$ 80,526	\$ 80,584	(0.1)%
Europe	34,320	35,916	(4.4)%	69,881	72,786	(4.0)%
Rest of world	54,856	58,584	(6.4)%	101,742	108,399	(6.1)%
	130,579	136,639	(4.4)%	252,149	261,769	(3.7)%
Heart Valves						
United States	4,678	6,147	(23.9)%	9,034	12,683	(28.8)%
Europe	10,672	11,863	(10.0)%	21,185	23,979	(11.7)%
Rest of world	18,001	15,792	14.0 %	28,805	28,182	2.2 %
	33,351	33,802	(1.3)%	59,024	64,844	(9.0)%
Advanced Circulatory Support						
United States	7,944	5,468	45.3 %	15,977	5,468	192.2 %
Europe	192	353	(45.6)%	311	353	(11.9)%
Rest of world	178	194	(8.2)%	274	194	41.2 %
	8,314	6,015	38.2 %	16,562	6,015	175.3 %
Cardiovascular						
United States	54,025	53,754	0.5 %	105,537	98,735	6.9 %
Europe	45,184	48,132	(6.1)%	91,377	97,118	(5.9)%
Rest of world	73,035	74,570	(2.1)%	130,821	136,775	(4.4)%
	172,244	176,456	(2.4)%	327,735	332,628	(1.5)%
Neuromodulation						
United States	80,551	89,395	(9.9)%	157,437	167,387	(5.9)%
Europe	12,996	11,943	8.8 %	23,655	22,234	6.4 %
Rest of world	10,722	9,315	15.1 %	17,826	14,876	19.8 %
	104,269	110,653	(5.8)%	198,918	204,497	(2.7)%
Other						
	656	389	68.6 %	1,317	771	70.8 %
Totals						
United States	134,576	143,149	(6.0)%	262,974	266,122	(1.2)%
Europe ⁽¹⁾	58,180	60,075	(3.2)%	115,032	119,352	(3.6)%
Rest of world	84,413	84,274	0.2 %	149,964	152,422	(1.6)%
Total	\$ 277,169	\$ 287,498	(3.6)%	\$ 527,970	\$ 537,896	(1.8)%

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

The table below presents segment income from continuing operations (in thousands, except for percentages):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2019	2018	% Change	2019	2018	% Change
Cardiovascular	\$ 10,120	\$ 16,337	(38.1)%	\$ 11,109	\$ 26,595	(58.2)%
Neuromodulation	619	57,211	(98.9)%	22,250	95,945	(76.8)%
Other	(25,677)	(37,239)	(31.0)%	(53,976)	(60,059)	(10.1)%
Total reportable segment (loss) income from continuing operations ⁽¹⁾	\$ (14,938)	\$ 36,309	(141.1)%	\$ (20,617)	\$ 62,481	(133.0)%

(1) For a reconciliation of segment (loss) income from continuing operations to (loss) income from continuing operations before tax refer to "Note 17. Geographic and Segment Information" in the condensed consolidated financial statements in this Quarterly Report on Form 10-Q.

Cardiovascular

Cardiovascular net sales for the three and six months ended June 30, 2019 compared to the three and six months ended June 30, 2018 decreased 2.4% and 1.5%, respectively. The decline in net sales for the three month period was due to declines in Cardiopulmonary and Heart Valves sales of 4.4% and 1.3%, respectively, partially offset by a \$2.3 million increase in Advanced Circulatory Support sales. Cardiopulmonary sales of \$130.6 million were negatively impacted due to the impact of exiting a Canadian distribution agreement on January 1, 2019 that accounted for \$8.6 million in sales during the three months ended June 30, 2018 and unfavorable foreign currency exchange rate fluctuations. These items more than offset growth in heart-lung machine sales driven by upgrading customers from our legacy S3 device to our current S5 device and competitive placements and growth in oxygenator sales. Heart Valves sales were positively impacted by growth in Perceval and mechanical valve sales but were more than offset by unfavorable foreign currency exchange rate fluctuations. Advanced Circulatory Support sales increased due to continued traction of the prior year sales force expansion and strong growth across all product lines, especially ProtekDuo. The decline in Cardiovascular net sales for the six month period was due to declines in Cardiopulmonary and Heart Valves sales of 3.7% and 9.0%, respectively, partially offset by a \$10.5 million increase in Advanced Circulatory Support sales due to the inclusion of the operating results of TandemLife starting from the acquisition date in April 2018. Cardiopulmonary sales of \$252.1 million were negatively impacted by the impact of the exiting of a distribution agreement on January 1, 2019 that accounted for \$16.4 million in sales during the six months ended June 30, 2018 and unfavorable foreign currency exchange rate fluctuations, which more than offset growth in heart-lung machine and oxygenator sales. Heart Valves sales were negatively impacted by a decline in tissue valve sales and unfavorable foreign currency exchange rate fluctuations.

Cardiovascular operating income for the three and six months ended June 30, 2019 compared to the three and six months ended June 30, 2018 decreased primarily due to increased litigation expenses associated with our 3T device and a decrease in net sales. Additionally, operating income for the six months ended June 30, 2019 was impacted by expenses associated with the expiration of a contract with one of our distributors.

Neuromodulation

Neuromodulation net sales for the three and six months ended June 30, 2019 compared to the three and six months ended June 30, 2018 decreased 5.8% and 2.7%, respectively. The decline in sales for the three and six month periods was due to strong growth in the Europe and Rest of World regions being more than offset by weakness in the U.S. market principally due to competitive dynamics and sales force turnover.

Neuromodulation operating income for the three and six months ended June 30, 2019 compared to the three and six months ended June 30, 2018 decreased primarily due to a \$50.3 million impairment of an IPR&D asset associated with obstructive sleep apnea, increased marketing expenses and increased R&D expenses associated with obstructive sleep apnea, TRD, and heart failure.

Cost of Sales and Expenses

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

	Three Months Ended June 30,			Six Months Ended June 30,		
	2019	2018	Change	2019	2018	Change
Cost of sales - exclusive of amortization	27.0%	32.0%	(5.0)%	30.2%	32.8%	(2.6)%
Product remediation	1.8%	0.5%	1.3 %	1.5%	1.0%	0.5 %
Selling, general and administrative	45.9%	42.9%	3.0 %	47.9%	42.3%	5.6 %
Research and development	12.5%	11.9%	0.6 %	14.8%	12.3%	2.5 %
Merger and integration expenses	1.6%	1.5%	0.1 %	1.4%	1.4%	— %
Restructuring expenses	0.5%	0.2%	0.3 %	0.7%	0.4%	0.3 %
Impairment of intangible assets	18.1%	—%	18.1 %	9.5%	—%	9.5 %
Amortization of intangibles	3.3%	3.4%	(0.1)%	3.5%	3.5%	— %

Cost of Sales - Exclusive of Amortization

Cost of sales consisted primarily of direct labor, allocated manufacturing overhead, the acquisition cost of raw materials and components. Cost of sales as a percentage of net sales for the three and six months ended June 30, 2019 compared to the three and six months ended June 30, 2018 decreased primarily due to a reduction in a sales-based contingent consideration liability related to our acquisition of ImThera that was recorded during the three months ended June 30, 2019. The reduction in the liability resulted in a reduction in cost of sales of \$12.7 million.

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

SG&A expenses consisted of sales, marketing, general and administrative activities. SG&A expenses as a percentage of net sales for the three and six months ended June 30, 2019 compared to the three and six months ended June 30, 2018 increased primarily due to additional litigation expenses related to our 3T devices, U.S. investments in a direct to consumer campaign for epilepsy, expanding Advanced Circulatory Support commercial capabilities, strengthening our commercial organization in international markets and overall lower sales. SG&A expenses for the six months ended June 30, 2019 were also negatively affected by the impact of including the operating results of Advanced Circulatory Support and expenses associated with the expiration of a contract with one of our distributors.

Research and Development (“R&D”) Expenses

R&D expenses consist of product design and development efforts, clinical study programs and regulatory activities, which are essential to our strategic portfolio initiatives, including TMVR, TRD, obstructive sleep apnea and heart failure. R&D expenses as a percentage of net sales for the three and six months ended June 30, 2019 compared to the three and six months ended June 30, 2018 increased primarily due to additional R&D expenses for our development of next generation products, including heart-lung machines, the SenTiva VNS Therapy System and advanced circulatory support and clinical trials and strategic investments in TRD, TMVR, obstructive sleep apnea and heart failure. These increases were partially offset by a reduction in a regulatory milestone-based contingent consideration liability related to our acquisition of ImThera of \$5.1 million during the three months ended June 30, 2019.

Impairment of Intangible Assets

During the second quarter of 2019, we determined that LivaNova will experience a delay in the estimated commercialization date of the Company’s obstructive sleep apnea product currently under development. This delay constituted a triggering event that required evaluation of the IPR&D asset arising from the ImThera acquisition for impairment. Based on the assessment performed, we determined that the IPR&D asset was impaired and as a result, recorded an impairment of \$50.3 million, which is included in our Neuromodulation segment. The new carrying value of the IPR&D asset as of June 30, 2019 was \$112.0 million. The estimated fair value of IPR&D was determined using the income approach. Future delays in commercialization or changes in management estimates could result in further impairment.

Gain on Acquisition

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

Income Taxes

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

Our effective income tax rate from continuing operations for the three and six months ended June 30, 2019 was 17.3% and 22.4%, respectively, compared with (5.5)% and 7.0% the three and six months ended June 30, 2018, respectively. Our effective income tax rate fluctuates based on, among other factors, changes in pretax income in countries with varying statutory tax rates, changes in valuation allowances, changes in tax credits and incentives, and changes in unrecognized tax benefits associated with uncertain tax positions.

Compared with the three and six months ended June 30, 2018, the change in the effective tax rate for the three and six months ended June 30, 2019 was primarily attributable to the establishment of a valuation allowance for a portion of the U.S. federal and state net operating losses, partly offset by a release of uncertain tax positions.

Liquidity and Capital Resources

Based on our current business plan, we believe that our existing cash and cash equivalents, future cash generated from continuing operations, and available borrowing capacity under our credit facilities will be sufficient to fund our expected operating needs, working capital requirements, R&D opportunities, capital expenditures and debt service requirements over the next 12 months from the issuance of these condensed consolidated financial statements. We regularly review our capital needs and consider various investing and financing alternatives to support our requirements. Refer to "Note 9. Financing Arrangements" in the condensed consolidated financial statements in this Quarterly Report on Form 10-Q for additional information regarding our debt. Our liquidity could be adversely affected by the factors affecting future operating results, including those referred to in "Part II, Item 1A. Risk Factors" in the 2018 Form 10-K.

No provision has been made for income taxes on unremitted earnings of our foreign controlled subsidiaries (non-UK subsidiaries) as of June 30, 2019. In the event of the distribution of those earnings in the form of dividends, a sale of the subsidiaries or certain other transactions, we may be liable for income taxes. However, the tax liability on future distributions should not be significant as most jurisdictions with unremitted earnings have various participation exemptions or no withholding tax.

Cash Flows

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

	Six Months Ended June 30,	
	2019	2018
Operating activities	\$ (17,421)	\$ 48,536
Investing activities	(22,454)	(93,190)
Financing activities	37,057	927
Effect of exchange rate changes on cash and cash equivalents	125	(2,508)
Net decrease	\$ (2,693)	\$ (46,235)

Operating Activities

Cash used in operating activities during the six months ended June 30, 2019 increased by \$66.0 million as compared to the same prior-year period. The increase is primarily due to increases in working capital partially offset by an increase in net income adjusted for non-cash items.

Investing Activities

Cash used in investing activities during the six months ended June 30, 2019 decreased \$70.7 million as compared to the same prior-year period. The decrease is primarily due to the 2018 acquisitions of ImThera and TandemLife, net of cash acquired, which were partially offset by the 2018 sale of the CRM business franchise, net of cash disposed.

Financing Activities

Cash provided by financing activities during the six months ended June 30, 2019 increased \$36.1 million as compared to the same prior-year period. The increase is primarily due to an increase in long-term borrowing proceeds offset by a decrease in short-term borrowing proceeds and the 2018 payment of deferred consideration related to an acquisition.

Off-Balance Sheet Arrangements

As of June 30, 2019, we did not have any off-balance sheet arrangements.

Contractual Obligations

We had no material changes in our contractual commitments and obligations from amounts listed under “Part II, Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources” in our 2018 Form 10-K.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

We are exposed to certain market risks as part of our ongoing business operations, including risks from foreign currency exchange rates, interest rate risks and concentration of procurement suppliers that could adversely affect our consolidated financial position, results of operations or cash flows. We manage these risks through regular operating and financing activities and, at certain times, derivative financial instruments. Quantitative and qualitative disclosures about these risks are included in this Quarterly Report on Form 10-Q in “Part I, Note 10. Derivatives and Risk Management,” “Part I, Item 2. Management’s Discussion and Analysis of Financial Conditions and Results of Operations” and “Part II, Item 1A. Risk Factors,” and in our 2018 Form 10-K in “Part II, Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Part I, Item 1A. Risk Factors.” There have been no material changes from the information provided therein.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

(a) Evaluation of Disclosure Controls and Procedures

Management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of the design and effectiveness of our disclosure controls and procedures as of June 30, 2019. Based on that evaluation, the Chief Executive Officer (CEO) and the Chief Financial Officer (CFO) have concluded the disclosure controls and procedures were not effective as of that date due to the material weaknesses in internal control over financial reporting that were disclosed in our 2018 Form 10-K.

(b) Changes in Internal Control Over Financial Reporting

On January 1, 2019, we implemented a new software system, as well as new internal controls, to support adoption of the new Lease Accounting standard, ASC 842. The operating effectiveness of these controls will be evaluated as part of our annual assessment of the effectiveness of internal controls over financial reporting for the fiscal year ended December 31, 2019. No other changes over internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d - 5(f) under the Exchange Act) occurred during the quarter ended June 30, 2019.

Remediation

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

PART II. OTHER INFORMATION

Item 1. *Legal Proceedings*

For a description of our material pending legal and regulatory proceedings and settlements, refer to “Note 12. Commitments and Contingencies” in our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

Item 1A. *Risk Factors*

There were no material changes to the description of the risk factors associated with our business as previously disclosed in “Part I, Item 1A. Risk Factors” of our 2018 Form 10-K.

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

None

Item 3. *Defaults Upon Senior Securities*

None.

Item 4. *Mine Safety Disclosures*

Not applicable.

Item 5. *Other Information*

None.

Item 6. Exhibits

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

Exhibit Number	Document Description
3.1	Amended Articles of Association, incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K, filed on June 15, 2018
10.1*†	Service Agreement, dated January 2, 2019, between Trui Hebbelinck and LivaNova PLC.
10.2*	Amendment and Restatement Agreement, dated June 6, 2019, in relation to the Finance Contract originally dated May 6, 2014, between the European Investment Bank, Sorin Group Italia S.r.l., and LivaNova PLC.
10.3*	Amendment and Restatement Agreement, dated June 6, 2019, in relation to the Finance Contract originally dated June 29, 2017, between the European Investment Bank, Sorin Group Italia S.r.l., and LivaNova PLC.
31.1*	Certification of the Chief Executive Officer of LivaNova PLC pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2*	Certification of the Chief Financial Officer of LivaNova PLC pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1*	Certification of the Chief Executive Officer and Chief Financial Officer of LivaNova PLC pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101*	Interactive Data Files Pursuant to Rule 405 of Regulation S-T: (i) the Condensed Consolidated Statements of Income (Loss) for the three and six months ended June 30, 2019 and June 30, 2018, (ii) the Condensed Consolidated Statements of Comprehensive Income (Loss) for the three and six months ended June 30, 2019 and June 30, 2018, (iii) the Condensed Consolidated Balance Sheet as of June 30, 2019 and December 31, 2018, (iv) the Condensed Consolidated Statements of Cash Flows for the six months ended June 30, 2019 and June 30, 2018, and (vi) the Notes to the Condensed Consolidated Financial Statements

SIGNATURE

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

LIVANOVA PLC

Date: July 31, 2019

By: /s/ DAMIEN MCDONALD

Damien McDonald
Chief Executive Officer
(Principal Executive Officer)

LIVANOVA PLC

Date: July 31, 2019

By: /s/ THAD HUSTON

Thad Huston
Chief Financial Officer
(Principal Financial Officer)

LIVANOVA PLC

TRUI HEBBELINCK

SERVICE AGREEMENT

THIS AGREEMENT is made on the 2nd day of January 2019

BETWEEN

- (1) **LIVANOVA PLC**, a company registered in England with registered number 09451374 and having its registered office at 20 Eastbourne Terrace, London W2 6LG, United Kingdom (the “**Company**”); and
- (2) **TRUI HEBBELINCK**, residing at 19 Clifton Road, Chesham Bois HP6 5PP, Buckinghamshire, United Kingdom (the “**Executive**”).

BACKGROUND

The Company wishes to employ the Executive as Chief Human Resources Officer on the terms and conditions of this Agreement and the Executive wishes to accept such employment.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

“Basic Salary”	means the salary, as specified in Clause 6.1.1 or, as appropriate, the reviewed annual salary from time to time;
“Board”	means the Board of Directors of the Company from time to time or any duly authorised committee thereof, or where the relevant powers have been reserved to the Company’s members, its members from time to time;
“Compensation Committee”	means the compensation committee appointed by the Board;
“Confidential Information”	means all information which is identified or treated by the Company or any Group Company or any of the Group’s clients or customers as confidential or which by reason of its character or the circumstances or manner of its disclosure is evidently confidential including (without prejudice to the foregoing generality) any information about the personal affairs of any of the directors (or their families) of the Company or any Group Company, business plans, proposals relating to the acquisition or disposal of a company or business or proposed expansion or contraction of activities, maturing new business opportunities, research and development projects, designs, secret processes, trade secrets, product or services development and formulae, know-how, inventions, sales statistics and forecasts, marketing strategies and plans, costs, profit and loss and other financial information (save to the extent published in audited accounts), prices and discount structures and the names, addresses and contact and other details of: (a) employees and their terms of employment; (b) customers and potential customers, their requirements and their terms of business with the Company/Group; and (c) suppliers and potential suppliers and their terms of business (all whether or not recorded in writing or in electronic or other format);

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

1.2 Interpretation and Construction

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

- (a) words importing the singular shall include the plural and vice versa;

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

1.3 **Headings**

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

2. **THE EMPLOYMENT**

2.1 **Appointment**

Subject to the provisions of this Agreement, the Company employs the Executive and the Executive accepts employment as Chief Human Resources Officer of the Company. The Employment will commence on 18 March 2019.

2.2 **Work Permits and warranty**

2.2.1 The Executive warrants to the Company that by virtue of entering into this Agreement she will not be in breach of any express or implied obligation to any third party, including any restrictive covenants.

2.2.2 The Executive warrants that she is legally entitled to work in the United Kingdom, or will undertake such steps as are necessary to become legally entitled to work in the United Kingdom, as soon as reasonably possible, and will throughout the Employment thereafter continue to hold a valid United Kingdom work permit if appropriate. The Executive warrants that she will notify the Company in advance of any possible change to her immigration status, as soon as she becomes

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

3. DURATION OF THE EMPLOYMENT

3.1 Continuous Employment

3.1.1 The Executive's continuous period of employment with the Company will commence on the commencement date of the Employment as set out in Clause 2.1.

3.1.2 No employment with any previous employer shall count as part of the Executive's continuous period of employment.

3.2 Duration and Notice

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

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

3.3 Payment in lieu of notice

3.3.1 The Company shall be entitled, at its sole discretion, to terminate the Employment immediately at any time by giving the Executive notice in writing. In these circumstances, the Company will subsequently make a payment to the Executive in lieu of notice, calculated in accordance with the provisions of Clauses 3.3.3 and 3.3.4 (the payment being referred to as a "**Notice Payment**").

3.3.2 For the avoidance of doubt, the Company is not obliged exercise its right to terminate the Employment and to make a Notice Payment in accordance with clause 3.3.1 above so long as it continues to employ the Executive throughout the Notice Period. If the Company shall decide not to make a Notice Payment, the Executive shall not be entitled to enforce a Notice Payment as a contractual debt nor as liquidated damages.

3.3.3 The Notice Payment will be paid less all deductions that are required or permitted by law to be made including in respect of income tax, national insurance contributions and any sums due to the Company or any Group Company.

3.3.4 Subject to the terms of Clause 3.4, the Notice Payment will consist of a sum equivalent to the Basic Salary which the Executive would have received in respect of any notice period outstanding on the Termination Date, but will exclude any bonus, commission share of profit, pension contributions and any other benefits (including any benefits derived from any Share Incentives) that she would have received or would have accrued to her during that period.

3.3.5 The Notice Payment is in full and final settlement of all and any rights and claims that the Executive may have against the Company arising out of the termination of her employment (including both contractual and statutory employment claims), excluding any amounts accrued and due to the Executive on the Termination Date. The Executive agrees to waive, release and discharge any and all such rights and claims and acknowledges that it is a condition of the payment

of the Notice Payment that she will execute a settlement agreement (and any other documents reasonably required by the Company) in a form reasonably acceptable to the Company in order to give effect to the release and waiver in this Clause 3.3.

3.4 Payment in instalments

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

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

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

4. HOURS AND PLACE OF WORK

4.1 Hours of work

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

4.2 Working Time Regulations

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

4.3 Place of work

4.3.1 The Executive’s place of work, on her obtainment of the necessary work permit and visa according to the U.K. immigration legislation, will initially be at the Company’s offices at 20 Eastbourne Terrace, W2 6LG London, but the Company may require the Executive to work at any other location within or outside the U.K. for such periods as the Company may from time to time require. The Executive will be given reasonable notice of any change in her permanent place of work.

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

5. SCOPE OF THE EMPLOYMENT

5.1 Duties of the Executive

During the Employment the Executive shall:

- (a) undertake and carry out to the best of her ability such duties and exercise such powers in relation to the Group’s business as may from time to time be assigned to or vested in her by the Board including where those duties require the Executive to work for any Group Company;

- (b) in the discharge of those duties and the exercise of those powers observe and comply with all lawful resolutions, regulations and directions from time to time made by, or under the authority of, the Board and promptly upon request, give a full account to the Board or a person duly authorised by the Board of all matters with which she is involved. She will provide the information in writing if requested;
- (c) comply with the Articles of Association (as amended from time to time) of any Group Company of which she is a director;
- (d) ensure compliance with the U.K. Corporate Governance Code, as applicable from time to time;
- (e) act in accordance with all statutory, fiduciary and common law duties that she owes to the Company and any Group Company;
- (f) refrain from doing anything that would cause her to be disqualified from acting as a director;
- (g) use reasonable endeavours to do, or refrain from doing, such things as are necessary or expedient to ensure compliance by herself and any Group Company with applicable law and regulations and all other regulatory authorities relevant to any Group Company and any codes of practice issued by any Group Company (as amended from time to time);
- (h) unless prevented by ill-health, holidays or other unavoidable cause, devote the whole of her working time, attention and skill to the discharge of her duties under this Agreement;
- (i) faithfully and diligently perform her duties and at all times use her best endeavours to promote and protect the interests of the Group;
- (j) promptly disclose to the Board, to the extent of the Executive's knowledge thereof, full details of any wrongdoing by the Executive or any other employee of any Group Company where that wrongdoing is material to that employee's employment by the relevant company or to the interests or reputation of any Group Company;
- (k) not incur on behalf of the Company or any Group Company any capital expenditure in excess of such sum as may be authorised by the Company or by resolution of the Board from time to time; and
- (l) not enter into on behalf of the Company or any Group Company any commitment, contract or arrangement which is otherwise than in the normal course of the Company's or the relevant Group Company's business or is outside the scope of her normal duties or authorisations or is of an unusual or onerous or long-term nature.

5.2 **Directorships and Directors and Officers insurance**

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

5.2.2 The Company shall for the duration of the Employment and for a period of not less than six calendar years following the Termination Date, maintain directors' and officers' insurance for the benefit of the Executive in respect of those liabilities which she may incur as a director or officer of the Company or any Group Company and for which such insurance is normally available.

5.3 **Right to suspend duties and powers**

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

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

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

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

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

5.4 **Joint appointments**

The Company shall be at liberty to appoint any other person or persons to act jointly with the Executive in any position to which she may be assigned from time to time.

6. **REMUNERATION**

6.1 **Basic Salary**

6.1.1 During the Employment the Company shall pay the Executive a Basic Salary of not less than £270,000 per annum. The Basic Salary shall accrue from day to day and be payable by credit transfer in equal monthly instalments in arrears on or around the last day of each calendar month or otherwise as arranged from time to time.

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

6.2 **Salary review**

The Basic Salary shall be reviewed annually, the first review to take effect following the first Compensation Committee quarterly meeting of each calendar year commencing in 2020, however the Compensation Committee is not obliged to increase the Basic Salary at any review.

6.3 **Discretionary bonus**

6.3.1 The Company will, subject to the approval of the Compensation Committee, pay the Executive a bonus in respect of each financial year of the Company (the “**Bonus**”). The Executive’s target bonus is a sum equal to 55% of her Basic Salary for that financial year. The terms and amount of this bonus (and whether it is paid in cash or in other forms, such as shares or share options) will be approved from time to time and notified to the Executive by the Compensation Committee in its sole discretion.

6.3.2 The actual amount of any Bonus payable will be determined by reference to the Compensation Committee in its sole discretion and will be determined by the achievement of Company performance objectives or personal performance objectives or both Company and personal performance objectives. The Board will determine appropriate performance targets at the beginning of each financial year. The Bonus will be paid by the Company after receipt by it of the audited financial statements of the Company for the financial year in question.

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

6.4 **Signing bonus**

In respect of the Executive’s agreement to execute this Agreement, the Company will pay the Executive a signing bonus in the amount of £45,000 with payment of the Executive’s first monthly instalment of Basic Salary.

6.5 **Corporate Governance**

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

7. **EXPENSES**

7.1 **Out-of-pocket expenses**

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

7.2 **Company credit/charge cards**

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

8. **DEDUCTIONS**

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

9. **COMPANY CAR**

9.1 **Car allowance**

The Executive may use her own vehicle or rent a vehicle for the Company's business, in which case she will be paid a car allowance of £1,100 per month towards this cost. The car allowance will be subject to deduction of tax and National Insurance contributions.

10. **PENSION SCHEME**

10.1 **The Scheme**

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

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

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

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

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

11. **OTHER INSURANCE & BENEFITS**

11.1 **Health Care Scheme**

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

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

11.2 **Payments**

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

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

11.3 **Medical examinations**

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

12. **HOLIDAYS**

12.1 **The holiday year**

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

12.2 **Annual entitlement**

- 12.2.1 The Executive's annual entitlement to paid holidays is to those public or customary holidays recognised by the Company in any holiday year of which there are eight in total and in addition 24 contractual days holiday. In addition, the Executive shall be entitled to one additional day of holiday per year of continuous service (assessed as at 1st January each year) up to a maximum of five additional days.
- 12.2.2 Entitlement to contractual holidays is accrued pro rata throughout the holiday year. The Executive will be entitled to take public and customary holidays on the days that they are recognised by the Company during the holiday year.
- 12.2.3 The Executive is not entitled to carry any unused holiday entitlement forward to the next holiday year without the permission of the Company.

12.3 **Holiday entitlement on termination**

- 12.3.1 Upon notice of termination of the Employment being served by either party, the Company may require the Executive to take any unused holidays accrued in the holiday year in which the termination takes place at that time during any notice period. Alternatively, the Company may, at its discretion, on termination of the Employment, make a payment in lieu of accrued contractual holiday entitlement.
- 12.3.2 The Executive will be required to make a payment to the Company in respect of any holidays taken in excess of her holiday entitlement accrued at the Termination Date. Any sums so due may be deducted from any money owing to the Executive by the Company.

13. **ABSENCE**

13.1 **Absence due to sickness or injury**

13.1.1 If the Executive is absent from work due to sickness or injury she shall:

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

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

13.2 **Payment of salary during absence**

13.2.1 Subject to the Executive complying with the terms of Clause 13.1.1, the Company may, at its sole discretion, continue to pay Basic Salary during any period of absence due to sickness or injury for up to a maximum of six months in any period of twelve consecutive months (the twelve month period being referred to as the "**Entitlement Period**") unless the Employment is terminated in terms of Clauses 3 or 17.1. The first Entitlement Period will begin on the first day of absence and any subsequent Entitlement Period will start on the first day of any absence occurring outside an enduring Entitlement Period.

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

- (a) an amount equivalent to any Statutory Sick Pay payable to the Executive;

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

13.3 **Absence caused by third party negligence**

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

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

14. **RESTRICTIONS DURING EMPLOYMENT**

14.1 **Disclosure of other interests**

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

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

14.2 **Restrictions on other activities and interests of the Executive**

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

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

14.3 **Transactions with the Company**

Subject to any regulations issued by the Company, the Executive shall not be entitled to receive or obtain directly or indirectly any discount, rebate, commission or any other form of gift or

gratuity (any of these referred to as a “**Gratuity**”) as a result of the Employment or any sale or purchase of goods or services effected or other business transacted (whether or not by her) by or on behalf of the Company or any Group Company and if she (or any person in which she is interested) obtains any Gratuity she shall account to the Company for the amount received by her (or a due proportion of the amount received by the person having regard to the extent of her interest therein).

14.4 **Dealing in securities**

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

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

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

15. **CONFIDENTIALITY AND COMPANY DOCUMENTS**

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

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

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

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

15.2 **Protection of Company documents and materials**

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

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

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

15.3 Exceptions to confidentiality restrictions

15.3.1 Nothing in the Agreement prohibits the Executive from reporting possible violations of law or regulation to any governmental agency or entity, including the U.S. Department of Justice, the U.S. Securities and Exchange Commission, the U.S. Congress, and any U.S. agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of U.S. federal law or regulation. The Executive does not need the prior authorization of the Company or any employee of the Company to make any such reports or disclosures, and the Executive is not required to notify the Company that she has made such reports or disclosures.

15.3.2 Pursuant to the U.S. Defend Trade Secrets Act of 2016, the Executive and the Company acknowledge that:

- (a) An individual may not be held criminally or civilly liable under any U.S. federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.
- (b) Further, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the employer's trade secrets to the attorney and use the trade secret information in the court proceeding if the individual: (a) files any document containing the trade secret under seal; and (b) does not disclose the trade secret, except pursuant to court order.

16. INVENTIONS AND OTHER WORKS

16.1 Executive to further interests of the Company

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

16.2 Disclosure and ownership of Works

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

16.3 **Protection, registration and vesting of Works**

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

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

16.4 **Waiver of rights by the Executive**

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

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

16.5 **Power of Attorney**

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

16.6 **Statutory rights**

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

17. **TERMINATION**

17.1 **Termination events**

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

- (a) if the Executive is guilty of any gross misconduct or behaviour which tends to bring herself or the Company or any Group Company into disrepute; or
- (b) if the Executive commits any material or persistent breach of this Agreement (in the case of a non-material persistent breach, having been given notice in writing of the breach and a reasonable opportunity to rectify the breach) or fails to comply with any reasonable order or direction of the Board; or
- (c) if the Executive fails to perform her duties to the reasonable satisfaction of the Board (having been given notice in writing of: (i) the areas of underperformance, (ii) the improvements in performance that are reasonably required by the Board; and (iii) a reasonable period of time to make the necessary improvements in performance; or
- (d) if she becomes insolvent or bankrupt or compounds with or grants a trust deed for the benefit of her creditors; or
- (e) if her behaviour (whether or not in breach of this Agreement) can reasonably be regarded as materially prejudicial to the interests of the Company or any Group Company, including if she is found guilty of any criminal offence punishable by imprisonment (whether or not such sentence is actually imposed); or
- (f) if she has an order made against her disqualifying her from acting as a company director; or
- (g) if she becomes of unsound mind; or
- (h) if the Executive is found guilty of a serious breach of the rules or regulations as amended from time to time of the U.K. Listing Authority (including the Model Code for transactions in securities by directors), or any other regulatory authority relevant to the Company or any Group Company or any code of practice issued by the Company or any Group Company (as amended from time to time).

17.2 Company's right to proceed

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

17.3 Termination on resignation as director

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

17.4 No damages or payment in lieu of notice

In the event of the Employment being terminated pursuant to Clause 17.1 or 17.3, the Executive shall not be entitled to receive any payment in lieu of notice nor make any claim against the

Company or any Group Company for damages for loss of office or termination of the Employment. Regardless of this, the termination shall be without prejudice to the continuing obligations of the Executive under this Agreement.

18. EVENTS UPON TERMINATION

18.1 Obligations upon termination

Immediately upon the termination of the Employment howsoever arising or immediately at the request of the Board at any time after either the Company or the Executive has served notice of termination of the Employment, the Executive shall:

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

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

18.2 Share Incentives

On termination of the Employment, the Executive's rights with respect to Share Incentives granted to the Executive during the Employment shall be governed by the terms of the LivaNova Plc 2015 Incentive Award Plan and the underlying award agreement for each such Share Incentive.

19. RESTRICTIONS AFTER TERMINATION

19.1 Definitions

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

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

19.2 Restrictive covenants

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

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

19.3 Application of restrictive covenants to other Group Companies

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

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

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

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

19.4 Effect of suspension on Restricted Period

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

19.5 Further undertakings

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

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

19.6 Severance

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

20. RECONSTRUCTION AND AMALGAMATIONS

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

21. DISCIPLINARY AND GRIEVANCE PROCEDURE

21.1 Disciplinary procedures and grievance procedures

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

22. GENERAL

22.1 Provisions which survive termination

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

22.2 No collective agreements

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

23. DATA PROTECTION AND PRIVACY

23.1 Data Protection

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

23.2 Privacy

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

24. AMENDMENTS, WAIVERS AND REMEDIES

24.1 Amendments

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

24.2 Waivers and remedies cumulative

24.2.1 The rights of each party under this Agreement:

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

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

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

25. ENTIRE AGREEMENT

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

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

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

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

26. NO OUTSTANDING CLAIMS

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

27. SEVERANCE

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

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

28. NOTICE

28.1 Notices and deemed receipt

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

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

provided that if deemed receipt occurs before 9am on a business day the notice shall be deemed to have been received at 9:00 am on that day and if deemed receipt occurs after 5pm on a business day, or on a day which is not a business day, the notice shall be deemed to have been received at 9:00 am on the next business day. For the purpose of this Clause, “**business day**” means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.

29. GOVERNING LAW AND JURISDICTION

29.1 Governing law

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

29.2 Jurisdiction

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

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

EXECUTED as a Deed
by LIVANOVA PLC
acting by Damien McDonald,
Chief Executive Officer,
and a Witness

Damien McDonald

Witness

Full Name: _____

Address: _____

EXECUTED as a Deed
By TRUI HEBBELINCK
in the presence of:

Witness's

Signature:

Full Name:

Address:

FI N° 83.445 (IT)

Serapis N° 2013-0335

GRUPPO SORIN R&D

Amendment Agreement in relation to the
Finance Contract signed on
6 May 2014 in Luxembourg
(as subsequently amended)

between the

European Investment Bank

and

LivaNova PLC

and

Sorin Group Italia S.r.l.

Luxembourg, 6 June 2019

London, 6 June 2019

Milan, 6 June 2019

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AMENDED AND RESTATED FINANCE CONTRACT	8

THIS AMENDMENT AND RESTATEMENT AGREEMENT (this “**Agreement**”) is dated 6 June 2019 and made between:

- (1) **The European Investment Bank**, having its seat at 100 blvd Konrad Adenauer, Luxembourg, L-2950 Luxembourg (the “**Bank**”);
- (2) **Sorin Group Italia S.r.l.**, a company incorporated in Italy, having its registered office at Via Benigno Crespi, 17, 20159 Milano, Italy (the “**Italian Subsidiary**”); and
- (3) **LivaNova PLC**, a public limited company incorporated in England and Wales with registered number 9451374, having its registered office at 20 Eastbourne Terrace, London, W2 6LG, United Kingdom (the “**Parent**”).

WHEREAS:

- (A) The Parent, the Italian Subsidiary and the Bank (*inter alios*) entered into a research and development finance contract dated 6 May 2014 (as subsequently amended, the “**Finance Contract**”).
- (B) The Parent, the Italian Subsidiary and the Bank have agreed to enter into this agreement in order to amend the terms of the Finance Contract in the manner set out below.
- (C) The parties acknowledge that the purpose of the Finance Contract, being research and development activities in Italy and France for the 2014-2016 period, is not impacted by the transaction.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

“**Companies**” means, collectively, the Parent and the Italian Subsidiary.

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

1.2 Construction

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

1.3 Third Party Rights

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

2. AMENDMENTS TO THE FINANCE CONTRACT

2.1 In paragraph (b) (Definition) of the section titled “Interpretation and Definitions”:

- (a) the definition of “Consolidated EBITDA” shall be amended to read as follows:

<<“**Consolidated EBITDA**” shall mean, in respect of a Relevant Period and in relation to the consolidated profit and loss statement of the Group, and determined in accordance with

US GAAP: the amount of the consolidated operating income of the Group (without double counting):

- (a) plus depreciation and amortization expenses for plant, property and equipment; and
 - (b) plus amortization of intangible assets and impairment losses (net of any reversal of impairment charges) to the extent taken into account for the purpose of determining the operating result of the Group; and
 - (c) plus Non-Recurring Items (to the extent such Non-Recurring Items have been taken into account for the purposes of determining the operating result of the Group, including for the avoidance of doubt reversal of provisions); and
 - (d) plus extraordinary and non-cash items of expense related to the employee stock-based compensation plan, minus non-cash items of income related to the employee stock-based compensation plan, but only to the extent such items have been deducted in the determination of operating income; and
 - (e) plus extraordinary and non-cash items of expense related to the changes of fair value of the contingent consideration of acquisitions (including, without limitation, future milestone /earn-out payments, acquisition-related warranty claims and escrow retentions, and in any case excluding any item relating to litigation (if any) connected to acquisitions, which shall be treated as a Non-Recurring Item) (the "**Changes in Fair Value**"), minus extraordinary and non-cash items of income of such Changes in Fair Value, to the extent all such items have been taken into account for the determination of operating income and are explicitly reported in the relevant financial statements or the notes to the financial statements.>>;
- (a) the definition of "Non-Recurring Items" shall be included (where appropriate in alphabetical order) to read as follows:

<<"**Non-Recurring Items**" means cost items related to:

- (a) restructuring expenses (including provisions);
- (b) merger and integration expenses;
- (c) litigation expenses (including provisions);
- (d) product remediation expenses (including provisions),

in total not exceeding (save as provided in the proviso set out in the paragraph directly under paragraph (ii) below):

- (i) 45% of Consolidated EBITDA (before adjusting for Non-Recurring Items in accordance with item (c) of the definition of Consolidated EBITDA) in 2019; and
- (ii) 35% of Consolidated EBITDA (before adjusting for Non-Recurring Items in accordance with item (c) of the definition of Consolidated EBITDA) in each financial year from 2020 until the end of loan life (2026),

provided that, for the test period starting on 1 January 2018 and ending on 31 December 2018, the specific provision of USD 294,021,000.00 related to the settlement of a matter known as "3T litigation"(as reported in the Original Financial Statements) shall be added back to Consolidated EBITDA for the purposes of calculating Consolidated Net Financial Indebtedness to Consolidated EBITDA and Consolidated EBITDA to Consolidated Total Net Interest Payable ratios (both as defined in Schedule E), while not adding back to Consolidated EBITDA any further adjustments related to Non-Recurring Items. For the avoidance of doubt, the specific provision of USD 294,021,000.00 related to the settlement of the "3T litigation" shall also be added back to EBITDA for the 12-month test period ending on 30 June 2019 in addition to any other Non-Recurring Items within the limits set out in limb (i) above.>>;

(b) the definition of “Relevant Period” shall be included (where appropriate in alphabetical order) to read as follows:

<<“**Relevant Period**” means, for the purpose of EBITDA calculation, each twelve-month period.>>;

2.2 On the Effective Date, the amendments and additions in Article 2.1 above shall be deemed to have become effective as from 1 January 2018 (included).

3. RESTATEMENT OF THE FINANCE CONTRACT

3.1 The Finance Contract

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

3.2 Continuing Effect

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

3.3 Further Assurance

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

4. GUARANTOR CONFIRMATION

4.1 Guarantee Confirmation

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

- (a) continue to apply in respect of the obligations of each Co-debtor under the amended and restated Finance Contract; and
- (b) extend to all new obligations of any Co-debtor under the amended and restated Finance Contract arising from the amendments effected by this Agreement.

5. REPRESENTATIONS AND WARRANTIES

The Parent and the Italian Subsidiary make each of the representations and warranties in Article 6.15 (*General Representations and Warranties*) of the amended and restated Finance Contract (other than that under limb (e) of Article 6.15D and by reference to the facts and circumstances then existing) on;

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

6. FEES AND EXPENSES

6.1 Amendment fee

An amendment fee of EUR 9,000.00 (nine-thousand euros) shall be due by the Borrowers to the Bank in connection with the execution of this Agreement. This amount shall be paid within 30 (thirty) days following the date of the relevant invoice sent by the Bank to the Borrower, indicating the number of the Bank’s invoice as reference.

The amendment and waiver fee once paid is non-refundable and non-creditable against any other fees payable to the Bank.

6.2 **Costs and Expenses**

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

7. **MISCELLANEOUS**

7.1 **Counterparts**

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

7.2 **Partial Invalidity**

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

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

7.3 **Remedies and Waivers**

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

8. **GOVERNING LAW AND JURISDICTION**

8.1 **Governing Law**

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

8.2 **Jurisdiction**

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

8.3 **Agent of Service**

Without prejudice to any other mode of service allowed under any relevant law, the Italian Subsidiary hereby irrevocably appoints LivaNova PLC, at 20 Eastbourne Terrace, London, W2 6LG as its agent of service for the purposes of accepting service on its behalf of any writ, notice, order, judgement or other legal process (and the Parent by its execution of this Agreement accepts

that appointment). The Italian Subsidiary agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed in 4 (four) originals in the English language.

Schedule 1

CONDITIONS PRECEDENT

1) Companies

A copy of the constitutional documents of each Company or a certificate of an authorised signatory of each relevant Company certifying that the constitutional documents previously delivered to the Bank for the purposes of the original Finance Contract have not been amended and remain in full force and effect.

- (a) A copy of the relevant authority of signatories of each Company, including a resolution of the board of directors, or any other competent corporate authority, of each of Parent, the and the Italian Subsidiary:
 - i. approving the terms of, and the transactions contemplated by, this Agreement and resolving that it execute this Agreement;
 - ii. authorising a specified person or persons to execute this Agreement on its behalf; and
 - iii. in the case of the Italian Subsidiary, authorising the Parent to act as its agent in connection with this Agreement.
- (b) If applicable, a copy of any power of attorney authorising the person or persons specified therein to sign this Agreement to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above and, if applicable, any power of attorney referred to in paragraph (c).
- (d) A certificate of an authorised signatory of the relevant Company certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2) Amendment agreement

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

3) Legal Opinions

Legal opinions issued (in form and substance satisfactory for the Bank) by the external legal counsel of the Companies on (i) the due incorporation, capacity and corporate authorizations of each of the Companies; and (ii) on the legal, valid, binding and enforceable obligations by each of the Companies under this Agreement and the amended and restated Finance Contract, in accordance with their respective law of their jurisdiction of incorporation.

SCHEDULE 2
AMENDED AND RESTATED FINANCE CONTRACT

FI N° 83.445 (IT)

Serapis N° 2013-0335

GRUPPO SORIN R&D

Finance Contract

between the

European Investment Bank

and

LivaNova PLC

and

Sorin Group Italia S.r.l.

Luxembourg, 6 May 2014

(as amended and restated pursuant to an amendment
and restatement agreement dated 2 October 2015, an amendment agreement dated 26 April 2018
and pursuant to an amendment and restatement agreement dated 6 June 2019)

THIS CONTRACT IS MADE BETWEEN:

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

(the "**Bank**")

of the first part, and

LivaNova PLC, a public limited company incorporated in
England and Wales with registered number 9451374,
having its registered office at 20 Eastbourne Terrace,
London W2 6LG, United Kingdom,

(the "**Parent**")

of the second part, and

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

(the "**Italian Subsidiary**")

of the third part.

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

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

WHEREAS:

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

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

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

NOW THEREFORE it is hereby agreed as follows:

INTERPRETATION AND DEFINITIONS

(a) Interpretation

In this Contract:

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

(b) Definitions

In this Contract:

“Acceptance Deadline” for a notice means:

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

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

“Amendment and Restatement Agreement” means the amendment and restatement agreement dated 6 June 2019 and entered into between the Bank and the Borrowers.

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

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

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

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

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

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

“Consolidated EBITDA” shall mean, in respect of a Relevant Period and in relation to the consolidated profit and loss statement of the Group, and determined in accordance with US GAAP: the amount of the consolidated operating income of the Group (without double counting):

- (a) plus depreciation and amortization expenses for plant, property and equipment; and
- (b) plus amortization of intangible assets and impairment losses (net of any reversal of impairment charges) to the extent taken into account for the purpose of determining the operating result of the Group; and
- (c) plus Non-Recurring Items (to the extent such Non-Recurring Items have been taken into account for the purposes of determining the operating result of the Group, including for the avoidance of doubt reversal of provisions); and

- (d) plus extraordinary and non-cash items of expense related to the employee stock-based compensation plan, minus non-cash items of income related to the employee stock-based compensation plan, but only to the extent such items have been deducted in the determination of operating income; and
- (e) plus extraordinary and non-cash items of expense related to the changes of fair value of the contingent consideration of acquisitions (including, without limitation, future milestone /earn-out payments, acquisition-related warranty claims and escrow retentions, and in any case excluding any item relating to litigation (if any) connected to acquisitions, which shall be treated as a Non-Recurring Item) (the "**Changes in Fair Value**"), minus extraordinary and non-cash items of income of such Changes in Fair Value, to the extent all such items have been taken into account for the determination of operating income and are explicitly reported in the relevant financial statements or the notes to the financial statements.

"**Consolidated Net Financial Indebtedness**" shall mean at any time:

- (a) the aggregate at that time of Financial Indebtedness of the members of the Group from sources external to the Group (including guarantees for an aggregate amount exceeding USD 40,000,000.00 (forty million US dollars) at that time); less
- (b) the aggregate amount at that time of: (i) cash; (ii) debt securities issued or guaranteed by any member state of the OECD that benefit from an investment grade rating; and (iii) receivables from any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

"**Consolidated Net Worth**" in respect of the Group shall mean the consolidated net worth of the Group (being the stockholders' equity as determined in accordance with US GAAP).

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

- (i) interest accrued during such period as an obligation of any member of the Group (whether or not paid or capitalised during or deferred for payment after such period);
- (ii) less any interest received or receivable by any member of the Group (after deducting any applicable withholding tax) in such period.

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

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

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

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

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

exceeds

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

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

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

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

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

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with this Contract; or

- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of either the Bank or a Borrower, preventing that party:
 - (i) from performing its payment obligations under this Contract; or
 - (ii) from communicating with other parties,

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

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

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

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

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

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

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

“Environmental Law” means:

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

“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.

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

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

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

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

- (i) moneys borrowed;
- (ii) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (iii) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (iv) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with US GAAP, be treated as a finance or capital lease;

- (v) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis – including true sale US GAAP – under an arrangement other than a Permitted Receivables Disposal);
- (vi) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and lease back arrangements and sale and purchase arrangements having deferred payment terms longer than terms customary on the market) having the financial effect of a borrowing;
- (vii) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (fair value) shall be taken into account);
- (viii) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (ix) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (i) to (viii) above.

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

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

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

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

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

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

“**GAAP**” means generally accepted accounting principles in the country of incorporation of each Borrower, including US GAAP.

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

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

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

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

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

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

- (a) there are, in the reasonable opinion of the Bank, events or circumstances adversely affecting the Bank’s access to its sources of funding;
- (b) in the opinion of the Bank, funds are not available from its ordinary sources of funding in order to adequately fund a Tranche in the relevant currency and/or for the relevant maturity and/or in relation to the reimbursement profile of such Tranche;
- (c) in relation to a Tranche in respect of which interest is or would be payable at Floating Rate:

(A) the cost to the Bank of obtaining funds from its sources of funding, as determined by the Bank, for a period equal to the Floating Rate Reference Period of such Tranche (i.e. in the money market) would be in excess of the applicable EURIBOR;

or

(B) the Bank determines that adequate and fair means do not exist for ascertaining the applicable EURIBOR of such Tranche or it is not possible to determine the EURIBOR in accordance with the definition contained in Schedule B.

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

“Material Adverse Effect” means a material adverse effect on:

- (a) the business, operations, property or financial condition of the Group taken as a whole; or
- (b) the ability of a Borrower to perform its payment obligations under the Contract and/or its obligations under Article 6.07 and/or Schedule E (Financial Ratios); or
- (c) the validity or enforceability of the Contract or the rights or remedies of the Bank under the Contract.

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

“Non-Recurring Items” means cost items related to:

- (a) restructuring expenses (including provisions);
- (b) merger and integration expenses;
- (c) litigation expenses (including provisions);
- (d) product remediation expenses (including provisions),

in total not exceeding (save as provided in the proviso set out in the paragraph directly under paragraph (ii) below):

- (i) 45% of Consolidated EBITDA (before adjusting for Non-Recurring Items in accordance with item (c) of the definition of Consolidated EBITDA) in 2019; and
- (ii) 35% of Consolidated EBITDA (before adjusting for Non-Recurring Items in accordance with item (c) of the definition of Consolidated EBITDA) in each financial year from 2020 until the end of loan life (2026),

provided that, for the test period starting on 1 January 2018 and ending on 31 December 2018, the specific provision of USD 294,021,000.00 (two hundred ninety-four million and twenty-one thousand US dollars) related to the settlement of a matter known as “3T litigation” (as reported in the Original Financial Statements) shall be added back to Consolidated EBITDA for the purposes of calculating Consolidated Net Financial Indebtedness to Consolidated EBITDA and Consolidated EBITDA to Consolidated Total Net Interest Payable ratios (both as defined in Schedule E), while not adding back to Consolidated EBITDA any further adjustments related to Non-Recurring Items. For the avoidance of doubt, the specific provision of USD 294,021,000.00 (two hundred ninety-four million and twenty-one thousand US dollars) related to the settlement of the “3T litigation” shall also be added back to EBITDA for the 12-month test period ending on 30 June 2019 in addition to any other Non-Recurring Items within the limits set out in limb (i) above.

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

“Original Financial Statements” means the audited consolidated financial statements of the Group for the financial year ended 31 December 2018.

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

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

“Permitted Acquisition” means an operation permitted under Article 6.10B.

“Permitted Guarantee” means:

- (a) any guarantee comprising a 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;
- (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 Contract; 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 Company and, in aggregate for those made in any financial year, do not exceed USD 50,000,000.00 (fifty million US dollars) 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 are already concluded at date of signature of this Contract; and/or (ii) any securitisation and/or factoring programme of the receivables of the Group previously consented by the Bank, such consent not to be unreasonably withheld; and/or (iii) any disposal of receivables not otherwise permitted under paragraphs (i) or (ii) above where the net consideration receivable (when aggregated with the consideration for all such other receivables disposed of) does not exceed USD 40,000,000.00 (forty million US dollars) in any financial year.

“Permitted Share Buyback” means any share buyback occurring at any time on or after the date falling 16 (sixteen) months after the date of 6 June 2019, provided that at that time (a) the aggregate principal amount of the Loans (as defined in the Term Loan) outstanding under the Term Loan does not exceed USD 200,000,000.00 (two hundred million US dollars); and (b) the ratio of Consolidated Net Financial Indebtedness to Consolidated EBITDA does not exceed 1.5 times.

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

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

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

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

- (a) the interest net of the Margin that would accrue thereafter on the Prepayment Amount over the period from the Prepayment Date to the Maturity Date if it were not prepaid; over

(b) the interest that would so accrue over that period, if it were calculated at the Redeployment Rate, less 0.15% (fifteen basis points). The said present value shall be calculated at a discount rate equal to the Redeployment Rate, applied as of each relevant Payment Date.

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

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

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

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

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

“Relevant Period” means, for the purpose of EBITDA calculation, each twelve-month period.

“Restricted Party” means a person that is:

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

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

“Sanctions Authority” means:

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

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

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

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

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

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

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) more than half the issued share capital (which gives rise to voting rights) of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

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

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

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

“**Term Loan**” means the USD 350,000,000.00 (three hundred and fifty million US dollars) credit facility agreement entered into on 26 March 2019 between the Parent and certain banking institutions.

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

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

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

ARTICLE 1

Credit and Disbursements

1.01 Amount of Credit

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

1.02 Disbursement procedure

1.02A Tranches

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

1.02B Disbursement Request

- (a) Each of the Borrowers may present to the Bank a Disbursement Request for the disbursement of a Tranche, such Disbursement Request to be received at the latest 15 (fifteen) days before the Final Availability Date. The Disbursement Request shall be in the form set out in Schedule C and shall specify:
 - (i) the amount of the Tranche;

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

1.02C Disbursement Notice

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

(b) If one or more of the elements specified in the Disbursement Notice does not reflect the corresponding element, if any, in the Disbursement Request, the relevant Borrower may following receipt of the Disbursement Notice revoke the Disbursement Request by written notice to the Bank to be received no later than 12h00 Luxembourg time on the next Business Day and thereupon the Disbursement Request and the Disbursement Notice shall be of no effect. If the relevant Borrower have not revoked in writing the Disbursement Request within such period, such Borrower will be deemed to have accepted all elements specified in the Disbursement Notice.

(c) If the relevant Borrower has presented to the Bank a Disbursement Request in which such Borrower has not specified the fixed interest rate or spread as set out in Article 1.02B(b), such Borrower will be deemed to have agreed in advance to the Fixed Rate or Spread as subsequently specified in the Disbursement Notice.

1.02D **Disbursement Account**

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

Only one account may be specified for each Tranche.

1.03 **Currency of disbursement**

The Bank shall disburse each Tranche in EUR.

1.04 **Conditions of disbursement**

1.04A **First Tranche**

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

- (a) evidence that the execution of this Contract by the Borrowers have been duly authorised and that the person or persons signing this Contract on behalf of each of the Borrowers is/are duly authorised to do so together with the specimen signature of each such person or persons;
- (b) evidence that the Borrowers have obtained all necessary Authorisations, required in connection with this Contract and the Project;
- (c) legal opinions issued by the external legal counsel of the Borrowers (at the cost of the Borrowers) on (i) the due incorporation, capacity and corporate authorizations of each of the Borrowers; and (ii) on the legal, valid, binding and enforceable obligations by each of the Borrowers under this Contract in accordance with their respective law of their jurisdiction of incorporation;
- (d) INTENTIONALLY LEFT BLANK;
- (e) evidence that any process agent referred to in Article 11.03 has accepted its appointment;
- (f) evidence of compliance by the relevant Borrower with the financial covenants pursuant to Article 6.07;
- (g) evidence of payment of the appraisal fee in full pursuant to Article 1.08; and
- (h) evidence that the Parent has repaid in full the loans, together with accrued interest, and all other amounts accrued or outstanding, under the Finance Contract between the Bank and the Parent in Milan on 6 December 2007 (FI N° 24.239(IT) Serapis N° 2004-0233) denominated "Sorin Technologie Medicali R & D".

1.04B **All Tranches**

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

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

1.05 Deferment of disbursement

1.05A Grounds for deferment

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

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

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

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

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

1.06 Cancellation and suspension

1.06A Borrower's right to cancel

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

1.06B Bank's right to suspend and cancel

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

1.06C Indemnity for suspension and cancellation of a Tranche

1.06C(1) SUSPENSION

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

1.06C(2) CANCELLATION

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

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

If the Bank cancels:

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

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

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

1.07 Cancellation after expiry of the Credit

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

1.08 Appraisal fee

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

1.09 Non-utilisation fee

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

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

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

1.10 Sums due under Article 1

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

1.11 Co-debtorship: joint and several liability

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

ARTICLE 2

The Loan

2.01 Amount of Loan

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

2.02 Currency of repayment, interest and other charges

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

2.03 Confirmation by the Bank

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

ARTICLE 3

Interest

3.01 Rate of interest

For the purposes of this Contract "Margin" means 113 basis points (1.13 %).

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

3.01A Fixed Rate Tranches

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

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

3.01B Floating Rate Tranches

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

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

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

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

3.02 Interest on overdue sums

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

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

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

3.03 Market Disruption Event

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

- the Margin and
- the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based

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

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

ARTICLE 4

Repayment

4.01 Normal repayment

- (a) Each Borrower shall repay each Tranche by instalments on the Payment Dates specified in the relevant Disbursement Notice in accordance with the terms of the amortisation table delivered pursuant to Article 2.03.
- (b) Each amortisation table shall be drawn up on the basis that:
 - (i) in the case of a Fixed Rate Tranche, repayment shall be made annually, semi-annually or quarterly by equal instalments of principal or constant instalments of principal and interest;
 - (ii) in the case of a Floating Rate Tranche, repayment shall be made by equal annual, semi-annual or quarterly instalments of principal;
 - (iii) the first repayment date of each Tranche shall be a Payment Date falling not earlier than 60 (sixty) days from the Scheduled Disbursement Date and not later than the first Payment Date immediately following the first anniversary of the Scheduled Disbursement Date of the Tranche; and
 - (iv) the last repayment date of each Tranche shall be a Payment Date falling not earlier than 4 (four) years and not later than 7 (seven) years from the Scheduled Disbursement Date.

4.02 Voluntary prepayment

4.02A Prepayment option

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

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

4.02B Prepayment indemnity

4.02B(1) FIXED RATE TRANCHE

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

4.02B(2) FLOATING RATE TRANCHE

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

4.02C **Prepayment mechanics**

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

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

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

4.03 **Compulsory prepayment**

4.03A **Prepayment Events**

4.03A(1) PROJECT COST REDUCTION

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

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

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

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

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

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

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

4.03A(3) CHANGE OF CONTROL

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

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

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

For the purposes of this Article:

- (a) a "**Change-of-Control Event**" occurs if:
 - (i) any person or group of persons acting in concert gains control of the Parent or of the entity directly or ultimately controlling the Parent;
 - (ii) the Parent ceases to be the beneficial owner directly or indirectly through wholly owned subsidiaries of more than 50% (fifty per cent) of the issued share capital of the Italian Subsidiary;
- (b) "**acting in concert**" means acting together pursuant to an agreement or understanding (whether formal or informal); and
- (c) "**control**" means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise.

4.03A(4) CHANGE OF LAW

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

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

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

4.03A(5) ILLEGALITY

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

4.03B Prepayment mechanics

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

4.03C Prepayment indemnity

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

4.04 General

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

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

ARTICLE 5

Payments

5.01 Day count convention

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

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

5.02 Time and place of payment

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

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

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

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

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

5.03 No set-off by the Borrower

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

5.04 Disruption to Payment Systems

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

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

5.05 Application of sums received

(a) General

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

(b) Partial payments

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

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

(c) Allocation of sums related to Tranches

(i) In case of:

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

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

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

ARTICLE 6

Borrower undertakings and representations

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

A. Project undertakings

6.01 Use of Loan and availability of other funds

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

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

6.02 Completion of Project

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

6.03 Increased cost of Project

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

6.04 Procurement procedure

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

6.05 Continuing Project undertakings

Each Borrower shall:

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

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

B. General undertakings

6.06 Disposal of assets

6.06A Each Borrower shall not (and the Parent shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset (including, but not limited to, receivables).

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

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

For the purposes of this Article, "**dispose**" and "**disposal**" includes any act effecting sale, transfer, lease or other disposal.

6.07 Financial Covenants

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

6.08 Limitations on distributions

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

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

(e) reduce its share capital.

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

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

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

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

6.09 Change of Business

The Parent shall procure that no substantial change is made to the general nature of the business of the Parent or the Group from that carried on at the Effective Date.

6.10 Acquisition

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

6.10B Paragraph 6.10A does not apply to:

- (i) a Permitted Share Buyback;
- (ii) the acquisition for cash consideration of (A) all or the majority of the issued share capital of a company with limited liability; or (B) a business or undertaking, but (in both cases (A) and (B)) only if:
 - (a) no Event of Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;
 - (b) the acquired company, business or undertaking is engaged in a business substantially the same as (or ancillary or related to) that carried on by the Group; and
 - (c) the consideration (including associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability in each case remaining in the acquired company (or any such business) at the date of acquisition (the "**Individual Purchase Price**") when aggregated with the consideration (including associated costs and expenses) for any other acquisition permitted under this Contract and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in any such acquired companies or businesses at the time of acquisition (the "**Total Purchase Price**") does not exceed in aggregate USD 280,000,000.00 (two hundred and eighty million US dollars) or its equivalent from 6 June 2019 over the life of the Tranches;
- (iii) any other acquisition by any Borrower in respect of which the Bank has given its prior written consent.

Any acquisition whose Individual Purchase Price exceeds in aggregate USD 75,000,000.00 (seventy-five million US dollars) or its equivalent will only be permitted under paragraph (c) above if the Parent has delivered to the Bank not later than 30 (thirty) Business Days before

legally committing to make such acquisition a certificate signed by (i) the Chief Executive Officer of the Parent or (ii) two members of the Board of Directors of the Parent, attaching a copy of the latest audited accounts (or if not available, management accounts) of the target company or business.

Such certificate must give calculations showing in reasonable detail that the Parent would have remained in compliance with its obligations under Article 6.07 if the covenant tests were recalculated for the relevant period ending on the most recent Accounting Date consolidating the financial statements of the target company (consolidated if it has Subsidiaries) or business with the financial statements of the Group for such period on a pro forma basis and as if the consideration for the proposed acquisition had been paid at the start of that relevant period.

6.11 Financial Indebtedness

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

For the purposes of this Article:

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

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

6.12 Compliance with laws

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

6.13 Merger

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

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

- (a) a merger between a Borrower and any Subsidiary that is consolidated within the consolidated financial statements of the Parent, provided that such Borrower is in each case the surviving entity;
- (b) any solvent amalgamation or merger among members of the Group which are not a Borrower; and
- (c) the solvent liquidation or reorganisation of any member of the Group which is not a Borrower so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group,

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

6.14 Books and records

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

6.14A Loans or credit

- (a) Except as permitted under paragraph (b), each Borrower shall not be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) does not apply to a Permitted Loan.

6.14B No guarantees or indemnities

- (a) Except as permitted under paragraph (b), each Borrower shall not 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.

6.14C Sanctions

Each Borrower shall not:

- (a) use, lend, contribute or otherwise make available any part of the proceeds of any disbursement under the Credit or other transaction contemplated:
 - (i) for the purpose of financing any trade, business or other activities involving, or for the benefit of, any Restricted Party; or
 - (ii) in any other manner that would result in any person being in breach of any Sanctions or becoming a Restricted Party;
- (b) knowingly engage in any transaction that evades or avoids or breaches directly or indirectly, any Sanctions applicable to it; or
- (c) knowingly fund all or part of any payment in connection with a Finance Document out of proceeds derived from business or transactions with a Restricted Party, or from any action which is in breach of any Sanctions.

6.15 General Representations and Warranties

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

6.15B [INTENTIONALLY LEFT BLANK]

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

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

- (a) it has the power to execute, deliver and perform its obligations under this Contract and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same by it;
- (b) this Contract constitutes its legally valid, binding and enforceable obligations;
- (c) the execution and delivery of, the performance of its obligations under and compliance with the provisions of this Contract do not and will not:
 - (i) contravene or conflict with any applicable law, statute, rule or regulation, or any judgement, decree or permit to which it is subject;
 - (ii) contravene or conflict with any agreement or other instrument binding upon it which might reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Contract;
 - (iii) contravene or conflict with any provision of its by-laws or memorandum and articles of association;
- (d) the latest available audited accounts of that Borrower (and, in case of the Parent, latest available audited accounts of the Parent) have - save as disclosed in them - been prepared on a basis consistent with previous years and have been approved by its auditors as representing a true and fair view of the results of its operations for that year and accurately disclose or reserve against all the liabilities (actual or contingent) of that Borrower;
- (e) there has been no Material Adverse Change since 30 June 2015;

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

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

ARTICLE 7

Guarantee and indemnity. Security.

7.01 Guarantee and indemnity.

7.01A Guarantee and indemnity

Each Co-debtor irrevocably and unconditionally jointly and severally:

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

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

7.01B Continuing guarantee

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

7.01C Reinstatement

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

7.01D Waiver of defences

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

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

7.01E Immediate recourse

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

7.01F Appropriations

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

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

7.01G Deferral of Co-debtors' rights

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

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

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

7.01H Additional security

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

7.01I Limitation of the obligations of the Italian Subsidiary

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

7.01J Borrowers' Agent

- (a) Each Borrower (other than the Parent) by its execution of this Contract irrevocably appoints the Parent (acting through one or more authorised signatories) to act on its behalf as its agent in relation to this Contract and irrevocably authorises:
 - (i) the Parent on its behalf to supply all information concerning itself contemplated by this Contract to the Bank and to give all notices and instructions (including, in the case of a Borrower, Disbursement Requests); and
 - (ii) the Bank to give any notice, demand or other communication to that Borrower pursuant to this Contract to the Parent,

and in each case the Borrower shall be bound as though the Borrower itself had given the notices and instructions (including, without limitation, any Disbursement Requests) or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Parent or given to the Parent under this Contract on behalf of another Borrower or in connection with this Contract shall be binding for all purposes on that Borrower as if that Borrower had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Parent and any other Borrower, those of the Parent shall prevail.

7.02 Negative pledge

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

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

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

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

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

7.03 Pari passu

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

7.04 Clauses by inclusion

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

ARTICLE 8

Information and Visits

8.01 Information concerning the Project

- (a) The Parent (and, upon request of the Bank, the relevant Borrower) shall deliver to the Bank:
- (i) the information in content and in form, and at the times, specified in Schedule A.2 or otherwise as agreed from time to time by the parties to this Contract; and
 - (ii) any such information or further document concerning the financing, procurement, implementation, operation and environmental matters of or for the Project as the Bank may reasonably require within a reasonable time,
- provided always that if such information or document is not delivered to the Bank on time, and the Parent (and, upon request of the Bank, the relevant Borrower) does not rectify the omission within a reasonable time set by the Bank in writing, the Bank may remedy the deficiency, to the extent feasible, by employing its own staff or a consultant or any other third party, at the Parent's expense and the Borrowers shall provide such persons with all assistance necessary for the purpose;
- (b) The Borrowers shall submit for the approval of the Bank without delay any material change to the Project, also taking into account the disclosures made to the Bank in connection with the Project prior to the signing of this Contract, in respect of, inter alia, the price, design, plans, timetable or to the expenditure programme or financing plan for the Project;
- (c) The Borrowers shall promptly inform the Bank of:
- (i) any action or protest initiated or any objection raised by any third party or any genuine complaint received by any Borrower or any Environmental Claim that is to its knowledge commenced, pending or threatened against it with regard to environmental or other matters affecting the Project;
 - (ii) any fact or event known to any Borrower, which may substantially prejudice or affect the conditions of execution or operation of the Project;
 - (iii) a genuine allegation, complaint or information with regard to Criminal Offences related to the Project;
 - (iv) any non-compliance by it with any applicable Environmental Law; and
 - (v) any suspension, revocation or modification of any Environmental Approval,
- and set out the action to be taken with respect to such matters.
- (d) The Borrowers shall provide to the Bank, if so requested:
- (i) a certificate of its insurers showing fulfilment of the requirements of Article 6.05(c); and
 - (ii) annually, a list of policies in force covering the insured property forming part of the Project, together with confirmation of payment of the current premiums.

8.02 Information concerning the Borrowers

- (a) The Parent shall deliver to the Bank:
- (i) as soon as they become available but in any event within 180 (one hundred and eighty) days after the end of each of its financial years its audited consolidated and unconsolidated annual report, balance sheet, profit and loss account and auditors report for that financial year together with a Compliance Certificate as set out in Schedule D.2 and prepared in accordance with the requirements set out in the "Compliance Certificate" section in Schedule E;

- (ii) as soon as they become publicly available but in any event within 90 (ninety) days after the end of each of the relevant accounting periods its interim consolidated and unconsolidated semi-annual report, balance sheet and profit and loss account for the first half-year of each of its financial years together with a Compliance Certificate as set out in Schedule D.2 and prepared in accordance with the requirements set out in the "Compliance Certificate" section in Schedule E;
 - (iii) all material documents dispatched by the Parent to its shareholders (or any class of them) or its creditors (or any class of them) at the same time as they are dispatched; and
 - (iv) from time to time, such further information on its general financial situation as the Bank may reasonably require or such certificates of compliance with the undertakings of Article 6 as the Bank may deem necessary.
- (b) Each set of financial statements delivered by each Borrower pursuant to paragraphs (a)(i) and (a)(ii) above shall be certified in accordance with applicable laws and any applicable rules of any relevant stock exchange.
- (c) Each Borrower shall procure that each set of financial statements of such Borrower delivered pursuant to paragraphs (a)(i) and (a)(ii) above is prepared using the US GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements unless, in relation to any set of financial statements, it notifies the Bank that there has been a change in the US GAAP, the accounting practices or reference periods and its auditors deliver to the Bank:
- (i) a description of any change necessary for those financial statements to reflect the US GAAP, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Bank, to enable the Bank to determine whether the undertaking in Article 6.07 (Financial Covenants) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.
- (d) Any reference in this Contract to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.
- (e) Each of the Borrowers shall inform the Bank immediately of:
- (i) any material alteration to its by-laws or memorandum and articles of association or shareholding structure and of any change of ownership of 5% (five per cent) or more of its shares after the Effective Date;
 - (ii) any fact which obliges it to prepay any financial indebtedness or any European Union funding;
 - (iii) any event or decision that constitutes or may result in a Prepayment Event;
 - (iv) any intention on its part to grant any security over any of its assets in favour of a third party;
 - (v) any intention on its part to relinquish ownership of any material component of the Project;
 - (vi) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrowers under this Contract;
 - (vii) any event listed in Article 10.01 having occurred or being threatened or anticipated;
 - (viii) any investigations concerning the integrity of the members of any of the Borrowers' Board of Directors or other administrative body or managers;

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

8.03 Visits by the Bank

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

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

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

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

ARTICLE 9

Charges and expenses

9.01 Taxes, duties and fees

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

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

9.02 Other charges

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

9.03 Increased costs, indemnity and set-off

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

ARTICLE 10

Events of Default

10.01 Right to demand repayment

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

10.01A Immediate demand

The Bank may make such demand immediately:

- (a) if any Borrower does not pay on the due date any amount payable pursuant to this Contract at the place and in the currency in which it is expressed to be payable, unless (i) its failure to pay is caused by an administrative or technical error or a Disruption Event and (ii) payment is made within 3 (three) Business Days of its due date;
- (b) if any information or document given to the Bank by or on behalf of any of the Borrowers or any representation, warranty or statement made or deemed to be made by any of the Borrowers in or pursuant to this Contract or in connection with the negotiation or performance of this Contract is or proves to have been incorrect, incomplete or misleading in any material respect;
- (c) if, following any default of any Borrower or any other member of the Group in relation to any loan, or any obligation arising out of any financial transaction, other than the Loan
 - (i) any Borrower or any other member of the Group is required or is capable of being required or will, following expiry of any applicable contractual grace period, be required or be capable of being required to prepay, discharge, close out or terminate ahead of maturity such other loan or obligation; or
 - (ii) any financial commitment for such other loan or obligation is cancelled or suspended,

and such other loans or obligations or commitments falling under paragraphs (i) and/or (ii) above are in an aggregate principal amount in excess of USD 7,500,000.00 (seven million and five hundred thousand US dollars) or its equivalent in any other currency or currencies;

- (d) if any Borrower or any member of the Group is unable to pay its debts as they fall due, or suspends its debts, or makes or seeks to make a composition with its creditors;
- (e) if any corporate action, legal proceedings or other procedure or step is taken in relation to the suspension of payments, a moratorium of any indebtedness, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) or an order is made or an effective resolution is passed for the winding up of any Borrower or any member of the Group, or if any Borrower or any member of the Group takes steps towards a substantial reduction in its capital, is declared insolvent or ceases or resolves to cease to carry on the whole or any substantial part of its business or activities or any Security over any asset of any Borrower is enforced;
- (f) if an encumbrancer takes possession of, or a receiver, liquidator, administrator, administrative receiver or similar officer is appointed, whether by a court of competent jurisdiction or by any competent administrative authority or by any person, of or over, any part of the business or assets of any Borrower or any member of the Group or any property forming part of the Project;
- (g) if any Borrower or any member of the Group defaults in the performance of any obligation in respect of any other loan granted by the Bank or financial instrument entered into with the Bank;
- (h) if any Borrower or any member of the Group defaults in the performance of any obligation in respect of any other loan made to it from the resources of the Bank or the European Union;
- (i) if any distress, execution, sequestration or other process is levied or enforced upon the property of any Borrower or any property forming part of the Project and is not discharged or stayed within 14 (fourteen) days;
- (j) if a Material Adverse Change occurs, as compared with the Borrowers' condition at the date of the Effective Date;
- (k) if it is or becomes unlawful for any Borrower to perform any of its obligations under this Contract or other transactional documents or this Contract or other transactional documents is not effective in accordance with its terms or is alleged by any Borrower to be ineffective in accordance with its terms;
- (l) if the Parent's auditors qualify the audited annual consolidated financial statements of the Parent on the grounds of inadequate or unreliable information or being unable to prepare the accounts on a going concern basis, in each case which would have or would be reasonably likely to have a Material Adverse Effect;
- (m) if the authority or ability of any Borrower 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 Borrower or any of its assets where such limitation or curtailment has or is reasonably likely to have a Material Adverse Effect; or
- (n) if any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened against any Borrower or its assets which have or are reasonably likely to have a Material Adverse Effect.

10.01B Demand after notice to remedy

The Bank may also make such demand:

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

- (b) if any fact related to the Borrower or the Project stated in the Recitals materially alters and is not materially restored and if the alteration either prejudices the interests of the Bank as lender to the Borrower or adversely affects the implementation or operation of the Project,

unless the non-compliance or circumstance giving rise to the non-compliance is capable of remedy and is remedied within 5 (five) Business Days from a notice served by the Bank on the Parent on behalf of the Borrowers.

10.02 Other rights at law

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

10.03 Indemnity

10.03A Fixed Rate Tranches

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

10.03B Floating Rate Tranches

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

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

10.03C General

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

10.04 Non-Waiver

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

ARTICLE 11

Law and jurisdiction, miscellaneous

11.01 Governing Law

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

11.02 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute (a "**Dispute**") arising out of or in connection with this Contract (including a dispute regarding the existence, validity or termination of this Contract or the consequences of its nullity) or any non-contractual obligation arising out of or in connection with this Contract.

- (b) The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

11.03 Agent of Service

Without prejudice to any other mode of service allowed under any relevant law, each Borrower (other than the Parent) hereby irrevocably appoints LivaNova PLC, at 20 Eastbourne Terrace, London W2 6LG United Kingdom as its agent of service for the purposes of accepting service on its behalf of any writ, notice, order, judgement or other legal process (and the Parent accepts that appointment). Each Borrower (other than the Parent) agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

The Bank hereby appoints Securities Management Trust Limited of 8 Lothbury, London EC2R 7HH to be its agent for the purpose of accepting service of legal process.

11.04 Place of performance

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

11.05 Evidence of sums due

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

11.06 Third party rights

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

11.07 Entire Agreement

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

11.08 Invalidity

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

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

11.09 Amendments

Any amendment to this Contract shall be made in writing and shall be signed by the parties hereto.

11.10 Counterparts

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

ARTICLE 12

Final clauses

12.01 Notices

12.01A Form of notices

- (a) Any notice or other communication given under this Contract must be in writing and, unless otherwise stated, may be made by letter, electronic mail or facsimile.
- (b) Notices and other communications for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, may be made by hand delivery, registered letter, facsimile or by electronic mail. Such notices and communications shall be deemed to have been received by the other party:

1 on the date of delivery in relation to a hand-delivered or registered letter;

2 on receipt of transmission in relation to a facsimile; or

3 in the case of any electronic mail, only when actually received in readable form and only if it is addressed in such a manner as the Bank or the Borrower (as the applicable recipient) shall specify for this purpose.

- (c) Any notice provided by any Borrower or Co-debtor to the Bank by electronic mail shall:

- (i) mention the Contract Number in the subject line; and

- (ii) be in the form of a non-editable electronic image (pdf, tif or other common non editable file format agreed between the parties) of the notice signed by an authorised signatory with individual representation right or by two or more authorised signatories with joint representation right of the relevant Borrower or Co-debtor as appropriate, attached to the electronic mail.

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

- (e) Without affecting the validity of electronic mail or facsimile notices or communication made in accordance with this article 12.01, the following notices, communications and documents shall also be sent by registered letter to the relevant party at the latest on the immediately following Business Day:

- (i) Disbursement Request;

- (ii) Revocation of a Disbursement Request according to Article 1.02 C (b);

- (iii) any notices and communication in respect of the deferment, cancellation and suspension of a disbursement of any Tranche, interest revision or conversion of any Tranche, Market Disruption Event, Prepayment Request, Prepayment Notice, Event of Default, any demand for prepayment, and

- (iv) any other notice, communication or document required by the Bank.

The parties agree that any above communication (including via electronic mail) is an accepted form of communication and shall constitute admissible evidence in court.

12.01B Addresses

The address, fax number and electronic mail address (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication to be made or document to be delivered under or in connection with this Contract is:

For the Bank
Attention: OPS A/MA-2-IM BK & CORP /-/
100 boulevard Konrad Adenauer
L-2950 Luxembourg
Facsimile no: +352 4379 55420
E-mail address: EIB-MA-Implementation@eib.org

For the Parent
Attention: General Counsel
20 Eastbourne Terrace
London W2 6LG, United Kingdom
E-mail address: Keyna.Skeffington@livanova.com;
Maurizio.Borelli@livanova.com

For the Italian Subsidiary
Attention: Finance Manager
Via Benigno Crespi,17
Italy, 20159 Milano
Facsimile no.: + 39 02 69969513
E-mail address: Keyna.Skeffington@livanova.com;
Maurizio.Borelli@livanova.com

12.01C Notification of communication details

The Bank and each Borrower and Co-debtor shall promptly notify the other parties in writing of any change in their respective communication details.

12.02 English language

- (a) Any notice or communication given under or in connection with this Contract must be in English.
- (b) All other documents provided under or in connection with this Contract must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Bank, accompanied by a certified English translation and, in this case, the English translation will prevail.

12.03 Recitals and Schedules

The Recitals and following Schedules form part of this Contract:

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

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

Purpose, Location

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

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

Description

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

Cardiac surgery:

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

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

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

New Ventures:

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

Calendar

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

A.2 Information Duties under Article 8.01(a)

1. Dispatch of information: designation of the person responsible

(xii)

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

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

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

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

2. Information on the project's implementation

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

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

(xiv)

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

Table1: Project cost summary (monitoring reference).

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

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

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

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

Definitions of EURIBOR

A. EURIBOR

“EURIBOR” means:

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

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

For the purposes of paragraphs (b) and (c) above:

- (i) “**available**” means the rates, for given maturities, that are calculated and published by Global Rate Set Systems Ltd (GRSS), or such other service provider selected by the European Money Markets Institute (EMMI), under the sponsorship of EMMI and EURIBOR ACI, or any successor to that function of EMMI and EURIBOR ACI as determined by the Bank, and
- (ii) “**Screen Rate**” means the rate of interest for deposits in EUR for the relevant period as published at 11h00, Brussels time, or at a later time acceptable to the Bank on the day (the “**Reset Date**”) which falls 2 (two) Relevant Business Days prior to the first day of the relevant period, on Reuters page EURIBOR 01 or its successor page or, failing which, by any other means of publication chosen for this purpose by the Bank.

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

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

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

B. GENERAL

For the purposes of the foregoing definitions:

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

Forms for Borrower

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

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

Italy – GRUPPO SORIN R&D (2013-0335)

	Date:
--	-------

Please proceed with the following disbursement:

Loan Name (*):

GRUPPO SORIN R&D (2013-0335)

Signature Date (*):

Contract FI number:

83.445 (IT)

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Currency & amount requested

Currency	Amount

Proposed disbursement date:

INTEREST Int. rate basis (Art. 3.01)
Rate (% or Spread)

Reserved for the Bank (contract currency)

OR (please indicate only ONE)

Total **Credit** Amount:

Maximum Rate (% or Maximum Spread)

Frequency (Art. 3.01)

- Annual
- Semi-annual
- Quarterly

Disbursed to date:

Payment Dates (Art. 5)

Balance for disbursement:

Current disbursement:

CAPITAL **Repayment frequency**

- Annual
- Semi-annual
- Quarterly

Balance after disbursement:

Repayment methodology (Art. 4.01)

- Equal instalments
- Constant annuities

Disbursement deadline:

First repayment date

Max. number of disbursements:

Maturity Date:

Minimum Tranche size:

Total allocations to date:

Conditions precedent: Yes / No

Relevant Borrower's account to be credited:

Acc. N°:

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

Bank name, address:

Please transmit information relevant to:

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

Certificates to be provided by the Borrowers

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

To: European Investment Bank

From: [Borrowers]

Date:

Subject: Finance Contract between European Investment Bank and [Borrower] dated 1 (the "Finance Contract")
FI number 83.445 (IT) Serapis number 2013-0335

Dear Sirs,

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

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

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

Yours faithfully,

For and on behalf of [Borrowers]

Date:

D.2 Form of Compliance Certificate

To: European Investment Bank

From: [Parent]

Date:

Subject: Finance Contract between European Investment Bank and [Borrowers] dated 1 (the "Finance Contract")
FI number 83.445 (IT) Serapis number 2013-0335

Dear Sirs,

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

We hereby confirm:

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

Yours faithfully,

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

[director]

[director]

APPENDIX

Financial information

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

FINANCIAL RATIOS

For the purpose of this Contract:

Financial Testing

The financial covenants set out in this Schedule E shall be tested by reference to each of the financial statements of the Borrower and each Compliance Certificate delivered pursuant to Article 8.02(a)(i) and Article 8.02 (a)(ii), provided however that in all places where the Contract provides for calculation and/or reporting of Consolidated Net Financial Indebtedness to Consolidated EBITDA and of Consolidated EBITDA to Consolidated Total Net Interest Payable as of 30 June, Consolidated EBITDA and Consolidated Total Net Interest Payable shall be calculated on a 12 month rolling basis (which means the sum of the most recent half-year and 6 months prior to the most recent half-year).

Test Date: means 30 June and 31 December of each year.

Financial ratios

The Parent shall ensure that:

- (a) **Consolidated Net Financial Indebtedness to Consolidated EBITDA:** Consolidated Net Financial Indebtedness as at any Test Date shall not be more than 2.50x times the Consolidated EBITDA for the test period ending on that Test Date,
- (b) **Consolidated Net Financial Indebtedness to Consolidated Net Worth:** Consolidated Net Financial Indebtedness as at any Test Date shall not be more than 0.50 x times the Consolidated Net Worth as at that Test Date.
- (c) **Consolidated EBITDA to Consolidated Total Net Interest Payable:** Consolidated EBITDA for the test period ending on a Test Date shall not be lower than 6.30 x times the Consolidated Total Net Interest Payable for the test period ending on that Test Date.
- (d) **Consolidated Net Worth:** the Consolidated Net Worth shall at no time be lower than USD 725,000,000.00.

Compliance Certificate

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

Each Compliance Certificate shall be signed by (a) the Chief Executive Officer of the Parent; or (b) two members of the Board of Directors of the Parent, and shall be accompanied by a report signed by reputable independent auditors.

Existing Security

<u>Grantor</u>	<u>Beneficiary</u>	<u>Transaction</u>	<u>Outstanding secured amount as of 31/05/2019</u>	<u>Expiry</u>	<u>Type of Security</u>
Sorin Group Italia Srl	Mediocredito Italiano	Mortgage Loan	175,438.55	30/09/2021	Mortgage
Sorin Group Italia Srl	Mediocredito Italiano	Mortgage Loan	305,555.59	29/09/2026	Mortgage
		Total amount	480,994.14		

SIGNATORIES

THE BANK

Signed for and on behalf of the

EUROPEAN INVESTMENT BANK

this 6th day of June 2019, in Luxembourg

THE ITALIAN SUBSIDIARY

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

Name:

Title:

THE PARENT

for and on behalf of **LivaNova PLC**

Name:

Title:

FI N° 86.677 (IT)

Serapis N° 2016-0607

LIVANOVA R&D

Amendment Agreement in relation to the
Finance Contract signed on
29 June 2017 in (*inter alia*)
Luxembourg, London and Milan
(as subsequently amended)

between the

European Investment Bank

and

LivaNova PLC

and

Sorin Group Italia S.r.l.

Luxembourg, 6 June 201

London, 6 June 2019

Milan, 6 June 2019

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AMENDED AND RESTATED FINANCE CONTRACT	7

THIS AMENDMENT AND RESTATEMENT AGREEMENT (this “**Agreement**”) is dated 6 June 2019 and made between:

- (1) **The European Investment Bank**, having its seat at 100 blvd Konrad Adenauer, Luxembourg, L-2950 Luxembourg (the “**Bank**”);
- (2) **Sorin Group Italia S.r.l.**, a company incorporated in Italy, having its registered office at Via Benigno Crespi, 17, 20159 Milano, Italy (the “**Italian Subsidiary**”); and
- (3) **LivaNova PLC**, a public limited company incorporated in England and Wales with registered number 9451374, having its registered office at 20 Eastbourne Terrace, London W2 6LG, United Kingdom (the “**Parent**”).

WHEREAS:

- (A) The Parent, the Italian Subsidiary and the Bank (*inter alios*) entered into a research and development finance contract dated 29 June 2014 (as subsequently amended, the “**Finance Contract**”).
- (B) The Parent, the Italian Subsidiary and the Bank have agreed to enter into this agreement in order to amend the terms of the Finance Contract in the manner set out below.
- (C) The parties acknowledge that the purpose of the Finance Contract, being research and development activities in Italy and France for the 2014-2021 period, is not impacted by the transaction.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement:

“**Companies**” means, collectively, the Parent and the Italian Subsidiary.

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

1.2 Construction

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

1.3 Third Party Rights

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

2. RESTATEMENT OF THE FINANCE CONTRACT

2.1 The Finance Contract

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

2.2 Continuing Effect

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

2.3 Further Assurance

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

3. GUARANTOR CONFIRMATION

3.1 Guarantee Confirmation

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

- (a) continue to apply in respect of the obligations of each Co-debtor under the amended and restated Finance Contract; and
- (b) extend to all new obligations of any Co-debtor under the amended and restated Finance Contract arising from the amendments effected by this Agreement.

4. REPRESENTATIONS AND WARRANTIES

The Parent and the Italian Subsidiary make each of the representations and warranties in Article 6.15 (*General Representations and Warranties*) of the amended and restated Finance Contract (other than that under limb (e) of Article 6.15D and by reference to the facts and circumstances then existing) on;

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

5. FEES AND EXPENSES

5.1 Amendment fee

An amendment fee of EUR 9,000 (nine-thousand euros) shall be due by the Borrowers to the Bank in connection with the execution of this Agreement. This amount shall be paid within 30 (thirty) days following the date of the relevant invoice sent by the Bank to the Borrower, indicating the number of the Bank's invoice as reference.

5.2 The amendment and waiver fee once paid is non-refundable and non-creditable against any other fees payable to the Bank.

5.3 Costs and Expenses

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

6. MISCELLANEOUS

6.1 Counterparts

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

6.2 Partial Invalidity

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

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

6.3 Remedies and Waivers

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

7. GOVERNING LAW AND JURISDICTION

7.1 Governing Law

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

7.2 Jurisdiction

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

7.3 Agent of Service

Without prejudice to any other mode of service allowed under any relevant law, the Italian Subsidiary hereby irrevocably appoints LivaNova PLC, at 20 Eastbourne Terrace, London, W2 6LG as its agent of service for the purposes of accepting service on its behalf of any writ, notice, order, judgement or other legal process (and the Parent by its execution of this Agreement accepts that appointment). The Italian Subsidiary agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed in 4 (four) originals in the English language.

Schedule 1
CONDITIONS PRECEDENT

(i) Companies

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

(i) Amendment agreement

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

(ii) Legal Opinions

Legal opinions issued (in form and substance satisfactory for the Bank) by the external legal counsel of the Companies on (i) the due incorporation, capacity and corporate authorizations of each of the Companies; and (ii) on the legal, valid, binding and enforceable obligations by each of the Companies under this Agreement and the amended and restated Finance Contract, in accordance with their respective law of their jurisdiction of incorporation.

Schedule 2
AMENDED AND RESTATED FINANCE CONTRACT

FI N° 86.677 (IT)
Serapis N° 2016-0607

LIVANOVA R&D

Finance Contract

between the

European Investment Bank

and

LivaNova PLC

and

Sorin Group Italia S.r.l.

Luxembourg, 29 June 2017

London, 27 June 2017

Clamart, 23 June 2017

Milano, 21 June 2017

(as amended and restated pursuant to an amendment
agreement dated 26 April 2018

and pursuant to an amendment and restatement agreement dated 6 June 2019)

THIS CONTRACT IS MADE BETWEEN:

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

(the "**Bank**")

of the first part, and

LivaNova PLC, a public limited company incorporated
in England and Wales with registered number
9451374 having its registered office at 20 Eastbourne
Terrace, London W2 6LG

(the "**Parent**")

of the second part, and

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

(the "**Italian Subsidiary**")

of the third part.

The Parent and the Italian Subsidiary are collectively referred to herein as the "**Borrowers**", and each of them a "**Borrower**".
The Bank and the Borrowers are collectively referred to herein as the "**Parties**".

WHEREAS:

- (1) The Borrowers have stated that they are undertaking a project of research and development (R&D) of various new products and product improvements with a particular focus on i) cardiac surgery (heart valves and cardiopulmonary), and ii) cardiac rhythm management (the “**Project**”) as more particularly described in the technical description (the “**Technical Description**”) set out in Schedule A.1. The Project is covering the entire product development from pre-clinical studies to clinical trials and life cycle engineering. The Project will be managed by the Italian Subsidiary, implemented in France and Italy.
- (2) The total cost of the Project, as estimated by the Bank, is EUR 180,900,000.00 (one hundred eighty million nine hundred thousand euros) and the Borrowers stated that they intend to finance the Project as follows:

Source	Amount (EUR)
Credit from the Bank	90,000,000.00
Other funding sources	90,900,000.00
TOTAL	180,900,000.00

- (3) In order to fulfil the financing plan set out in Recital (2), the Borrowers have requested from the Bank a credit of EUR 90,000,000.00 (ninety million euros).
- (4) The Bank, considering that the financing of the Project falls within the scope of its functions, and having regard to the statements and facts cited in these Recitals, has decided to give effect to the Borrowers’ request providing to them a credit in an amount of EUR 90,000,000.00 (ninety million euros) under this Finance Contract (the “**Contract**”), provided that the amount of the Bank’s loan shall not, in any case, exceed (i) 50% (fifty per cent) of the total cost of the Project set out in Recital (2) nor (ii) when aggregated with any EU grants available for the Project, 90% (ninety per cent) of the total cost of the Project set out in Recital (2).
- (5) The Borrowers have authorised the borrowing of the sum of EUR 90,000,000.00 (ninety million euros) represented by this credit on the terms and conditions set out in this Contract.
- (6) The Statute of the Bank provides that the Bank shall ensure that its funds are used as rationally as possible in the interests of the European Union; and, accordingly, the terms and conditions of the Bank’s loan operations must be consistent with relevant policies of the European Union.
- (7) The Bank considers that access to information plays an essential role in the reduction of environmental and social risks, including human rights violations, linked to the projects it finances and has therefore established its transparency policy, the purpose of which is to enhance the accountability of the Bank’s group companies towards its stakeholders and the citizens of the European Union in general.
- (8) The processing of personal data shall be carried out by the Bank in accordance with applicable European Union legislation on the protection of individuals with regard to the processing of personal data by the EC institutions and bodies and on the free movement of such data.
- (9) This operation benefits from a guarantee from the European Union under the European Fund for Strategic Investments (“**EFSI**”).

NOW THEREFORE it is hereby agreed as follows:

INTERPRETATION AND DEFINITIONS

(a) Interpretation

In this Contract:

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

(b) Definitions

In this Contract:

"Acceptance Deadline" for a notice means:

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

"Accounting Date" shall mean each 30 June and 31 December.

"Amendment and Restatement Agreement" means the amendment and restatement agreement dated 6 June 2019 and entered into between the Bank and the Borrowers.

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

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

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

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

"Co-debtor" means each of the Parent and the Italian Subsidiary acting as co-debtor under Article 1.11 and guarantor under Article 7.01.

"Compliance Certificate" means a certificate substantially in the form set out in Schedule D.2.

"Consolidated EBITDA" shall mean, in respect of a Relevant Period and in relation to the consolidated profit and loss statement of the Group, and determined in accordance with US GAAP: the amount of the consolidated operating income of the Group (without double counting):

- (a) plus depreciation and amortization expenses for plant, property and equipment; and
- (b) plus amortization of intangible assets and impairment losses (net of any reversal of impairment charges) to the extent taken into account for the purpose of determining the operating result of the Group; and
- (c) plus Non-Recurring Items (to the extent such Non-Recurring Items have been taken into account for the purposes of determining the operating result of the Group, including for the avoidance of doubt reversal of provisions);
- (d) plus extraordinary and non-cash items of expense related to the employee stock-based compensation plan, minus non-cash items of income related to the employees stock-based compensation plan, but only to the extent such items have been deducted in the determination of operating income; and

- (e) plus extraordinary and non-cash items of expense related to the changes of fair value of the contingent consideration of acquisitions (including, without limitation, future milestone /earn-out payments, acquisition-related warranty claims and escrow retentions, and in any case excluding any item relating to litigation (if any) connected to acquisitions, which shall be treated as a Non-Recurring Item) (the “**Changes in Fair Value**”), minus extraordinary and non-cash items of income of such Changes in Fair Value, to the extent all such items have been taken into account for the determination of operating income and are explicitly reported in the relevant financial statements or the notes to the financial statements.

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

- (i) the aggregate at that time of Financial Indebtedness of the members of the Group from sources external to the Group (including guarantees for an aggregate amount exceeding USD 40,000,000.00 (forty million US dollars) at that time); less
- (ii) the aggregate amount at that time of: (i) cash; (ii) debt securities issued or guaranteed by any member state of the OECD that benefit from an investment grade rating; and (iii) receivables from any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

“**Consolidated Net Worth**” in respect of the Group shall mean the consolidated net worth of the Group (being the stockholders' equity as determined in accordance with US GAAP).

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

- (i) interest accrued during such period as an obligation of any member of the Group (whether or not paid or capitalised during or deferred for payment after such period);
- (ii) less any interest received or receivable by any member of the Group (after deducting any applicable withholding tax) in such period.

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

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

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

- (a) the interest rate net of the Margin that would have been applicable to such amount had it been disbursed to the Borrowers on the Scheduled Disbursement Date exceeds
- (b) the Relevant Interbank Rate (one month rate) less 0.125% (12.5 basis points), unless this value is less than zero, in which case it will be set at zero.

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

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

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

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

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

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

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

“**EFSI**” has the meaning given in recital 9.

“**EFSI Regulation**” means the Regulation 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments.

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

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

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

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

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

“**Environmental Law**” means:

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

“**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.

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

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

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

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

- (i) moneys borrowed;
- (ii) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (iii) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (iv) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with US GAAP, be treated as a finance or capital lease;
- (v) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis – including true sale US GAAP – under an arrangement other than a Permitted Receivables Disposal);

- (vi) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and lease back arrangements and sale and purchase arrangements having deferred payment terms longer than terms customary on the market) having the financial effect of a borrowing;
- (vii) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (fair value) shall be taken into account);
- (viii) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (ix) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (i) to (viii) above.

"Final Availability Date" means 30 December 2018.

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

"Fixed Rate Tranche" means a Tranche on which Fixed Rate is applied.

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

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

"Floating Rate Tranche" means a Tranche on which Floating Rate is applied.

"GAAP" means generally accepted accounting principles in the country of incorporation of each Borrower, including US GAAP.

"Group" means the Parent and its Subsidiaries.

"Illegal Activities" means any of the following illegal activities or activities carried out for illegal purposes: tax evasion, tax fraud, fraud, corruption, coercion, collusion, obstruction, money laundering, financing of terrorism, organised crime or any illegal activity that may affect the financial interests of the EU, according to applicable laws.

"Indemnifiable Prepayment Event" means a Prepayment Event other than those specified in Articles 4.03A(2) or 4.03A(5).

"Interest Revision/Conversion" means the determination of new financial conditions relative to the interest rate, specifically the same interest rate basis ("**revision**") or a different interest rate basis ("**conversion**") which can be offered for the remaining term of a Tranche or until a next Interest Revision/Conversion Date, if any, for an amount which, at the proposed Interest Revision/Conversion Date, is not less than EUR 10,000,000.00 (ten million euros) or the equivalent thereof.

"Interest Revision/Conversion Date" means the date, which shall be a Payment Date, specified by the Bank pursuant to Article 1.02 C in the Disbursement Notice or pursuant to Article 3 and Schedule G.

"Interest Revision/Conversion Proposal" means a proposal made by the Bank under Schedule G.

"Interest Revision/Conversion Request" means a written notice from the Borrowers, delivered at least 75 (seventy-five) days before an Interest Revision/Conversion Date, requesting the Bank to submit to it an Interest Revision/Conversion Proposal. The Interest Revision/Conversion Request shall also specify:

- (i) Payment Dates chosen in accordance with the provisions of Article 3.01;
- (ii) the preferred repayment schedule chosen in accordance with Article 4.01; and
- (iii) any further Interest Revision/Conversion Date chosen in accordance with Article 3.01.

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

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

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

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

- (a) there are, in the reasonable opinion of the Bank, events or circumstances adversely affecting the Bank’s access to its sources of funding;
- (b) in the opinion of the Bank, funds are not available from its ordinary sources of funding in order to adequately fund a Tranche in the relevant currency and/or for the relevant maturity and/or in relation to the reimbursement profile of such Tranche;
- (c) in relation to a Tranche in respect of which interest is or would be payable at Floating Rate:
 - (A) the cost to the Bank of obtaining funds from its sources of funding, as determined by the Bank, for a period equal to the Floating Rate Reference Period of such Tranche (i.e. in the money market) would be in excess of the applicable Relevant Interbank Rate;

or

- (B) the Bank determines that adequate and fair means do not exist for ascertaining the applicable Relevant Interbank Rate for the relevant currency of such Tranche or it is not possible to determine the Relevant Interbank Rate in accordance with the definition contained in Schedule B.

“Material Adverse Change” in relation to a Borrower and/or any of its Subsidiaries, any event or change of condition, as compared with the condition at the Effective Date, affecting respectively that Borrower and/or any of its Subsidiaries, which, in the reasonable opinion of the Bank, has a material adverse effect on:

- (i) the ability of any Borrower and/or any of its Subsidiaries to perform its obligations under this Contract;
- (ii) the business, operations, property, condition (financial or otherwise) or prospects of any Borrower and/or any of its Subsidiaries or the Group as a whole; or
- (iii) the legality, validity or enforceability of, or the effectiveness or ranking of, or the value of any Security granted to the Bank, or the rights or remedies of the Bank under this Contract.

“Material Adverse Effect” means a material adverse effect on:

- (a) the business, operations, property or financial condition of the Group taken as a whole; or
- (b) the ability of a Borrower to perform its payment obligations under the Contract and/or its obligations under Article 6.07 and/or Schedule E (Financial Ratios); or
- (c) the validity or enforceability of the Contract or the rights or remedies of the Bank under the Contract.

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

“Non-Recurring Items” means cost items related to:

- (a) restructuring expenses (including provisions);
- (b) merger and integration expenses;
- (c) litigation expenses (including provisions);

(d) product remediation expenses (including provisions),

in total not exceeding (save as provided in the proviso set out in the paragraph directly under paragraph (ii) below):

- (i) 45% of Consolidated EBITDA (before adjusting for Non-Recurring Items in accordance with item (c) of the definition of Consolidated EBITDA) in 2019; and
- (ii) 35% of Consolidated EBITDA (before adjusting for Non-Recurring Items in accordance with item (c) of the definition of Consolidated EBITDA) in each financial year from 2020 until the end of loan life (2026),

provided that, for the test period starting on 1 January 2018 and ending on 31 December 2018, the specific provision of USD 294,021,000.00 (two hundred ninety-four million and twenty-one thousand US dollars) related to the settlement of a matter known as "3T litigation" (as reported in the Original Financial Statements) shall be added back to Consolidated EBITDA for the purposes of calculating Consolidated Net Financial Indebtedness to Consolidated EBITDA and Consolidated EBITDA to Consolidated Total Net Interest Payable ratios (both as defined in Schedule E), while not adding back to Consolidated EBITDA any further adjustments related to Non-Recurring Items. For the avoidance of doubt, the specific provision of USD 294,021,000.00 (two hundred ninety-four million and twenty-one thousand US dollars) related to the settlement of the "3T litigation" shall also be added back to EBITDA for the 12-month test period ending on 30 June 2019 in addition to any other Non-Recurring Items within the limits set out in limb (i) above.

"Notified Tranche" means a Tranche in respect of which the Bank has issued a Disbursement Notice.

"Original Financial Statements" means the audited consolidated financial statements of the Group for the financial year ended 31 December 2018.

"Payment Date" means: the annual, semi-annual or quarterly dates specified in the Disbursement Notice until the Interest Revision/Conversion Date, if any, or until the Maturity Date, save that, in case any such date is not a Relevant Business Day, it means:

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

"Permitted Acquisition" means an operation permitted under Article 6.10B.

"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 Contract; 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 Company 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 are already concluded at date of signature of this Contract; and/or (ii) any securitisation and/or factoring programme of the receivables of the Group previously consented by the Bank, such consent not to be unreasonably withheld; and/or (iii) any disposal of receivables not otherwise permitted under paragraphs (i) or (ii) above where the net consideration receivable (when aggregated with the consideration for all such other receivables disposed of) does not exceed USD 40,000,000 (forty million USD dollars)

in any financial year.

“Permitted Share Buyback” means any share buyback occurring at any time on or after the date falling 16 (sixteen) months after the date of 6 June 2019 provided that at that time (a) the aggregate principal amount of the Loans (as defined in the Term Loan) outstanding under the Term Loan does not exceed USD 200,000,000 (two-hundred million); and (b) the ratio of Consolidated Net Financial Indebtedness to Consolidated EBITDA does not exceed 1.5 times following the payment for the share buyback.

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

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

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

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

- (a) the interest net of the Margin that would accrue thereafter on the Prepayment Amount over the period from the Prepayment Date to the Interest Revision/Conversion Date, if any, or the Maturity Date if it were not prepaid; over
- (b) the interest that would so accrue over that period, if it were calculated at the Redeployment Rate, less 0.15% (15 basis points).

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

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

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

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

“Redeployment Rate” means the Fixed Rate excluding the Margin in effect on the day of the indemnity calculation for fixed-rate loans denominated in the same currency and which shall have the same terms for the payment of interest and the same repayment profile to the Interest Revision/Conversion Date, if any, or the Maturity Date as the Tranche in respect of which a prepayment is proposed or requested to be made. For those cases where the period is shorter than 48 (forty-eight) months (or 36 (thirty-six) months in the absence of a repayment of principal during that period), the most closely corresponding money market rate equivalent will be used, that is the Relevant Interbank Rate minus 0.125% (12.5 basis points) for periods of up to 12 (twelve) months. For periods falling between 12 (twelve) and 36/48 (thirty-six/forty-eight) months, as the case may be, the bid point on the swap rates as published by Reuters for the related currency and observed by the Bank at the time of calculation will apply.

“Relevant Business Day” means:

- (a) for EUR, a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007 (TARGET2) is open for the settlement of payments in EUR; and

- (b) for any other currency, a day on which banks are open for general business in the principal domestic financial centre of the relevant currency.

“Relevant Interbank Rate” means:

- (a) EURIBOR for a Tranche denominated in EUR; and
(b) LIBOR for a Tranche denominated in USD.

“Relevant Period” means, for the purpose of EBITDA calculation, each twelve-month period.

“Restricted Party” means a person that is:

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

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

“Sanctions Authority” means:

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

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

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

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

“Spread” means the fixed spread to the Relevant Interbank Rate (being either plus or minus) determined by the Bank including the Margin and notified to the Borrowers in the relevant Disbursement Notice or Interest Revision/Conversion Proposal.

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

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
(b) more than half the issued share capital (which gives rise to voting rights) of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or
(c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

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

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

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

“**Term Loan**” means the USD 350,000,000.00 (three hundred and fifty million US dollars) credit facility agreement entered into on 26 March 2019 between the Parent and certain banking institutions.

“**Tranche**” means each disbursement made or to be made under this Contract. In case no Disbursement Notice has been delivered, Tranche shall mean a Tranche as requested under Article 1.02 B.

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

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

ARTICLE 1

Credit and Disbursements

1.01 Amount of Credit

By this Contract the Bank establishes in favour of the Borrowers, and the Borrowers accept, the credit in an amount of EUR 90,000,000.00 (ninety million euros) for the financing of the Project (the “**Credit**”).

1.02 Disbursement procedure

1.02A Tranches

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

1.02B Disbursement Request

- (a) Each of the Borrowers may present to the Bank a Disbursement Request for the disbursement of a Tranche, such Disbursement Request to be received at the latest 15 (fifteen) days before the Final Availability Date. The Disbursement Request shall be in the form set out in Schedule C and shall specify:
- (i) the amount and currency of the Tranche;
 - (ii) the preferred disbursement date for the Tranche; such preferred disbursement date must be a Relevant Business Day falling at least 15 (fifteen) days after the date of the Disbursement Request and, in any event, on or before the Final Availability Date, it being understood that notwithstanding the Final Availability Date the Bank may disburse the Tranche up to 4 (four) calendar months from the date of the Disbursement Request;
 - (iii) whether the Tranche is a Fixed Rate Tranche or a Floating Rate Tranche, each pursuant to the relevant provisions of Article 3.01;
 - (iv) the preferred interest payment periodicity for the Tranche, chosen in accordance with Article 3.01;
 - (v) the preferred terms for repayment of principal for the Tranche, chosen in accordance with Article 4.01;
 - (vi) the preferred first and last dates for repayment of principal for the Tranche;
 - (vii) the Borrowers’ choice of Interest Revision/Conversion Date, if any, for the Tranche;
 - (viii) the IBAN code (or appropriate format in line with local banking practice) and SWIFT BIC of the bank account to which disbursement of the Tranche should be made in accordance with Article 1.02.D.

- (b) If the Bank, following a request by any of the Borrowers, has provided that Borrower, before the submission of the Disbursement Request, with a non-binding fixed interest rate or spread quotation to be applicable to the Tranche, that Borrower may also at its discretion specify in the Disbursement Request such quotation, that is to say:
- (i) in the case of a Fixed Rate Tranche, the aforementioned fixed interest rate previously quoted by the Bank; or
 - (ii) in the case of a Floating Rate Tranche, the aforementioned spread previously quoted by the Bank, applicable to the Tranche until the Maturity Date or until the Interest Revision/Conversion Date, if any.
- (c) Each Disbursement Request shall be accompanied by evidence of the authority of the person or persons authorised to sign it and the specimen signature of such person or persons or a declaration by the relevant Borrower that no change has occurred in relation to the authority of the person or persons authorised to sign Disbursement Requests under this Contract.
- (d) Subject to Article 1.02.C(b), each Disbursement Request is irrevocable.

1.02C Disbursement Notice

- (a) Not less than 10 (ten) days before the proposed Scheduled Disbursement Date of a Tranche the Bank shall, if the Disbursement Request conforms to this Article 1.02, deliver to the relevant Borrower a Disbursement Notice which shall specify:
- (i) the currency, the amount and EUR equivalent of the Tranche;
 - (ii) the Scheduled Disbursement Date;
 - (iii) the interest rate basis for the Tranche, being: (i) a Fixed Rate Tranche; or (ii) a Floating Rate Tranche all pursuant to the relevant provisions of Article 3.01;
 - (iv) the first interest Payment Date and the periodicity for the payment of interest for the Tranche;
 - (v) the terms for repayment of principal for the Tranche;
 - (vi) the first and last dates for repayment of principal for the Tranche;
 - (vii) the applicable Payment Dates for the Tranche;
 - (viii) the Interest Revision/Conversion Date, if requested by any Borrower, for the Tranche; and
 - (ix) for a Fixed Rate Tranche the Fixed Rate and for a Floating Rate Tranche the Spread applicable to the Tranche until the Interest Revision/Conversion Date, if any or until Maturity Date.
- (b) If one or more of the elements specified in the Disbursement Notice does not reflect the corresponding element, if any, in the Disbursement Request, the relevant Borrower may following receipt of the Disbursement Notice revoke the Disbursement Request by written notice to the Bank to be received no later than 12h00 Luxembourg time on the next Business Day and thereupon the Disbursement Request and the Disbursement Notice shall be of no effect. If the relevant Borrower have not revoked in writing the Disbursement Request within such period, such Borrower will be deemed to have accepted all elements specified in the Disbursement Notice.
- (c) If the relevant Borrower has presented to the Bank a Disbursement Request in which such Borrower has not specified the fixed interest rate or spread as set out in Article 1.02.B(b), such Borrower will be deemed to have agreed in advance to the Fixed Rate or Spread as subsequently specified in the Disbursement Notice.

1.02D Disbursement Account

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

Only one account may be specified for each Tranche.

1.03 Currency of disbursement

The Bank shall disburse each Tranche in EUR or USD.

For the calculation of the sums available to be disbursed in USD, and to determine their equivalent in EUR, the Bank shall apply the rate published by the European Central Bank in Frankfurt, available on or shortly before submission of the Disbursement Notice as the Bank shall decide.

1.04 Conditions of disbursement

1.04A First Tranche

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

- (a) evidence that the execution of this Contract by the Borrowers has been duly authorised and that the person or persons signing this Contract on behalf of each of the Borrowers is/are duly authorised to do so together with the specimen signature of each such person or persons;
- (b) evidence that the Borrowers have obtained all necessary Authorisations, required in connection with this Contract and the Project;
- (c) legal opinions issued by the external legal counsel of the Borrowers (at the cost of the Borrowers) on (i) the due incorporation, capacity and corporate authorizations of each of the Borrowers; (ii) valid choice of English law, valid choice of jurisdiction and recognition of English judgments in any proceedings taken in England, Italy or France and legal, valid, binding and enforceable obligations as a matter of English, Italian or France law of the Borrowers under this Contract (iii) on the legal, valid, binding and enforceable obligations by each of the Borrowers under this Contract in accordance with their respective law of their jurisdiction of incorporation;
- (d) legal memorandum by the external legal counsel of the Borrowers (at the cost of the Borrowers) on the execution of this Contract by the Italian Subsidiary as Co-debtor;
- (e) evidence that any process agent referred to in Article 11.03 has accepted its appointment;
- (f) evidence of compliance by the relevant Borrower with the financial covenants pursuant to Article 6.07;
- (g) evidence of payment of the appraisal fee in full pursuant to Article 1.08.

1.04B All Tranches

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

- (a) that the Bank has received, in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date for the proposed Tranche, of the following documents or evidence:
 - (i) a certificate from each Borrower in the form of Schedule D.1, signed by an authorised representative of each Borrower and dated no earlier than the date falling 15 (fifteen) days before the Scheduled Disbursement Date;
 - (ii) a copy of any other authorisation or other document, opinion or assurance which the Bank has notified the Parent is necessary or desirable in connection with the entry into and performance of, and the transactions contemplated by, this Contract or the validity and enforceability of the same.

- (b) that on the Disbursement Date for the proposed Tranche:
- (i) the representations and warranties which are repeated pursuant to Article 6.15 are correct in all material respects; and
 - (ii) no event or circumstance which constitutes or would with the passage of time or giving of notice under this Contract constitute:
 - (aa) an Event of Default, or
 - (bb) a Prepayment Event,has occurred and is continuing unremedied or unwaived or would result from the disbursement of the proposed Tranche.

1.05 Deferment of disbursement

1.05A Grounds for deferment

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

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

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

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

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

1.06 Cancellation and suspension

1.06A Borrowers' right to cancel

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

1.06B Bank's right to suspend and cancel

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

- (b) The Bank may also suspend the portion of the Credit in respect of which it has not issued a Disbursement Notice with immediate effect in the case that a Market Disruption Event occurs.
- (c) Any suspension shall continue until the Bank ends the suspension or cancels the suspended amount.

1.06C Indemnity for suspension and cancellation of a Tranche

1.06C(1) SUSPENSION

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

1.06C(2) CANCELLATION

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

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

If the Bank cancels:

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

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

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

1.07 Cancellation after expiry of the Credit

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

1.08 Appraisal fee

The Parent, on behalf of the Borrowers, shall pay or cause to be paid to the Bank within the earlier of (i) 30 September 2017 and (ii) the date of disbursement of the first Tranche an appraisal fee in respect of the appraisal conducted by the Bank in relation to the Project. The amount of the appraisal fee is EUR 120,000.00 (one hundred twenty thousand euros). The Parent, on behalf of the Borrowers, authorises the Bank to retain out of the first Tranche an amount equal to the appraisal fee and such amount so retained by the Bank shall be treated as having been disbursed by the Bank in payment of the appraisal fee.

1.09 Non-utilisation fee

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

- (a) on each 1 June, 1 September, 1 December and 1 March of each year; and

(b) on the Final Availability Date; or, if the Credit is cancelled in full under Article 1.06 prior to the Final Availability Date, on the date of cancellation.

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

1.10 Sums due under Article 1

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

1.11 Co-debtorship: joint and several liability

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

ARTICLE 2

The Loan

2.01 Amount of Loan

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

2.02 Currency of repayment, interest and other charges

Interest, repayments and other charges payable in respect of each Tranche shall be made by the Borrowers in the currency in which the Tranche is disbursed.

Any other payment shall be made in the currency specified by the Bank having regard to the currency of the expenditure to be reimbursed by means of that payment.

2.03 Confirmation by the Bank

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

ARTICLE 3

Interest

3.01 Rate of interest

For the purposes of this Contract "**Margin**" means 108 basis points (1.08 %).

Fixed Rates and Spreads are available for periods of not less than 4 (four) years or, in the absence of a repayment of principal during that period, not less than 3 (three) years.

3.01A Fixed Rate Tranches

The relevant Borrower shall pay interest on the outstanding balance of each Fixed Rate Tranche at the Fixed Rate quarterly, semi-annually or annually in arrears on the relevant Payment Dates as specified in the Disbursement Notice, commencing on the first such Payment Date following the Disbursement Date of the Tranche. If the period from the Disbursement Date to the first

Payment Date is 15 (fifteen) days or less than the payment of interest accrued during such period shall be postponed to the following Payment Date.

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

3.01B Floating Rate Tranches

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

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

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

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

3.01 C Revision or Conversion of Tranches

Where the relevant Borrower exercises an option to revise or convert the interest rate basis of a Tranche, it shall, from the effective Interest Revision/Conversion Date (in accordance with the procedure set out in Schedule G) pay interest at a rate determined in accordance with the provisions of Schedule G.

3.02 Interest on overdue sums

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

- (i) for overdue sums related to Floating Rate Tranches, the applicable Floating Rate plus 2% (200 basis points);
- (ii) for overdue sums related to Fixed Rate Tranches, the higher of (a) the applicable Fixed Rate plus 2% (200 basis points) or (b) the Relevant Interbank Rate plus 2% (200 basis points);
- (iii) for overdue sums other than under (i) or (ii) above, the Relevant Interbank Rate plus 2% (200 basis points)

and shall be payable in accordance with the demand of the Bank. For the purpose of determining the Relevant Interbank Rate in relation to this Article 3.02, the relevant periods within the meaning of Schedule B shall be successive periods of one month commencing on the due date.

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

3.03 Market Disruption Event

If at any time (i) from the issuance by the Bank of the Disbursement Notice in respect of a Tranche, and (ii) until the date falling 30 (thirty) calendar days for Tranches,

prior to the Scheduled Disbursement Date, a Market Disruption Event occurs, the Bank may notify to the relevant Borrower that this clause has come into effect. In such case, the following rules shall apply:

- (a) In the case of a Notified Tranche to be disbursed in EUR or USD, the rate of interest applicable to such Notified Tranche until the Maturity Date or the Interest Revision/Conversion Date if any, shall be the percentage rate per annum which is the sum of:
- the Margin and
 - the rate (expressed as a percentage rate per annum) which is determined by the Bank to be the all-inclusive cost to the Bank for the funding of the relevant Tranche based upon the then applicable internally generated Bank reference rate or an alternative rate determination method reasonably determined by the Bank.
- Each of the Borrowers shall have the right to refuse in writing such disbursement within the deadline specified in the notification and shall bear charges incurred as a result, if any, in which case the Bank shall not make the disbursement and the corresponding Credit shall remain available for disbursement under Article 1.02B. If the Borrowers do not refuse the disbursement in time, the parties agree that the disbursement and the conditions thereof shall be fully binding for both parties.
- (b) In the case of a Notified Tranche to be disbursed in a currency other than EUR or USD, the Bank shall notify to the Borrowers the EUR equivalent to be disbursed on the Scheduled Disbursement Date and the relevant percentage rate as described above under paragraph (a) applicable to the Tranche until the Maturity Date or the Interest Revision/Conversion Date if any. The Borrowers shall have the right to refuse in writing such disbursement within the deadline specified in the notification and shall bear charges incurred as a result, if any, in which case the Bank shall not make the disbursement and the corresponding portion of the Credit shall remain available for disbursement under Article 1.02B. If the Borrowers do not refuse the disbursement in time, the parties agree that the disbursement in EUR and the conditions thereof shall be fully binding for both parties.
- (c) In each of the cases (a) or (b), above, the Spread or Fixed Rate previously notified by the Bank in the Disbursement Notice shall no longer be applicable.

ARTICLE 4

Repayment

4.01 Repayment by instalment

- (a) Each Borrower shall repay each Tranche by instalments on the Payment Dates specified in the relevant Disbursement Notice in accordance with the terms of the amortisation table delivered pursuant to Article 2.03.
- (b) Each amortisation table shall be drawn up on the basis that:
- (i) in the case of a Fixed Rate Tranche without an Interest Revision/Conversion Date, repayment shall be made annually, semi-annually or quarterly by equal instalments of principal or constant instalments of principal and interest;
 - (ii) in the case of a Fixed Rate Tranche, with an Interest Revision/Conversion Date or a Floating Rate Tranche, repayment shall be made by equal annual, semi-annual or quarterly instalments of principal;
 - (iii) the first repayment date of each Tranche shall be a Payment Date falling not earlier than 60 (sixty) days from the Scheduled Disbursement Date and not later than the first Payment Date immediately following the second anniversary of the Scheduled Disbursement Date of the Tranche; and
 - (iv) the last repayment date of each Tranche shall be a Payment Date falling not earlier than 4 (four) years and not later than 8 (eight) years from the Scheduled Disbursement Date.

4.02 Voluntary prepayment

4.02A Prepayment option

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

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

4.02B Prepayment indemnity

4.02B(1) FIXED RATE TRANCHE

If any of the Borrowers prepays a Fixed Rate Tranche, that Borrower shall pay to the Bank on the Prepayment Date the Prepayment Indemnity in respect of the Fixed Rate Tranche which is being prepaid.

4.02B(2) FLOATING RATE TRANCHE

Any Borrower may prepay a Floating Rate Tranche without indemnity on any relevant Payment Date.

4.02B(3) NO INDEMNITY

Unless the relevant Borrower have accepted in writing a Fixed Rate in respect of an Interest Revision/Conversion Proposal pursuant to Schedule G, prepayment of a Tranche on their Interest Revision/Conversion Date as notified under Article 1.02C(a)(viii), or in accordance with Schedule C.1 or G, as the case may be, may be effected without indemnity.

4.02C Prepayment mechanics

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

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

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

4.03 Compulsory prepayment

4.03A Prepayment Events

4.03A(1) PROJECT COST REDUCTION

If the total cost of the Project falls below the figure stated in Recital (2) so that the amount of the Credit exceeds

- (a) 50% (fifty per cent); and/or
- (b) when aggregated with the amount of any other funds from the European Union made available for the Project, 90% (ninety per cent)

of such total cost of the Project, the Bank may forthwith, by notice to the Borrowers, cancel the undisbursed portion of the Credit and/or demand prepayment of the Loan up to the amount by

which the Credit exceeds the limits referred to in (a) or (b) above. The Borrowers shall effect payment of the amount demanded on the date specified by the Bank, such date being a date falling not less than 30 (thirty) days from the date of the demand.

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

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

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

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

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

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

4.03A(3) *CHANGE OF CONTROL*

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

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

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

For the purposes of this Article:

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

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

4.03A(4) CHANGE OF LAW

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

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

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

4.03A(5) ILLEGALITY

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

4.03B **Prepayment mechanics**

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

4.03C **Prepayment indemnity**

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

4.04 **General**

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

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

ARTICLE 5

Payments

5.01 **Day count convention**

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

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

5.02 Time and place of payment

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

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

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

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

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

5.03 No set-off by the Borrowers

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

5.04 Disruption to Payment Systems

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

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

5.05 Application of sums received

- (a) General

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

- (b) Partial payments

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

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

(c) Allocation of sums related to Tranches

- (i) In case of:
 - (A) a partial voluntary prepayment of a Tranche, the Prepayment Amount shall be applied pro rata to each outstanding instalment, or, at the request of the Borrower, in inverse order of maturity,
 - (B) a partial compulsory prepayment of a Tranche, the Prepayment Amount shall be applied in reduction of the outstanding instalments in inverse order of maturity.
- (ii) Sums received by the Bank following a demand under Article 10.01 and applied to a Tranche, shall reduce the outstanding instalments in inverse order of maturity. The Bank may apply sums received between Tranches at its discretion.
- (iii) In case of receipt of sums which cannot be identified as applicable to a specific Tranche, and on which there is no agreement between the Bank and the Parent on behalf of the Borrowers on their application, the Bank may apply these between Tranches at its discretion.

ARTICLE 6

Borrowers undertakings and representations

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

A. Project undertakings

6.01 Use of Loan and availability of other funds

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

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

6.02 Completion of Project

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

6.03 Increased cost of Project

If the total cost of the Project exceeds the estimated figure set out in Recital (2), the Parent on behalf of the Borrowers shall obtain the finance to fund the excess cost without recourse to the

Bank, so as to enable the Project to be completed in accordance with the Technical Description. The plans for funding the excess cost shall be communicated to the Bank without delay.

6.04 Procurement procedure

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

6.05 Continuing Project undertakings

Each Borrower shall:

- (a) **Maintenance:** maintain, repair, overhaul and renew all property forming part of the Project as required to keep it in good working order;
- (b) **Project assets:** unless the Bank shall have given its prior consent in writing retain title to and possession of all or substantially all the assets comprising the Project or, as appropriate, replace and renew such assets and maintain the Project in substantially continuous operation in accordance with its original purpose; provided that the Bank may withhold its consent only where the proposed action would prejudice the Bank's interests as lender to the Borrowers or would render the Project ineligible for financing by the Bank under its Statute or under Article 309 of the Treaty on the Functioning of the European Union;
- (c) **Insurance:** insure all works and property forming part of the Project with first class insurance companies in accordance with the most comprehensive relevant industry practice;
- (d) **Rights and Permits:** maintain in force all rights of way or use and all Authorisations necessary for the execution and operation of the Project; and
- (e) **Environment:**
 - (i) implement and operate the Project in compliance with Environmental Law;
 - (ii) obtain and maintain requisite Environmental Approvals for the Project;
 - (iii) comply with any such Environmental Approvals; and
 - (iv) 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.
- (f) **Integrity:** take, within a reasonable timeframe, appropriate measures in respect of any member of its management bodies who has been convicted by a final and irrevocable court ruling of Illegal Activities perpetrated in the course of the exercise of his/her professional duties, in order to ensure that such member is excluded from any of that Borrower's activity in relation to the Loan or the Project.

B. General undertakings

6.06 Disposal of assets

6.06A Each Borrower shall not (and the Parent shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset (including, but not limited to, receivables).

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

- (a) made in the ordinary course of trading of the disposing entity; or

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

For the purposes of this Article, “**dispose**” and “**disposal**” includes any act effecting sale, transfer, lease or other disposal.

6.07 Financial Covenants

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

6.08 Limitations on distributions

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

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

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

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

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

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

6.9 Change of Business

The Parent shall procure that no substantial change is made to the general nature of the business of the Parent or the Group from that carried on at the Effective Date.

6.10 Acquisition

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

6.10B Article 6.10A does not apply to:

- (i) a Permitted Share Buyback; and
- (ii) the acquisition for cash consideration of (A) all or the majority of the issued share capital of a company with limited liability; or (B) a business or undertaking but (in both cases (A) and (B)) only if:
 - (a) no Event of Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;
 - (b) the acquired company, business or undertaking is engaged in a business substantially the same as (or ancillary or related to) that carried on by the Group; and
 - (c) the consideration (including associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability in each case remaining in the acquired company (or any such business) at the date of acquisition (the "**Individual Purchase Price**") (when aggregated with the consideration (including associated costs and expenses) for any other acquisition permitted under this Contract and any Financial Indebtedness or other assumed actual or contingent liability, in each case remaining in any such acquired companies or businesses at the time of acquisition (the "**Total Purchase Price**") does not exceed in aggregate USD 280,000,000.00 (two hundred and eighty million US dollars) or its equivalent from 6 June 2019 over the life of the Tranches; and
- (iii) any other acquisition by any Borrower in respect of which the Bank has given its prior written consent.

Any acquisition whose Individual Purchase Price exceeds in aggregate USD 75,000,000.00 (seventy five million US dollars) or its equivalent will only be permitted under paragraph (c) above if the Parent has delivered to the Bank not later than 30 (thirty) Business Days before legally committing to make such acquisition a certificate signed by (i) the Chief Executive Officer of the Parent or (ii) two members of the Board of Directors of the Parent, attaching a copy of the latest audited accounts (or if not available, management accounts) of the target company or business.

Such certificate must give calculations showing in reasonable detail that the Parent would have remained in compliance with its obligations under Article 6.07 if the covenant tests were recalculated for the relevant period ending on the most recent Accounting Date consolidating the financial statements of the target company (consolidated if it has Subsidiaries) or business with the financial statements of the Group for such period on a pro forma basis and as if the amount of the consideration to be paid at the date of the acquisition, for the proposed acquisition, had been paid at the start of that relevant period.

6.11 Financial Indebtedness

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

For the purposes of this Article:

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

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

6.12 Compliance with laws

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

6.13 Merger

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

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

- (a) a merger between a Borrower and any Subsidiary that is consolidated within the consolidated financial statements of the Parent, provided that such Borrower is in each case the surviving entity;
- (b) any solvent amalgamation or merger among members of the Group which are not a Borrower;
- (c) the solvent liquidation or reorganisation of any member of the Group which is not a Borrower so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;

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

6.14 Books and records

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

6.14A Loans or credit

- (a) Except as permitted under paragraph (b), each Borrower shall not be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) does not apply to a Permitted Loan.

6.14B No guarantees or indemnities

- (a) Except as permitted under paragraph (b), each Borrower shall not 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.

6.14C Sanctions

Each Borrower shall not:

- (a) use, lend, contribute or otherwise make available any part of the proceeds of any disbursement under the Credit or other transaction contemplated:
 - (i) for the purpose of financing any trade, business or other activities involving, or for the benefit of, any Restricted Party; or
 - (ii) in any other manner that would result in any person being in breach of any Sanctions or becoming a Restricted Party;
- (b) knowingly engage in any transaction that evades or avoids or breaches directly or indirectly, any Sanctions applicable to it; or
- (c) knowingly fund all or part of any payment in connection with a Finance Document out of proceeds derived from business or transactions with a Restricted Party, or from any action which is in breach of any Sanctions.

6.15 General Representations and Warranties

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

6.15A [INTENTIONALLY LEFT BLANK]

- 6.15C The Italian Subsidiary represents and warrants to the Bank that it is duly incorporated and validly existing as a limited liability company (*società a responsabilità limitata*) under the laws of Italy and it has power to carry on its business as it is now being conducted and to own its property and other assets.
- 6.15D Each of the Borrowers represents and warrants to the Bank that:
- (a) it has the power to execute, deliver and perform its obligations under this Contract and all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the same by it;
 - (b) this Contract constitutes its legally valid, binding and enforceable obligations;
 - (c) the execution and delivery of, the performance of its obligations under and compliance with the provisions of this Contract do not and will not:
 - (i) contravene or conflict with any applicable law, statute, rule or regulation, or any judgement, decree or permit to which it is subject;
 - (ii) contravene or conflict with any agreement or other instrument binding upon it which might reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Contract;
 - (iii) contravene or conflict with any provision of its by-laws or memorandum and articles of association;
 - (d) the latest available audited accounts of that Borrower (and, in case of the Parent, latest available audited accounts of the Parent) have been prepared on a basis consistent with previous years and have been approved by its auditors as representing a true and fair view of the results of its operations for that year and accurately disclose or reserve against all the liabilities (actual or contingent) of that Borrower;
 - (e) there has been no Material Adverse Change since 28 February 2017;
 - (f) no event or circumstance which constitutes an Event of Default has occurred and is continuing unremedied or unwaived;
 - (g) no litigation, arbitration, administrative proceedings or investigation is current or to its knowledge is threatened or pending before any court, arbitral body or agency which has resulted or if adversely determined is reasonably likely to result in a Material Adverse Change, nor is there subsisting against it or any of its subsidiaries any unsatisfied judgement or award;
 - (h) it has obtained all necessary Authorisations in connection with this Contract and in order to lawfully comply with its obligations hereunder, and the Project and all such Authorisations are in full force and effect and admissible in evidence;
 - (i) its payment obligations under this Contract rank not less than *pari passu* in right of payment with all other present and future unsecured and unsubordinated obligations under any of its debt instruments except for obligations mandatorily preferred by law applying to companies generally;
 - (j) it is in compliance with Article 6.05(e) and to the best of its knowledge and belief (having made due and careful enquiry) no Environmental Claim has been commenced or is threatened against it;
 - (k) it is in compliance with all undertakings under this Article 6;
 - (l) no financial covenants have been concluded with any other creditor of the Group which are more restrictive than the ones contained in the Contract;
 - (m) to the best of its knowledge, no funds invested in the Project by that Borrower or by its controlling entities or by another member of the Group are of illicit origin, including products of money laundering or linked to the financing of terrorism. Each Borrower shall promptly inform the Bank if at any time it becomes aware of the illicit origin of any such funds; and

- (n) it is not engaged in any Illegal Activities and to the best of its knowledge no Illegal Activities have occurred in connection with the Project.

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

6.16 Visibility

The Borrowers agree to cooperate with the Bank to ensure that any press release or publication made by the Borrowers regarding the financing and the Project include an appropriate acknowledgement of the financial support provided by EIB with the backing of the European Union through EFSI.

ARTICLE 7

Guarantee and indemnity, Security

7.01 Guarantee and indemnity

7.01A Guarantee and indemnity

Each Co-debtor irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Bank punctual performance by each Borrower of all that Borrower's obligations under this Contract or other transactional documents;
- (b) undertakes with the Bank that whenever a Borrower does not pay any amount when due under or in connection with this Contract or other transactional documents, that Co-debtor shall immediately on demand pay that amount as if it was the principal Borrower; and
- (c) agrees with the Bank that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Bank immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under this Contract on the date when it would have been due. The amount payable by a Co-debtor under this indemnity will not exceed the amount it would have had to pay under this Article 7.01 if the amount claimed had been recoverable on the basis of a guarantee.

7.01B Continuing guarantee

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

7.01C Reinstatement

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

7.01D Waiver of defences

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

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

7.01E Immediate recourse

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

7.01F Appropriations

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

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

7.01G Deferral of Co-debtors' rights

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

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

(f) to claim or prove as a creditor of any Borrower in competition with the Bank.

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

7.01H **Additional security**

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

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

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

7.01J **Borrowers' Agent**

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

7.02 **Negative pledge**

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

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

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

- (a) any Security Interest listed in Schedule F (Existing Security) except to the extent the principal amount secured by that Security exceeds the amount stated in that Schedule;
- (b) any Security Interest arising by operation of law and in the ordinary course of trading;
- (c) any guarantee comprising a netting or set-off arrangement entered into by the Parent or any of its Subsidiaries in the ordinary course of their banking arrangements for the purpose of netting debt and credit balances;

- (d) any Security Interest securing indebtedness the outstanding principal amount of which (when aggregate with the outstanding principal amount of any other indebtedness which has the benefit of Security Interest given by any member of the Group other than any permitted under (a) to (c) above) does not exceed in aggregate USD 15,000,000.00 (fifteen million US Dollars) (or its equivalent);

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

7.03 Pari passu

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

7.04 Clauses by inclusion

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

ARTICLE 8

Information and Visits

8.01 Information concerning the Project

- (a) The Parent (and, upon request of the Bank, the relevant Borrower) shall deliver to the Bank:
- (i) the information in content and in form, and at the times, specified in Schedule A.2 or otherwise as agreed from time to time by the parties to this Contract;
 - (ii) any such information or further document concerning the Project as the Bank may reasonably require to comply with its obligations under the EFSI Regulation; and
 - (iii) any such information or further document concerning the financing, procurement, implementation, operation and environmental matters of or for the Project as the Bank may reasonably require within a reasonable time,

provided always that if such information or document is not delivered to the Bank on time, and the Parent (and, upon request of the Bank, the relevant Borrower) does not rectify the omission within a reasonable time set by the Bank in writing, the Bank may remedy the deficiency, to the extent feasible, by employing its own staff or a consultant or any other third party, at the Parent's expense and the Borrowers shall provide such persons with all assistance necessary for the purpose;

- (b) The Borrowers shall submit for the approval of the Bank without delay any material change to the Project, also taking into account the disclosures made to the Bank in connection with the Project prior to the signing of this Contract, in respect of, inter alia, the price, design, plans, timetable or to the expenditure programme or financing plan for the Project;

- (c) The Borrowers shall promptly inform the Bank of:
 - (i) any action or protest initiated or any objection raised by any third party or any genuine complaint received by any Borrower or any Environmental Claim that is to its knowledge commenced, pending or threatened against it with regard to environmental or other matters affecting the Project;
 - (ii) any fact or event known to any Borrower, which may substantially prejudice or affect the conditions of execution or operation of the Project;
 - (iii) a genuine allegation, complaint or information with regard to Illegal Activities related to the Loan and/or the Project;
 - (iv) any non-compliance by it with any applicable Environmental Law; and
 - (v) any suspension, revocation or modification of any Environmental Approval,
 and set out the action to be taken with respect to such matters.
- (d) The Borrowers shall provide to the Bank, if so requested:
 - (i) a certificate of its insurers showing fulfilment of the requirements of Article 6.05(c); and
 - (ii) annually, a list of policies in force covering the insured property forming part of the Project, together with confirmation of payment of the current premiums.

8.02 **Information concerning the Borrowers**

- (a) The Parent shall deliver to the Bank:
 - (i) as soon as they become available but in any event within 180 (one hundred and eighty) days after the end of each of its financial years its audited consolidated and unconsolidated annual report, balance sheet, profit and loss account and auditors report for that financial year together with a Compliance Certificate as set out in Schedule D.2 and prepared in accordance with the requirements set out in the "Compliance Certificate" section in Schedule E;
 - (ii) as soon as they become publicly available but in any event within 90 (ninety) days after the end of each of the relevant accounting periods its interim consolidated and unconsolidated semi-annual report, balance sheet and profit and loss account for the first half-year of each of its financial years together with a Compliance Certificate as set out in Schedule D.2 and prepared in accordance with the requirements set out in the "Compliance Certificate" section in Schedule E;
 - (iii) from time to time, such further information on its general financial situation as the Bank may reasonably require or such certificates of compliance with the undertakings of Article 6 as the Bank may deem necessary;
- (iii) *bis* all material documents dispatched by the Parent to its shareholders (or any class of them) or its creditors (or any class of them) at the same time as they are dispatched; and
 - (iv) any such information or further document concerning customer due diligence matters of or for the Borrowers as the Bank may reasonably require within a reasonable time.
- (b) Each set of financial statements delivered by each Borrower pursuant to paragraphs (a)(i) and (a)(ii) above shall be certified in accordance with applicable laws and any applicable rules of any relevant stock exchange.
- (c) Each Borrower shall procure that each set of financial statements of such Borrower delivered pursuant to paragraphs (a)(i) and (a)(ii) above is prepared using the US GAAP, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements unless, in relation to any set of financial statements, it notifies the Bank that there has been a change in the US GAAP, the accounting practices or reference periods and its auditors deliver to the Bank:

- (i) a description of any change necessary for those financial statements to reflect the US GAAP, accounting practices and reference periods upon which the Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be reasonably required by the Bank, to enable the Bank to determine whether the undertaking in Article 6.07 (Financial Covenants) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the Original Financial Statements.
- (d) Any reference in this Contract to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.
- (e) Each of the Borrowers shall inform the Bank immediately of:
- (i) any material alteration to its by-laws or memorandum and articles of association or shareholding structure and of any change of ownership of 5% (five per cent) or more of its shares after the Effective Date;
 - (ii) any fact which obliges it to prepay any financial indebtedness or any European Union funding;
 - (iii) any event or decision that constitutes or may result in a Prepayment Event;
 - (iv) any intention on its part to grant any security over any of its assets in favour of a third party;
 - (v) any intention on its part to relinquish ownership of any material component of the Project;
 - (vi) any fact or event that is reasonably likely to prevent the substantial fulfilment of any obligation of the Borrowers under this Contract;
 - (vii) any event listed in Article 10.01 having occurred or being threatened or anticipated;
 - (viii) any investigations concerning the integrity of the members of any of the Borrowers' Board of Directors or other administrative body or managers;
 - (ix) to the extent permitted by law, any material litigation, arbitration, administrative proceedings or investigation carried out by a court, administration or similar public authority, which, to the best of its knowledge and belief, is current, imminent or pending against any Borrower or any of their controlling entities or members of any of the Borrowers' management bodies in connection with Illegal Activities related to the Loan or the Project;
 - (x) any measure taken by the Borrowers pursuant to Article 6.05(f) of this Contract; and
 - (xi) any litigation, arbitration or administrative proceedings or investigation which is current, threatened or pending and which might if adversely determined result in a Material Adverse Change.

8.03 Visits by the Bank

Each Borrower shall allow the Bank and, when either required by the relevant mandatory provisions of EU law or pursuant to the EFSI Regulation, the competent EU institutions including the European Court of Auditors, the Commission, the European Anti-Fraud Office, as well as persons designated by the foregoing:

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

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

In the case of a genuine allegation, complaint or information with regard to Illegal Activities related to the Loan and/or the Project, each Borrower shall consult with the Bank in good faith regarding appropriate actions. In particular, if it is proven that a third party committed Illegal Activities in connection with the Loan and/or the Project with the result that the Loan or the EFSI financing were misapplied, the Bank may, without prejudice to the other provisions of this Contract, inform the Borrowers if, in its reasonable view, the Borrowers should take appropriate recovery measures against such third party. In any such case, the Borrowers shall in good faith consider the Bank's views and keep the Bank informed.

8.04 Disclosure and publication

Each Borrower acknowledges that:

the Bank may be obliged to communicate information relating to any of the Borrowers and the Project to any competent institution or body of the European Union in accordance with the relevant mandatory provisions of European Union law or pursuant to the EFSI Regulation; and

the Bank may publish on its website or produce press releases containing information related to the financing provided pursuant to this Contract with support of the EFSI including the name and address of the Borrowers, the purpose of the financing and the type and amount of financing received under this Contract.

ARTICLE 9

Charges and expenses

9.01 Taxes, duties and fees

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

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

9.02 Other charges

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

9.03 Increased costs, indemnity and set-off

(a) Each Borrower shall pay to the Bank any sums or expenses incurred or suffered by the Bank as a consequence of the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or compliance with any law or regulation made after the Effective Date, in accordance with or as a result of which (i) the Bank is obliged to incur additional costs in order to fund or perform its obligations under this Contract, or (ii) any amount owed to the Bank under this Contract or the financial income resulting from the granting of the Credit or the Loan by the Bank to the Borrowers is reduced or eliminated.

- (b) Without prejudice to any other rights of the Bank under this Contract or under any applicable law, each Borrower shall indemnify and hold the Bank harmless from and against any loss incurred as a result of any payment or partial discharge that takes place in a manner other than as expressly set out in this Contract.
- (c) The Bank may set off any matured obligation due from any Borrower under this Contract (to the extent beneficially owned by the Bank) against any obligation (whether or not matured) owed by the Bank to that Borrower regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Bank may set off in an amount estimated by it in good faith to be the amount of that obligation.

ARTICLE 10

Events of Default

10.01 Right to demand repayment

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

10.01A Immediate demand

The Bank may make such demand immediately:

- (a) if any Borrower does not pay on the due date any amount payable pursuant to this Contract at the place and in the currency in which it is expressed to be payable, unless (i) its failure to pay is caused by an administrative or technical error or a Disruption Event and (ii) payment is made within 3 (three) Business Days of its due date;
- (b) if any information or document given to the Bank by or on behalf of any of the Borrowers or any representation, warranty or statement made or deemed to be made by any of the Borrowers in or pursuant to this Contract or in connection with the negotiation or performance of this Contract is or proves to have been incorrect, incomplete or misleading in any material respect;
- (c) if, following any default of any Borrower or any other member of the Group in relation to any loan, or any obligation arising out of any financial transaction, other than the Loan
- (i) any Borrower or any other member of the Group is required or is capable of being required or will, following expiry of any applicable contractual grace period, be required or be capable of being required to prepay, discharge, close out or terminate ahead of maturity such other loan or obligation; or
- (ii) any financial commitment for such other loan or obligation is cancelled or suspended,
- and such other loans or obligations or commitments falling under paragraphs (i) and/or (ii) above are in an aggregate principal amount in excess of USD 7,500,000.00 (seven million five hundred thousand US dollars) or its equivalent in any other currency or currencies;
- (d) if any Borrower or any member of the Group is unable to pay its debts as they fall due, or suspends its debts, or makes or seeks to make a composition with its creditors;
- (e) if any corporate action, legal proceedings or other procedure or step is taken in relation to the suspension of payments, a moratorium of any indebtedness, dissolution,

administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) or an order is made or an effective resolution is passed for the winding up of any Borrower or any member of the Group, or if any Borrower or any member of the Group takes steps towards a substantial reduction in its capital, is declared insolvent or ceases or resolves to cease to carry on the whole or any substantial part of its business or activities, or any Security over any asset of any Borrower is enforced;

- (f) if an encumbrancer takes possession of, or a receiver, liquidator, administrator, administrative receiver or similar officer is appointed, whether by a court of competent jurisdiction or by any competent administrative authority or by any person, of or over, any part of the business or assets of any Borrower or any member of the Group or any property forming part of the Project;
- (g) if any Borrower or any member of the Group defaults in the performance of any obligation in respect of any other loan granted by the Bank or financial instrument entered into with the Bank;
- (h) if any Borrower or any member of the Group defaults in the performance of any obligation in respect of any other loan made to it from the resources of the Bank or the European Union;
- (i) if any distress, execution, sequestration or other process is levied or enforced upon the property of any of the Borrowers or any property forming part of the Project and is not discharged or stayed within 14 (fourteen) days;
- (j) if a Material Adverse Change occurs, as compared with the Borrowers' condition at the Effective Date;
- (k) if it is or becomes unlawful for any Borrower to perform any of its obligations under this Contract or other transactional documents or this Contract or other transactional documents is not effective in accordance with its terms or is alleged by any Borrower to be ineffective in accordance with its terms;
- (l) if any Parent's auditors qualify the audited annual consolidated financial statements of the Parent on the grounds of inadequate or unreliable information or being unable to prepare the accounts on a going concern basis, in each case which would have or would be reasonably likely to have a Material Adverse Effect;
- (m) if the authority or ability of any Borrower 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 Borrower or any of its assets where such limitation or curtailment have or is reasonably likely to have a Material Adverse Effect; or
- (n) if any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened against any Borrower or its assets which have or are reasonably likely to have a Material Adverse Effect.

10.01B **Demand after notice to remedy**

The Bank may also make such demand:

- (a) if any Borrower fails to comply with any obligation under this Contract not being an obligation mentioned in Article 10.01A; or
- (b) if any fact related to the Borrowers or the Project stated in the Recitals materially alters and is not materially restored and if the alteration either prejudices the interests of the Bank as lender to the Borrowers or adversely affects the implementation or operation of the Project,

unless the non-compliance or circumstance giving rise to the non-compliance is capable of remedy and is remedied within 5 (five) Business Days from a notice served by the Bank on the Parent on behalf of the Borrowers.

10.02 **Other rights at law**

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

10.03 Indemnity

10.03A Fixed Rate Tranches

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

10.03B Floating Rate Tranches

In case of demand under Article 10.01 in respect of any Floating Rate Tranche, each Borrower shall pay to the Bank the amount demanded together with a sum equal to the present value of 0.15% (15 basis points) per annum calculated and accruing on the amount of principal due to be prepaid in the same manner as interest would have been calculated and would have accrued, if that amount had remained outstanding according to the original amortisation schedule of the Tranche, until the Interest Revision/Conversion Date, if any, or the Maturity Date.

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

10.03C General

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

10.04 Non-Waiver

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

ARTICLE 11

Law and jurisdiction, miscellaneous

11.01 Governing Law

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

11.02 Jurisdiction

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

11.03 Agent of Service

Without prejudice to any other mode of service allowed under any relevant law, each Borrower (other than the Parent) hereby irrevocably appoints LivaNova PLC at 20, Eastbourne Terrace London W2 6LG, United Kingdom, as its agent of service for the purposes of accepting service on its behalf of any writ, notice, order, judgement or other legal process (and the Parent accepts

that appointment). Each Borrower (other than the Parent) agrees that failure by a process agent to notify it of the process will not invalidate the proceedings concerned.

The Bank hereby appoints Securities Management Trust Limited of 8 Lothbury, London EC2R 7HH to be its agent for the purpose of accepting service of legal process.

11.04 Place of performance

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

11.05 Evidence of sums due

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

11.06 Third party rights

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

11.07 Entire Agreement

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

11.08 Invalidity

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

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

11.09 Amendments

Any amendment to this Contract shall be made in writing and shall be signed by the parties hereto.

11.10 Counterparts

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

ARTICLE 12

Final clauses

12.01 Notices

12.01A Form of notices

- (a) Any notice or other communication given under this Contract must be in writing and, unless otherwise stated, may be made by letter, electronic mail and facsimile.
- (b) Notices and other communications for which fixed periods are laid down in this Contract or which themselves fix periods binding on the addressee, may be made by hand delivery,

registered letter, facsimile or by electronic mail. Such notices and communications shall be deemed to have been received by the other party:

- 1 on the date of delivery in relation to a hand-delivered or registered letter;
 - 2 on receipt of transmission in relation to a facsimile; or
 - 3 in the case of any electronic mail, only when actually received in readable form and only if it is addressed in such a manner as the Bank or the Borrower (as the applicable recipient) shall specify for this purpose.
- (c) Any notice provided by any Borrower or Co-debtor to the Bank by electronic mail shall:
- (i) mention the Contract Number in the subject line; and
 - (ii) be in the form of a non-editable electronic image (pdf, tif or other common non editable file format agreed between the parties) of the notice signed by an authorised signatory with individual representation right or by two or more authorised signatories with joint representation right of the relevant Borrower or Co-debtor as appropriate, attached to the electronic mail.
- (d) Notices issued by a Borrower pursuant to any provision of this Contract shall, where required by the Bank, be delivered to the Bank together with satisfactory evidence of the authority of the person or persons authorised to sign such notice on behalf of the Borrower and the authenticated specimen signature of such person or persons.
- (e) Without affecting the validity of electronic mail or facsimile notices or communication made in accordance with this article 12.01, the following notices, communications and documents shall also be sent by registered letter to the relevant party at the latest on the immediately following Business Day:
- (i) Disbursement Request;
 - (ii) Revocation of a Disbursement Request according to Article 1.02 C (b);
 - (iii) any notices and communication in respect of the deferment, cancellation and suspension of a disbursement of any Tranche, interest revision or conversion of any Tranche, Market Disruption Event, Prepayment Request, Prepayment Notice, Event of Default, any demand for prepayment, and
 - (iv) any other notice, communication or document required by the Bank.

The parties agree that any above communication (including via electronic mail) is an accepted form of communication and shall constitute admissible evidence in court.

12.01B Addresses

The address, fax number and electronic mail address (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication to be made or document to be delivered under or in connection with this Contract is:

For the Bank

Attention: Ops A/MA/2-IM BK&CORP/-/-

100 boulevard Konrad Adenauer

L-2950 Luxembourg

Facsimile no: +352 4379 55420

E-mail address: EIB-MA-Implementation@eib.org

For the Parent

Attention: General Counsel

20 Eastbourne Terrace

London W2 6LG, United Kingdom

E-mail address:
Maurizio.Borelli@livanova.com

Keyna.Skeffington@livanova.com;

For the Italian Subsidiary

Finance Manager

Via Benigno Crespi,17

Italy, 20159 Milano

Facsimile no.: + 39 02 69969513

E-mail address:
Maurizio.Borelli@livanova.com

Keyna.Skeffington@livanova.com;

12.01C Notification of communication details

The Bank and each Borrower and Co-debtor shall promptly notify the other parties in writing of any change in their respective communication details.

12.02 English language

- (a) Any notice or communication given under or in connection with this Contract must be in English.
- (b) All other documents provided under or in connection with this Contract must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Bank, accompanied by a certified English translation and, in this case, the English translation will prevail.

12.03 Recitals and Schedules

The Recitals and following Schedules form part of this Contract:

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

A.1. TECHNICAL DESCRIPTION

Purpose, Location

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

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

Description

This project concerns developments for i) cardiac surgery and ii) cardiac rhythm management.

Cardiac surgery:

The R&D activities within the cardiopulmonary segment will focus on the development of new devices including disposables / accessories and life cycle management of existing flagship devices. Example projects would be major improvements of the S5 heart-lung machine (HLM) to bridge the way to next generation S7 HLM, a new Extracorporeal membrane oxygenation (ECMO) line and new Neonatal and pediatric oxygenators (NINO).

For heart valves the promoter will focus on two early clinical stage transcatheter mitral valve repair (TMVR) technologies as well as on the next generation PERCEVAL sutureless valve and different tissue valves.

Cardiac rhythm management:

Within the cardiac rhythm management the promoter will focus on the development of a low cost solution for the KORA pacemaker product line, development of a full body MRI-compatible solution based on the KORA pacemaker and IMRICOR technology lead and the development of various products within the PLATINIUM platform for cardiac resynchronisation therapy (CRT) devices. The promoter intends to further exploit its SonR technology for the development of its CRT devices. This technology consists of a sensor encapsulated inside the tip of an electrostimulation lead, which is implanted in the patient and is used to optimise the delivery of cardiac resynchronisation therapy.

Calendar

The project will be implemented from January 2017 until December 2020, except for ii) cardiac rhythm management : until 30.04.2018.

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

1. Dispatch of information: designation of the person responsible

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

Financial and Technical Contact

Company	<i>LivaNova PLC</i>
Contact person	<i>Mr. Maurizio Borelli</i>
Title	<i>Director</i>
Function / Department	<i>Treasury, Risk Management and Credit</i>
Address	<i>Via Benigno Crespi 17 20159 Milan, Italy</i>
Phone	<i>39 02 699 697 17</i>
Fax	
Email	<i>maurizio.borelli@livanova.com</i>

The above-mentioned contact person(s) is (are) the responsible contact(s) for the time being.
The Borrowers shall inform the EIB immediately in case of any change.

2. Information on the project's implementation

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

Document / information	Deadline	Frequency of reporting
Project Progress Report: - <i>A brief update on the Technical Description, explaining the reasons for significant changes vs. initial scope;</i> - <i>Update on implementation of each of the main project's components;</i> - <i>Update on the cost of the project, explaining reasons for any possible cost variations vs. initial budgeted cost;</i> - <i>A description of any major issue with impact on the environment;</i> - <i>Update on the relevant demand trends and evolution for LivaNova's business;</i> - <i>Any significant issue that has occurred and any significant risk that may affect the project's operation;</i> - <i>Any legal action concerning the project that may be on-going.</i>	<i>30 June 2018</i> <i>30 June 2019</i> <i>30 June 2020</i>	<i>Annual</i>

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

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

Document / information	Date of delivery to the Bank
<p>Project Completion Report, including:</p> <ul style="list-style-type: none"> - <i>A brief description of the technical characteristics of the project as completed, explaining the reasons for any significant change;</i> - <i>The implementation results of each of the main project's components explaining reasons for any variation and/or delay;</i> - <i>The final cost of the project, explaining reasons for any possible cost variations vs. initial budgeted cost;</i> - <i>The number of staff employed in R&D during the implementation of the project (2017-2020) in Italy and France; with breakdown by location;</i> - <i>Update on the market trends for CS (HV and CP), CRM and NV and LivaNova's market share and competitive position;</i> - <i>The number of patent applications and the number of patents granted per year during the period 2017-2020;</i> - <i>The share of LivaNova's sales coming from products introduced in the last 5 years;</i> - <i>LivaNova's ROCE in 2017, 2018, 2019 and 2020;</i> - <i>A description of any major issue with impact on the environment;</i> - <i>Any significant issue that has occurred and any significant risk that may affect the project's operation;</i> - <i>Any legal action concerning the project that may be on-going.</i> 	<p>30 May 2021</p>

Language of reports	English
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Definitions of EURIBOR and LIBOR

A. EURIBOR

"EURIBOR" means:

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

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

For the purposes of paragraphs (b) and (c) above:

- (v) "**available**" means the rates, for given maturities, that are calculated and published by Global Rate Set Systems Ltd (GRSS), or such other service provider selected by the European Money Markets Institute (EMMI), under the sponsorship of EMMI and EURIBOR ACI, or any successor to that function of EMMI and EURIBOR ACI as determined by the Bank, and
- (vi) "**Screen Rate**" means the rate of interest for deposits in EUR for the relevant period as published at 11h00, Brussels time, or at a later time acceptable to the Bank on the day (the "**Reset Date**") which falls 2 (two) Relevant Business Days prior to the first day of the relevant period, on Reuters page EURIBOR 01 or its successor page or, failing which, by any other means of publication chosen for this purpose by the Bank.

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

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

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

B. LIBOR USD

"LIBOR" means, in respect of USD:

- 1 in respect of a relevant period of less than one month, the Screen Rate for a term of one month;

2 in respect of a relevant period of one or more months for which a Screen Rate is available, the applicable Screen Rate for a term for the corresponding number of months; and

3 in respect of a relevant period of more than one month for which a Screen Rate is not available, the rate resulting from a linear interpolation by reference to two Screen Rates, one of which is applicable for a period next shorter and the other for a period next longer than the length of the relevant period,

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

For the purposes of paragraphs (b) and (c) above:

- (i) "**available**" means "calculated and published" under the aegis of the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited as determined by the Bank) for given maturities, and
- (ii) "**Screen Rate**" means the rate of interest for deposits in USD for the relevant period as set by the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited as determined by the Bank) and released by financial news providers at 11h00, London time, or at a later time acceptable to the Bank on the day (the "**Reset Date**") which falls 2 (two) London Business Days prior to the first day of the relevant period.

If such Screen Rate is not so released by any financial news provider acceptable to the Bank, the Bank shall request the principal London offices of 4 (four) major banks in the London interbank market selected by the Bank to quote the rate at which USD deposits in a comparable amount are offered by each of them at approximately 11h00, London time, on the Reset Date, to prime banks in the London interbank market for a period equal to the Representative Period. If at least 2 (two) such quotations are provided, the rate will be the arithmetic mean of the quotations provided.

If fewer than 2 (two) quotations are provided as requested, the Bank shall request the principal New York City offices of 4 (four) major banks in the New York City interbank market, selected by the Bank, to quote the rate at which USD deposits in a comparable amount are offered by each of them at approximately 11h00, New York City time, on the day falling 2 (two) New York Business Days after the Reset Date, to prime banks in the European market for a period equal to the Representative Period. If at least 2 (two) such quotations are provided, the rate will be the arithmetic mean of the quotations provided.

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

C. GENERAL

For the purposes of the foregoing definitions:

- 0 "**London Business Day**" means a day on which banks are open for normal business in London and "**New York Business Day**" means a day on which banks are open for normal business in New York.
- 1 All percentages resulting from any calculations referred to in this Schedule will be rounded, if necessary, to the nearest one hundred-thousandth (in respect of LIBOR) or one thousandth (in respect of EURIBOR) of a percentage point, with halves being rounded up.
- 2 The Bank shall inform the Borrowers without delay of the quotations received by the Bank.

3 If any of the foregoing provisions becomes inconsistent with provisions adopted under the aegis of:
EMMI and EURIBOR ACI (or any successor to that function of EMMI and EURIBOR ACI as determined by the Bank) in respect of EURIBOR, or
the ICE Benchmark Administration Limited (or any successor to that function of the ICE Benchmark Administration Limited as determined by the Bank) in respect of LIBOR,
the Bank may by notice to the Borrowers amend the provision to bring it into line with such other provisions.

Forms for Borrowers

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

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

Italy – LIVANOVA R&D (2016-0607)

	Date:
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Please proceed with the following disbursement:

Loan Name (*):

LivaNova R&D (2016-0607)

Signature Date (*):

Contract FI number:

86.677 (IT)

Currency & amount requested

Proposed disbursement date:

Currency Amount

I Int. rate basis (Art. 3.01)

N

T

E Rate (% or Spread)

R OR (please indicate only ONE) -----

E

S Maximum Rate (% or Maximum

T Spread)

Reserved for the Bank

(contract currency)

Total **Credit** Amount:

Frequency (Art. 3.01)

Annual

Semi-annual

Quarterly

Disbursed to date:

Payment Dates (Art. 5)

Balance for disbursement:

Interest Revision/Conversion date (if any)

Current disbursement:

C Repayment frequency

Annual

A

P

Semi-annual

I

T

Quarterly

A

L

Balance after disbursement:

Repayment methodology (Art. 4.01)

Equal instalments

Constant annuities

Disbursement deadline:

First repayment date

Max. number of disbursements:

Maturity Date:

Minimum Tranche size:

Total allocations to date:

Conditions precedent:

Yes / No

Relevant Borrower's account to be credited:

Acc. N°:

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

Bank name, address:

Please transmit information relevant to:

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

Certificates to be provided by the Borrowers

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

To: European Investment Bank

From: [Borrowers]

Date:

Subject: Finance Contract between European Investment Bank and [Borrowers] dated 1 (the "Finance Contract")
FI number 86.677 (IT) Serapis number 2016-0607

Dear Sirs,

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

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

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

Yours faithfully,

For and on behalf of [Borrowers]

Date:

D.2 Form of Compliance Certificate

To: European Investment Bank

From: [Parent]

Date:

Subject: Finance Contract between European Investment Bank and [Borrowers] dated 1 (the "Finance Contract")

FI number 86.677 (IT) Serapis number 2016-0607

Dear Sirs,

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

We hereby confirm:

(i)[insert details and computations of covenants to be certified];

(ii)[no asset disposals of the type prohibited under Article 6.06 has been enacted];

(iii)[no security of the type prohibited under Article 7.02 has been created or is in existence;]

(iv)[no event or circumstance which constitutes or would with the passage of time or giving of notice under the Finance Contract constitute an Event of Default has occurred and is continuing unremedied or unwaived. *[If this statement cannot be made, this certificate should identify any potential event of default that is continuing and the steps, if any, being taken to remedy it].*]

Yours faithfully,

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

[director][director]

APPENDIX

Financial information

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

FINANCIAL RATIOS

For the purpose of this Contract:

Financial Testing

The financial covenants set out in this Schedule E shall be tested by reference to each of the financial statements of the Borrower and each Compliance Certificate delivered pursuant to Article 8.02(a)(i) and Article 8.02 (a)(ii), provided however that in all places where the Contract provides for calculation and/or reporting of Consolidated Net Financial Indebtedness to Consolidated EBITDA and of Consolidated EBITDA to Consolidated Total Net Interest Payable as of 30 June, Consolidated EBITDA and Consolidated Total Net Interest Payable shall be calculated on a 12 month rolling basis (which means the sum of the most recent half-year and 6 (six) months prior to the most recent half-year).

Test Date: means 30 June and 31 December of each year.

Financial ratios

The Parent shall ensure that:

- (a) **Consolidated Net Financial Indebtedness to Consolidated EBITDA:** Consolidated Net Financial Indebtedness as at any Test Date shall not be more than 2.50x times the Consolidated EBITDA for the test period ending on that Test Date,
- (b) **Consolidated Net Financial Indebtedness to Consolidated Net Worth:** Consolidated Net Financial Indebtedness as at any Test Date shall not be more than 0.50 x times the Consolidated Net Worth as at that Test Date.
- (c) **Consolidated EBITDA to Consolidated Total Net Interest Payable:** Consolidated EBITDA for the test period ending on a Test Date shall not be lower than 6.30 x times the Consolidated Total Net Interest Payable for the test period ending on that Test Date.
- (d) **Consolidated Net Worth:** the Consolidated Net Worth shall at no times be lower than USD 725,000,000.00.

Compliance Certificate

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

Each Compliance Certificate shall be signed by (a) the Chief Executive Officer of the Parent; or (b) two members of the Board of Directors of the Parent and shall be accompanied by a report signed by reputable independent auditors.

Existing Security

Grantor	Beneficiary	Transaction	Outstanding secured amount as of 31/05/2019	Expiry	Type of Security
Sorin Group Italia Srl	Mediocredito Italiano	Mortgage Loan	Euro 175,438.55	30/09/2021	Mortgage
Sorin Group Italia Srl	Mediocredito Italiano	Mortgage Loan	Euro 305,555.59	29/09/2026	Mortgage
		Total amount	Euro 480,994.14		

Interest Rate Revision and Conversion

If an Interest Revision/Conversion Date has been included in the Disbursement Notice for a Tranche, the following provisions shall apply.

A. Mechanics of Interest Revision/Conversion

Upon receiving an Interest Revision/Conversion Request the Bank shall, during the period commencing 60 (sixty) days and ending 30 (thirty) days before the Interest Revision/Conversion Date, deliver to the Borrowers an Interest Revision/Conversion Proposal stating:

- (a) the Fixed Rate and/or Spread that would apply to the Tranche, or the part thereof indicated in the Interest Revision/Conversion Request pursuant to Article 3.01; and
- (b) that such rate shall apply until the Maturity Date or until a new Interest Revision/Conversion Date, if any, and that interest is payable quarterly, semi-annually or annually in arrears on designated Payment Dates.

The Borrowers may accept in writing an Interest Revision/Conversion Proposal by the deadline specified therein.

Any amendment to this Contract requested by the Bank in this connection shall be effected by an agreement to be concluded not later than 15 (fifteen) days prior to the relevant Interest Revision/Conversion Date.

B. Effects of Interest Revision/Conversion

If the Borrowers duly accept in writing a Fixed Rate or a Spread in respect of an Interest Revision/Conversion Proposal, the Borrowers shall pay accrued interest on the Interest Revision/Conversion Date and thereafter on the designated Payment Dates.

Prior to the Interest Revision/Conversion Date, the relevant provisions of this Contract and Disbursement Notice shall apply to the entire Tranche. From and including the Interest Revision/Conversion Date onwards, the provisions contained in the Interest Revision/Conversion Proposal relating to the new interest rate or Spread shall apply to the Tranche (or part thereof) until the new Interest Revision/Conversion Date, if any, or until the Maturity Date.

C. Non-fulfilment of Interest Revision/Conversion

If the Borrowers do not submit an Interest Revision/Conversion Request or does not accept in writing the Interest Revision/Conversion Proposal for the Tranche or if the parties fail to effect an amendment requested by the Bank pursuant to Paragraph A above, the Borrowers shall repay the Tranche (or part thereof) on the Interest Revision/Conversion Date, without indemnity. The Borrowers will repay on the Interest Revision/Conversion Date any part of a Tranche which is unaffected by the Interest Revision/Conversion.

SIGNATORIES

THE BANK

Signed for and on behalf of the

EUROPEAN INVESTMENT BANK

this 6th day of June 2019, in Luxembourg

THE ITALIAN SUBSIDIARY

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

Name:

Title:

THE PARENT

for and on behalf of **LivaNova PLC**

Name:

Title:

CERTIFICATION

I, Damien McDonald, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2019 of LivaNova PLC and its consolidated subsidiaries;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2019

/s/ DAMIEN MCDONALD

Damien McDonald

Chief Executive Officer

(Principal Executive Officer)

CERTIFICATION

I, Thad Huston, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2019 of LivaNova PLC and its consolidated subsidiaries;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2019

/s/ THAD HUSTON

Thad Huston

Chief Financial Officer

(Principal Financial Officer)

**CERTIFICATION OF THE
CHIEF EXECUTIVE OFFICER AND
CHIEF FINANCIAL OFFICER
OF LIVANOVA PLC
PURSUANT TO 18 U.S.C. SECTION 1350**

Each of Damien McDonald, Chief Executive Officer of LivaNova PLC (the “Company”), and Thad Huston, Chief Financial Officer of the Company, each hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

(a) the Quarterly Report on Form 10-Q of the Company and its consolidated subsidiaries for the quarter ended June 30, 2019, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(b) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 31, 2019

/s/ DAMIEN MCDONALD

Damien McDonald
Chief Executive Officer
(Principal Executive Officer)

Date: July 31, 2019

/s/ THAD HUSTON

Thad Huston
Chief Financial Officer
(Principal Financial Officer)

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as a part of this report or on a separate disclosure document.