

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): April 23, 2020



LivaNova PLC

(Exact Name of Registrant as Specified in its Charter)

England and Wales
(State or Other Jurisdiction
of Incorporation)

001-37599
(Commission
File Number)

98-1268150
(IRS Employer
Identification No.)

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

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

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

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

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

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

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

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement

On April 23, 2020, LivaNova PLC (“LivaNova” or the “Company”) concluded execution on a series of debt covenant amendments, (together, the “Debt Amendments”) which taken together, materially modify the status of our current debt agreements. The Debt Amendments temporarily amend financial covenants relating to consolidated net financial indebtedness to consolidated EBITDA and consolidated EBITDA to consolidated total net interest payable, waive certain events of default prior to December 31, 2020 relating to COVID-19, and implement a test period of 12 months for certification purposes.

Club Facility

On April 9, 2020, LivaNova and Barclays Bank PLC (the “Agent”) amended a facility agreement (the “First Club Facility Amendment”) dated March 26, 2019 made between the Company and Bank of America Merrill Lynch International DAC, Barclays Bank plc, BNP Paribas, London Branch and Intesa Sanpaolo S.P.A. as Arranger, Bookrunners and Original Lenders; Bank of America Merrill Lynch International DAC as Documentation Agent and Coordinator; and Barclays Bank plc as Agent (the “Club Facility Agreement”). Capitalized words used herein without definition have the meanings assigned in the Club Facility Agreement, as amended.

The First Club Facility Amendment waives any Event of Default occurring on or prior to December 31, 2020 arising under Clause 21.10 (Cessation of business) or Clause 21.13 (Expropriation) (a) caused directly by any suspension of business by any Material Subsidiary or temporary closure of any Material Subsidiary’s manufacturing plants, in each case lasting no more than 45 days in aggregate in the financial year ending on December 31, 2020, resulting from mandatory orders or restrictions imposed by any government or local authority as a result of the COVID-19 pandemic; or (b) under Clause 21.16 (Material adverse change) by virtue of any event or circumstance directly caused by the COVID-19 pandemic, as it currently exists as at the date hereof (and taking into account its anticipated development).

Further, pursuant to the original Club Facility Agreement, the Company was required to maintain (i) a ratio of Consolidated Net Financial Indebtedness to Consolidated EBITDA ratio of no more than 2.50 and (ii) a ratio of Consolidated EBITDA to Consolidated Total Net Interest Payable of no less than 6.30, in each case of as of certain measurement dates (the “Existing Metrics”). Under the First Club Facility Amendment, beginning with the date thereof and continuing through December 31, 2020, the Company is not required to comply with the Existing Metrics, but is instead required to maintain (i) a ratio of Consolidated Net Financial Indebtedness to Consolidated EBITDA ratio of no more than 3.50 and (ii) a ratio of Consolidated EBITDA to Consolidated Total Net Interest Payable of no less than 5.0, in each case of as of certain measurement dates (such amended ratios, the “Temporary Metrics”).

On April 23, 2020, the Company and Agent subsequently made an additional amendment (the “Second Club Facility Amendment”) to the aforementioned Club Facility Agreement, defining the term “Test Period” to mean “each period of twelve months ending on an Accounting Date” versus a “period of six or, as the case may be, twelve months” ending on an Accounting Date.

The description above does not purport to be complete and is qualified in its entirety by the complete text of the First Club Facility Amendment and Second Club Facility Amendment filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Lavoro Facility Agreement

On April 17, 2020, the Company and Banca Nazionale Del Lavoro S.P.A. (the “Lender”) amended a facility agreement (“First Lavoro Amendment”) dated July 25, 2019 made between the Company and the Lender (“Lavoro Facility Agreement”).

The First Lavoro Amendment waives any Event of Default arising under Clause 21.10 (Cessation of business) or Clause 21.13 (Expropriation) caused directly by any suspension of business by any Material Subsidiary or temporary closure of any Material Subsidiary’s manufacturing plants, in each case lasting no more than 45 days in aggregate in the financial year ending December 31, 2020 and resulting directly from mandatory orders or restrictions imposed by any government or local authority as a result of the COVID-19 pandemic (such suspension or closure, a “COVID-19 Closure”); and occurring during the financial year ending December 31, 2020 by virtue of any COVID-19 Closure. Capitalized words used herein without definition have the meanings assigned in the Lavoro Facility Agreement, as amended.

The First Lavoro Amendment also modifies certain financial covenants of the Lavoro Facility Agreement consistent with the changes to the Club Facility Agreement, as amended, by providing that for the period beginning as of the date of the First Lavoro Amendment and ended on December 31, 2020, the Company does not need to comply with the Existing Metrics, and is instead subject to compliance with the Temporary Metrics, in each case as defined above.

On April 21, 2020, the Company and the Lender subsequently made an additional amendment (the “Second Lavoro Amendment”) to the aforementioned Lavoro Facility Agreement, defining the term “Test Period” to mean “each period of twelve months ending on an Accounting Date” versus a “period of six or, as the case may be, twelve months” ending on an Accounting Date.

The description above does not purport to be complete and is qualified in its entirety by the complete text of the First Lavoro Amendment and Second Lavoro Amendment filed as Exhibits 10.3 and 10.4, respectively, to this Current Report on Form 8-K and incorporated herein by reference. The Lavoro Facility Agreement is filed as Exhibit 10.5 to this Current Report on Form 8-K and incorporated herein by reference.

EIB Finance Contracts

On April 21, 2020, the Company, Sorin Group Italia S.r.l. and the European Investment Bank (“EIB”) amended (the “EIB Amendment”) (1) the Finance Contract entered into by and between (i) the European Investment Bank and (ii) Sorin S.p.A., Sorin Group Italia S.r.l. and Sorin CRM S.A.S on May 6, 2014 in Luxembourg, as subsequently amended on October 2, 2015, April 26, 2018 and June 6, 2019 (the “Finance Contract 83.445”) and (2) the Finance Contract entered into by and between (i) the European Investment Bank and (ii) Sorin Group Italia S.r.l., Sorin CRM S.A.S and LivaNova PLC on June 21, 2017 in Milan, on June 23, 2017 in Clamart, on June 27, 2017 in London and on June 29, 2017 in Luxembourg, as subsequently amended on April 26, 2008 and on June 6, 2019 (the “Finance Contract 86.677”), (the Finance Contract 83.445 and the Finance Contract 86.677 jointly referred to as the “Finance Contracts”). Capitalized words used herein without definition have the meanings assigned in the Finance Contracts, as amended.

Specifically, the EIB Amendment modifies the definition of “Non-Recurring Items” such that the Company can forego compliance on the 35% consolidated EBITDA cap on subsidiary financial indebtedness for the test period ended June 30, 2020. The EIB Amendment also modifies certain financial conditions of the Finance Contracts consistent with the changes to the Club Facility Agreement and the Lavoro Facility Agreement, in each case as amended, by providing that for the period beginning as of the date of the EIB Amendment and ended on December 31, 2020, the Company does not need to comply with the Existing Metrics, and is instead subject to compliance with the Temporary Metrics, in each case as defined above.

The description above does not purport to be complete and is qualified in its entirety by the complete text of the EIB Amendment filed as Exhibit 10.6, to this Current Report on Form 8-K and incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information set forth under Item 1.01 above is incorporated by reference into this Item 2.03.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

<u>Exhibit</u>	<u>Description</u>
10.1	<u>First Club Facility Amendment</u>
10.2	<u>Second Club Facility Amendment</u>
10.3	<u>First Lavoro Amendment</u>
10.4	<u>Second Lavoro Amendment</u>
10.5	<u>Lavoro Facility Agreement</u>
10.6	<u>EIB Amendment</u>

SIGNATURE

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

LivaNova PLC

Date: April 23, 2020

By: /s/ Keyna Skeffington

Name: Keyna Skeffington

Title: Senior Vice President & General Counsel

To: **LIVANOVA PLC** a company incorporated in England and Wales with registration number 09451374 (the “**Company**”)

From: **BARCLAYS BANK PLC as Agent**

Date: 9 April 2020

Dear Sirs/Madams

LIVANOVA PLC - AMENDMENT LETTER

1. BACKGROUND

- (a) We refer to the facility agreement dated 26 March 2019 and made between (1) LivaNova plc as Company, (2) Bank of America Merrill Lynch International DAC, Barclays Bank plc, BNP Paribas, London Branch, and Intesa Sanpaolo S.P. as Arranger, Bookrunners and Original Lenders, (3) Bank of America Merrill Lynch International DAC as Documentation Agent and Co-ordinator and (4) Barclays Bank plc as Agent (the “**Facility Agreement**”).
- (b) This Letter is supplemental to and amends the Facility Agreement.
- (c) The Company has requested that the Finance Parties agree to certain amendments to the Facility Agreement. Pursuant to clause 33 (*Amendments and Waivers*) of the Facility Agreement, the Majority Lenders have consented to the amendments contemplated by this Letter. Accordingly, the Agent is authorized to execute this Letter on behalf of the Finance Parties.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Letter terms defined in, or construed for the purposes of, the Facility Agreement have the same meanings when used in this Letter (unless the same are otherwise defined in this Letter):

“**Amended Facility Agreement**” means the Facility Agreement as amended pursuant to paragraph 3.1 (*Amendments*) of this Letter; and

“**Effective Date**” means the date of your acknowledgment of this Letter.

2.2 Paragraphs

- (a) In this Letter, any reference to a “**paragraph**” or “**schedule**” is, unless the context otherwise requires, a reference to a paragraph or schedule of this Letter.
- (b) Paragraph and schedule headings are for ease of reference only.

2.3 Continuing obligations

Subject to the provisions of this Letter:

- (a) the Facility Agreement and all the other Finance Documents shall remain in full force and effect;
- (b) as from the Effective Date, the Facility Agreement shall be read and construed as one document with this Letter; and
- (c) nothing in this Letter shall constitute or be construed as a waiver (save as specifically and expressly waived under paragraph 3 of this Letter) or release of any right or remedy of a Finance Party under the Finance Documents, nor otherwise prejudice any right or remedy of a Finance Party under the Facility Agreement or any other Finance Document.

3. AMENDMENTS, CONFIRMATIONS AND FURTHER ASSURANCE

3.1 Amendments

With effect from the Effective Date, the Facility Agreement shall be amended in accordance with schedule 1 (*Amendment*) to this Letter.

3.2 Further assurance

The Company shall, at the request of the Lender 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 Letter.

3.3 Waivers

The Agent, on behalf of and acting on the instructions of the Majority Lenders, hereby waives any Event of Default occurring on or prior to 31 December 2020:

- (a) arising under Clause 21.10 (*Cessation of business*) or Clause 21.13 (*Expropriation*) of the Amended Facility Agreement caused directly by any suspension of business by any Material Subsidiary or temporary closure of any Material Subsidiary's manufacturing plants, in each case lasting no more than 45 days in aggregate in the financial year ending on 31 December 2020, resulting from mandatory orders or restrictions imposed by any government or local authority as a result of the COVID-19 pandemic; and
- (b) under Clause 21.16 (*Material adverse change*) by virtue of any event or circumstance directly caused by the COVID-19 pandemic, as it currently exists as at the date hereof (and taking into account its anticipated development).

4. REPRESENTATIONS AND RELIANCE

4.1 Representations

The Company makes the Repeating Representations (as defined in the Amended Facility Agreement) in relation to itself and, where relevant, each of its Subsidiaries on the Effective Date, by reference to the facts and circumstances existing at that date and assuming, in respect of paragraph (a) of Clause 17.11 (*No default*), the waivers set out in paragraph 3.3 of this Letter have been granted.

4.2 Reliance

The Company acknowledges that the Lender has entered into this Letter in full reliance on the representations and warranties made by it in the terms stated in this paragraph 4.

5. COSTS AND EXPENSES

In accordance with clause 16 (*Amendments Costs*) of the Facility Agreement, the Company shall within three Business Days of demand pay the Agent the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to the Company's request and in connection with the negotiation, preparation, printing and execution of this Letter and any other documents referred to in this Letter.

6. MISCELLANEOUS

6.1 Counterparts

This Letter may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Letter.

6.2 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person (other than a Finance Party) who is not a party to this Letter has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Letter.
- (b) Subject to clause 33 (*Amendments and Waivers*) of the Facility Agreement, the consent of any person who is not a party to this Letter is not required to rescind or vary this Letter at any time.

6.3 Finance Document

The Agent and the Company agree that this Letter is a Finance Document.

6.4 Governing law

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

Please confirm your agreement to the above by signing and returning the enclosed copy of this Letter.

Yours faithfully

/s/ Lisa Mariconda
Lisa Mariconda
Assistant Vice President
IB Wholesale Lending Operations
For and on behalf of
BARCLAYS BANK PLC as Agent

SCHEDULE 1: AMENDMENT

1. AMENDMENT

The Facility Agreement will be amended as follows:

A. The following definition shall be inserted in clause 1.1 (*Definitions*) of the Facility Agreement:

“First Amendment Date” means 9 April 2020.

B. Paragraphs (a) and (b) of Clause 19.1 (*Financial Condition*) of the Facility Agreement shall be deleted and replaced with the following:

19.1 Financial condition

(a) Consolidated Net Financial Indebtedness to Consolidated EBITDA:

- (i) Save for the exception provided in the following paragraph, the Company shall ensure that Consolidated Net Financial Indebtedness as at any Accounting Date shall not be more than 2.50 times the Consolidated EBITDA for the applicable Test Period ending on that Accounting Date.
- (ii) During the period from the First Amendment Date to and including the day on which the Compliance Certificate for the financial year ending on 31 December 2020 is (A) delivered or (B) required to be delivered by the Company in accordance with Clause 18.2 (*Compliance Certificate*) of the Facility Agreement, the Company shall ensure that Consolidated Net Financial Indebtedness as at any Accounting Date during that period shall not be more than 3.50 times the Consolidated EBITDA for the applicable Test Period ending on that Accounting Date.

(b) Consolidated EBITDA to Consolidated Total Net Interest Payable:

- (i) Save for the exception provided in the following paragraph, Consolidated EBITDA for the applicable Test Period ending on an Accounting Date shall not be lower than 6.30 times the Consolidated Total Net Interest Payable for that Test Period.
- (ii) During the period from the First Amendment Date to and including the day on the earlier of which the Compliance Certificate for the financial year ending on 31 December 2020 is (A) delivered or (B) required to be delivered by the Company in accordance with Clause 18.2 (*Compliance Certificate*) of the Facility Agreement, Consolidated EBITDA for the applicable Test Period ending on an Accounting Date shall not be lower than 5 times the Consolidated Total Net Interest Payable for that Test Period.

[ON COPY]

To: **BARCLAYS BANK PLC** as Agent

We acknowledge, agree and accept the above terms:

/s/ Thad Huston
For and on behalf of
LIVANOVA PLC

COVENANT TEST AMENDMENT

To: **LIVANOVA PLC** a company incorporated in England and Wales with registration number 09451374 (the “**Company**”)

From: **BARCLAYS BANK PLC** as Agent

Date: 23 April 2020

Dear Sirs/Madams

LIVANOVA PLC - AMENDMENT LETTER

1. BACKGROUND

- (a) We refer to a facility agreement dated 26 March 2019 and made between (1) LivaNova plc as Company, (2) Bank of America Merrill Lynch International DAC, Barclays Bank plc, BNP Paribas, London Branch and Intesa Sanpaolo S.P.A. as Arranger, Bookrunners and Original Lenders, (3) Bank of America Merrill Lynch International DAC as Documentation Agent and Co-ordinator and (4) Barclays Bank plc as Agent (as amended from time to time, the “**Facility Agreement**”).
- (b) This Letter is supplemental to and amends the Facility Agreement.
- (c) The Company has requested that the Finance Parties agree to certain amendments to the Facility Agreement. Pursuant to clause 33 (*Amendments and Waivers*) of the Facility Agreement, the Majority Lenders have consented to the amendments contemplated by this Letter. Accordingly, the Agent is authorised to execute this Letter on behalf of the Finance Parties.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Letter terms defined in, or construed for the purposes of, the Facility Agreement have the same meanings when used in this Letter (unless the same are otherwise defined in this Letter):

“**Amended Facility Agreement**” means the Facility Agreement as amended pursuant to paragraph 3.1 (*Amendments*) of this Letter; and

“**Effective Date**” means the date of your acknowledgment of this Letter.

2.2 Paragraphs

- (a) In this Letter, any reference to a “**paragraph**” or “**schedule**” is, unless the context otherwise requires, a reference to a paragraph or schedule of this Letter.
- (b) Paragraph and schedule headings are for ease of reference only.

2.3 Continuing obligations

Subject to the provisions of this Letter:

- (a) the Facility Agreement and all the other Finance Documents shall remain in full force and effect;
- (b) as from the Effective Date, the Facility Agreement shall be read and construed as one document with this Letter; and
- (c) nothing in this Letter shall constitute or be construed as a waiver (save as specifically and expressly waived under paragraph 3 of this Letter) or release of any right or remedy of a Finance Party under the Finance Documents, nor otherwise prejudice any right or remedy of a Finance Party under the Facility Agreement or any other Finance Document.

3. AMENDMENTS, CONFIRMATIONS AND FURTHER ASSURANCE

3.1 Amendments

With effect from the Effective Date, the Facility Agreement shall be amended in accordance with schedule 1 (*Amendment*) to this Letter.

3.2 Further assurance

The Company shall, at the request of the Agent 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 Letter.

3.3 Consent and waiver

The Company hereby confirms that the Compliance Certificate dated 10 September 2019, supplied to the Agent in respect of the first half of the Company's 2019 financial year, set out computations as to compliance with Clause 19.1(b) (*Financial Covenants*) in accordance with the Amended Facilities Agreement.

The Company requests that, and the Agent on behalf of and acting on the instructions of the Majority Lenders confirms that, where a Compliance Certificate has been provided prior to the Effective Date and contains computations as to compliance with Clause 19.1(b) (*Financial Covenants*) in accordance with the Amended Facilities Agreement, any Event of Default arising under Clause 21.3 (*Other obligations*) or Clause 21.4 (*Misrepresentation*) in respect of such computation shall be waived and no replacement Compliance Certificate shall be required as a result of the calculation being conducted in accordance with the Amended Facilities Agreement.

4. REPRESENTATIONS AND RELIANCE

4.1 Representations

The Company makes the Repeating Representations (as defined in the Amended Facility Agreement) in relation to itself and, where relevant, each of its Subsidiaries on the Effective Date, by reference to the facts and circumstances existing at that date and assuming, in respect of paragraph (a) of Clause 17.11 (*No default*), the waivers set out in paragraph 3.3 of this Letter have been granted.

4.2 Reliance

The Company acknowledges that the Finance Parties have entered into this Letter in full reliance on the representations and warranties made by it in the terms stated in this paragraph 4.

5. COSTS AND EXPENSES

In accordance with clause 16.2 (*Amendments Costs*) of the Facility Agreement, the Company shall within three Business Days of demand pay the Agent the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to the Company's request and in connection with the negotiation, preparation, printing and execution of this Letter and any other documents referred to in this Letter.

6. MISCELLANEOUS

6.1 Counterparts

This Letter may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Letter.

6.2 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person (other than a Finance Party) who is not a party to this Letter has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Letter.
- (b) Subject to clause 33 (*Amendments and Waivers*) of the Facility Agreement, the consent of any person who is not a party to this Letter is not required to rescind or vary this Letter at any time.

6.3 Finance Document

The Agent and the Company agree that this Letter is a Finance Document.

6.4 Governing law

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

Please confirm your agreement to the above by signing and returning the enclosed copy of this Letter.

Yours faithfully

/s/ Paolo Montagna
For and on behalf of
BARCLAYS BANK PLC as Agent

SCHEDULE 1: AMENDMENT

The Facility Agreement will be amended as follows:

The definition of “Test Period” in Clause 19.3 (*Definitions*) of the Facility Agreement shall be deleted and replaced with the following:

“**Test Period**” shall mean for the purposes of Clause 19.1(a) and Clause 19.1(b), each period of twelve months ending on an Accounting Date.

[ON COPY]

To: **BARCLAYS BANK PLC as Agent**

We acknowledge, agree and accept the above terms:

/s/ Thad Huston
For and on behalf of
LIVANOVA PLC

From: **LIVANOVA PLC** a company incorporated in England and Wales with registration number 09451374 (the “**Company**”)

To: **BANCA NAZIONALE DEL LAVORO S.P.A.** as Original Lender

Date: 17 April 2020

Dear Sirs/Madams

LIVANOVA PLC - AMENDMENT LETTER

1. BACKGROUND

- (a) We refer to the facility agreement dated 25 July 2019 (the “**Facility Agreement**”) and made between (1) LivaNova plc, Italian Branch as Company (the “**Company**”) and (2) Banca Nazionale del Lavoro S.p.A. as Original Lender (the “**Lender**”).
- (b) This Letter is supplemental to and amends the Facility Agreement.
- (c) The Company by this Letter requests that the Lender consent to certain amendments to the Facility Agreement pursuant to clause 31 (*Amendments and Waivers*) of the Facility Agreement.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Letter terms defined in, or construed for the purposes of, the Facility Agreement have the same meanings when used in this Letter (unless the same are otherwise defined in this Letter):

“**Amended Facility Agreement**” means the Facility Agreement as amended pursuant to paragraph 3.1 (*Amendments*) of this Letter; and

“**Effective Date**” means the date of your acknowledgment of this Letter.

2.2 Paragraphs

- (a) In this Letter, any reference to a “**paragraph**” or “**schedule**” is, unless the context otherwise requires, a reference to a paragraph or schedule of this Letter.
- (b) Paragraph and schedule headings are for ease of reference only.

2.3 Continuing obligations

Subject to the provisions of this Letter:

- (a) the Facility Agreement and all the other Finance Documents shall remain in full force and effect;

- (b) as from the Effective Date, the Facility Agreement shall be read and construed as one document with this Letter; and
- (c) nothing in this Letter shall constitute or be construed as a waiver (save as specifically and expressly waived under paragraph 3.3 of this Letter) or release of any right or remedy of a Finance Party under the Finance Documents, nor otherwise prejudice any right or remedy of a Finance Party under the Facility Agreement or any other Finance Document.

3. AMENDMENTS, CONFIRMATIONS AND FURTHER ASSURANCE

3.1 Amendments

With effect from the Effective Date, the Facility Agreement shall be amended in accordance with schedule 1 (*Amendment*) to this Letter.

3.2 Further assurance

The Company shall, at the request of the Lender 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 Letter.

3.3 Waivers

The Lender hereby waives any Event of Default:

- (a) arising under Clause 21.10 (*Cessation of business*) or Clause 21.13 (*Expropriation*) of the Amended Facility Agreement caused directly by any suspension of business by any Material Subsidiary or temporary closure of any Material Subsidiary's manufacturing plants, in each case lasting no more than 45 days in aggregate in the financial year ending 31 December 2020 and resulting directly from mandatory orders or restrictions imposed by any government or local authority as a result of the COVID-19 pandemic (such suspension or closure, a "**COVID-19 Closure**"); and
- (b) occurring during the financial year ending 31 December 2020 under Clause 21.16 (*Material adverse change*) by virtue of any COVID-19 Closure.

4. REPRESENTATIONS AND RELIANCE

4.1 Representations

The Company makes the Repeating Representations (as defined in the Amended Facility Agreement) in relation to itself and, where relevant, each of its Subsidiaries on the Effective Date, by reference to the facts and circumstances existing at that date and assuming, in respect of paragraph (a) of Clause 17.11 (*No default*), the waivers set out in paragraph 3.3 of this Letter have been granted.

4.2 Reliance

The Company acknowledges that the Lender has entered into this Letter in full reliance on the representations and warranties made by it in the terms stated in this paragraph 4.

5. COSTS AND EXPENSES

In accordance with clause 16.2 (*Amendments Costs*) of the Facility Agreement, the Company shall within three Business Days of demand pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in responding to the Company's request and in connection with the negotiation, preparation, printing and execution of this Letter and any other documents referred to in this Letter.

6. MISCELLANEOUS

6.1 Counterparts

This Letter may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Letter.

6.2 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person (other than a Finance Party) who is not a party to this Letter has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Letter.
- (b) Subject to clause 31 (*Amendments and Waivers*) of the Facility Agreement, the consent of any person who is not a party to this Letter is not required to rescind or vary this Letter at any time.

6.3 Finance Document

The Lender and the Company agree that this Letter is a Finance Document.

6.4 Governing law

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

Please confirm your agreement to the above by signing and returning the enclosed copy of this Letter.

Yours faithfully

/s/ Thad Huston
Thad Huston
Chief Financial Officer

For and on behalf of
LIVANOVA PLC

SCHEDULE 1: AMENDMENT

1. AMENDMENT

The Facility Agreement will be amended as follows:

A. The following definition shall be inserted in clause 1.1 (*Definitions*) of the Facility Agreement:

“First Amendment Date” means 17 April 2020.

B. Paragraphs (a) and (b) of Clause 19.1 (*Financial Condition*) of the Facility Agreement shall be deleted and replaced with the following:

19.1 Financial condition

(a) Consolidated Net Financial Indebtedness to Consolidated EBITDA:

- (i) Save as provided in sub-paragraph (ii), the Company shall ensure that Consolidated Net Financial Indebtedness as at any Accounting Date shall not be more than 2.50 times the Consolidated EBITDA for the applicable Test Period ending on that Accounting Date.
- (ii) The Company shall ensure that Consolidated Net Financial Indebtedness as at the Accounting Date falling on 30 June 2020 and 31 December 2020 shall not be more than 3.50 times the Consolidated EBITDA for the applicable Test Period ending on the relevant Accounting Date.

(b) Consolidated EBITDA to Consolidated Total Net Interest Payable:

- (i) Save as provided in sub-paragraph (ii), Consolidated EBITDA for the applicable Test Period ending on an Accounting Date shall not be lower than 6.30 times the Consolidated Total Net Interest Payable for that Test Period.
- (ii) Consolidated EBITDA for the Test Period ending on the Accounting Date falling on 30 June 2020 and 31 December 2020 shall not be lower than 5.00 times the Consolidated Total Net Interest Payable for the relevant Test Period.

To: **LIVANOVA PLC**

We acknowledge, agree and accept the above terms:

/s/ Paolo Montagna

For and on behalf of

BANCA NAZIONALE DEL LAVORO S.P.A. as Original Lender

From: **LIVANOVA PLC** a company incorporated in England and Wales with registration number 09451374 (the “**Company**”) acting through its Italian branch located at Via Benigno Crespi, 17 Italy, 20159 Milan

To: **BANCA NAZIONALE DEL LAVORO S.P.A.** as Original Lender

Date: 21 April 2020

Dear Sirs/Madams

LIVANOVA PLC ITALIAN BRANCH - AMENDMENT LETTER

1. BACKGROUND

- (a) We refer to the facility agreement dated 25 July 2019 (the “**Facility Agreement**”) and made between (1) LivaNova plc, Italian Branch as Company (the “**Company**”) and (2) Banca Nazionale del Lavoro S.p.A. as Original Lender as amended from time to time (the “**Facility Agreement**”).
- (b) This Letter is supplemental to and amends the Facility Agreement.
- (c) The Company has requested that the Lender agrees to certain amendments to the Facility Agreement. The Lender has consented to the amendments contemplated by this Letter.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Letter terms defined in, or construed for the purposes of, the Facility Agreement have the same meanings when used in this Letter (unless the same are otherwise defined in this Letter):

2.2 Paragraphs

- (a) In this Letter, any reference to a “**paragraph**” or “**schedule**” is, unless the context otherwise requires, a reference to a paragraph or schedule of this Letter.
- (b) Paragraph and schedule headings are for ease of reference only.

2.3 Continuing obligations

Subject to the provisions of this Letter:

- (a) the Facility Agreement and all the other Finance Documents shall remain in full force and effect;

- (b) as from the date hereof, the Facility Agreement shall be read and construed as one document with this Letter; and
- (c) nothing in this Letter shall constitute or be construed as a waiver or release of any right or remedy of a Finance Party under the Finance Documents, nor otherwise prejudice any right or remedy of a Finance Party under the Facility Agreement or any other Finance Document.

3. AMENDMENTS, CONFIRMATIONS AND FURTHER ASSURANCE

3.1 Amendments

With effect from the Effective Date, the Facility Agreement shall be amended in accordance with Schedule 1 (*Amendment*) to this Letter.

3.2 Further assurance

The Company shall, at the request of the Lender 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 Letter.

4. REPRESENTATIONS AND RELIANCE

4.1 Representations

The Company makes the Repeating Representations (as defined in the Facility Agreement) in relation to itself and, where relevant, each of its Subsidiaries on the date of acceptance of this letter, by reference to the facts and circumstances existing at that date.

4.2 Reliance

The Company acknowledges that the Lender has entered into this Letter in full reliance on the representations and warranties made by it in the terms stated in this paragraph 4.

5. COSTS AND EXPENSES

In accordance with clause 16.2 (*Amendments Costs*) of the Facility Agreement, the Company shall within three Business Days of demand pay the Lender the amount of all costs and expenses (including legal fees) incurred by the Lender in responding to and evaluating this Letter.

6. MISCELLANEOUS

6.1 Counterparts

This Letter may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Letter.

6.2 Third party rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person (other than a Finance Party) who is not a party to this Letter has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Letter.
- (b) Subject to clause 31 (*Amendments and Waivers*) of the Facility Agreement, the consent of any person who is not a party to this Letter is not required to rescind or vary this Letter at any time.

6.3 Finance Document

The Lender and the Company agree that this Letter is a Finance Document.

6.4 Governing law

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

Please confirm your agreement to the above by signing and returning the enclosed copy of this Letter.

Yours faithfully

/s/ Maurizio Borelli

For and on behalf of

LIVANOVA PLC, ITALIAN BRANCH

SCHEDULE 1: Amendment

The Facility Agreement will be amended as follows:

The definition of “Test Period” in Clause 19.3 (*Definitions*) of the Facility Agreement shall be deleted and replaced with the following:

“Test Period” shall mean for the purposes of Clause 19.1(a) and Clause 19.1(b), each period of twelve months ending on an Accounting Date.

To: **LIVANOVA PLC, ITALIAN BRANCH**

We acknowledge, agree and accept the above terms:

/s/ Paolo Montagna

For and on behalf of

BANCA NAZIONALE DEL LAVORO SPA

25 July 2019

**LIVANOVA PLC, Italian Branch
(as Company)**

and

**BANCA NAZIONALE DEL LAVORO S.p.A.
(as Original Lender)**

FACILITY AGREEMENT

CONTENTS

Clause		Page
1.	DEFINITIONS AND INTERPRETATION	1
2.	THE FACILITY	17
3.	PURPOSE	17
4.	CONDITIONS OF UTILISATION	17
5.	UTILISATION	17
6.	REPAYMENT	18
7.	PREPAYMENT AND CANCELLATION	19
8.	INTEREST	22
9.	INTEREST PERIODS	23
10.	CHANGES TO THE CALCULATION OF INTEREST	24
11.	FEES	26
12.	TAX GROSS UP AND INDEMNITIES	29
13.	INCREASED COSTS	36
14.	OTHER INDEMNITIES	37
15.	MITIGATION BY THE LENDER	38
16.	COSTS AND EXPENSES	38
17.	REPRESENTATIONS	39
18.	INFORMATION UNDERTAKINGS	45
19.	FINANCIAL COVENANTS	48
20.	GENERAL UNDERTAKINGS	50
21.	EVENTS OF DEFAULT	51
22.	CHANGES TO THE LENDER	59
23.	CHANGES TO THE COMPANY	62
24.	CONDUCT OF BUSINESS BY THE LENDER	62
25.	PAYMENT MECHANICS	63
26.	SET-OFF	65
27.	NOTICES	65
28.	CALCULATIONS AND CERTIFICATES	66
29.	PARTIAL INVALIDITY	67
30.	REMEDIES AND WAIVERS	67
31.	AMENDMENTS AND WAIVERS	67
32.	CONFIDENTIAL INFORMATION	68
33.	CONFIDENTIALITY OF FUNDING RATES	72
34.	COUNTERPARTS	73
35.	CONTRACTUAL RECOGNITION OF BAIL-IN	73
36.	ITALIAN TRANSPARENCY PROVISIONS	74
37.	GOVERNING LAW	74
38.	ENFORCEMENT	74

SCHEDULE 1 CONDITIONS PRECEDENT	75
SCHEDULE 2 UTILISATION REQUEST	76
SCHEDULE 3 FORM OF TRANSFER CERTIFICATE	77
SCHEDULE 4 FORM OF ASSIGNMENT AGREEMENT	80
SCHEDULE 5 FORM OF COMPLIANCE CERTIFICATE	84
SCHEDULE 6 MATERIAL COMPANIES	85
SCHEDULE 7 EXISTING SECURITY	86

THIS AGREEMENT is dated 25 July 2019 and made between:

- (1) **LIVANOVA PLC**, a company incorporated in England and Wales with registration number 09451374 (the “**Company**”) acting through its Italian branch located at Via Benigno Crespi, 17 Italy, 20159 Milan; and
- (2) **BANCA NAZIONALE DEL LAVORO S.p.A.** as lender (the “**Original Lender**”).

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

“**Accounting Principles**” means generally accepted accounting principles in the United States of America, being US GAAP.

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

“**Assignment Agreement**” means an agreement substantially in the form set out in Schedule 4 (*Form of Assignment Agreement*) or any other form agreed between the Lender and the Company.

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

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

“**Available Commitment**” means in relation to the Facility, the Commitment minus:

- (a) the amount of any outstanding Loans under the Facility; and
- (b) in relation to any proposed Utilisation, the amount of any Loans that are due to be made on or before the proposed Utilisation Date, save that any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date shall not be deducted from the Commitment.

“**Available Facility**” means the Available Commitment in respect of the Facility.

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers.

“**Bail-In Legislation**” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“**Break Costs**” means the amount (if any) by which:

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

exceeds:

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

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

“**Code**” means the US Internal Revenue Code of 1986.

“**Commitment**” means:

- (a) in relation to the Original Lender, the commitment of the Original Lender in respect of the Facility, being euro 40,000,000; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

in each case to the extent not cancelled, reduced or transferred by it under this Agreement.

“**Compliance Certificate**” means a certificate substantially in the form set out in Schedule 5 (*Form of Compliance Certificate*).

“**Confidential Information**” means all information relating to the Company, the Group, the Finance Documents or the Facility of which the Lender becomes aware in its capacity as Lender in relation to the Finance Documents or the Facility from any member of the Group or any of its advisers; in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

- (i) information that:

- (A) is or becomes public information other than as a direct or indirect result of any breach by the Lender of Clause 32 (*Confidential Information*); or
- (B) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (C) is known by the Lender before the date the information is disclosed to it by any member of the Group or any of its advisers or is lawfully obtained by the Lender after that date, from a source which is, as far as the Lender is aware, unconnected with the Group and which, in either case, as far as the Lender is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and

(ii) any Funding Rate.

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Company and the Lender.

“**CTA**” means the Corporation Tax Act 2009.

“**Default**” means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

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

- (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 the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (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 a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

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

“**EEA Member Country**” means any member state of the European Union, Iceland, Liechtenstein and Norway.

“**Eligible Institution**” means any Lender or other bank, financial institution, trust, fund or other entity selected by the Company and which, in each case, is not a member of the Group.

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

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

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

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

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

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

“**EU Bail-In Legislation Schedule**” means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

“**EURIBOR**” means, in relation to any Loan in euro:

- (a) the applicable Screen Rate as of 11.00 am (Brussels time) on the Quotation Date for euro and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*).

“**Event of Default**” means any event or circumstance specified as such in Clause 21 (*Events of Default*).

“**Excluded Guarantee**” means:

- (a) any counter-indemnity obligation in respect of a performance or similar bond guaranteeing performance by a member of the Group under any public tender or other contract entered into in the ordinary course of trade; or

- (b) any guarantee or indemnity granted or arising under legislation relating to tax or corporate law under which any member of the Group assumes general liability for the obligations of another member of the Group.

“**Existing Lender**” has the meaning given to it in Clause 22.1 (Assignments and transfers by the Lender).

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

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

“**Fallback Interest Period**” means one week.

“**FATCA**” means:

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

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

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

“**Fee Letter**” means any letter or letters dated prior to or on or about the date of this Agreement between the Lender and the Company setting out any of the fees referred to in Clause 11 (*Fees*).

“**Finance Document**” means this Agreement, any Fee Letter and any other document designated as such by the Lender and the Company.

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;
- (e) 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 agreement other than a Permitted Receivables Disposal);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and lease back arrangements and sale and purchase agreements having deferred payment terms longer than terms customary on the market) having the financial effect of a borrowing;
- (g) 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);
- (h) 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
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

“**Funding Rate**” means any individual rate notified by the Lender to the Company pursuant to paragraph (a)(ii) of Clause 10.3 (*Cost of funds*).

“**Group**” means the Company and its Subsidiaries for the time being.

“**Historic Screen Rate**” means, in relation to any Loan, the most recent applicable Screen Rate for the currency of that Loan and for a period equal in length to the Interest Period of that Loan and which is as of a day which is no more than five Business Days before the Quotation Day.

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

“**Intellectual Property**” means:

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

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

“Interpolated Historic Screen Rate” means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

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

each for the currency of that Loan and each of which is as of a day which is no more than five Business Days before the Quotation Day.

“Interpolated Screen Rate” means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

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

each for the currency of that Loan and each of which is as of a day which is no more than two days before the Quotation Day.

“ITA” means the Income Tax Act 2007.

“Italian Civil Code” means the Italian civil code, enacted by Italian Royal Decree No. 262 of 16 March 1942, as subsequently amended and supplemented.

“Italian Subsidiary” means Sorin Group Italia S.r.l., a company incorporated in Italy.

“Italian Usury Law” means Italian law No. 108 of 7 March, 1996, as amended from time to time and related implementing rules and regulations.

“Legal Reservations” means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation, liquidation, bankruptcy, moratoria, administration, court schemes and other laws generally affecting the rights of creditors and similar principles, rights, defences and limitations under the laws of any applicable jurisdiction;
- (b) the time barring of claims under any applicable limitation laws (including, without limitation, the Limitation Acts), the possibility that a court may strike out provisions of a contract as being invalid for reasons of oppression, undue influence or similar reasons, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim;

- (c) any applicable public policy law provisions and/or rules of mandatory application including pursuant to Italian Law no. 2018 of 31 May 1995 and EC Regulation no. 593/2008;
- (d) similar principles, rights and defences under the laws of any jurisdiction in which the Company and/or a Subsidiary conducts their businesses; and
- (e) any other matters which are set out as qualifications or reservations as to matters of law of general application specifically referred to in any legal opinion referred to in Schedule 1 (*Conditions Precedent*).

“**Lender**” means:

- (a) the Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a “Lender” in accordance with Clause 22(*Changes to the Lender*),

which in each case has not ceased to be a Party as such in accordance with the terms of this Agreement.

“**Limitation Acts**” means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

“**LMA**” means the Loan Market Association.

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

“**Margin**” means 0.8 per cent. per annum.

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

- (a) the business, operations, property or financial condition of the Group taken as a whole; or
- (b) the ability of the Company to perform its payment obligations under the Finance Documents and/or its obligations under Clause 19 (*Financial Covenants*); or
- (c) the validity or enforceability of the Finance Documents or the rights or remedies of the Lender under any of the Finance Documents.

“**Material Subsidiaries**” means, at any time, a Subsidiary of the Company which:

- (a) is listed in Schedule 6 (*Material Companies*); or
- (b) has an operating profit representing 10 per cent. or more of the consolidated operating profit of the Group (determined in accordance with the Accounting Principles) or has turnover (excluding intra-group items) representing 10 per cent., or more of the turnover of the Group, calculated on a consolidated basis.

Compliance with the conditions set out in paragraph (b) above shall be determined by reference to the latest consolidated financial statements of the Group. However, if a Subsidiary has been acquired since the date as at which the latest consolidated financial statements of the Group were prepared, the financial statements shall be deemed to be adjusted in order to take into account the acquisition of that Subsidiary.

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

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

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

“**New Lender**” has the meaning given to it in Clause 22.1 (Assignments and transfers by the Lender).

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

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

“**Party**” means a party to this Agreement.

“**Permitted Acquisition**” means:

- (a) a Permitted Share Buyback;
- (b) an acquisition for cash consideration of (A) all or the majority of the issued share capital of a limited liability company or (B) a business or undertaking, but only if:
 - (i) no Event of Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;
 - (ii) the acquired company, business or undertaking is engaged in a business substantially the same as (or ancillary or related to) that carried on by the Group;
 - (iii) the consideration (including associated costs and expenses) for the acquisition and any Financial Indebtedness or other assumed actual or contingent liability, remaining in the acquired company (or any such business) at the date of acquisition (the “**Individual Purchase Price**”) when aggregated with the consideration (including associated costs and expenses) for any other acquisition permitted under this Agreement and any Financial Indebtedness or other assumed actual or contingent liability, remaining in any such acquired companies or businesses at the time of acquisition) does not exceed USD 280,000,000 or its equivalent in aggregate over the life of the Facility.

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

Such certificate must give calculations showing in reasonable detail that the Company would have remained in compliance with the financial covenants set out in Clause 19 (*Financial Covenants*) if the covenant test was recalculated for the relevant period ending on the most recent Accounting Date consolidating the financial statements of the target company (consolidated if it has Subsidiaries) or business with the financial statements of the Group for such period on a pro forma basis and as if the consideration for the proposed acquisition had been paid at the start of that period.

“Permitted Guarantee” means:

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

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

- (a) to another member of the Group; or
- (b) to any other entity (i) in which a member of the Group holds a beneficial interest and (ii) which carries on the same or substantially similar business to the Group, provided such Financial Indebtedness or loans are approved by the board of directors of the 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:

- (a) any factoring programme with recourse (*pro solvendo*) or without recourse (*pro soluto*) of receivables of the Group which is in existence at the date hereof;
- (b) any securitisation and/or factoring programme of the receivables of the Group consented to by the Lender (acting reasonably); and/or
- (c) any disposal of receivables not otherwise permitted under paragraphs (a) or (b) above where the net consideration receivable (when aggregated with the consideration for all such other receivables disposed of) does not exceed USD 40,000,000 in any financial year.

“Permitted Security” means:

- (a) any Security listed in Schedule 7 (*Existing Security*) except to the extent the principal amount secured by that Security exceeds the amount stated in that schedule;
- (b) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (c) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
 - (i) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
 - (ii) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,excluding, in each case, any Security under a credit support arrangement in relation to a hedging transaction;
- (d) any lien arising by operation of law and in the ordinary course of trading;
- (e) any Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
 - (i) the Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
 - (iii) the Security is removed or discharged within two months of the date of acquisition of such asset;
- (f) any Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security is created prior to the date on which that company becomes a member of the Group, if:
 - (i) the Security was not created in contemplation of the acquisition of that company;
 - (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (iii) the Security is removed or discharged within two months of that company becoming a member of the Group;
- (g) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group; or

- (h) any Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security given by any member of the Group other than any permitted under paragraphs (a) to (g) above) does not exceed USD 15,000,000 (or its equivalent in another currency or currencies).

“Permitted Share Buyback” means any share buyback occurring at any time on or after the date falling 18 Months after the date of the Term Loan Facility Agreement provided that at that time (a) the aggregate principal amount of the Loans outstanding under the Term Loan Facility Agreement does not exceed USD 200,000,000 and (b) the ratio of Consolidated Net Financial Indebtedness to Consolidated EBITDA does not exceed 1.5 times.

“Permitted Transaction” means:

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

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

“Quotation Day” means, in relation to any period for which an interest rate is to be determined:

- (a)
- (i) (if the currency is euro) two TARGET Days before the first day of that period; or
- (ii) (for any other currency) two Business Days before the first day of that period,

(unless market practice differs in the Relevant Market for that currency, in which case the Quotation Day for that currency will be determined by the Lender in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days)).

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

“Relevant Market” means, in relation to euro, the European interbank market and, in relation to any other currency, the London interbank market.

“Relevant Nominating Body” means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

“Repeating Representations” means each of the representations set out in Clauses 17.2 (*Status*) to 17.7 (*Governing law and enforcement*), paragraph (a) of Clause 17.11 (*No default*), paragraph (d) of Clause 17.13 (*Financial statements*), Clause 17.20 (*Good title to assets*), Clause 17.21 (*Legal and beneficial ownership*) and Clause 17.24 (*Centre of main interests and establishments*).

“Replacement Benchmark” means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
 - (ii) any Relevant Nominating Body,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Lender and the Company, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or
- (c) in the opinion of the Lender and the Company, an appropriate successor to a Screen Rate.

“Representative” means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

“Resolution Authority” means any body which has authority to exercise any Write-down and Conversion Powers.

“Restricted Party” means a person that is:

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

“Rollover Loan” means one or more Loans:

- (a) made or to be made on the same day that a maturing Loan is due to be repaid;

- (b) the aggregate amount of which is equal to or less than the amount of the maturing Loan; and
- (c) made or to be made to the Borrower for the purpose of refinancing that maturing Loan.

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

“**Sanctions Authority**” means:

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

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

“**Screen Rate**” means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Lender may specify another page or service displaying the relevant rate after consultation with the Company.

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

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

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

“**TARGET2**” means 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.

“**TARGET Day**” means any day on which TARGET2 is open for the settlement of payments in euro.

“**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).

“**Term Loan Facility Agreement**” means the term loan facility agreement dated 26 March 2019 between LivaNova PLC, as borrower thereunder, Bank of America Merrill Lynch International DAC, Barclays Bank PLC, BNP Paribas, London Branch and Intesa Sanpaolo S.p.A., as Arrangers and Bookrunners, and Barclays Bank PLC, as Agent.

“**Termination Date**” means the date falling two years after the date of this Agreement.

“**Transfer Certificate**” means a certificate substantially in the form set out in Schedule 3 (*Form of Transfer Certificate*) or any other form agreed between the Lender and the Company.

“**Unpaid Sum**” means any sum due and payable but unpaid by the Company under the Finance Documents.

“**US**” means 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.

“**US Tax Obligor**” means the Company where some or all of its payments under the Finance Documents are from sources within the US for US federal income tax purposes.

“**Utilisation**” means a utilisation of the Facility.

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

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

“**VAT**” means the value added tax provided for by Presidential Decree no. 633 of 26th October 1972, and any other tax of a similar nature including without limitation:

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

“**Write-down and Conversion Powers**” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

1.2 **Construction**

- (a) Unless a contrary indication appears, any reference in this Agreement to:
 - (i) the “**Lender**”, “”or any “**Party**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
 - (ii) “**assets**” includes present and future properties, revenues and rights of every description;
 - (iii) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (iv) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (v) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (vi) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (vii) a provision of law is a reference to that provision as amended or re-enacted; and
 - (viii) a time of day is a reference to London time.

- (b) The determination of the extent to which a rate is “**for a period equal in length**” to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (e) A Default (other than an Event of Default) is “continuing” if it has not been remedied or waived and an Event of Default is “continuing” if it has not been remedied or waived.

1.3 **Currency symbols and definitions**

- (a) “\$”, “USD” and “dollars” denote the lawful currency of the United States of America.
- (b) “€”, “EUR” and “euro” denote the single currency of the Participating Member States.

1.4 **Third party rights**

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

**SECTION 2
THE FACILITY**

2. THE FACILITY

2.1 The Facility

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

3. PURPOSE

3.1 Purpose

The Company shall apply all amounts borrowed by it under the Facility towards general corporate and working capital purposes of the Group (excluding acquisitions, dividends and share buybacks).

3.2 Monitoring

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

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Lender will only be obliged to comply with Clause 5.4 (*Loan availability*) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, it has received all of the documents and other evidence listed in Schedule 1 (*Conditions precedent*) in form and substance satisfactory to it. The Lender shall notify the Company promptly upon being so satisfied.

4.2 Further conditions precedent

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

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

4.3 Maximum number of Loans

The Company may not deliver a Utilisation Request if as a result of the proposed Utilisation more than eight Loans would be outstanding.

**SECTION 3
UTILISATION**

5. UTILISATION

5.1 Delivery of a Utilisation Request

The Company may utilise the Facility by delivery to the Lender of a duly completed Utilisation Request not later than 9:30 am (Milan time) on the day two Business Days prior to the Utilisation Date.

5.2 Completion of a Utilisation Request

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

5.3 Amount

The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of EUR 5,000,000 or, if less, the Available Facility.

5.4 Loan availability

If the conditions set out in this Agreement have been met the Lender shall make each Loan available by the Utilisation Date through its Facility Office.

5.5 Cancellation of Commitment

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

SECTION 4 REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loans

- (a) The Company shall repay the Loan on the last day of its Interest Period.
- (b) Without prejudice to the Company's obligation under paragraph (a) above, if one or more Loans are to be made available to the Company:
 - (i) on the same day that a maturing Loan is due to be repaid by the Company; and
 - (ii) in whole or in part for the purpose of refinancing the maturing Loan,

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

- (A) if the amount of the maturing Loan exceeds the aggregate amount of the new Loans:
 - (1) the Company will only be required to make a payment under Clause 25.1 (*Payments to the Lender*) in an amount equal to that excess; and
 - (2) the new Loans shall be treated as having been made available and applied by the Company in or towards repayment of the maturing Loan and the Lender will not be required to make a payment under Clause 25.1 (*Payments to the Lender*) in respect of the new Loans; and

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

- (1) the Company will not be required to make a payment under Clause 25.1 (*Payments to the Lender*); and
- (2) the Lender will be required to make a payment under Clause 25.1 (*Payments to the Lender*) in respect of the new Loans only to the extent that the new Loans exceeds the maturing Loan and the remainder of the new Loans shall be treated as having been made available and applied by the Company in or towards repayment of the maturing Loan.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

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

- (a) the Lender shall promptly notify the Company upon becoming aware of that event;
- (b) upon the Lender notifying the Company, the Available Commitment of the Lender will be immediately cancelled; and
- (c) to the extent that the Loans have not been transferred pursuant to paragraph (d) of Clause 7.5 (*Right of replacement or repayment and cancellation*), the Company shall repay the Loans in full on the last day of the Interest Period for each Loan occurring after the Lender has notified the Company and the Commitment shall be cancelled.

7.2 Change of control

If:

- (a) any person or group of persons acting in concert gains direct or indirect control of the Company; or
- (b) the Company ceases to be the beneficial owner directly or indirectly through wholly owned subsidiaries, of more than 50 per cent. of the issued share capital of the Italian Subsidiary:
 - (i) the Company shall promptly notify the Lender upon becoming aware of that event;
 - (ii) the Lender shall not be obliged to fund a Utilisation (except for a Rollover Loan); and
 - (iii) the Lender shall be entitled, by not less than 30 days' notice to the Company, to require cancellation of its Commitment and prepayment of all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents, whereupon its Commitment will be cancelled and all such outstanding Loans and amounts will become immediately due and payable.
- (c) For the purpose of paragraph (a) above "**control**" means the power to direct the management and policies of an entity, whether through the ownership of more than 50 per cent. of entire voting capital, by contract or otherwise.
- (d) For the purpose of paragraph (a) above "**acting in concert**" means acting together pursuant to an agreement or understanding (whether formal or informal).

7.3 Voluntary cancellation

The Company may, if it gives the Lender not less than five Business Days' (or such shorter period as the Lender may agree) prior notice, cancel the whole or any part (but, if in part, by a minimum amount of EUR2,000,000) of the Available Facility.

7.4 Voluntary prepayment of Loans

- (a) Subject to paragraph (b) below, the Company may, if it gives the Lender not less than five Business Days' (or such shorter period as the Lender may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, by a minimum of EUR2,000,000).

7.5 Right of replacement or repayment and cancellation

- (a) If:
- (i) any sum payable to the Lender by the Company is required to be increased under paragraph (c) of Clause 12.2 (*Tax gross-up*);
 - (ii) the Lender claims indemnification from the Company under Clause 12.2(d) (*Tax indemnity*) or Clause 13.1 (*Increased costs*); or
 - (iii) pursuant to Clause 10.2 (*Market disruption*) the Company receives notification from the Lender that the cost to it of funding the Loan from whatever source it may reasonably select would be in excess of EURIBOR and Clause 10.3 (*Cost of funds*) is therefore to apply,

the Company may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Lender notice of cancellation of its Commitment and its intention to procure the repayment of the Loans or give the Lender notice of its intention to replace that Lender in accordance with paragraph (d) below.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Company has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Company in that notice), the Company shall repay the Loans together with all interest and other amounts accrued in relation thereto under the Finance Documents.
- (d) If:
- (i) any of the circumstances set out in paragraph (a) above apply to the Lender; or
 - (ii) the Company becomes obliged to pay any amount in accordance with Clause 7.1 (*Illegality*) to the Lender,

the Company may, on five Business Days' prior notice to the Lender, replace the Lender by requiring that Lender to (and, to the extent permitted by law, the Lender shall) transfer pursuant to Clause 22 (*Changes to the Lender*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 22 (*Changes to the Lender*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of the outstanding Loans and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (e) The replacement of the Lender pursuant to paragraph (d) above shall be subject to the following conditions:

- (i) the Lender shall not have any obligation to find a replacement Lender;
- (ii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by it pursuant to the Finance Documents; and
- (iii) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer.

- (f) The Lender shall perform the checks described in paragraph (e)(iii) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Company when it is satisfied that it has complied with those checks.

7.6 **Restrictions**

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) Unless a contrary indication appears in this Agreement, any part of the Facility which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.
- (d) The Company shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Commitment cancelled under this Agreement may be subsequently reinstated.

SECTION 5 COSTS OF UTILISATION

8. INTEREST

8.1 Calculation of interest

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

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

8.2 Payment of interest

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

8.3 Default interest

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

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

8.4 Notification of rates of interest

- (a) The Lender shall promptly notify the Company of the determination of a rate of interest under this Agreement.
- (b) The Lender shall promptly notify the Company of each Funding Rate relating to a Loan.

8.5 Italian Usury Law

Notwithstanding any other provision of the Finance Documents:

- (i) any interest (including default interest) payable by the Company pursuant to the Finance Documents will be compounded only within the limits imposed by Article 1283 of the Italian Civil Code and Article 120 of the Italian Banking Act; and
- (ii) if at any time any monetary amount or other benefit stated to be due to the Lender by the Company in respect of the Finance Documents by way of interest, fees, remuneration, charges, expenses (or other costs relevant for the purposes of the Italian Usury Law) would be found to exceed a maximum amount permitted pursuant to the Italian Usury Law, such amount or other benefit shall be reduced, for the shortest period possible (if applicable), at the maximum amount permitted to be payable by the Company under the Italian Usury Law and if any Lender shall receive interest in an amount that exceeds the maximum amount permitted pursuant to the Italian Usury Law, the excess interest shall be applied to the principal of the obligations owing by the Company or, if it exceeds such unpaid principal, refunded to the Company.

9. INTEREST PERIODS

9.1 Selection of Interest Periods

- (a) Subject to this Clause 9, the Company may select an Interest Period of 1, 2, 3 or 6 Months or any other period agreed between the Company and the Lender.

- (b) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (c) Each Interest Period for a Loan shall start on the Utilisation Date for that Loan or (if already made) on the last day of its preceding Interest Period.
- (d) A Loan has one Interest Period only.

9.2 Non-Business Days

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

9.3 Consolidation of Loans

If two or more Interest Periods of the same duration end on the same date, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for EURIBOR for the Interest Period of a Loan, the applicable EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Shortened Interest Period*: If no Screen Rate is available for EURIBOR for:
 - (i) the currency of a Loan; or
 - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,the Interest Period of that Loan shall (if it is longer than the applicable Fallback Interest Period) be shortened to the applicable Fallback Interest Period and the applicable EURIBOR for that shortened Interest Period shall be determined pursuant to the definition of "EURIBOR".
- (c) *Shortened Interest Period and Historic Screen Rate*: If the Interest Period of a Loan is, after giving effect to paragraph (b) above, either the applicable Fallback Interest Period or shorter than the applicable Fallback Interest Period and, in either case, no Screen Rate is available for EURIBOR for:
 - (i) the currency of that Loan; or
 - (ii) the Interest Period of that Loan and it is not possible to calculate the Interpolated Screen Rate,the applicable EURIBOR shall be the Historic Screen Rate for that Loan.
- (d) *Shortened Interest Period and Interpolated Historic Screen Rate*: If paragraph (c) above applies but no Historic Screen Rate is available for the Interest Period of the Loan, the applicable EURIBOR shall be the Interpolated Historic Screen Rate for a period equal in length to the Interest Period of that Loan.

- (e) *Cost of funds*: If paragraph (d) above applies but it is not possible to calculate the Interpolated Historic Screen Rate, the Interest Period of that Loan shall, if it has been shortened pursuant to paragraph (b) above, revert to its previous length and there shall be no EURIBOR for that Loan and Clause 10.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

10.2 **Market disruption**

If the cost to the Lender of funding a Loan from whatever source it may reasonably select would be in excess of EURIBOR then Clause 10.3 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

10.3 **Cost of funds**

- (a) If this Clause 10.3 applies, the rate of interest on the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin; and
 - (ii) the weighted average of the rates notified to the Company by the Lender as soon as practicable and in any event by close of business on the date falling two Business Days after the Quotation Day (or, if earlier, on the date falling five Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this Clause 10.3 applies and the Lender or the Company so requires, the Lender and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of the Lender and the Company, be binding on all Parties.
- (d) If this Clause 10.3 applies pursuant to Clause 10.2 (*Market disruption*) and:
- (i) the Lender's Funding Rate is less than EURIBOR; or
 - (ii) the Lender does not supply a quotation by the time specified in paragraph (a)(ii) above,
- the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be EURIBOR.

10.4 **Notification to Company**

If Clause 10.3 (*Cost of funds*) applies the Lender shall, as soon as is practicable, notify the Company.

10.5 Break Costs

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

11. FEES

11.1 Commitment fee

- (a) The Company shall pay to the Lender a fee computed at the rate of 35 per cent. of the applicable Margin on the Available Commitment for the Availability Period.
- (b) The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the Availability Period (with the first such period commencing on the date of this Agreement), on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the Commitment at the time the cancellation is effective.

11.2 Upfront fee

The Company shall pay to the Lender an upfront fee in the amount and at the times agreed in a Fee Letter.

SECTION 6 ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS UP AND INDEMNITIES

12.1 Definitions

In this Agreement:

“Borrower DTTP Filing” means an HM Revenue & Customs' Form DTTP2 duly completed and filed by the Company, which where it relates to a UK Treaty Lender that is not the Original Lender, contains the scheme reference number and jurisdiction of tax residence of that Lender in the documentation which it executes on becoming a Party as Lender, and is filed with HM Revenue & Customs within 30 days of the date on which that Lender becomes a Party as a Lender.

“Italian Qualifying Lender” means:

- (a) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
 - (i) a bank or financial institution duly authorised or licensed to carry out banking or lending activity within the territory of Italy pursuant to Italian Legislative Decree No. 385 of 1 September, 1993 that is tax resident in Italy pursuant to Article 73 of the Italian Income Tax Code and, for the purpose of any Finance Documents does not act through a permanent establishment located outside the Republic of Italy;

- (ii) a permanent establishment (“*stabile organizzazione*”) in the Republic of Italy of a non-Italian resident bank or financial institution that is duly authorised or licensed to carry out banking activity in Italy for which any payment received under the Finance Documents is business income (“reddito di impresa”) pursuant to Articles 81, 151 and 152, paragraph 1, of Italian Presidential Decree No. 917 of 22 December 1986;
- (iii) a securitisation company incorporated under Italian Law 130 of 30 April 1999 that is duly authorised or licensed to carry out lending activity within the territory of Italy;
- (iv) any entity which, under article 26, paragraph 5-bis of Italian Presidential Decree No. 600 of 29 September 1973, is entitled to receive interest payments deriving from Italy without the application of any Tax Deduction; or
- (v) an Italian Treaty Lender.

“**Italian Treaty Lender**” means a Lender which:

- (a) is treated as a resident of an Italian Treaty State for the purposes of the Italian Treaty;
- (b) does not carry on a business in Italy through a permanent establishment with which that Loan is effectively connected; and
- (c) fulfils any other conditions which must be fulfilled under the relevant Treaty in order to benefit from full exemption from Tax imposed by Italy on interest payments, subject to the completion of any necessary procedural formalities.

“**Italian Treaty State**” means a jurisdiction having a double taxation agreement (an “**Italian Treaty**”) with Italy which makes provision for full exemption from tax imposed by Italy on interest.

“**Qualifying Lender**” means either an Italian Qualifying Lender or a UK Qualifying Lender.

“**Tax Confirmation**” means a confirmation by the Lender that the person beneficially entitled to interest payable to it in respect of an advance under a Finance Document is either:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or

- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.

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

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

“**Tax Payment**” means either the increase in a payment made by the Company to the Lender under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.2(d) (*Tax indemnity*).

“**Treaty Lender**” means either an Italian Treaty Lender or a UK Treaty Lender.

“**UK Non-Bank Lender**” means, where a Lender which is not an Original Lender and which gives a Tax Confirmation in the documentation which it executes on becoming a Party as a Lender.

“**UK Qualifying Lender**” means:

- (a) a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:
- (i) a Lender:
 - (A) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance or would be within such charge as respects such payments apart from section 18A of the CTA; or
 - (B) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made and within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or
 - (ii) a Lender which is:
 - (A) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (B) a partnership each member of which is:
 - (1) a company so resident in the United Kingdom; or
 - (2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;

(C) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or

(iii) a UK Treaty Lender; or

(b) a Lender which is a building society (as defined for the purpose of section 880 of the ITA) making an advance under a Finance Document.

“**UK Treaty Lender**” means a Lender which:

(a) is treated as a resident of a UK Treaty State for the purposes of the UK Treaty;

(b) does not carry on a business in the United Kingdom through a permanent establishment with which that Loan is effectively connected; and

(c) fulfils any other conditions which must be fulfilled under the relevant Treaty in order to benefit from full exemption from Tax imposed by the United Kingdom on interest payments, subject to the completion of any necessary procedural formalities.

“**UK Treaty State**” means a jurisdiction having a double taxation agreement (a “**UK Treaty**”) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

Unless a contrary indication appears, in this Clause 12 a reference to “determines” or “determined” means a determination made in the absolute discretion of the person making the determination, acting in good faith.

12.2 Tax gross-up

(a) The Company shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Company shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly. Similarly, the Lender shall notify the Company on becoming so aware in respect of a payment payable it.

(c) If a Tax Deduction is required by law to be made by the Company, the amount of the payment due from the Company shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:

(i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a UK Qualifying Lender, but on that date that Lender is not or has ceased to be a UK Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority;

- (ii) the Lender is a UK Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of UK Qualifying Lender; and:
 - (A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a “**Direction**”) under section 931 of the ITA which relates to the payment and that Lender has received from the Company a certified copy of that Direction; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made;
 - (iii) the Lender is a UK Qualifying Lender solely by virtue of paragraph (a)(ii) of the definition of UK Qualifying Lender and:
 - (A) the Lender has not given a Tax Confirmation to the Company; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Company, on the basis that the Tax Confirmation would have enabled the Company to have formed a reasonable belief that the payment was an “excepted payment” for the purpose of section 930 of the ITA; or
 - (iv) the Lender is a UK Treaty Lender and the Company is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (e) or (f) (as applicable) below.
- (e)
- (i) Subject to sub-paragraph (ii) below, a UK Treaty Lender and the Company shall co-operate in completing any procedural formalities necessary for the Company to obtain authorisation to make payments under the Finance Documents to the UK Treaty Lender without a Tax Deduction on account of Tax imposed by the UK.
 - (ii) A UK Treaty Lender which is not the Original Lender and that holds a passport under the HMRC DT Treaty Passport scheme, and which wishes that scheme to apply to this Agreement, shall confirm its scheme reference number and its jurisdiction of tax residence in the documentation which it executes on becoming a Party as a Lender, and, having done so, the UK Treaty Lender shall be under no obligation pursuant to sub-paragraph (i) above.
- (f) If a UK Treaty Lender has confirmed its scheme reference number and its jurisdiction of tax residence in accordance with sub-paragraph (ii) under paragraph (e) above and:
- (i) the Company has not made a Borrower DTTP Filing in respect of that Lender; or
 - (ii) the Company has made a Borrower DTTP Filing in respect of that Lender but:

- (A) that Borrower DTTP Filing has been rejected by HM Revenue & Customs; or
- (B) HM Revenue & Customs has not given the Company authority to make payments to that Lender without a Tax Deduction within 60 days of the date of the Borrower DTTP Filing,

and in each case, the Company has notified that Lender in writing, that Lender and the Company shall co-operate in completing any additional procedural formalities necessary for the Company to obtain authorisation to make that payment without a Tax Deduction on account of Tax imposed by the UK.

- (g) If a UK Treaty Lender has not confirmed its scheme reference number and jurisdiction of tax residence in accordance with sub-paragraph (ii) under paragraph (e) above, the Company shall not make a Borrower DTTP Filing or file any other form relating to the HMRC DT Treaty Passport scheme in respect of that Lender's Commitment or its participation in any Loan unless the Lender otherwise agrees.
- (h) The Company shall, promptly on making a Borrower DTTP Filing, deliver a copy of that Borrower DTTP Filing to the UK Treaty Lender.
- (i) A UK Non-Bank Lender shall promptly notify the Company if there is any change in the position from that set out in the Tax Confirmation.
- (j) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction for or on account of Tax imposed by Italy, if on the date on which the payment falls due:
 - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been an Italian Qualifying Lender, but on that date the relevant Lender is not or has ceased to be an Italian Qualified Lender other than as a result of any change, after the date on which that Lender becomes a party to this Agreement, in (or change in the interpretation, administration or application of) any law or regulation or order or governmental rule or treaty or any practice or concession of any applicable tax authority; or
 - (ii) the Lender is an Italian Treaty Lender and the Company is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (k) below.
- (k) An Italian Treaty Lender and the Company shall co-operate in completing any procedural formalities necessary for the Company to obtain authorisation to make payments under the Finance Documents to the Italian Treaty Lender without a Tax Deduction on account of Tax imposed by Italy.
- (l) If the Company is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law, it being understood that if the Lender is entitled to more favourable tax treatment, evidence thereof should be timely provided by the Lender to the Borrower.

- (m) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company shall deliver to the Lender such evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

12.3 Tax indemnity

- (a) The Company shall (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which the Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax by the Lender in respect of a Finance Document.

- (b) Paragraph (a) above shall not apply:

- (i) with respect to any Tax assessed on the Lender:

- (A) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or

- (B) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or

- (ii) to the extent a loss, liability or cost:

- (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*);

- (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) or paragraph (j) of Clause 12.2 (*Tax gross-up*) applied;

- (C) relates to a FATCA Deduction required to be made by a Party;

- (D) results solely from the Lender changing its tax residence after becoming a party to the Finance Documents; or

- (E) is compensated for by another clause of this Agreement; or

- (iii) to a liability from the Lender's gross negligence, illegal acts, fraud and/or wilful misconduct or any breach of their obligations under the Finance Documents.

- (c) The Lender making, or intending to make a claim under paragraph (a) above shall promptly notify the Company.

12.4 Tax Credit

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

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) the Lender has obtained and utilised that Tax Credit,

the Lender shall pay an amount to the Company which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Company.

12.5 Lender status confirmation

A Lender which is not an Original Lender shall indicate, in the documentation which it executes on becoming a Party as a Lender, and for the benefit of the Company, which of the following categories it falls in:

- (a) not a UK Qualifying Lender, a UK Qualifying Lender (other than a UK Treaty Lender) or a UK Treaty Lender; and
- (b) not an Italian Qualifying Lender, an Italian Qualifying Lender (other than an Italian Treaty Lender) or an Italian Treaty Lender.

If the Lender fails to indicate its status in accordance with this Clause 12.5 then the Lender shall be treated for the purposes of this Agreement as if it is not a UK Qualifying Lender or an Italian Qualifying Lender until such time as it notifies the Lender which category applies. For the avoidance of doubt, the documentation which the Lender executes on becoming a Party as a Lender shall not be invalidated by any failure of the Lender to comply with this Clause 12.5.

12.6 Stamp duty and registration taxes

The Company shall pay and, within three Business Days of demand, indemnify the Lender against any cost, loss or liability that the Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document, provided that this Clause 12.6 shall not apply in respect of any stamp duty, registration or other similar Taxes payable in respect of an assignment, disposal, novation or transfer by a Lender of any of its rights and/or obligations under Clause 22.1 (*Assignment and transfers by the Lender*).

Based on Article 17 of Presidential Decree No. 601 of 29 September, 1973, as amended by article 12 of Decree Law No. 145 of 23 December 2013, which provides for the application of the *imposta sostitutiva* on medium-long term financings upon election of the parties in the relevant facilities agreement, the Company and the Lender hereby expressly agree to not elect for the application of the *imposta sostitutiva* to the Facility made available under this Agreement.

12.7 VAT

- (a) All amounts expressed to be payable under a Finance Document by the Company to the Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply and, accordingly, if VAT is or becomes chargeable on any supply made by the Lender to the Company under a Finance Document and the Lender is required to account to the relevant tax authority for the VAT, the Company must pay to the Lender (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and the Lender must promptly provide an appropriate VAT invoice to the Company).

- (b) Where a Finance Document requires the Company to reimburse or indemnify the Lender for any cost or expense, the Company shall reimburse or indemnify (as the case may be) the Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that the Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (c) Any reference in this clause 12.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping rules (provided, for in Article 11 of Council Directive 2006/112/EC, as amended (or as implemented by the relevant member state of the European Union) or any other similar provision in any jurisdiction which is not a member state of the European Union).

12.8 FATCA information

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

- (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If the Company is a US Tax Obligor or the Lender reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, the Lender shall, within ten Business Days of:
- (i) where the Company is a US Tax Obligor and the Lender is the Original Lender, the date of this Agreement;
 - (ii) where the Company is a US Tax Obligor on a date on which any other Lender becomes a Party as a Lender, that date; or
 - (iii) where the Company is not a US Tax Obligor, the date of a request from the Lender,
- supply to the Company:
- (A) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
 - (B) any withholding statement or other document, authorisation or waiver as the Company may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) If any withholding certificate, withholding statement document, authorisation or waiver provided to the Company by the Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, the Lender shall promptly update it and provide such updated withholding certificate, withholding statement document, authorisation or waiver to the Company unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Company). The Company shall provide any such updated withholding certificate, withholding statement document, authorisation or waiver to the Company.
- (g) The Company may rely on any withholding certificate, withholding statement document, authorisation or waiver it receives from the Lender pursuant to paragraph (e) or (g) above without further verification. The Company shall not be liable for any action taken by it under or in connection with paragraph (e), (f), or (g) above.

12.9 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment.

13. INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Company shall, within three Business Days of a demand by the Lender, pay the Lender the amount of any Increased Costs properly incurred by the Lender or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement, or (iii) the implementation of, or compliance with Basel III and/or CRD IV or any law or regulation to the extent that it implements or applies Basel III and/or CRD IV.

- (b) In this Agreement:

“**Basel III**” means:

- (i) the agreements on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for international authorities operating the countercyclical capital buffer” published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (ii) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (iii) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”.

“**CRD IV**” means:

- (i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
- (ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment.

“**Increased Costs**” means:

- (i) a reduction in the rate of return from the Facility or on the Lender’s (or its Affiliate’s) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lender or any of its Affiliates to the extent that it is attributable to the Lender having entered into the Commitment or funding or performing its obligations under any Finance Document.

13.2 **Increased cost claims**

- (a) If the Lender intends to make a claim pursuant to Clause 13.1 (*Increased costs*) it shall notify the Company of the event giving rise to the claim.
- (b) The Lender shall, as soon as practicable after a demand by the Company, provide a certificate setting out, in reasonable detail, the amount and the event giving rise to such Increased Costs (and appending (to the extent available and capable of being disclosed) related documentary evidence).

13.3 **Exceptions**

- (a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by the Company;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 12.2(d) (*Tax indemnity*) (or would have been compensated for under Clause 12.2(d) (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.2(d) (*Tax indemnity*) applied); or
 - (iv) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.
- (b) In this Clause 13.3, a reference to a “**Tax Deduction**” has the same meaning given to that term in Clause 12.1 (*Definitions*).

14. **OTHER INDEMNITIES**

14.1 **Currency indemnity**

- (a) If any sum due from the Company under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
 - (i) making or filing a claim or proof against the Company;
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Company shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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

14.2 Other indemnities

The Company shall, within three Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by it as a result of:

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

14.3 Indemnity to the Lender

The Company shall promptly indemnify the Lender against any cost, loss or liability incurred by the Lender (acting reasonably) as a result of:

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

15. MITIGATION BY THE LENDER

15.1 Mitigation

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

15.2 Limitation of liability

- (a) The Company shall promptly indemnify the Lender for all costs and expenses reasonably incurred by it as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) The Lender is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in its opinion (acting reasonably), to do so might be prejudicial to it.

16. COSTS AND EXPENSES

16.1 Transaction expenses

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

- (a) this Agreement and any other documents referred to in this Agreement; and
- (b) any other Finance Documents executed after the date of this Agreement.

16.2 Amendment costs

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

16.3 Enforcement costs

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

SECTION 8 REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. REPRESENTATIONS

- (a) Subject to paragraph (b) below, the Company makes the representations and warranties set out in this Clause 17 to the Lender on the date of this Agreement.
- (b) The representations and warranties set out in paragraphs (a) and (b) of Clause 17.12 (*No misleading information*) are made by the Company on the date of this Agreement or, if later, on the date such information or projections are delivered.

17.2 Status

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

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

17.3 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations.

17.4 Non-conflict with other obligations

Subject to the Legal Reservations, the entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

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

17.5 Power and authority

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

17.6 Validity and admissibility in evidence

All Authorisations required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents; and
- (b) to make the Finance Documents admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

17.7 Governing law and enforcement

Subject to the Legal Reservations:

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

17.8 Insolvency

No:

- (a) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 21.7 (*Insolvency Proceedings*); or

(b) creditors' process described in Clause 21.8 (*Creditor's process*),

has been taken or, to its knowledge, threatened in relation to the Company or any Material Subsidiary; and

(i) none of the circumstances described in Clause 21.6 (*Insolvency*) applies to a the Company or any Material Subsidiary; and

(ii) none of the circumstances set out in Article 2446 and Article 2447 of the Italian Civil Code exists with respect to any Material Subsidiary incorporated under the laws of Italy.

17.9 **No filing or stamp taxes**

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

17.10 **Deduction of Tax**

(a) It is not required to make any Tax Deduction (as defined in Clause 12.1 (*Definitions*)) on account of Tax imposed by the UK from any payment it may make under any Finance Document to a Lender which is:

(i) a UK Qualifying Lender:

(A) falling within paragraph (a)(i) of the definition of "UK Qualifying Lender"; or

(B) except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (a)(ii) of the definition of "UK Qualifying Lender"; or

(C) falling within paragraph (b) of the definition of "UK Qualifying Lender"; or

(ii) a UK Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).

(b) It is not required to make any Tax Deduction (as defined in Clause 12.1 (*Definitions*)) on account of Tax imposed by Italy from any interest payment it may make in respect of an advance under any Finance Document to a Lender which is an Italian Qualifying Lender.

17.11 **No default**

(a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.

(b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Material Subsidiaries or to which its (or any of its Material Subsidiaries') assets are subject which would have a Material Adverse Effect.

17.12 No misleading information

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

The representations and warranties in this paragraph are made by the Company only so far as it is aware having made due and careful enquiries.

17.13 Financial statements

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.
- (b) Its Original Financial Statements fairly represent its financial condition as at the end of the relevant financial year during the relevant financial year (consolidated in the case of the Company).
- (c) There has been no material adverse change in the business or consolidated financial condition of the Group since the date of its Original Financial Statements.
- (d) Its most recent financial statements required to be delivered in accordance with Clause 18.1 (*Financial Statements*):
 - (i) have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and
 - (ii) fairly represent in all material respects its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

17.14 No proceedings pending or threatened

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

17.15 No breach of laws

- (a) It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

17.16 Environmental laws

- (a) Each member of the Group is in compliance with Clause 20.3 (*Environmental Compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.
- (c) The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for.

17.17 Taxation

- (a) It is not (and none of its Material Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Material Subsidiaries is) overdue in the payment of any material amount in respect of Tax unless and only to the extent that:
 - (i) such payment is being contested, postponed or compromised in good faith;
 - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest, postpone or compromise them; and
 - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have, or to the Company's knowledge, would not reasonably be expected to have a Material Adverse Effect.
- (b) No claims or investigations that are not provided for in its latest financial statements are being made or conducted against it (or any of its Material Subsidiaries) with respect to Taxes such that a liability of the Company or any Material Subsidiary of USD 20,000,000 (or its equivalent in any other currency) or more is reasonably likely to arise upon a final determination of that claim or investigation.
- (c) The Company acts for the purposes of any Finance Documents through its Italian Branch which qualifies as a permanent establishment ("*stabile organizzazione*") pursuant to Article 162 of Italian Presidential Decree No. 917 of 22 December 1986.

17.18 Security and Financial Indebtedness

- (a) No Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.
- (b) No member of the Group has any Financial Indebtedness outstanding that is prohibited under Clause 20.18 (*Financial Indebtedness*).

17.19 **Pari passu ranking**

Subject to the Legal Reservations, its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

17.20 **Good title to assets**

It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted other than where a failure to do so could not reasonably be expected to have a Material Adverse Effect.

17.21 **Legal and beneficial ownership**

It and each of its Subsidiaries is the sole legal and beneficial owner of the assets which are material in the context of its business and which are required by it in order to carry on its business as it is being conducted, other than where a failure to be so could not reasonably be expected to have a Material Adverse Effect.

17.22 **Intellectual Property**

It and each of its Subsidiaries:

- (a) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted;
 - (b) does not (nor does any of its Subsidiaries), in carrying on its businesses, infringe any Intellectual Property of any third party in any respect; and
 - (c) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it,
- (a) other than where a failure to be or do so could not reasonably be expected to have a Material Adverse Effect.

17.23 **Accounting Reference Date**

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

17.24 **Centre of main interests and establishments**

For the purposes of The Council of the European Union Regulation No 2015/848 on Insolvency Proceedings (recast) (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in England and Wales and it has no “*establishment*” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction (other than Italy).

17.25 **Anti-corruption and anti-money laundering law**

To the best of its knowledge and belief (after due and careful enquiry), each member of the Group has conducted its businesses in compliance with applicable anti-corruption laws and all applicable laws and regulations that relate to anti-money laundering, counter-terrorist financing or record keeping or reporting requirements relating to anti-money laundering or counter-terrorist financing, and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

17.26 Sanctions

- (a) To the best of its knowledge and belief (after due and careful enquiry), neither it nor any of its Subsidiaries, nor any directors, officers or employees of it or any of its Subsidiaries:
 - (i) is a Restricted Party or is engaging in or has engaged in any transaction or conduct that could result in it becoming a Restricted Party;
 - (ii) is subject to any claim, proceeding, formal notice or investigation with respect to Sanctions;
 - (iii) is engaging in any transaction that evades or avoids, or has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions applicable to it; or
 - (iv) is engaging, directly or indirectly, in any trade, business or other activities with or for the benefit of any Restricted Party where such trade, business or activity is in breach of Sanctions.
- (b) No Utilisation, nor the proceeds from any Utilisation, has been used, directly or (knowingly) indirectly, to lend, contribute, provide or has otherwise been made to fund or finance any business activities or transactions:
 - (i) of or with a Restricted Party; or
 - (ii) in any other manner which would result in any member of the Group or the Lender being in breach of any Sanctions or becoming a Restricted Party.

17.27 Repetition

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

18. INFORMATION UNDERTAKINGS

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

18.1 Financial statements

The Company shall supply to the Lender:

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

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

18.2 Compliance Certificate

- (a) The Company shall supply to the Lender, with each set of financial statements delivered pursuant to paragraph (a) or (b) of Clause 18.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 19 (*Financial Covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by the Chief Executive Officer or two directors of the Company.

18.3 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Company pursuant to Clause 18.1 (*Financial statements*) shall be certified in accordance with applicable laws and the rules of any relevant stock exchange.
- (b) The Company shall procure that each set of financial statements of the Company delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using the Accounting Principles, 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 Lender that there has been a change in the Accounting Principles, the accounting practices or reference periods and its auditors deliver to the Lender:
 - (i) a description of any change necessary for those financial statements to reflect the Accounting Principles, 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 Lender, to enable it to determine whether Clause 19 (*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.

Any reference in this Agreement 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.

18.4 Information: miscellaneous

The Company shall supply to the Lender:

- (a) all material documents dispatched by the Company to its shareholders (or any class of them) or its creditors (or any class of them) at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any material litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which are likely to be adversely determined and if adversely determined, would have a Material Adverse Effect; and

- (c) promptly, such further information regarding the financial condition, assets, business and operations of any member of the Group as the Lender may reasonably request.

18.5 Notification of default

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

18.6 Use of websites

- (a) The Company may satisfy its obligation under this Agreement to deliver any information in relation to the Lender by posting this information onto an electronic website designated by the Company and the Lender (the "**Designated Website**") if:
 - (i) the Lender expressly agrees that it will accept communication of the information by this method;
 - (ii) both the Company and the Lender are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the Company and the Lender.

If the Lender does not agree to the delivery of information electronically then it shall notify the Company accordingly and the Company shall supply the information to the Lender in paper form.

- (b) The Company shall promptly upon becoming aware of its occurrence notify the Lender if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) the Company becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

- (c) If the Company notifies the Lender under paragraph (b)(i) or paragraph (b)(v) above, all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless and until the Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.
- (d) The Lender may request one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Company shall comply with any such request within ten Business Days.

18.7 “Know your customer” checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of the Company after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by the Lender of any of its rights and obligations under this Agreement to a third party,obliges the Lender to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Company shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender in order for it to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

19. FINANCIAL COVENANTS

The financial undertakings set out in this Clause 19 shall remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force (unless indicated otherwise).

19.1 Financial condition

- (a) **Consolidated Net Financial Indebtedness to Consolidated EBITDA:** The Company shall ensure that Consolidated Net Financial Indebtedness as at any Accounting Date shall not be more than 2.50 times the Consolidated EBITDA for the applicable Test Period ending on that Accounting Date.
- (b) **Consolidated EBITDA to Consolidated Total Net Interest Payable:** Consolidated EBITDA for the applicable Test Period ending on an Accounting Date shall not be lower than 6.30 times the Consolidated Total Net Interest Payable for that Test Period.
- (c) **Consolidated Net Financial Indebtedness to Consolidated Net Worth:** Consolidated Net Financial Indebtedness as at any Accounting Date shall not be more than 0.50 times the Consolidated Net Worth as at that Accounting Date.
- (d) **Consolidated Net Worth:** the Consolidated Net Worth shall at no time be lower than USD 725,000,000.

19.2 Financial covenant calculations

The financial ratios shall be calculated in accordance with the Accounting Principles and tested by reference to each of the financial statements and each compliance certificate to be delivered as set out in Clause 18 (*Compliance Certificate*).

19.3 Definitions

In this Clause 19:

“**Consolidated EBITDA**” shall mean in relation to the Group the consolidated profit and loss statement of the Group and determined in accordance with the Accounting Principles: the amount of the consolidated operating income of the Group:

- (a) plus depreciation and amortization expenses for plant, property and equipment; and
- (b) plus amortization of intangible assets and impairment losses; and
- (c) plus restructuring, merger and integration expenses; and
- (d) plus litigation expenses; and
- (e) plus extraordinary and non-cash items of expense, but only to the extent such items have been deducted in the determination of operating income;
- (f) minus extraordinary and non-cash items of income, but only to the extent such items are included in the operating income.

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

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

“**Consolidated Net Worth**” in respect of the Group shall mean the consolidated net worth of the Group determined in accordance with the Accounting Principles.

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

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

“**Test Period**” shall mean:

- (a) for the purpose of Clause 19.1(a), each period of twelve months ending on an Accounting Date; and
- (b) for the purpose of Clause 19.1(b), a period of six or, as the case may be, twelve months starting on 1 January of a financial year and ending on an Accounting Date in that financial year.

20. GENERAL UNDERTAKINGS

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

20.1 Authorisations

The Company shall promptly:

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

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

20.2 Compliance with laws

The Company shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents to which it is a party or would reasonably be expected to have a Material Adverse Effect.

20.3 Environmental compliance

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

- (a) comply with all Environmental Law;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits;
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

20.4 Environmental claims

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

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

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

20.5 **Pari passu ranking**

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

20.6 **Insurance**

- (a) The Company shall (and it shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.
- (b) All insurances must be with reputable independent insurance companies or underwriters.

20.7 **Intellectual Property**

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

- (a) preserve and maintain the subsistence and validity of its material Intellectual Property necessary for the business of the relevant Group member;
- (b) use reasonable endeavours to prevent any infringement in any material respect of such Intellectual Property;
- (c) make registrations and pay all registration fees and taxes necessary to maintain such Intellectual Property in full force and effect and record its interest in that Intellectual Property;
- (d) not use or permit such Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of such Intellectual Property or imperil the right of any member of the Group to use such property; and
- (e) not discontinue the use of such Intellectual Property,

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

20.8 Access

If an Event of Default is continuing or the Lender reasonably suspects an Event of Default is continuing, the Company shall, and it shall ensure that each Material Subsidiary will permit the Lender and/or its accountants or other professional advisers and contractors free access at all reasonable times and on reasonable notice at the risk and cost of the Company (provided such access shall be at the cost of the Lender if such access is granted and it transpires that an Event of Default is not continuing) to (a) the premises, assets, books, accounts and records of the Company and each Material Subsidiary and (b) meet and discuss matters with senior management.

20.9 Preservation of assets

The Company shall (and it shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business where a failure to do so would have or would be reasonably likely to have a Material Adverse Effect.

20.10 Taxation

- (a) The Company shall (and it shall ensure that each other member of the Group will) pay and discharge all Taxes of a material amount imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
 - (i) such payment is being contested in good faith;
 - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements required to be delivered to the Lender in accordance with Clause 18.1 (*Financial Statements*); and
 - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) The Company shall act for the purposes of any Finance Documents through its Italian Branch which qualifies as a permanent establishment (“*stabile organizzazione*”) pursuant to Article 162 of Italian Presidential Decree No. 917 of 22 December 1986.

20.11 Anti-corruption and anti-money laundering law

- (a) The Company shall not (and it shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.
- (b) The Company shall (and it shall ensure that each other member of the Group will):
 - (i) conduct its businesses in compliance with:
 - (A) (other than in respect of matters referred to in paragraph (B) below) applicable anti-corruption laws and all applicable anti-money laundering and counter-terrorist financing laws and regulations; and

(B) all record keeping or reporting requirements required pursuant to any applicable anti-money laundering or counter-terrorist financing laws or regulations in each case in all material respects; and

(ii) maintain policies and procedures designed to promote and achieve compliance with such laws.

20.12 Sanctions

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

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

20.13 Negative pledge

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

20.14 Loans or credit

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

20.15 Acquisitions

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

20.16 Merger

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

20.17 No Guarantees or indemnities

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

20.18 Financial Indebtedness

- (a) The Company shall ensure that the Subsidiary Financial Indebtedness does not exceed at any time 35 per cent. of Group Financial Indebtedness.
- (b) For the purposes of this Clause 20.18:

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

“**Subsidiary Financial Indebtedness**” means the aggregate Financial Indebtedness of each Subsidiary excluding, in each case, the Financial Indebtedness of the Company, any Financial Indebtedness comprising of guarantees of Financial Indebtedness of the Company granted by the Italian Subsidiary and the Financial Indebtedness of the Group incurred under any Excluded Guarantee.

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

20.19 Disposal of assets

- (a) Except as permitted under paragraph (b), the Company shall not (and it shall ensure that no other member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

- (b) Paragraph (a) does not apply to any sale, lease, transfer or other disposal for fair market value and at arm's length:
 - (i) made in the ordinary course of trading of the disposing entity;
 - (ii) of assets in exchange of other assets comparable or superior as to type, value and quality;
 - (iii) of obsolete or redundant vehicles, plant and equipment for cash;
 - (iv) of receivables being part of Permitted Receivables Disposals; or
 - (v) of assets not falling within paragraphs (b)(i) to (b)(iv), provided that over the life of the Facility the aggregate value of the disposed assets and other disposals of assets not falling within paragraphs (b)(i) to (b)(iv), shall not exceed 10 per cent. of the total assets of the Group as reports in the latest audited consolidated financial statements.

20.20 Change of business

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

20.21 Arm's length basis

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

20.22 Amendments

- (a) The Company shall not (and it shall ensure that no other member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of any document delivered to the Lender pursuant to Schedule 1 (*Conditions Precedent*) except in writing:
 - (i) in accordance with this Agreement;
 - (ii) prior to or on the first Utilisation Date, with the prior written consent of the Lender; or
 - (iii) after the first Utilisation Date, in a way which could not be reasonably expected materially and adversely to affect the interests of the Lender.
- (b) The Company shall promptly supply to the Lender a copy of any document relating to any of the matters referred to in paragraphs (a)(i) to (a)(iii).

20.23 Accounting practices

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

21. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 21 is an Event of Default (save for Clause 21.17 (*Acceleration*)).

21.1 Non-payment

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

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

21.2 Financial covenants

Any requirement of Clause 19 (*Financial Covenants*) is not satisfied.

21.3 Other obligations

- (a) The Company does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*) and Clause 19 (*Financial Covenants*)).
- (b) No Event of Default under paragraph (a) will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days, of the earlier of (A) the Lender giving notice to the Company and (B) the Company becoming aware of the failure to comply.

21.4 Misrepresentation

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

21.5 Cross default

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

- (d) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default.
- (e) No Event of Default will occur under this Clause 21.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) is less than USD 7,500,000 (or its equivalent in any other currency or currencies).

21.6 **Insolvency**

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

21.7 **Insolvency proceedings**

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company or any Material Subsidiary other than a solvent liquidation or reorganisation of any Material Subsidiary;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of the Company or any Material Subsidiary;
 - (iii) the appointment of a liquidator (other than in respect of a solvent liquidation of a Material Subsidiary), receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Company or any Material Subsidiary or any of its assets; or
 - (iv) enforcement of any Security over any assets of the Company or any Material Subsidiary,or any analogous procedure or step is taken in any jurisdiction.

- (b) This Clause 21.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 10 Business Days of commencement.

21.8 Creditors' process

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

21.9 Unlawfulness and invalidity

- (a) It is or becomes unlawful for the Company to perform any of its obligations under the Finance Documents.
- (b) Any obligation or obligations of the Company under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable.
- (c) Any Finance Document ceases to be in full force.

21.10 Cessation of business

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

21.11 Change of ownership

The Company 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.

21.12 Audit qualification

The Company's auditors qualify the audited annual consolidated financial statements of the Company 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.

21.13 Expropriation

The authority or ability of any Material Subsidiary to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Material Subsidiary or any of its assets where such limitation or curtailment has or is reasonably likely to have a Material Adverse Effect.

21.14 Repudiation and rescission of agreements

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

21.15 Litigation

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

21.16 Material adverse change

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

21.17 Acceleration

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

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

**SECTION 9
CHANGES TO PARTIES**

22. CHANGES TO THE LENDER

22.1 Assignments and transfers by the Lender

Subject to this Clause 22, the Lender (the “**Existing Lender**”) may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “**New Lender**”).

22.2 Company consent

- (a) Subject to paragraph (c) below, the consent of the Company is required for an assignment or transfer by the Lender, unless the assignment or transfer is:
 - (i) to an Affiliate of the Lender or a Related Fund of the Lender; or
 - (ii) made at a time when an Event of Default is continuing.
- (b) The consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent five Business Days after the Lender has requested it unless consent is expressly refused by the Company within that time.

- (c) No transfer or assignment may be made by the Lender to any person whose business is similar or related to the business carried on by the Group as a whole (or to an Affiliate of any such person or any such person acting on behalf of or on the instructions of any such person) or to a Distressed Fund without the prior written consent of the Company (in its sole discretion).

22.3 Other conditions of assignment or transfer

- (a) A transfer will only be effective if the procedure set out in Clause 22.5 (*Procedure for transfer*).
- (b) An assignment will only be effective if the procedure set out in Clause 22.6 (*Procedure for assignment*) is complied with.
- (c) If:
 - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Company would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax Gross Up and Indemnities*) or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

22.4 Limitation of responsibility of Existing Lender

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of the Company;
 - (iii) the performance and observance by the Company of its obligations under the Finance Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Company and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

- (ii) will continue to make its own independent appraisal of the creditworthiness of the Company and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 22; or
 - (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Company of its obligations under the Finance Documents or otherwise.

22.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 22.2 (*Company consent*) and Clause 22.3 (*Other conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (b) below when the Company receives a duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender.
- (b) on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Company and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the “**Discharged Rights and Obligations**”);
 - (ii) the Company and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Company and the New Lender have assumed and/or acquired the same in place of the Company and the Existing Lender; and
 - (iii) the New Lender shall become a Party as a “**Lender**”.

22.6 Procedure for assignment

- (a) Subject to the conditions set out in Clause 22.2 (*Company consent*) and Clause 22.3 (*Other conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Company receives a duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender.
- (b) On the Transfer Date:
 - (i) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;

- (ii) the Existing Lender will be released by the Company and the other Finance Parties from the obligations owed by it (the “**Relevant Obligations**”) and expressed to be the subject of the release in the Assignment Agreement; and
 - (iii) the New Lender shall become a Party as a “**Lender**” and will be bound by obligations equivalent to the Relevant Obligations.
- (c) The Lender may utilise procedures other than those set out in this Clause 22.6 to assign their rights under the Finance Documents (but not, without the consent of the Company or unless in accordance with Clause 22.5 (*Procedure for transfer*), to obtain a release by the Company from the obligations owed to the Company by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 22.2 (Company consent) and Clause 22.3 (Other conditions of assignment or transfer).

22.7 **Security over Lender’s rights**

In addition to the other rights provided to Lender under this Clause 22, the Lender may without consulting with or obtaining consent from the Company, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure its obligations including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by the Company other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

23. **CHANGES TO THE COMPANY**

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

SECTION 10 THE LENDER

24. **CONDUCT OF BUSINESS BY THE LENDER**

No provision of this Agreement will:

- (a) interfere with the right of the Lender to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

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

**SECTION 11
ADMINISTRATION**

25. PAYMENT MECHANICS

25.1 Payments to the Lender

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

25.2 Distributions to the Company

The Lender may (in accordance with Clause 26 (*Set-off*)) apply any amount received by it for the Company in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Company under the Finance Documents.

25.3 Partial payments

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

provided that the Lender shall be entitled to vary the order set out in paragraphs (a)(i) to (a)(iii) above at any time by notice to the Company.
- (b) Clause 25.3(a) above will override any appropriation made by the Company.

25.4 No set-off by the Company

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

25.5 Business Days

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

25.6 Currency of account

- (a) Subject to paragraphs (b) to (e) below, euro is the currency of account and payment for any sum due from the Company under any Finance Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.
- (c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than euro shall be paid in that other currency.

25.7 Disruption to payment systems etc.

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

- (a) the Lender may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the Facility as the Lender may deem necessary in the circumstances;
- (b) the Lender shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (a) above 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;
- (c) any such changes agreed upon by the Lender and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 31 (*Amendments and Waivers*); and

- (d) the Lender shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Lender) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 25.7.

26. SET-OFF

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

27. NOTICES

27.1 Communications in writing

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

27.2 Addresses

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is that identified with its name below or any substitute address or email address or department or officer as the Party may notify to the other Parties by not less than five Business Days' notice.

27.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
- (i) if by way of email, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 27.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document which becomes effective, in accordance with paragraph (a) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

27.4 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means in addition to email which is permitted pursuant to Clause 27.1 (*Communications in writing*) above (including, without limitation, by way of posting to a secure website) if those two Parties:

- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as permitted in paragraph (a) above to be made between the Company and the Lender may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
 - (c) Any such electronic communication as permitted in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Lender only if it is addressed in such a manner as the Lender shall specify for this purpose.
 - (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
 - (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 27.4.

27.5 **English language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

28. **CALCULATIONS AND CERTIFICATES**

28.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

28.2 **Certificates and Determinations**

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

28.3 **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

29. **PARTIAL INVALIDITY**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

30. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election by the Lender to affirm any Finance Document shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

31. **AMENDMENTS AND WAIVERS**

31.1 **Required consents**

Any term of the Finance Documents may be amended or waived only with the consent of all Parties.

31.2 **Replacement of Screen Rate**

- (a) Any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Benchmark; and
 - (ii)
 - (A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
 - (B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);

- (C) implementing market conventions applicable to that Replacement Benchmark;
- (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
- (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Lender and of the Company.

32. CONFIDENTIAL INFORMATION

32.1 Confidentiality

The Lender agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 32.2 (*Disclosure of Confidential Information*), Clause 32.3 (*Disclosure to financial information agencies*) and Clause 32.4 (*Disclosure to numbering service providers*) and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

32.2 Disclosure of Confidential Information

The Lender may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, insurers, auditors, partners and Representatives such Confidential Information as it shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Company and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

- (iii) appointed by the Lender or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) to whom or for whose benefit the Lender charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 22.7 (*Security over Lender's rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Company;

in each case, such Confidential Information as the Lender shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;

- (c) to any person appointed by the Lender or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the Lender; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Company if the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

32.3 Disclosure to financial information agencies

- (a) The Lender may disclose to any financial information agency such information as may be necessary or desirable (limited to name of the Company, country of domicile of the Company, place of incorporation of the Company, sector and business type of the Company, date of this Agreement, Clause 37 (*Governing law*), amounts of the Commitment with respect to, and names of, the Facility, purpose as set forth in Clause 3.1 (*Purpose*), currency of the Facility, type of Facility, and Termination Date for Facility) for the purpose of such financial information agency compiling league table data in relation to transactions and participants.
- (b) The Parties acknowledge and agree that league table data compiled by a financial information agency may be disclosed to users of its service in accordance with the standard terms and conditions of that financial information agency.

32.4 Disclosure to numbering service providers

- (a) The Lender may disclose to any national or international numbering service provider appointed by it to provide identification numbering services in respect of this Agreement, the Facility and/or the Company the following information:
 - (i) the name of the Company;
 - (ii) the country of domicile of the Company;
 - (iii) the place of incorporation of the Company;
 - (iv) the date of this Agreement;
 - (v) Clause 37 (*Governing law*);
 - (vi) the date of each amendment and restatement of this Agreement;
 - (vii) the amounts of the Commitment with respect to, and names of, the Facility;

- (viii) the amount of the Commitment;
- (ix) the currency of the Facility;
- (x) the type of Facility;
- (xi) the ranking of Facility;
- (xii) the Termination Date for the Facility;
- (xiii) changes to any of the information previously supplied pursuant to paragraphs (i) to (xii) above; and
- (xiv) such other information agreed between the Lender and the Company,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or the Company by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Company represents that, after applicable disclosure of this Agreement is made in its filings to the U.S. Securities and Exchange Commission, none of the information set out in paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Lender shall notify the Company of:
 - (i) the name of any numbering service provider appointed by the Lender in respect of this Agreement, the Facility and/or the Company; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or the Company by such numbering service provider.

32.5 **Entire agreement**

This Clause 32 constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

32.6 **Inside information**

The Lender acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Lender undertakes not to use any Confidential Information for any unlawful purpose.

32.7 **Notification of disclosure**

The Lender agrees (to the extent permitted by law and regulation) to inform the Company:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 32.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 32.

32.8 Continuing obligations

The obligations in this Clause 32 are continuing and, in particular, shall survive and remain binding on the Lender for a period of twelve months from the earlier of:

- (a) the date on which all amounts payable by the Company under or in connection with this Agreement have been paid in full and the Commitment has been cancelled or otherwise ceases to be available; and
- (b) the date on which the Lender otherwise ceases to be a Lender.

33. CONFIDENTIALITY OF FUNDING RATES

33.1 Confidentiality and disclosure

- (a) The Lender and the Company agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Lender may disclose:
 - (i) any Funding Rate to the Company pursuant to Clause 8.4 (*Notification of rates of interest*); and
 - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers as the Lender specifies.
- (c) The Lender may disclose any Funding Rate, and the Company may disclose any Funding Rate, to:
 - (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender or the Company, as the case may be, it is not practicable to do so in the circumstances;

- (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Lender or the Company, as the case may be, it is not practicable to do so in the circumstances; and
- (iv) any person with the consent of the Lender.

33.2 Related obligations

- (a) The Lender and the Company acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Lender and the Company undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Lender and the Company agree (to the extent permitted by law and regulation) to inform the relevant Lender:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 33.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 33.

33.3 No Event of Default

No Event of Default will occur under Clause 21.3 (*Other obligations*) by reason only of the Company's failure to comply with this Clause 33.

34. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

35. CONTRACTUAL RECOGNITION OF BAIL-IN

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

36. ITALIAN TRANSPARENCY PROVISIONS

For the purposes of the transparency provisions set out in the Italian CICR Resolution of 4 March 2003 and in the "*Disposizioni sulla trasparenza delle operazioni e dei servizi bancari e finanziari*" published by the Bank of Italy on 20 June 2012, as amended from time to time, the Company hereby acknowledges and confirms that:

- (iii) it has appointed and has been advised by legal counsel in all relevant jurisdictions connection with the negotiation, preparation and execution of this Agreement; and
- (iv) this Agreement (and all of its terms and conditions) including the recitals and the schedules thereto, have been specifically negotiated (*oggetto di trattativa individuale*).

SECTION 12 GOVERNING LAW AND ENFORCEMENT

37. GOVERNING LAW

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

38. ENFORCEMENT

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1

CONDITIONS PRECEDENT

1. **The Company**

- (a) A copy of the constitutional documents of the Company.
- (b) A copy, or a certified extract, of a resolution of the board of directors of the Company:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents and resolving that it execute the Finance Documents;
 - (ii) authorising a specified person or persons to execute the Finance Documents on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph 1(b).
- (d) A certificate of the Company (signed by an authorised signatory) confirming that borrowing the Commitment would not cause any borrowing or similar limit binding on it to be exceeded.
- (e) A certificate of an authorised signatory of the Company certifying that each copy document relating to it specified in this Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. **Legal opinion**

A legal opinion of Chiomenti LLP, legal advisers to the Lender in England, substantially in the form distributed to the Lender prior to signing this Agreement.

3. **Other documents and evidence**

- (a) The Original Financial Statements of the Group.
- (b) Evidence that the fees, costs and expenses then due from the Company pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and Expenses*) have been paid or will be paid by the first Utilisation Date.

**SCHEDULE 2
UTILISATION REQUEST**

From: LivaNova PLC, Italian Branch

To: [Lender]

Dated:

Dear Sirs

**LivaNova PLC, Italian Branch–Facility Agreement
dated [] (the “Agreement”)**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
 - (a) Proposed Utilisation Date: [] (or, if that is not a Business Day, the next Business Day)
 - (b) Currency of Loan: Euro
 - (c) Amount: [], or if less the Available Facility
 - (d) Interest Period: [•] Months
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) of the Agreement is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to [account]
5. This Utilisation Request is irrevocable.

Yours faithfully

**authorised signatory for
LivaNova PLC, Italian Branch**

SCHEDULE 3

FORM OF TRANSFER CERTIFICATE

To: LivaNova PLC, Italian Branch as **Company**

From: [*The Existing Lender*] (the “**Existing Lender**”) and [*The New Lender*] (the “**New Lender**”)

Dated:

**LivaNova PLC, Italian Branch – Facility Agreement
dated [] (the “Agreement”)**

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 22.5 (*Procedure for transfer*) of the Agreement:
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 22.5 (*Procedure for transfer*) of the Agreement, all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Agreement as specified in the Schedule.
 - (b) The proposed Transfer Date is [].
 - (c) The Facility Office and address, email address and attention details for notices of the New Lender for the purposes of Clause 27.2 (*Addresses*) of the Agreement are set out in the Schedule.
3. The New Lender confirms, for the benefit of the Company, that it is:
 - (a) [an Italian Qualifying Lender or an Italian Qualifying Lender (other than an Italian Treaty Lender);]
 - (b) [an Italian Treaty Lender;]
 - (c) [not an Italian Qualifying Lender].¹
4. The New Lender confirms, for the benefit of the Company, that it is:
 - (a) [a UK Qualifying Lender or a UK Qualifying Lender (other than a UK Treaty Lender);]
 - (b) [a UK Treaty Lender;]
 - (c) [not a UK Qualifying Lender].²

¹ Delete as applicable - each New Lender is required to confirm which of these three categories it falls within.

² Delete as applicable - each New Lender is required to confirm which of these three categories it falls within.

5. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]
5. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number []) and is tax resident in []³, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and notifies the Company that it wishes that scheme to apply to the Agreement.]⁴

[5/6]. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.

[6/7]. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

[7/8]. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

³ Insert jurisdiction of tax residence.

⁴ Include if New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, email address and attention details for notices and account details for payments,]

[Existing Lender]

[New Lender]

By:

By:

SCHEDULE 4

FORM OF ASSIGNMENT AGREEMENT

To: LivaNova PLC, Italian Branch as **Company**

From: [the *Existing Lender*] (the “**Existing Lender**”) and [the *New Lender*] (the “**New Lender**”)

Dated:

LivaNova PLC, Italian Branch - Facility Agreement dated [] (the “Agreement”)

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 22.6 (*Procedure for assignment*) of the Agreement:
 - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment and participations in Loans under the Agreement specified in the Schedule.
 - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address, email address and attention details for notices of the New Lender for the purposes of Clause 27.2 (*Addresses*) of the Agreement are set out in the Schedule.
6. The New Lender confirms, for the benefit of the Company, that it is:
 - (a) [an Italian Qualifying Lender or an Italian Qualifying Lender (other than an Italian Treaty Lender);]
 - (b) [an Italian Treaty Lender;]
 - (c) [not an Italian Qualifying Lender].⁵
7. The New Lender confirms, for the benefit of the Company, that it is:
 - (a) [a UK Qualifying Lender or a UK Qualifying Lender (other than a UK Treaty Lender);]

⁵ Delete as applicable - each New Lender is required to confirm which of these three categories it falls within.

- (b) [an UK Treaty Lender;]
- (c) [not a UK Qualifying Lender].⁶
8. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]⁷
9. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number []) and is tax resident in []⁸, so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax, and notifies the Company that it wishes that scheme to apply to the Agreement.]⁹

[8/9]. This Assignment Agreement acts as notice to the Company (on behalf of the Company) of the assignment referred to in this Assignment Agreement.

[9/10]. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.

[10/11]. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

[11/12]. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

⁶ Delete as applicable - each New Lender is required to confirm which of these categories it falls within.

⁷ Include only if New Lender is a UK Non-Bank Lender - i.e. falls within paragraph (a)(ii) of the definition of Qualifying Lender in Clause 12.1 (*Definitions*).

⁸ Insert jurisdiction of tax residence.

⁹ Include if New Lender holds a passport under the HMRC DT Treaty Passport scheme and wishes that scheme to apply to the Agreement.

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

[Facility Office address, email address and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

SCHEDULE 5

FORM OF COMPLIANCE CERTIFICATE

To: [] as Lender

From: LivaNova PLC

Dated:

Dear Sirs

**LivaNova PLC, Italian Branch – Facility Agreement
dated [] (the “Agreement”)**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that:
 - (a) The Consolidated Net Financial Indebtedness as at the most recent Accounting Date was [~], therefore the Consolidated Net Financial Indebtedness was not more than 2.50 times the Consolidated EBITDA for the applicable Test Period ending on that Accounting Date and the covenant contained in Clause 19.1(a) has been complied with.
 - (b) The Consolidated EBITDA for the applicable Test Period ending on the most recent Accounting Date was [~], therefore the Consolidated EBITDA was not lower than 6.30 times the Consolidated Total Net Interest Payable for that Test Period and the covenant contained in Clause 19.1(b) has been complied with.
 - (c) The Consolidated Net Financial Indebtedness as at the most recent Accounting Date was [~], therefore the Consolidated Net Financial Indebtedness was not more than 0.50 times the Consolidated Net Worth as at that Accounting Date and the covenant contained in Clause 19.1(c) has been complied with.
 - (d) The Consolidated Net Worth as at the most recent Accounting Date was [~], therefore the Consolidated Net Worth was not lower than USD 725,000,000 and the covenant contained in Clause 19.1(d) has been complied with.
3. [We confirm that no Default is continuing.]*

Signed:

[Director
of LivaNova PLC
OR
[Chief Executive Officer
of LivaNova PLC]

Director
of LivaNova PLC]

OR¹⁰

* If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

¹⁰ Delete as appropriate

SCHEDULE 6
MATERIAL COMPANIES

LIVANOVA USA, INC., USA

SORIN GROUP ITALIA SRL

LIVANOVA JAPAN K.K.

LIVANOVA AUSTRALIA PTY LIMITED

LIVANOVA CANADA CORP.

SCHEDULE 7

EXISTING SECURITY

Group Member	Security	Total Principal Amount of Indebtedness Secured (rounded to the nearest €)
Sorin Group Italia Srl	Mortgage	€175,439
Sorin Group Italia Srl	Mortgage	€210,526

The Company

LIVANOVA PLC, Italian Branch

By: /s/ Maurizio Borelli

Address: Via Benigno Crespi, 17 Italy, 20159 Milan

Email Address: Keyna.Skeffington@livanova.com and Maurizio.Borelli@livanova.com

Attention: General Counsel

The Original Lender

BANCA NAZIONALE DEL LAVORO S.P.A.

By: /s/ Paolo Montagna

By: /s/ Ugo Fantini

Address: Diamond Tower, Piazza Lina Bo Bardi, 3, 20124 Milan, Italy

Email address:

*** **

If you wish to accept our proposal on the above terms and conditions, please send us a copy of its text, signed by way of acceptance.

BANCA NAZIONALE DEL LAVORO S.P.A.

/s/ Paolo Montagna

Name: Paolo Montagna

Title: Senior Banker

/s/ Ugo Fantini

Name: Ugo Fantini

Title: Head of Large Corporate Branch

as Original Lender

*** **

We hereby fully confirm our acceptance of your proposal pursuant to the terms and conditions set forth therein.

LIVANOVA PLC, Italian branch

/s/ Maurizio Borelli

Name: Maurizio Borelli

Title: Vice President, Treasury, Risk Management & Credit
(the "Company")

CONFIDENTIAL

Sent by DHL and anticipated by pdf

LivaNova PLC

Via Benigno Crespi, 17
Italy, 20159 Milano
Facsimile no.: +39 0269969513

To the attention of Maurizio Borelli, Director Treasury

Sorin Group Italia S.r.l.

Via Benigno Crespi,17
Italy, 20159 Milano
Facsimile no.: + 39 02 69969513

To the attention of the Finance Manager

JUOPS/SEE/RIG/mf no. 2020-0787
EIB – Corporate Use

Luxembourg, 21 aprile 2020

Subject: GRUPPO SORIN R&D

(FI 83.445 - SERAPIS 2013-0335)

Finance Contract entered into by and between (i) the European Investment Bank and (ii) Sorin S.p.A., Sorin Group Italia S.r.l. and Sorin CRM S.A.S on 6 May 2014 in Luxembourg, as subsequently amended on 2 October 2015, 26 April 2018 and 6 June 2019 (the "Finance Contract 83.445")

LIVANOVA R&D

(FI 86.677 - SERAPIS 2016-0607)

Finance Contract entered into by and between (i) the European Investment Bank and (ii) Sorin Group Italia S.r.l., Sorin CRM S.A.S and LivaNova PLC on 21 June 2017 in Milan, on 23 June 2017 in Clamart, on 27 June 2017 in London and on 29 June 2017 in Luxembourg, as subsequently amended on 26 April 2008 and on 6 June 2019 (the "Finance Contract 86.677")

(the Finance Contract 83.445 and the Finance Contract 86.677 jointly referred to as the "Finance Contracts")

Amendment No. 4 to Finance Contract 83.445 and Amendment No. 3 to Finance Contract 86.677

Dear Sirs,

reference is made to:

- (i) the Finance Contracts as defined above;
- (ii) your email dated 30 March 2020.

1. INTERPRETATION

Unless otherwise defined, capitalised terms used in this letter have the same meaning attributed to them in the Finance Contracts. References to Articles in this letter are references to Articles in the Finance Contracts.

In this letter, "**Effective Date**" means the date on which the Bank confirms to the Borrower in writing (including by electronic mail or other electronic means) that the Bank has received in a form and substance satisfactory to it: (i) two (2) originals of this letter duly countersigned on behalf of the Borrowers, together with a certified copy of the relevant authority of signatories, unless otherwise already provided, and a copy of any other authorisation or other document, opinion or assurance which the Bank considers to be necessary or desirable (if it has notified the Borrowers accordingly) in connection with the entry into and performance of the transaction contemplated by this letter or for the validity and enforceability of this letter.

2. AMENDMENTS TO THE FINANCE CONTRACT

With effect from the Effective Date, each of the Finance Contracts shall be amended as set out below:

Changes in Definitions

In paragraph (b) (**Definitions**) of the section titled "**INTERPRETATIONS AND DEFINITIONS**" the definition of "**Non Recurring Items**" shall be amended by inserting the following text immediately after the words "*until the end of loan life (2026)*":

"with the sole exception of the Test Period ending on 30 June 2020, in relation to which the 35% cap shall not apply".

Changes in Schedule E – FINANCIAL RATIOS

- a) Paragraph (a) entitled "**Consolidated Financial Indebtedness to Consolidated EBITDA**" shall be amended by inserting the following text immediately after the last sentence of such paragraph:

"By way of derogation from the above mentioned 2.50 maximum threshold, the Parties agree that at the Accounting Dates of 30 June 2020 and 31 December 2020 the Consolidated Net Financial Indebtedness shall have to be not more than 3.50x times the Consolidated EBITDA for the Test Periods ending on such Accounting Dates."

- b) Paragraph (c) entitled "**Consolidated EBITDA to Consolidated Total Net Interest Payable**" shall be amended by inserting the following text immediately after the last sentence of such paragraph:

"By way of derogation from the above mentioned 6.30 minimum threshold, the Parties agree that for the Test Periods ending on 30 June 2020 and on 31 December 2020 the Consolidated EBITDA shall have to be not lower than 5.00x times the Consolidated Total Net Interest Payable for that Test Period."

3. CONTINUING OBLIGATIONS

The provisions of the Finance Contracts shall, save as amended by this letter, continue in full force and effect. The Borrowers acknowledge and agree that, other than as expressly set out and agreed hereby, this letter does not constitute a waiver granted by the Bank or amendment of any other term or condition of the Finance Contracts. The Bank reserves any and all contractual and legal rights it has under the Finance Contracts and the applicable law.

The Borrowers shall, at the 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 letter.

4. GOVERNING LAW AND JURISDICTION

This letter shall be governed by English laws and the parties hereto submit to the jurisdiction of the courts of England.

5. 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 to enjoy the benefit of any term of this agreement.

6. COUNTERPARTS

This letter 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.

If you are in agreement with the above, please have two (2) originals of this letter returned to the Bank, to the attention of Mrs. Angela Iacomucci (e-mail: a.iacomucci@eib.org) and Mrs. Roxana Gherca (e-mail: r.gherca@eib.org), initialled in each page, dated and duly signed in the name and on behalf of Sorin Group Italia S.r.l. and LivaNova PLC together with a certified copy of the relevant authority of signatories, unless otherwise already provided, by and not later than thirty (30) days from the receipt of this letter. After such date, the Bank reserves the right, at its discretion, by notice to the Borrowers, to confirm whether acceptance of this letter by the Borrowers is considered as validly given by the Borrowers.

Yours faithfully,
EUROPEAN INVESTMENT BANK

/s/ Roy E. Stuart

R. Stuart
Head of Division

/s/ A. Gagnato

A. Gagnato
Legal Counsel

Acknowledged and agreed for and on behalf of,
LivaNova PLC

/s/ Thad Huston
Thad Huston, Chief Financial Officer

Date: 21/4/2020

Acknowledged and agreed for and on behalf of,
Sorin Group Italia S.r.l.

/s/ Piero Vecchi
Piero Vecchi, Director

Date: 21/4/2020