

G. Defendants shall warrant to the Acquirer of Spacelabs that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of Spacelabs, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of Spacelabs.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to section IV, or by trustee appointed pursuant to section V, of this Final Judgment, shall include the entire Spacelabs business as defined in section II.E, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that Spacelabs can and will be used by the Acquirer as part of a viable, ongoing business in the manufacture and sale of patient monitors in the United States. The divestiture, whether pursuant to section V of this Final Judgment,

1. Shall be made to the Acquirer that, in the sole discretion of the United States, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the manufacture and sale of patient monitors in the United States; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and defendants gives defendants the ability unreasonably to raise the Acquirer's costs to lower the Acquirer's efficiency or otherwise to interfere in the ability of the Acquirer to compete effectively.

#### **V. Appointment of Trustee To Divest Spacelabs**

A. If defendants have not divested Spacelabs with the time period specified in Section IV.A., defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States in good-faith consultation with the European Commission to ensure selection of a trustee acceptable to both the United States and the European Commission and approved by the Court to effect the divestiture of Spacelabs.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Spacelabs. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effect by the trustee, subject to the provisions of sections IV, V, and VIII of this Final Judgment, and shall have

such other powers as this Court deems appropriate. Subject to section V.D. of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee to any ground other than the trustee's malfeasance or that the Acquirer has not been approved by the European Commission. Any objection by defendants on the ground of trustee malfeasance must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VIII.A; any objection by defendant based on lack of approval from the European Commission must be conveyed in writing to the United States and the trustee within two (2) days after the United States provides defendants with written notice, pursuant to Section VIII.C, stating that it does not object to the proposed divestiture of Spacelabs.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants, and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of Spacelabs and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accounts, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in Spacelabs, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest Spacelabs.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

#### **IV. Divestiture of Ziehm**

A. Defendants are ordered and directed, within one hundred twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest Ziehm in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to two, thirty (30) day periods, not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest Ziehm as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known,