

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AMPLIMED CORPORATION**

AmpliMed Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

FIRST: The name of the Corporation is AmpliMed Corporation. The Corporation was originally incorporated under the same name, and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of Delaware on August 25, 2003.

SECOND: The Board of Directors of the Corporation has adopted resolutions setting forth an Amended and Restated Certificate of Incorporation, declaring said Amended and Restated Certificate of Incorporation to be advisable and calling for the presentation of same to the stockholders of the Corporation for consideration thereof.

THIRD: Thereafter, in lieu of a meeting and vote of stockholders, the stockholders have given written consent to the adoption of the Amended and Restated Certificate of Incorporation and written notice of such adoption has been given to every stockholder entitled to such notice in accordance with Section 228 of the General Corporation Law of the State of Delaware.

FOURTH: The Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

FIFTH: The text of the Certificate of Incorporation of the Corporation be and it hereby is restated and integrated and further amended to read in its entirety as follows:

Article I

The name of the Corporation is AmpliMed Corporation.

Article II

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle 19801. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

Article III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

Article IV

A. Authorized Number of Shares. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Corporation is authorized to issue is 56,700,000 shares, of which 30,000,000 shares shall be Common Stock, each having a par value of \$0.0001 per share, and 26,700,000 shares shall be Preferred Stock, each having a par value of \$0.0001 per share.

B. Board Power to Designate. The shares of Preferred Stock may be issued from time to time in one or more series. Subject to compliance with applicable protective voting rights which have been or may be granted to the Preferred Stock or series thereof in Certificates of Designation or this Corporation's Amended and Restated Certificate of Incorporation (the "Protective Provisions"), the Board of Directors is hereby vested with authority to fix by resolution or resolutions the designations and the powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation the dividend rate, conversion or exchange rights, redemption price and liquidation preference, of any series of shares of Preferred Stock, and to fix the number of shares constituting any such series, and, subject to applicable Protective Provisions, to increase or decrease the number of shares of any such series (but not below the number of shares thereof then outstanding). In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution or resolutions originally fixing the number of shares of such series.

C. Designation. The Preferred Stock shall be divided into series. The first series shall consist of 7,089,785 shares and is designated "Series A Convertible Preferred Stock" (the "Series A Preferred"). The second series shall consist of 8,610,000 shares and is designated "Series B Convertible Preferred Stock" (the "Series B Preferred"). The third series shall consist of 11,000,000 shares and is designated "Series C Convertible Preferred Stock" (the "Series C Preferred"). The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred, the Series B Preferred and the Series C Preferred (collectively, the "Series Preferred") are as follows:

1. **Dividend Rights.** Subject to provisions of law, the holders of record of shares of the Series A Preferred, Series B Preferred and the Series C Preferred shall be entitled to receive cash dividends, on a pari passu basis, which shall be payable when, as and if declared by the Board of Directors, out of assets which are legally available for the payment of such dividends, including any special dividends declared by the Board of Directors as well as ordinary dividends, at an annual rate equal to \$0.1088 per share of Series A Preferred, \$0.1360 per share of Series B Preferred, and \$0.1600 per share of Series C Preferred (which amounts shall be subject to equitable adjustment whenever there shall occur a stock dividend, stock split, combination, reorganization, recapitalization, reclassification or other similar event) (collectively, "Recapitalizations"), provided that such dividends shall not be currently payable and shall only be payable when and if specifically provided herein. Dividends shall be cumulative, without compounding, and shall accrue daily on each share of Series A Preferred, Series B Preferred and Series C Preferred from the respective dates of issue thereof. Dividends

payable on the Series A Preferred, Series B Preferred and Series C Preferred for any period less than a full year shall be computed on the basis of the actual number of days elapsed and a 365-day year. No dividends shall be paid or declared, and no other distribution shall be made, on or with respect to the Common Stock of the Corporation as long as there are shares of Series A Preferred, Series B Preferred or Series C Preferred issued and outstanding. Upon the conversion of shares of the Series A Preferred, Series B Preferred or Series C Preferred into Common Stock of the Corporation, all cumulative dividends with respect to such converted shares shall be cancelled. Any partial payment shall be made ratably among the holders of Series A Preferred, Series B Preferred and Series C Preferred in proportion to the payment each such holder would receive if the full amount of such dividends were paid.

2. Liquidation, Dissolution or Winding Up.

(a) **Treatment at Sale, Liquidation, Dissolution or Winding Up.** In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any distribution or payment is made to any holders of any shares of Common Stock, the holders of shares of Series A Preferred, Series B Preferred and Series C Preferred, *pari passu*, shall be entitled to be paid first out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock whether such assets are capital, surplus or earnings, an amount equal to \$1.36 per share of Series A Preferred, \$1.70 per share of Series B Preferred and \$2.00 per share of Series C Preferred (as adjusted for any Recapitalizations) plus any dividends accrued or declared but unpaid on such shares, as adjusted for any Recapitalizations (such amounts, as so determined, are referred to herein as the "Series A Liquidation Value", "Series B Liquidation Value" and "Series C Liquidation Value", respectively, with respect to such shares). After payment has been made to the holders of the Series Preferred of the full liquidation preference to which such holders shall be entitled as aforesaid, the remaining assets, if any, shall be distributed among the holders of Series Preferred and Common Stock on a pro-rata basis, with such distribution to the holders of Series Preferred as would have been payable had each such share been converted to Common Stock pursuant to the provisions of Section 5 hereof immediately prior to such event of liquidation, dissolution or winding up.

(b) **Insufficient Funds.** If upon such liquidation, dissolution or winding up, the assets or surplus funds of the Corporation to be distributed to the holders of shares of Series Preferred and any other then-outstanding shares of the Corporation's capital stock ranking on a parity with respect to payment on liquidation with the Series Preferred (such shares being referred to herein as the "Series Preferred Parity Stock") shall be insufficient to permit payment to such respective holders of the full Series A Liquidation Value, Series B Liquidation Value and Series C Preferred and all other preferential amounts payable with respect to the Series Preferred and such Series Preferred Parity Stock, then the assets available for payment or distribution to such holders shall be allocated among the holders of the Series Preferred and such Series Preferred Parity Stock, pro rata, in proportion to the full respective preferential amounts to which the Series Preferred and such Series Preferred Parity Stock are each entitled.

(c) **Certain Transactions Treated as Liquidation.** For purposes of this Section 2, (i) any acquisition of the Corporation by means of merger or other form of corporate reorganization or consolidation with or into another corporation in which outstanding shares of this Corporation, including shares of Series A Preferred, Series B Preferred, or Series C Preferred are

exchanged for securities or other consideration issued, or caused to be issued, by the other corporation or its subsidiary (including any sale pursuant to Section 2.2 of the Amended and Restated Stockholders' Agreement to be entered into among the Corporation and certain of its stockholders on or about the date on which the Corporation first sells shares of Series C Preferred (the "Stockholders' Agreement")) and, as a result of which transaction, the stockholders of this Corporation own 50% or less of the voting power of the surviving entity (other than a mere re-incorporation transaction), (ii) a sale, transfer or lease (other than a pledge or grant of a security interest to a bona fide lender) of all or substantially all of the assets of the Corporation (other than to or by a wholly-owned subsidiary or parent of the Corporation), or (iii) the grant of an exclusive license to all or substantially all of the Corporation's intellectual property, shall be treated as a liquidation, dissolution or winding up of the Corporation and shall entitle the holders of Series Preferred to receive the amount that would be received in a liquidation, dissolution or winding up pursuant to Section 2(a) hereof, if the holders of at least 50% of the then outstanding shares of Series A Preferred (as to the Series A entitlement), the holders of at least 50% of the then outstanding shares of Series B Preferred (as to the Series B entitlement) and the holders of at least 50% of the then outstanding shares of Series C Preferred (as to the Series C entitlement) so elect by giving written notice thereof to the Corporation at least three days before the effective date of such event, or have voted in favor of such event at a stockholders meeting (or pursuant to a written consent in lieu of a meeting).

(d) **Distributions of Property.** Whenever the distribution provided for in this Section 2 shall be payable in property other than cash, the value of such distribution shall be the fair market value of such property as determined in good faith by the Board of Directors, unless the holders of 50% or more of the then outstanding shares of Series Preferred request, in writing, that an independent appraiser perform such valuation, then by an independent appraiser selected by the Board of Directors and reasonably acceptable to 50% or more of the holders of Series Preferred. Any securities shall be valued as follows:

(i) The value of securities not subject to investment letter or other similar restrictions on free marketability) other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be:

(A) if traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30-day period (or portion thereof) ending three days prior to the closing;

(B) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the 30-day period (or portion thereof) ending three days prior to the closing; and

(C) if there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Board of Directors of this Corporation including the members thereof elected by the holders of the Series Preferred Stock pursuant to Section IV(B)(5)(b) and the holders of a majority of the voting power of all then outstanding shares of Series Preferred.

(D) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the value determined as above in Section IV(C)(2)(d)(i)(A) to reflect the approximate fair market value thereof, as mutually determined by the Board of Directors of this Corporation and the holders of a majority of the voting power of all then outstanding shares of the Series Preferred.

(E) In the event the requirements of this Section IV(C)(2)(d) are not complied with, this Corporation shall forthwith either:

(i) cause such closing to be postponed until such time as the requirements of this Section IV(C)(2)(d) have been complied with; or

(ii) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Series Preferred shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section IV(C)(2)(F) hereof.

(F) This Corporation shall give each holder of record of Series Preferred written notice of an impending transaction set forth in Section IV(C)(2)(c) above not later than 20 days prior to the stockholders' meeting called to approve such transaction, or 20 days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section IV(c)(2), and this Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than 20 days after this Corporation has given the first notice provided for herein or sooner than 10 days after this Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of Series Preferred that are entitled to such notice rights or similar notice rights and that represent at least a majority of the voting power of all then outstanding shares of such Series Preferred.

3. Voting Power.

(a) **General.** Except as otherwise expressly provided in Section 8 hereof or as otherwise required by law, each holder of Series Preferred shall be entitled to vote on all matters and shall be entitled to that number of votes equal to the number of whole shares of Common Stock into which such holder's shares of Series Preferred could then be converted, pursuant to the provisions of Section 4 hereof, at the record date for the determination of stockholders entitled to vote on such matter or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as otherwise expressly provided in Section 8 hereof or as otherwise required by law, the holders of shares of Series Preferred and Common Stock shall vote together as a single class on all matters.

4. **Conversion Rights.** The holders of the Series Preferred shall have the following rights with respect to the conversion of such shares into shares of Common Stock:

(a) **General.** Subject to and in compliance with the provisions of this Section 4, any or all shares of the Series Preferred may, at the option of the holder thereof, be converted at any time into fully-paid and non-assessable shares of Common Stock, except that the Corporation shall not be required to convert less than 25,000 shares of Series Preferred in the event such holder seeks to convert less than all of such holder's shares of Series Preferred as applicable. The number of shares of Common Stock that a holder of Series Preferred shall be entitled to receive upon conversion shall be the product obtained by multiplying the Series A Applicable Conversion Rate, Series B Applicable Conversion Rate, or Series C Applicable Conversion Rate, as applicable (determined as provided in Section 4(b)) by the number of shares of Series A Preferred, Series B Preferred or Series C Preferred, as applicable, being converted at any time.

(b) **Applicable Conversion Rate.** The conversion rate in effect at any time for the Series A Preferred (the "Series A Applicable Conversion Rate") shall be the quotient obtained by dividing \$1.36 by the Series A Applicable Conversion Value, as defined in Section 4(c). Initially, the Series A Applicable Conversion Rate shall be one (1), and each share of Series A Preferred shall initially be convertible into one (1) share of Common Stock. The conversion rate in effect at any time for the Series B Preferred (the "Series B Applicable Conversion Rate") shall be the quotient obtained by dividing \$1.70 by the Series B Applicable Conversion Value, as defined in Section 4(c). Initially, the Series B Applicable Conversion Rate shall be one (1), and each share of Series B Preferred shall initially be convertible into one (1) share of Common Stock. The conversion rate in effect at any time for the Series C Preferred (the "Series C Applicable Conversion Rate") shall be the quotient obtained by dividing \$2.00 by the Series C Applicable Conversion Value, as defined in Section 4(c). Initially, the Series C Applicable Conversion Rate shall be one (1), and each share of Series C Preferred shall initially be convertible into one (1) share of Common Stock.

(c) **Applicable Conversion Value.** The Series A Applicable Conversion Value in effect from time to time, except as adjusted in accordance with Section 4(d) hereof, shall be \$1.36 with respect to the Series A Preferred (the "Series A Applicable Conversion Value"). The Series B Applicable Conversion Value in effect from time to time, except as adjusted in accordance with Section 4(d) hereof, shall be \$1.70 with respect to the Series B Preferred (the "Series B Applicable Conversion Value"). The Series C Applicable Conversion Value in effect from time to time, except as adjusted in accordance with Section 4(d) hereof, shall be \$2.00 with respect to the Series C Preferred (the "Series C Applicable Conversion Value").

(d) **Adjustment to Series A Applicable Conversion Value, Series B Applicable Conversion Value and Series C Applicable Conversion Value.**

(i) **Effect on Series A Applicable Conversion Value, Series B Applicable Conversion Value and Series C Applicable Conversion Value.**

(A) **Dilutive Issuances of Common Stock or Convertible Securities.** If the Corporation shall, while there are any shares of Series A Preferred, Series B Preferred or Series C Preferred outstanding, issue or sell shares of its

Common Stock (or Common Stock Equivalents, as defined below) without consideration or at a price per share less than the Series A Applicable Conversion Value, Series B Applicable Conversion Value or Series C Applicable Conversion Value in effect immediately prior to such issuance or sale, then and in such event, solely with respect to the applicable series, such Series A Applicable Conversion Value, Series B Applicable Conversion Value, or Series C Applicable Conversion Value, as applicable, upon each such issuance or sale, except as hereinafter provided, shall be reduced, concurrently with such issue, to a price (calculated to the nearest cent) determined by multiplying the Series A Applicable Conversion Value, Series B Applicable Conversion Value or Series C Applicable Conversion Value, as applicable, in effect immediately prior to such calculation by a fraction:

(1) the numerator of which shall be (a) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock or Common Stock Equivalents (calculated on a fully diluted basis assuming the exercise or conversion of all then exercisable options, warrants, purchase rights or convertible securities), plus (b) the number of shares of Common Stock which the net aggregate consideration, if any, received by the Corporation for the total number of such additional shares of Common Stock or Common Stock Equivalents so issued would purchase at the Series A Applicable Conversion Value, Series B Applicable Conversion Value, or Series C Applicable Conversion Value, as applicable, in effect immediately prior to such issuance, and

(2) the denominator of which shall be (a) the number of shares of Common Stock outstanding immediately prior to the issuance of such additional shares of Common Stock or Common Stock Equivalents (calculated on a fully diluted basis assuming the exercise or conversion of all then exercisable options, warrants, purchase rights or convertible securities), plus (b) the number of such additional shares of Common Stock or Common Stock Equivalents so issued.

The provisions of this Section 4(d)(i)(A) may be waived as to the Series A Preferred in any instance (without the necessity of convening any meeting of stockholders of the Corporation) upon the written consent of the holders of at least $66\frac{2}{3}\%$ of the outstanding shares of Series A Preferred. The provisions of this Section 4(d)(i)(A) may be waived as to the Series B Preferred in any instance (without the necessity of convening any meeting of stockholders of the Corporation) upon the written consent of the holders of at least $66\frac{2}{3}\%$ of the outstanding shares of Series B Preferred. The provisions of this Section 4(d)(i)(A) may be waived as to the Series C Preferred in any instance (without the necessity of convening any meeting of stockholders of the Corporation) upon the written consent of the holders of at least $66\frac{2}{3}\%$ of the outstanding shares of Series C Preferred.

(B) Other Dilutive Issuances of Warrants, Options and Purchase Rights to Common Stock or Convertible Securities.

(1) For the purposes of this Section 4(d)(i), the issuance of any warrants, options, subscription or purchase rights with respect to shares of Common Stock and the issuance of any securities convertible into or exchangeable for shares of Common Stock (other than the issuance of shares of Series Preferred), or the issuance of any warrants, options, subscription or purchase rights with respect to such convertible or

exchangeable securities (collectively, "Common Stock Equivalents"), shall be deemed an issuance of Common Stock with respect to the Series Preferred if the Net Consideration Per Share (as hereinafter determined) which may be received by the Corporation for such Common Stock Equivalents shall be less than the Series A Applicable Conversion Value, Series B Applicable Conversion Value, or Series C Applicable Conversion Value, as applicable, in effect at the time of such issuance. Any obligation, agreement or undertaking to issue Common Stock Equivalents at any time in the future shall be deemed to be an issuance at the time such obligation, agreement or undertaking is made or arises. No adjustment of the Series A Applicable Conversion Value, Series B Applicable Conversion Value, or Series C Applicable Conversion Value, as applicable, shall be made under this Section 4(d)(i) upon the issuance of any shares of Common Stock which are issued pursuant to the exercise, conversion or exchange of any Common Stock Equivalents if any adjustment shall previously have been made upon the issuance of any such Common Stock Equivalents as above provided.

(2) Should the Net Consideration Per Share of any such Common Stock Equivalents be decreased from time to time, then, upon the effectiveness of each such change, the Series A Applicable Conversion Value, Series B Applicable Conversion Value, or Series C Applicable Conversion Value, as applicable, will be that which would have been obtained (a) had the adjustments made upon the issuance of such Common Stock Equivalents been made upon the basis of the actual Net Consideration Per Share of such securities, and (b) had adjustments made to the Series A Applicable Conversion Value, Series B Applicable Conversion Value, or Series C Applicable Conversion Value, as applicable, since the date of issuance of such Common Stock Equivalents been made to such Series A Applicable Conversion Value, Series B Applicable Conversion Value, or Series C Applicable Conversion Value as applicable, as adjusted pursuant to Section 4(d)(i)(B)(1) above. Any adjustment of the Series A Applicable Conversion Value, the Series B Applicable Conversion Value, or the Series C Applicable Conversion Value, as applicable, with respect to this paragraph which relates to Common Stock Equivalents shall be disregarded if, as, and when all of such Common Stock Equivalents expire or are cancelled without being exercised, so that the Series A Applicable Conversion Value, the Series B Applicable Conversion Value, or the Series C Applicable Conversion Value, as applicable, effective immediately upon such cancellation or expiration shall be equal to the Series A Applicable Conversion Value, the Series B Applicable Conversion Value, or the Series C Applicable Conversion Value, as applicable, in effect at the time of the issuance of the expired or cancelled Common Stock Equivalents, with such additional adjustments as would have been made to the Series A Applicable Conversion Value, the Series B Applicable Conversion Value, or the Series C Applicable Conversion Value, as applicable, had the expired or cancelled Common Stock Equivalents not been issued.

(3) For purposes of this Section 4(d), the "Net Consideration Per Share" which may be received by the Corporation shall be determined as follows:

(a) The "Net Consideration Per Share" shall mean the amount equal to the total amount of consideration, if any, received by the Corporation for the issuance of such Common Stock Equivalents, plus the minimum amount of consideration, if any, payable to the Corporation upon exercise, or conversion or exchange

thereof, divided by the aggregate number of shares of Common Stock that would be issued if all such Common Stock Equivalents were exercised, exchanged or converted.

(b) The "Net Consideration Per Share" which may be received by the Corporation shall be determined in each instance as of the date of issuance of Common Stock Equivalents without giving effect to any possible future upward price adjustments or rate adjustments which may be applicable with respect to such Common Stock Equivalents; provided, however, that in the event that any Common Stock Equivalents are issued under which the applicable exercise or conversion price will be established in the future, then the Net Consideration Per Share shall be calculated, and corresponding adjustments under this Section 4(d) shall be effected, when such exercise or conversion price is first established.

(C) **Stock Dividends for Holders of Capital Stock Other Than Common Stock.** In the event that the Corporation shall make or issue, or shall fix a record date for the determination of holders of any capital stock of the Corporation other than holders of Common Stock entitled to receive a dividend or other distribution payable in Common Stock or securities of the Corporation convertible into or otherwise exchangeable for the Common Stock of the Corporation, then such Common Stock or other securities issued in payment of such dividend shall be deemed to have been issued for a consideration of \$.01, except for (1) dividends payable in shares of Common Stock payable pro rata to holders of Series A Preferred, Series B Preferred, or the Series C Preferred and to holders of any other class of stock (whether or not paid to holders of any other class of stock), or (2) with respect to the Series A Preferred, dividends payable in shares of Series A Preferred, (3) with respect to the Series B Preferred, dividends payable in shares of Series B Preferred, or (4) with respect to the Series C Preferred, dividends payable in shares of Series C Preferred.

(D) **Consideration Other than Cash.** For purposes of this Section 4(d)(i), if a part or all of the consideration received by the Corporation in connection with the issuance of shares of Common Stock or the issuance of any of the securities described in this Section 4(d)(i) consists of property other than cash, such consideration shall be deemed to have a fair market value as is reasonably determined in good faith by the Board of Directors of the Corporation.

(E) **Exceptions to Anti-dilution.** This Section 4(d)(i) shall not apply under any of the circumstances which would constitute an Extraordinary Common Stock Event (as described below). Further, this Section 4(d)(i) shall not apply with respect to:

(1) the issuance of up to an aggregate of 1,349,267 shares (exclusive of the shares issuable pursuant to the options referenced in Section 4(d)(i)(E)(2)) of Common Stock (or options to purchase such shares of Common Stock), issuable to employees, officers or directors of the Corporation at prices or exercise prices determined by the Board of Directors to be not less than fair market value and issued pursuant to a stock option plan or restricted stock purchase plan approved by the stockholders and the Board of Directors;

(2) the issuance of shares subject to outstanding options granted pursuant to that certain Stock Option Agreement entered into between the Corporation and the Founders named therein on or about the date on which the Corporation first sold shares of Series A Preferred;

(3) the issuance of shares of Common Stock upon the conversion of any shares of Series Preferred;

(4) the issuance of securities in connection with equipment or debt financing or leases (including securities issued in consideration of guarantees of such financing or leases) provided such issuance and the terms of such issuance have been approved by the Corporation's Board of Directors; and

(5) the issuance of securities to acquisition targets, vendors, landlords, customers, consultants, advisors, or co-venturers or to other persons in similar commercial or corporate partnering situations with the Corporation provided such issuance and the terms of such issuance have been approved by the Corporation's Board of Directors.

(ii) **Upon Extraordinary Common Stock Event.** Upon the happening of an Extraordinary Common Stock Event (as hereinafter defined), the Series A Applicable Conversion Value (and all other conversion values set forth in Section 4(d)(i) above) shall, simultaneously with the happening of such Extraordinary Common Stock Event, be adjusted by multiplying the Series A Applicable Conversion Value by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such Extraordinary Common Stock Event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such Extraordinary Common Stock Event, and the product so obtained shall thereafter be the Series A Applicable Conversion Value. The Series A Applicable Conversion Value, as so adjusted, shall be readjusted in the same manner upon the happening of any successive Extraordinary Common Stock Event or Events. Upon the happening of an Extraordinary Common Stock Event, the Series B Applicable Conversion Value (and all other conversion values set forth in Section 4(d)(i) above) shall, simultaneously with the happening of such Extraordinary Common Stock Event, be adjusted by multiplying the Series B Applicable Conversion Value by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such Extraordinary Common Stock Event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such Extraordinary Common Stock Event, and the product so obtained shall thereafter be the Series B Applicable Conversion Value. The Series B Applicable Conversion Value, as so adjusted, shall be readjusted in the same manner upon the happening of any successive Extraordinary Common Stock Event or Events. Upon the happening of an Extraordinary Common Stock Event, the Series C Applicable Conversion Value (and all other conversion values set forth in Section 4(d)(i) above) shall, simultaneously with the happening of such Extraordinary Common Stock Event, be adjusted by multiplying the Series C Applicable Conversion Value by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such Extraordinary Common Stock Event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such Extraordinary Common Stock Event, and the product so obtained shall

thereafter be the Series C Applicable Conversion Value. The Series C Applicable Conversion Value, as so adjusted, shall be readjusted in the same manner upon the happening of any successive Extraordinary Common Stock Event or Events. An “Extraordinary Common Stock Event” shall mean (A) the issuance of additional shares of Common Stock as a dividend or other distribution on outstanding shares of Common Stock, (B) a subdivision of outstanding shares of Common Stock into a greater number of shares of Common Stock, or (C) a combination or reverse stock split of outstanding shares of Common Stock into a smaller number of shares of Common Stock.

(iii) **Waiver of Adjustment to Series A, B or C Applicable Conversion Value.** Notwithstanding anything herein to the contrary, the operation of, and any adjustment of the Series A Applicable Conversion Value, the Series B Applicable Conversion Value, or the Series C Applicable Conversion Value pursuant to, this Section 4(d) may be waived with respect to any specific share or shares of Series A Preferred, Series B Preferred or Series C Preferred, either prospectively or retroactively and either generally or in a particular instance, by a writing executed by the registered holder of such share or shares. Any waiver pursuant to this Section 4(d)(iii) shall bind all future holders of shares of Series A Preferred, Series B Preferred or Series C Preferred for which such rights have been waived. In the event that a waiver of adjustment of Series A Applicable Conversion Value, Series B Applicable Conversion Value or the Series C Applicable Conversion Value under this Section 4(d)(iii) results in different Series A Applicable Conversion Value, Series B Applicable Conversion Value, or Series C Applicable Conversion Value for shares of Series A Preferred, Series B Preferred or Series C Preferred, the Secretary of the Corporation shall maintain a written ledger identifying the Series A Applicable Conversion Value, Series B Applicable Conversion Value, or the Series C Applicable Conversion Value for each share of Series A Preferred, Series B Preferred or Series C Preferred. Such information shall be made available to any person upon request. For the purposes of Section 4(d)(i), if different shares of Series A Preferred, Series B Preferred or Series C Preferred have more than one Series A Applicable Conversion Value, Series B Applicable Conversion Value, or Series C Applicable Conversion Value as a result of a waiver of adjustment of Series A Applicable Conversion Value, Series B Applicable Conversion Value, or Series C Applicable Conversion under this Section 4(d)(iii), the Series A Applicable Conversion Value, Series B Applicable Conversion Value, or the Series C Applicable Conversion Value for triggering any future adjustment of the Series A Applicable Conversion Value, the Series B Applicable Conversion Value, or the Series C Applicable Conversion Value of shares of Series A Preferred, Series B Preferred, or the Series C Preferred that have not had such adjustment waived shall be the lowest Series A Applicable Conversion Value, Series B Applicable Conversion Value, or the Series C Applicable Conversion Value in effect with respect to shares of Series A Preferred, Series B Preferred, or Series C Preferred, as applicable.

(e) **Automatic Conversion Upon Initial Public Offering.**

(i) **Mandatory Conversion of Preferred Stock.** Immediately upon the closing of an underwritten public offering on a firm commitment basis pursuant to an effective registration statement filed pursuant to the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Corporation in which the Corporation actually receives gross proceeds equal to or greater than \$25,000,000 (calculated before deducting underwriting discounts and commissions and before calculation of expenses) at

a price per share of not less than \$7.50 (following appropriate adjustment in the event of any stock dividends, stock split, combination or other similar recapitalization affecting such shares), all outstanding shares of Series Preferred shall be converted automatically into the number of shares of Common Stock into which such shares of Series Preferred are then convertible pursuant to Section 4 hereof without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent.

(ii) **Surrender of Certificates Upon Mandatory Conversion.**

Upon the occurrence of the conversion events specified in the preceding paragraph (i), the holders of the Series Preferred shall, upon notice from the Corporation, surrender the certificates representing such shares at the office of the Corporation or of its transfer agent for the Common Stock. Thereupon, there shall be issued and delivered to such holder a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred so surrendered were convertible on the date on which such conversion occurred. The Corporation shall not be obligated to issue such certificates unless certificates evidencing the shares of Series Preferred being converted are either delivered to the Corporation or any such transfer agent, or the holder notifies the Corporation that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith.

(f) **Dividends.** In the event the Corporation shall make or issue, or shall fix a record date for the determination of holders of Common Stock entitled to receive a dividend or other distribution (other than a distribution in liquidation or other distribution otherwise provided for herein) with respect to the Common Stock payable in (i) securities of the Corporation other than shares of Common Stock, or (ii) other assets (excluding cash dividends or distributions), then and in each such event provision shall be made so that the holders of the Series Preferred shall receive upon conversion thereof in addition to the number of shares of Common Stock receivable thereupon, the number of securities or such other assets of the Corporation which they would have received had their Series Preferred been converted into Common Stock on the date of such event and had they thereafter, during the period from the date of such event to and including the Conversion Date (as that term is hereafter defined in Section 4(j)), retained such securities or such other assets receivable by them during such period, giving application to all other adjustments called for during such period under this Section 4 with respect to the rights of the holders of the Series Preferred.

(g) **Capital Reorganization or Reclassification.** If the Common Stock issuable upon the conversion of the Series Preferred shall be changed into the same or different number of shares of any class or classes of capital stock, whether by capital reorganization, recapitalization, reclassification or otherwise (other than a subdivision or combination of shares or stock dividend provided for elsewhere in this Section 4, or a merger, consolidation or sale of all or substantially all of the Corporation's capital stock or assets to any other person), then and in each such event the holder of each share of Series Preferred shall have the right thereafter to convert such share into the kind and amount of shares of capital stock and other securities and property receivable upon such reorganization, recapitalization, reclassification or other change by the holders of the number of shares of Common Stock into which such shares of Series Preferred might have

been converted immediately prior to such reorganization, recapitalization, reclassification or change, all subject to further adjustment as provided herein.

(h) **Merger, Consolidation or Sale of Assets.** If at any time or from time to time there shall be a merger or consolidation of the Corporation with or into another corporation (other than a merger or reorganization involving only a change in the state of incorporation of the Corporation), or the sale of all or substantially all of the Corporation's capital stock or assets to any other person, then, as a part of such reorganization, merger, or consolidation or sale, provision shall be made so that the holders of the Series Preferred shall thereafter be entitled to receive upon conversion of the Series Preferred the number of shares of stock or other securities or property of the Corporation, or of the successor corporation resulting from such merger or consolidation, to which such holder would have been entitled if such holder had converted its shares of Series Preferred immediately prior to such capital reorganization, merger, consolidation or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 to the end that the provisions of this Section 4 (including adjustment of the Series A Applicable Conversion Value, Series B Applicable Conversion Value, or Series C Applicable Conversion Value, as applicable, then in effect and the number of shares of Common Stock or other securities issuable upon conversion of such shares of Series A Preferred, Series B Preferred, or Series C Preferred, as applicable) shall be applicable after that event in as nearly equivalent a manner as may be practicable.

(i) **Certificate as to Adjustments; Notice by Corporation.** In each case of an adjustment or readjustment of the Series A Applicable Conversion Rate, the Series B Applicable Conversion Rate, or the Series C Applicable Conversion Rate, the Corporation at its expense will furnish each holder of Series A Preferred, Series B Preferred, or Series C Preferred, as applicable, with a certificate prepared by the Treasurer or Chief Financial Officer of the Corporation, showing such adjustment or readjustment, and stating in detail the facts upon which such adjustment or readjustment is based.

(j) **Exercise of Conversion Privilege.** To exercise its conversion privilege, a holder of Series Preferred shall surrender the certificate or certificates representing the shares being converted to the Corporation at its principal office, and shall give written notice to the Corporation at that office that such holder elects to convert such shares. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock issuable upon such conversion shall be issued. The certificate or certificates for shares of Series Preferred surrendered for conversion shall be accompanied by proper assignment thereof to the Corporation or in blank. The date when such written notice is received by the Corporation, together with the certificate or certificates representing the shares of Series Preferred being converted, shall be the "Conversion Date." As promptly as practicable after the Conversion Date, the Corporation shall issue and shall deliver to the holder of the shares of Series Preferred being converted, or on its written order, such certificate or certificates as it may request for the number of whole shares of Common Stock issuable upon the conversion of such shares of Series Preferred in accordance with the provisions of this Section 4, rounded up to the nearest whole share as provided in Section 4(k), in respect of any fraction of a share of Common Stock issuable upon such conversion. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Conversion Date, and at such time the rights of the holder as holder of the converted shares of Series Preferred shall cease and the person(s) in whose name(s) any

certificate(s) for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(k) **No Issuance of Fractional Shares.** No fractional shares of Common Stock or scrip representing fractional shares shall be issued upon the conversion of shares of Series Preferred. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of Series Preferred, the Corporation shall round up to the next whole share of Common Stock issuable upon the conversion of shares of Series Preferred. The determination as to whether any fractional shares of Common Stock shall be rounded up shall be made with respect to the aggregate number of shares of Series Preferred being converted at any one time by any holder thereof, not with respect to each share of Series Preferred being converted.

(l) **Partial Conversion.** In the event some but not all of the shares of Series A Preferred, Series B Preferred or Series C Preferred, as applicable, represented by a certificate(s) surrendered by a holder are converted, the Corporation shall execute and deliver to or on the order of the holder, at the expense of the Corporation, a new certificate representing the number of shares of Series A Preferred, Series B Preferred or Series C Preferred, as applicable, which were not converted.

(m) **Reservation of Common Stock.** The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred (including any shares of Series Preferred represented by any warrants, options, subscription or purchase rights for Series Preferred), and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred (including any shares of Series Preferred represented by any warrants, options, subscriptions or purchase rights for such Series Preferred), the Corporation shall take such action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(n) **No Reissuance of Preferred Stock.** No share or shares of Series A Preferred, Series B Preferred, or Series C Preferred acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue. The Corporation shall from time to time take such appropriate corporate action as may be necessary to reduce the authorized number of shares of the Series A Preferred, the Series B Preferred, or the Series C Preferred, as applicable.

5. Redemption.

(a) **Optional Redemption.** Commencing on the seven-year anniversary of (i) September 5, 2003, with respect to the Series A Preferred, (ii) June 15, 2005 with respect to the Series B Preferred, and (iii) November 30, 2007 with respect to the Series C Preferred, and thereafter, the Corporation shall, at any time and from time to time, at the option of and on the written request of any holder of outstanding shares of Series A Preferred, Series B Preferred, or Series C Preferred, as applicable, (delivered to the Corporation not less than 45 nor more than 90

days prior to the date of redemption) redeem, on the date (the "Redemption Date") specified in such request, the shares of Series A Preferred, Series B Preferred, or Series C Preferred, as applicable, with respect to which such request is made. The redemption price for each share of Series A Preferred redeemed pursuant to this Section 5(a) shall initially be \$1.36 per share in cash plus all accrued and/or declared but unpaid dividends on such shares up to and including the date fixed for redemption, the redemption price for each share of Series B Preferred redeemed pursuant to this Section 5(a) shall initially be \$1.70 per share in cash plus all accrued and/or declared but unpaid dividends on such shares up to and including the date fixed for redemption, and the redemption price for each share of Series C Preferred redeemed pursuant to this Section 5(a) shall initially be \$2.00 per share in cash plus all accrued and/or declared but unpaid dividends on such shares up to and including the date fixed for redemption (as applicable, the "Redemption Price"). The Redemption Price set forth in this Section 5 shall be subject to equitable adjustment with respect to each series of Preferred Stock whenever there shall occur a stock split, stock dividend, combination, recapitalization, reclassification or other similar event involving a change in the Series A Preferred, the Series B Preferred, or the Series C Preferred, as applicable. The Redemption Price shall be payable in two equal installments, without interest, commencing with one-half of the Redemption Price payable on the Redemption Date and one-half payable on the first anniversary of the Redemption Date. To the extent that the Corporation may not legally redeem such shares of Series Preferred, such redemption shall take place as soon as legally permitted.

(b) Insufficient Funds for Redemption.

(i) If the funds of the Corporation legally available for redemption of the Series Preferred on the Redemption Date are insufficient to redeem the number of shares of Series Preferred to be so redeemed on such Redemption Date, the holders of shares of Series Preferred shall share ratably in any funds legally available for redemption of such shares according to the respective amounts which would be payable with respect to the number of shares owned by them if the shares to be so redeemed on such Redemption Date were redeemed in full. The shares of Series Preferred not redeemed shall remain outstanding and entitled to all rights and preferences provided herein.

(ii) At any time thereafter when additional funds of the Corporation are legally available for the redemption of such shares of Series Preferred, such funds will be used, as soon as practicable but no later than the end of the next succeeding fiscal quarter, to redeem the balance of such shares, or such portion thereof for which funds are then legally available, on the basis set forth above.

(c) Redemption Proportionate. Each redemption of Series Preferred pursuant to this Section 5 shall be made so that the number of shares of Series Preferred to be redeemed from each registered owner shall be on a pro rata basis according to the manner of distribution of the respective liquidation preferences of shares of Series Preferred which each such holder of Series Preferred owns of record as of the applicable Redemption Date.

(d) Redemption Notice. At least 15 days prior to the Redemption Date, written notice (hereinafter referred to as the "Redemption Notice") shall be mailed, first class or certified mail, postage prepaid, by the Corporation to each holder of record of Series Preferred which are to be redeemed, as its address shown on the records of the Corporation; provided,

however, that the Corporation's failure to give such Redemption Notice as to any holder shall not affect its obligation to redeem the Preferred Stock as provided in this Section 5 hereof as to such holder. The Redemption Notice shall contain the following information:

(i) the number of shares of Series Preferred held by the holder which are to be redeemed by the Corporation;

(ii) the Redemption Date and the Redemption Price; and

(iii) that the holder is to surrender to the Corporation, at the place designated therein, its certificate or certificates representing the Series Preferred to be redeemed.

(e) **Surrender of Certificates.** Each holder of Series Preferred shall surrender the certificate(s) representing such shares to the Corporation at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares as set forth in this Section 5 shall be paid to the order of the person whose name appears on such certificate(s) and each surrendered certificate shall be canceled and retired. In the event some but not all of the Series Preferred represented by a certificate(s) surrendered by a holder are being redeemed, the Corporation shall execute and deliver to or on the order of the holder, at the expense of the Corporation, a new certificate representing the number of shares of Series Preferred which were not redeemed.

The rights of redemption of the holders of Series Preferred are subject to the rights and preferences of any class or series of preferred stock that may be designated to be senior to, or on parity with, the Series Preferred with respect to rights of redemption.

(f) **Dividends and Conversion after Redemption.** From and after payment in full of the Redemption Price with respect to a share of Series Preferred, such share of Series Preferred subject to redemption shall not be entitled to any further dividends pursuant to Section 1 hereof or to the conversion provisions set forth in Section 4 hereof; provided, however, that in all events such redemption is consummated.

6. **Registration of Transfer.** The Corporation will keep at its principal office a register for the registration of shares of Series Preferred. Upon the surrender of any certificate representing shares of Series Preferred at such place, the Corporation will, at the request of the record holders of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefore representing the aggregate number of shares of Series Preferred represented by the surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of Series Preferred as is required by the holder of the surrendered certificate and will be substantially identical in form to the surrendered certificate.

7. **Replacement.** Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series Preferred, and in the case of any such loss, theft or destruction, upon receipt of an unsecured indemnity from the holder reasonably satisfactory to the Corporation or, in the case of such mutilation upon

surrender of such certificate, the Corporation will (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of Series Preferred represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

8. Restrictions and Limitations on Corporate Action and Amendments to Charter.

(a) Joint Vote of Series Preferred.

The Corporation shall not take any corporate action or otherwise amend its Certificate of Incorporation without the approval by vote or written consent of the holders of at least $66\frac{2}{3}\%$ of the then outstanding shares of Series Preferred, voting together as a single class, each share of Series Preferred to be entitled to that number of votes equal to the number of shares of Common Stock into which such share could then be converted pursuant to the provisions of Section 4, if such corporate action or amendment would:

(i) authorize or issue, or obligate the Corporation to authorize or issue, any debt or equity securities, other than issuances set forth in Section 4(d)(i)(E);

(ii) cause the Corporation to redeem, purchase or otherwise acquire for value (or pay into or set aside for a sinking fund for such purpose), any securities of the Corporation other than pursuant to Section 5 hereof, pursuant to the Stockholders' Agreement, or a redemption, purchase or other acquisition for cash of shares of Preferred Stock, which is effected pro rata with the holders thereof, in proportion to the full respective preferential amounts to which such holders are entitled;

(iii) cause any class of the Corporation's securities to become registered under Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934;

(iv) change the authorized number of directors of the Corporation;

(v) effect any transaction described in Section IV(c)(2)(C);

(vi) establish borrowing from banks or financial institutions in the aggregate of more than \$250,000;

(vii) pledge any of the assets of the Corporation in the aggregate with a fair market value in excess of \$250,000 or pledge any intellectual property of the Corporation;

(viii) change the Corporation's Line of Business where "Line of Business" means the clinical development of chemotherapeutic agents for cancer;

(ix) commence voluntary bankruptcy proceedings;

(x) dissolve the Corporation, or take any formal or informal steps in preparation for dissolution;

(xi) amend the Certificate of Incorporation of the Corporation;

(xii) authorize or issue, or obligate the Corporation to authorize or issue, by reclassification or otherwise, (i) Series A Parity Stock, Series B Parity Stock, or Series C Parity Stock (as defined in Section 2(b)), or (ii) shares of Preferred Stock senior to the Series Preferred with respect to liquidation preferences, dividend rights or redemption rights; or

(xiii) amend any provisions of this Section 8(a).

(b) **Separate Vote of Series A Preferred.** For so long as any shares of Series A Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least $66\frac{2}{3}\%$ of the outstanding shares of the Series A Preferred (voting together as one class and separately from any other series of Preferred Stock) shall be necessary for effecting or validating the following actions:

(i) amend any of the rights, preferences, privileges of or limitations provided for herein for the benefit of any shares of Series A Preferred;

(ii) authorize or issue, or obligate the Corporation to authorize or issue, additional shares of Series A Preferred;

(iii) decrease the authorized number of shares of Series A Preferred; or

(iv) amend or waive any provision of the Certificate of Incorporation or bylaws of the Corporation specifically related to the Series A Preferred in a manner that would adversely affect the rights of the holders of Series A Preferred.

(c) **Separate Vote of Series B Preferred.** For so long as any shares of Series B Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least $66\frac{2}{3}\%$ of the outstanding shares of the Series B Preferred (voting together as one class and separately from any other series of Preferred Stock) shall be necessary for effecting or validating the following actions:

(i) amend any of the rights, preferences, privileges of or limitations provided for herein for the benefit of any shares of Series B Preferred;

(ii) authorize or issue, or obligate the Corporation to authorize or issue, additional shares of Series B Preferred;

(iii) decrease the authorized number of shares of Series B Preferred; or

(iv) amend or waive any provision of the Certificate of Incorporation or bylaws of the Corporation specifically related to the Series B Preferred in a manner that would adversely affect the rights of the holders of Series B Preferred.

(d) **Separate Vote of Series C Preferred.** For so long as any shares of Series C Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least $66\frac{2}{3}\%$ of the outstanding shares of the Series C Preferred (voting together as one class and separately from any other series of Preferred Stock) shall be necessary for effecting or validating the following actions:

(i) amend any of the rights, preferences, privileges of or limitations provided for herein for the benefit of any shares of Series C Preferred;

(ii) authorize or issue, or obligate the Corporation to authorize or issue, additional shares of Series C Preferred;

(iii) decrease the authorized number of shares of Series C Preferred; or

(iv) amend or waive any provision of the Certificate of Incorporation or bylaws of the Corporation specifically related to the Series C Preferred in a manner that would adversely affect the rights of the holders of Series C Preferred.

9. **No Dilution or Impairment.** The Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of capital stock or assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Series Preferred set forth herein, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of the Series Preferred against dilution or other impairment. Without limiting the generality of the foregoing, the Corporation (a) will not increase the par value of any shares of stock receivable on the conversion of the Series Preferred above the amount payable therefor on such conversion, and (b) will take all such action as may be necessary or appropriate in order that the Corporation may validly and legally issue fully paid and nonassessable shares of stock on the conversion of all Series Preferred from time to time outstanding.

10. **Notices of Record Date.** In the event of:

(a) any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, or any right to subscribe for, purchase or otherwise acquire any shares of capital stock of any class or any other securities or property, or to receive any other right; or

(b) any capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the

Corporation, or any transfer of all or substantially all of the assets of the Corporation to any other corporation, or any other entity or person; or

(c) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then and in each such event the Corporation shall mail or cause to be mailed to each holder of Series Preferred a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and a description of such dividend, distribution or right, (ii) the date on which any such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (iii) the time, if any, that is to be fixed, as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, recapitalization, transfer, consolidation, merger, dissolution, liquidation or winding up. Such notice shall be mailed by first class mail, postage prepaid, at least ten (10) days prior to the earlier of (A) the date specified in such notice on which such record is to be taken and (B) the date on which such action is to be taken.

11. **Notices.** Except as otherwise expressly provided, all notices referred to herein will be in writing and will be delivered by registered or certified mail, return receipt requested, postage prepaid and will be deemed to have been given when so mailed (a) to the Corporation, at its principal executive offices and (b) to any stockholder, at such stockholder's address as it appears in the stock records of the Corporation (unless otherwise indicated in writing by any such stockholder).

Article V

The election of directors of the Corporation need not be by written ballot unless required by the bylaws of the Corporation.

Article VI

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, amend and repeal the bylaws of the Corporation.

Article VII

A. Elimination of Certain Liability of Directors. To the fullest extent permitted by the General Corporation Law of the State of Delaware, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director of the Corporation; provided, however, that the foregoing shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware

General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after the date of incorporation of the Corporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. No amendment to or repeal of this Article VII shall have any adverse effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

B. Indemnification and Insurance.

1. Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, or agent or in any other capacity while serving as a director, officer, employee, or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (but, in the case of any such amendment, to the fullest extent permitted by law, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability, and loss (including attorneys' fees, judgments, fines, amounts paid or to be paid in settlement, and excise taxes or penalties arising under the Employee Retirement Income Security Act of 1974) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of his or her heirs, executors, and administrators; provided, however, that, except as provided in paragraph (2) below, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors. The right to indemnification conferred in this Article VII(B) shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the General Corporation Law of the State of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Article VII(B) or otherwise. The corporation may, by action of the Board of Directors, provide indemnification to employees and agents of the corporation with the same scope and effect as the foregoing indemnification of directors and officers.

2. Right of Claimant to Bring Suit. If a claim under paragraph (1) of this Article VII(B) is not paid in full by the Corporation within 30 days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standards of conduct that make it permissible under the General Corporation Law of the State of Delaware for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

3. Non-Exclusivity of Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article VII(B) shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, Bylaw, agreement, vote of stockholders or disinterested directors, or otherwise.

4. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee, or agent of the corporation or another Corporation, partnership, joint venture, trust, or other enterprise against any such expense, liability, or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability, or loss under the General Corporation Law of the State of Delaware.

Article VIII

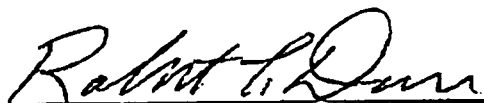
Meetings of stockholders may be held within or without the State of Delaware, as the bylaws may provide. The books of this Corporation may be kept (subject to any provision contained in applicable statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the bylaws of this Corporation.

Article IX

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation or to adopt new provisions, in the manner now or hereafter prescribed by the laws of the State of Delaware, as amended from time to time, and all rights conferred herein are granted subject to this reservation.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Robert T. Dorr, its President, on this 21st day of December, 2007.

AMPLIMED CORPORATION


Robert T. Dorr, President