

## INTERIM MONITOR AGREEMENT

This Interim Monitor Agreement ("Monitor Agreement") entered into this 30th day of October, 2005, among KPMG LLP ("KPMG") and Johnson & Johnson ("J&J" or "Respondent"), provides as follows:

WHEREAS, the United States Federal Trade Commission (the "Commission"), in In the Matter of Johnson & Johnson, has accepted or will shortly accept for public comment an Agreement Containing Consent Order, incorporating a Decision and Order (the "Order"), which, among other things, requires Respondent to divest or transfer certain defined assets and, to ensure that Respondent comply with their obligations under the Order, provides for the appointment of an Interim Monitor;

WHEREAS, the Commission may appoint KPMG as such monitor (the "Interim Monitor") pursuant to the Order to monitor Respondent's compliance with terms of the Order and with the Purchase Agreement by and between Ethicon Inc and Datascope Corp. ("Datascope Agreement"), and all ancillary agreements thereto, referenced in the Order;

WHEREAS, the Order further provides or will provide that Respondent shall execute an Interim Monitor Agreement, subject to the prior approval of the Commission, conferring all the rights, powers and authority necessary to permit the Interim Monitor to carry out such duties, and responsibilities pursuant to the Order;

WHEREAS, this Monitor Agreement, although executed by the Interim Monitor and Johnson & Johnson, is not effective for any purpose, including but not limited to imposing rights and responsibilities on Respondent or the Interim Monitor under the Order, until it has been approved by the Commission; and

WHEREAS, the parties to this Monitor Agreement intend to be legally bound;

NOW, THEREFORE, the parties agree as follows:

1. Capitalized terms used herein and not specifically defined herein shall have the respective definitions given to them in the Order. The term "Monitored Assets" means the EVH Business to be divested by J&J to Datascope pursuant to the Paragraph III of the Order.
2. The Interim Monitor shall have all of the powers and responsibilities conferred upon the Interim Monitor by the Order, including but not limited to:
  - a. supervising the divestiture of the Monitored Assets; and
  - b. supervising the performance of any transition services required by the Datascope Agreement, any exhibits thereto, or the Order.
3. Respondent hereby agrees that they will fully and promptly comply with all terms of the Order requiring it to confer all rights, powers, authority and privileges upon the Interim Monitor, or to impose upon itself any duties or obligations with respect to the Interim Monitor, to enable the Interim Monitor to perform the duties and responsibilities of the Interim Monitor thereunder.
4. Respondent further agrees that:
  - a. it will use reasonable efforts to ensure that Datascope Corp. or another

Commission-approved Acquirer enters into an agreement with the Interim Monitor governing the facilitation of the Interim Monitor's duties under the Order and the exchange of information between Datascope or another Commission-approved Acquirer and the Interim Monitor;

- b. no later than ten (10) Business Days after the Commission approves this Interim Monitor Agreement, it will provide the Interim Monitor with the following, as applicable:
  - (1) a copy of the Datascope Agreement (or drafts thereof) relating to the Monitored Assets, including any exhibits, schedules and appendices;
  - (2) offering or information memoranda, or similar documents and information, provided to Datascope relating to the sale of the Monitored Assets;
  - (3) copies of correspondence with, and non-privileged written reports or minutes of meetings of all contacts and discussions with Datascope relating to the Monitored Assets or the Datascope Agreement; and
  - (4) an inventory and description of the Monitored Assets;
- c. it will designate a senior individual as a primary Contact for the Interim Monitor and provide a written list of the principal individuals to be involved in the transitioning of the Monitored Assets to Datascope or another Commission-approved Acquirer, together with their locations, telephone numbers, electronic mail address (if available), and responsibilities, and will provide the Interim Monitor with written notice of any changes in such personnel occurring thereafter;
- d. it will use its reasonable efforts to provide the Interim Monitor with prompt notification (but not later than such notification is available to other meeting participants) of significant meetings, including date, time and venue, scheduled after the execution of this Monitor Agreement, relating to the manufacture, registration, regulatory approvals, marketing, sale and divestiture of the Monitored Assets, and such meetings may be attended by the Interim Monitor or his representative, at the Interim Monitor's option or at the request of the Commission or staff of the Commission;
- e. it will provide the Interim Monitor with non-privileged portions of all minutes, if any, of the above-referenced meetings as soon as practicable and, in any event, not later than those minutes are available to any employee of the Respondent;
- f. it will provide the Interim Monitor with all correspondence, meeting minutes, telephone summaries, reports, sent to or received from the FDA after the execution of this Monitor Agreement relating to the Monitored Assets, and will provide prompt notice of any and all meetings or communications with the FDA relating to or affecting the Monitored Assets;
- g. it will provide the Interim Monitor with electronic or hard copies as may be appropriate, of all reports submitted to the Commission pursuant to the Order, simultaneous with the submission of such reports to the Commission;
- h. to the extent not reflected in the reports submitted to the Commission pursuant

to the Consent Agreement and the Order, it will provide every (3) months commencing one (1) month after the Consent Agreement is accepted by the Commission for public comment, or as requested by the Interim Monitor, full and detailed electronic or hard copy reports to the Interim Monitor to all of Respondent's activities and obligations under the Order concerning the Monitored Assets including, without limitation to the extent applicable:

- (1) all activities concerning any transition services provided to Datascope or another Commission-approved Acquirer generally as provided in Paragraph III of the Order;
- (2) as applicable, all activities concerned with the manufacture, supply and technology transfer of the Monitored Assets, including, without limitation, negotiation and operation of supply agreements, actual supply and inventory; and
- (3) as applicable, all non-privileged minutes and records of meetings, action plans, and follow-ups to actions plans and meetings, with the Commission-approved Acquirer related to the manufacture, supply, and technology transfer of the Monitored Assets and, upon request Respondent shall provide the Interim Monitor with any records exchanged at such meetings, or such other records that the Interim Monitor may reasonably require relating to the manufacture, supply, and technology transfer of the Monitored Assets;

*provided however*, that, at the time the Order becomes final, the reports described in this paragraph shall be due to the Interim Monitor either as requested by the Interim Monitor or within five (5) Business Days of the date that Respondent files its reports with the Commission as required pursuant to Paragraph VII of the Order,

- i. it will comply with the Interim Monitor's reasonable requests for onsite visits of Respondent's facilities (or any contract manufacturer's facility) used to manufacture the Monitored Assets; and
  - j. it will comply with the Interim Monitor's reasonable requests for follow-up discussions or supplementary information concerning any reports provided to or requested by the Interim Monitor pursuant to this Agreement, including, as applicable: meetings and discussions with the principal staff involved in any activities relating to the research, development, manufacture, sale and or divestiture of the Monitored Assets or any Product comprised therein and, further including, actions necessary to maintain all necessary FDA approvals to manufacture and sell any of the Products in the United States and to prevent the destruction, removal, wasting, deterioration or impairment of the Monitored Assets, and will provide the Interim Monitor with access to and hard copies of all other data, records or other information that the Monitor reasonably believes are necessary to the proper discharge of his responsibilities under the Order.
5. Respondent shall promptly notify the Interim Monitor of any significant written or oral communication that occurs after the date of this Monitor Agreement between the Commission or staff of the Commission and Respondent related to the Order or this Monitor Agreement, together with electronic or hard copies (or, in the case of oral communications, summaries), as may be requested by the Interim Monitor, of such communications.

6. Respondent agrees that to the extent authorized by the Order, the Interim Monitor shall have the authority to employ, at the expense of the Respondent, and with the consent of Respondent, which will not unreasonably be withheld, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities, including but not limited to supervising the transfer of Confidential Business Information.
7. The Interim Monitor shall maintain the confidentiality of all information provided to the Interim Monitor by Respondent. Such information shall be used by the Interim Monitor only in connection with the performance of the Interim Monitor's duties pursuant to this Agreement. Such information shall not be disclosed by the Interim Monitor to any third party other than:
  - a. persons employed by, or working with, the Interim Monitor under this Agreement; or
  - b. persons employed at the Commission and working on this matter.

Notwithstanding the foregoing, the Interim Monitor may disclose confidential information to the extent that it is required to be disclosed pursuant to a statutory or regulatory provision or court order or to fulfill professional standards.

8. The Interim Monitor shall maintain a record and inform the Commission of all persons (other than representatives of the Commission) to whom confidential information related to this Agreement has been disclosed, each of whom will be restricted from participating in any unrelated work for the Respondent undertaken by Interim Monitor for a period of two (2) years following the termination of this Agreement.
9. Upon termination of the Interim Monitor's duties under this Monitor Agreement, the Interim Monitor shall promptly return, at Respondent's expense to Respondent all material provided to the Interim Monitor by Respondent that is confidential to Respondent and that it is entitled to have returned to it under the Order, and shall destroy any material prepared by the Interim Monitor that contains or reflects any confidential information of Respondent, except for one copy thereof that the Interim Monitor may retain for its records. Nothing herein shall abrogate the Interim Monitor's duty of confidentiality, including the obligation to keep such information confidential for a period of (10) years after the termination of the Monitor Agreement;
10. Except as otherwise provided herein, the Interim Monitor shall keep confidential for a period of (10) years all other aspects of the performance of its duties under this Monitor Agreement and shall not disclose any confidential or proprietary information relating thereto. To the extent that the Interim Monitor wishes to retain any employee, agent, consultant or any other third party to assist the Interim Monitor in accordance with the Order, the Interim Monitor shall ensure that, prior to being retained, such persons execute a confidentiality agreement in a form agreed upon by the Interim Monitor and Respondent.

For the purpose hereof, information shall not be considered confidential or proprietary to the extent that it is or becomes part of the public domain (other than as the result of any action by the Interim Monitor or by any employee, agent, affiliate or consultant of the Interim Monitor), or to the extent that the recipient of such information can demonstrate that such information was already known to the

recipient at the time of receipt from a source other than the Interim Monitor, Respondent, or any director, officer, employee, agent, consultant or affiliate of the Interim Monitor or Respondent, when such source is entitled to make such disclosure to such recipient.

11. Nothing in this Monitor Agreement shall require Respondent to disclose any material or information that is subject to a legally recognized privilege or that Respondent is prohibited from disclosing by reason of law or an agreement with a third party.
12. The Interim Monitor shall not have a fiduciary responsibility to the Respondent, but shall have fiduciary duties to the Commission.
13. Each party shall be reasonably available to the other to discuss any questions or issues that either party may have concerning compliance with the Order as it relates to Respondent.
14. Respondent will pay the Interim Monitor in accordance with the fee schedule attached as Confidential Exhibit A for all reasonable time spent in the performance of the Interim Monitor's duties, including all monitoring activities related to the efforts of the Commission-approved Acquirer of the Monitored Assets, all work in connection with the negotiation and preparation of this Monitor Agreement, and all reasonable and necessary travel time.
  - a. In addition, Respondent will pay (i) all out-of-pocket expenses reasonably incurred by the Interim Monitor in the performance of the Interim Monitor's duties, including any auto, train or air travel in the performance of the Interim Monitor's duties, international telephone calls, and (ii) all fees and disbursements reasonably incurred by such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties.
  - b. The Interim Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.
  - c. Where Interim Monitor is reimbursed for expenses, its policy is to bill clients the amount incurred at the time the good or service is purchased. If Interim Monitor subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, it does not credit such payment to client. Instead, Interim Monitor applies such payments to reduce its overhead costs, which costs are taken into account in determining Interim Monitor's standard billing rates and certain transaction charges which may be charged to clients.
  - d. If there is litigation during or after the conclusion of this engagement and partners, managers or staff personnel of Interim Monitor are requested or required to testify or otherwise become involved in such litigation, Interim Monitor will be compensated by the parties. Such compensation will cover fees and expenses, with the fees to be determined on the basis of the then current standard hourly rates for such partners, managers, or staff personnel. The parties agree that they shall be responsible for payment of such fees and expenses on a joint and several basis, unless the parties shall have mutually agreed to a different allocation of such fees and expenses.

15. Respondent hereby confirms its obligation to indemnify the Interim Monitor and hold the Interim Monitor harmless in accordance with and to the extent required by the Order. Respondent shall indemnify the Interim Monitor and any subcontractor and their respective agents, partners, principals, officers and employees (the "indemnified Parties") and hold the Indemnified Parties harmless (regardless of form of action, whether in contract, statutory law, tort or otherwise) against any losses, claims, damages, liabilities or expenses arising out of or in connection with, the performance of the Interim Monitor's duties and obligations including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from intentional misconduct or bad faith by the Interim Monitor.
  16. The Interim Monitor's maximum liability to the Respondent relating to services rendered pursuant to this Agreement (regardless of the form of the action, whether in contract, statutory law, tort, or otherwise) shall be limited to the total sum of the fees paid to the Interim Monitor by Respondent, except to the extent resulting from the intentional misconduct or bad faith by the Interim Monitor or any of his subcontractors, agents, partners, principals, officers or employees, in which case the liability is not so limited.
  17. Respondent agrees that its obligations to indemnify the Interim Monitor extend to any agreement that is entered between the Interim Monitor and Datascope or any Commission-approved Acquirer and relates to the Interim Monitor's responsibilities under the Monitor Agreement and/or the Order.
  18. Upon this Monitor Agreement becoming effective, the Interim Monitor shall be permitted, and Respondent shall be required, to notify Datascope or other Commission-approved Acquirers of his appointment as Interim Monitor.
  19. In the event of a disagreement or dispute between Respondent and the Interim Monitor concerning Respondent's obligations under the Order and, in the event that such disagreement or dispute cannot be resolved by the parties, any party may seek the assistance of the responsible individual in the Commission's Compliance Division to resolve the issue. In the case of any disagreement or dispute between Respondent and the Interim Monitor not relating to Respondent's obligations under the Order, and in the event that such disagreement or dispute cannot be resolved by the parties, it shall be resolved in accordance with the dispute resolution procedures set forth in Appendix B, which constitute the sole methodologies for the resolution of all such disputes. By operation of this provision, the parties agree to forego litigation over such disputes in any court of competent jurisdiction. Mediation, if selected, may take place at a place to be designated by the parties. Arbitration shall take place in New York, New York. Either party may seek to enforce any written agreement reached by the parties during mediation, or to confirm and enforce any final award entered in arbitration, in any court of competent jurisdiction.
- Notwithstanding the agreement to such procedures, either party may seek injunctive relief to enforce its rights with respect to the use or protection of (i) its confidential or proprietary information or material or (ii) its names, trademarks, service marks or logos, solely in the courts of the State of New York or in the courts of the United States located in the State of New York. The parties consent to the personal jurisdiction thereof and to sole venue therein only for such purposes.
20. This agreement shall be subject to the substantive law of the State of New York

(regardless of any other jurisdiction's choice of law principles).

21. This Monitor Agreement shall terminate no later than the date set forth in Paragraph V of the Order or the Commission has appointed a substitute monitor pursuant to the Order, provided however, that the Commission may extend this Monitor Agreement as may be necessary or appropriate to accomplish the purposes of the Order; provided, however, that Interim Monitor may terminate this Agreement by providing a 30 day advance written notice to the Commission and Respondent if its services hereunder become prohibited by law, rule or regulation. The confidentiality obligations of this Monitor Agreement shall survive its termination.
22. In the event that, during the term of this Monitor Agreement, the Interim Monitor becomes aware that it has or may have a conflict of interest that may affect or could have the appearance of affecting the performance by the Interim Monitor, or persons employed by, or working with, the Interim Monitor, of any duty under this Monitor Agreement, the Interim Monitor shall promptly inform both Respondent and the Commission of such conflict or potential conflict.
23. In the performance of its functions and duties under this Monitor Agreement, the Interim Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of its own business affairs.
24. It is understood that the Interim Monitor will be serving under this Interim Monitor Agreement as an independent contractor and that the relationship of employer and employee shall not exist between Interim Monitor and Johnson & Johnson.
25. This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and the Commission, and nothing herein express or implied shall give or be construed to give any other person any legal or equitable rights hereunder.
26. This Agreement contains the entire agreement between the parties hereto with respect to the matters described herein and replaces any and all prior agreements or understandings, whether written or oral.
27. Any notices or other communication required to be given hereunder shall be deemed to have been properly given if sent by mail or fax (with acknowledgment of receipt of such fax having been received), to the applicable party at its address below (or to such other address as to which such party shall hereafter notify the other party):

If to the Interim Monitor, to:

Charles A. Riepenhoff, Jr.  
Partner  
KPMG LLP  
303 Peachtree Street, NE  
Atlanta, GA 30308  
Tel: (404) 222-3289  
Fax: (404) 222-3383

If to Johnson & Johnson:

Eric Harris, Esq.  
Assistant General Counsel

Johnson & Johnson  
1 Johnson & Johnson Plaza  
New Brunswick, NJ  
Tel: (732) 524-2444  
Fax: (732) 524-2788

If to the Commission:

Federal Trade Commission  
601 New Jersey Avenue  
Washington, DC 20001  
Attn.: Kenneth A. Libby, Esq.  
Telephone: (202) 326-2694  
Facsimile: (202) 326-

28. This Monitor Agreement shall not become binding until it has been approved by the Commission and the Order has been accepted for public comment.

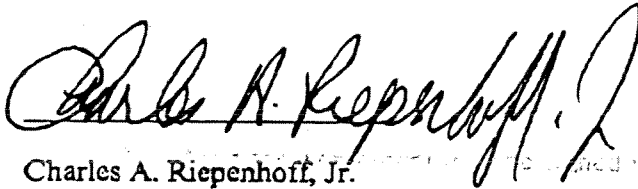


29. This Monitor Agreement may be signed in counterparts.

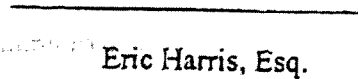
IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

KPMG LLP

Johnson & Johnson

A handwritten signature in dark ink, appearing to read "Charles A. Riepenhoff, Jr.", written over a horizontal line.

Charles A. Riepenhoff, Jr.

A handwritten signature in dark ink, appearing to read "Eric Harris, Esq.", written over a horizontal line.

Eric Harris, Esq.

29. This Monitor Agreement may be signed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Monitor Agreement as of the date first above written.

KPMG LLP

Johnson & Johnson

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Charles A. Riepenhoff, Jr.

A handwritten signature in dark ink, appearing to read "Eric Harris", written over a horizontal line.

Eric Harris, Esq.

**Confidential Appendix A**

KPMG Hourly billing rates:

**REDACTED**

## **Appendix B**

### **Dispute Resolution Procedures**

The following procedures are the sole methodologies to be used to resolve any controversy or claim ("dispute"). If any of these provisions are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

#### ***Mediation***

Any party may request mediation of a dispute by providing a written Request for Mediation to the other party or parties. The mediator, as well as the time and place of the mediation, shall be selected by agreement of the parties. Absent any other agreement to the contrary, the parties agree to proceed in mediation using the CPR Mediation Procedures (Effective April 1, 1998), with the exception of paragraph 2 which shall not apply to any mediation conducted pursuant to this agreement. As provided in the CPR Mediation Procedures, the mediation shall be conducted as specified by the mediator and as agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with facilitation by the mediator, to reach a consensual resolution of the dispute. The mediation shall be treated as a settlement discussion and shall be confidential. The mediator may not testify for any party in any later proceeding related to the dispute. No recording or transcript shall be made of the mediation proceeding. Each party shall bear its own costs in the mediation. Absent an agreement to the contrary, the fees and expenses of the mediator shall be shared equally by the parties.

#### ***Arbitration***

Arbitration shall be used to settle the following disputes: (1) any dispute not resolved by mediation 90 days after the issuance by one of the parties of a written Request for Mediation (or, if the parties have agreed to enter or extend the mediation, for such longer period as the parties may agree) or (2) any dispute in which a party declares, more than 30 days after receipt of a written Request for Mediation, mediation to be inappropriate to resolve that dispute and initiates a Request for Arbitration. Once commenced, the arbitration will be conducted either (1) in accordance with the procedures in this document and the Rules for Non-Administered Arbitration of the CPR Institute for Dispute Resolution ("CPR Arbitration Rules") as in effect on the date of the engagement letter or contract between the parties, or (2) in accordance with other rules and procedures as the parties may designate by mutual agreement. In the event of a conflict, the provisions of this document and the CPR Arbitration Rules will control.

The arbitration will be conducted before a panel of three arbitrators, two of whom may be designated by the parties using either the CPR Panels of Distinguished Neutrals or the Arbitration Rosters maintained by any JAMS Office in the United States. If the parties are unable to agree on the composition of the arbitration panel, the parties shall follow the screened selection process provided in Section B, Rules 5, 6, 7, and 8 of the CPR Arbitration Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or any dispute concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act and resolved by the arbitrators. No potential arbitrator shall be appointed unless he or she has agreed in writing to abide and be bound by these procedures.

The arbitration panel shall issue its final award in writing. The panel shall have no power to award non-monetary or equitable relief of any sort. Damages that are inconsistent with any applicable agreement between the parties, that are punitive in nature, or that are not measured by the prevailing party's actual damages, shall be unavailable in arbitration or any other forum. In no event, even if any other portion of these provisions is held to be invalid or unenforceable, shall the arbitration panel have power to make an award or impose a remedy that could not be made or imposed by a court deciding the matter in the same jurisdiction.

Discovery shall be permitted in connection with the arbitration only to the extent, if any, expressly authorized by the arbitration panel upon a showing of substantial need by the party seeking discovery.

All aspects of the arbitration shall be treated as confidential. The parties and the arbitration panel may disclose the existence, content or results of the arbitration only as provided in the CPR Arbitration Rules, provided that any party may disclose such information to the Commission or staff of the Commission. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests.

The award reached as a result of the arbitration will be binding on the parties, and confirmation of the arbitration award may be sought in any court having jurisdiction.