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in the office of the Secretary of State
of the State of CaliforniaJUN 27 2007 ²⁴

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
AGENSYS, INC.**

Donald B. Rice and Alan C. Mendelson hereby certify that:

ONE: They are the duly elected and acting President and Secretary, respectively, of Agensys, Inc., a California corporation (the "**Corporation**").

TWO: The Articles of Incorporation of this Corporation are amended and restated in their entirety to read as follows:

"I.

The name of the Corporation is Agensys, Inc.

II.

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

A. This 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 One Hundred Four Million Thirty Thousand (104,030,000) shares, Sixty-One Million Five Hundred Thousand (61,500,000) shares of which shall be Common Stock (the "**Common Stock**"), and Forty-Two Million Five Hundred Thirty Thousand (42,530,000) shares of which shall be Preferred Stock (the "**Preferred Stock**").

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is hereby authorized, within the limitations and restrictions stated in these Amended and Restated Articles of Incorporation (the "**Restated Articles**"), to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, the liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them; and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. Four Million Thirty Thousand (4,030,000) of the authorized shares of Preferred Stock are hereby designated "**Series A Preferred Stock**" (the "**Series A Preferred**"), Five Million (5,000,000) of the authorized shares of Preferred Stock are hereby designated "**Series B Preferred Stock**" (the "**Series B Preferred**"), Nineteen Million Five Hundred Thousand

(19,500,000) of the authorized shares of Preferred Stock are hereby designated "Series C Preferred Stock" (the "**Series C Preferred**") and Fourteen Million (14,000,000) of the authorized Preferred Stock are hereby designated "Series D Preferred Stock" (the "**Series D Preferred**"). The Series A Preferred, Series B Preferred, the Series C Preferred and Series D Preferred are collectively referred to herein as the "**Series Preferred**."

D. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

1. **Dividend Rights.**

(a) Holders of Series Preferred, in preference to the holders of any other stock of the Corporation ("**Junior Stock**"), shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of six percent (6%) of the "**Original Issue Price**" per annum on each outstanding share of Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares of Series Preferred). The Original Issue Price of the Series A Preferred shall be two dollars (\$2.00), the Original Issue Price of the Series B Preferred shall be two dollars and fifty cents (\$2.50), the Original Issue Price of the Series C Preferred shall be three dollars and fifteen cents (\$3.15) and the Original Issue Price of the Series D Preferred shall be three dollars and sixty cents (\$3.60). Such dividends shall be payable only when, as and if declared by the Board of Directors and approved by the vote or written consent of the holders of at least 66 2/3% of the outstanding Series Preferred voting together as a single class on an as-converted to Common Stock basis. Such dividends shall be non-cumulative and shall be paid on a pro-rata, pari passu basis in proportion to the respective dividend rates therefor.

(b) So long as any shares of Series Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Corporation be purchased, redeemed, or otherwise acquired for value by the Corporation (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer at a price not greater than the amount paid by such service provider for such shares or the then-current fair market value of such shares (as determined by the Board of Directors of the Company), as provided in the applicable agreement) until all dividends (set forth in Section 1(a) above) on the Series Preferred shall have been paid or declared and set apart. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Series Preferred in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. The provisions of this Section 1(b) shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock, or (iii) any repurchase of any outstanding securities of the Corporation that is unanimously approved by the Corporation's Board of Directors. The holders of the Series Preferred expressly waive their rights, if any, as described in California Corporations Code Sections 502 and 503 as they relate to repurchase of shares upon termination of employment or service as a consultant or director.

2. Voting Rights.

(a) **General Rights.** Except as otherwise provided herein or as required by law, the Series Preferred shall be voted equally with the shares of the Common Stock of the Corporation and not as a separate class on all matters on which the Common Stock shall be entitled to vote, at any annual or special meeting of shareholders of the Corporation, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series Preferred are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(b) Separate Vote of Series Preferred.

(i) In addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series Preferred voting together as a single class on an as-converted to Common Stock basis shall be necessary for effecting or validating the following actions:

(A) any amendment, alteration, or repeal of any provision of the Restated Articles or the Bylaws of the Corporation (including any filing of a Certificate of Determination), that affects adversely the voting powers, preferences, or other special rights or privileges, qualifications, limitations, or restrictions of the Series Preferred;

(B) any increase or decrease (other than by redemption or conversion) in the authorized number of shares of Common Stock or Preferred Stock;

(C) any authorization or any increase, whether by reclassification or otherwise, in the authorized amount of any class of shares or series of equity securities of the Corporation ranking senior to the Series Preferred in right of redemption, liquidation preference, voting or dividends;

(D) any redemption, purchase, repurchase, payment of dividends or other acquisitions or distributions with respect to Common Stock or Preferred Stock (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer);

(E) any transfer of material assets of the Corporation to any person other than a wholly-owned subsidiary of the Corporation;

(F) the payment of any cash dividend to any holders of Common Stock or Preferred Stock;

(G) any Asset Transfer or Acquisition (each as defined in Section 3(f)); or

(H) any dissolution or liquidation of the Corporation.

(ii) In addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of each of the outstanding Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred, in each case voting as a separate class on matters affecting their respective series of Preferred Stock, shall be necessary for effecting or validating the following actions:

(A) any alteration or change, by merger or otherwise, to the rights, preferences or privileges of the Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred, if and as applicable;

(B) any creation or reclassification, by merger or otherwise, of any new or existing class or series of shares having rights, preferences or privileges senior to or on a parity with the Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred, if and as applicable; or

(C) any increase or decrease in the authorized amount of the Series A Preferred, Series B Preferred, Series C Preferred or Series D Preferred, if and as applicable.

(c) **Election of Board of Directors.** The authorized size of the Corporation's Board of Directors shall be nine (9) and (i) the holders of Series D Preferred, voting as a separate class, shall be entitled to elect two (2) members of the Corporation's Board of Directors (the "**Series D Directors**") at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director; (ii) the holders of Series C Preferred, voting as a separate class, shall be entitled to elect three (3) members of the Corporation's Board of Directors (the "**Series C Directors**") at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such director and to fill any vacancy caused by the resignation, death or removal of such director; (iii) the holders of Series A Preferred and Series B Preferred, voting together as a single class on an as-converted to Common Stock basis, shall be entitled to elect two (2) members of the Corporation's Board of Directors (the "**Series A and B Directors**") at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; (iv) the holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Corporation's Board of Directors (the "**Common Director**") at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; and (v) the holders of Common Stock and Preferred Stock, voting together as a single class on an as-converted to Common Stock basis, as applicable, shall be entitled to elect one (1) member of the Corporation's Board of Directors (the "**Joint Director**") at each meeting or pursuant to each consent of the Corporation's shareholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

3. Liquidation Rights.

(a) Upon any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any other series of Preferred Stock or any Junior Stock, the holders of Series D Preferred and Series C Preferred shall be entitled to be paid out of the assets of the Corporation legally available for distribution, if any, in preference to the holders of the Common Stock. Series A Preferred and Series B Preferred, a per share amount equal to the sum of (i) the Original Issue Price of the Series D Preferred and the Series C Preferred, as applicable (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) and (ii) all declared and unpaid dividends on such shares of Series D Preferred and Series C Preferred, as applicable, for each share of Series D Preferred and Series C Preferred, as applicable held by such shareholders; *provided, however*, that any amount owed to the Series D Preferred and Series C Preferred pursuant to this Section 3(a) must be paid in cash unless such liquidation, dissolution or winding up is approved by the holders of at least two-thirds (2/3) of the outstanding Series D Preferred and Series C Preferred, voting together as a single class.

(b) After the payment of the full liquidation preference of the Series D Preferred and Series C Preferred as set forth in Section 3(a) above, the holders of Series A Preferred and Series B Preferred shall be entitled to be paid out of the remaining assets of the Corporation legally available for distribution, if any, a per share amount of Series A Preferred or Series B Preferred, as applicable, equal to the sum of (i) the Original Issue Price of the Series A Preferred or Series B Preferred, as applicable (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares), and (ii) all declared and unpaid dividends on such shares of Series A Preferred and Series B Preferred, as applicable, for each share of Series A Preferred or Series B Preferred, as applicable, held by such shareholders.

(c) After the payment of the full liquidation preference of the Series A Preferred and Series B Preferred as set forth in Section 3(b) above, the remaining assets of the Corporation legally available for distribution, if any, shall be distributed pro rata to the holders of the Common Stock, Series D Preferred and Series C Preferred on an as-converted to Common Stock basis until the holders of Series D Preferred and Series C Preferred have received an amount equal to (i) one and one-half (1.5) times their respective Original Issue Price per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) plus (ii) all declared and unpaid dividends on such shares of Series D Preferred and Series C Preferred, as applicable; *provided, however*, that any amount owed to the Series D Preferred and Series C Preferred pursuant to this Section 3(c) must be paid in cash unless such liquidation, dissolution or winding up is approved by the holders of at least two-thirds (2/3) of the outstanding Series D Preferred and Series C Preferred, voting together as a single class.

(d) After the payment of the full liquidation preferences set forth in Sections 3(a)-(c) above, the remaining assets of the Corporation legally available for distribution, if any, shall be distributed pro rata to the holders of Common Stock.

(e) Notwithstanding Sections 3(a)-(c) above, for purposes of determining the amount each holder of shares of Series Preferred is entitled to receive with

respect to a liquidation, dissolution or winding up of the Corporation, each such holder of shares of Series Preferred shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of Series Preferred into shares of Common Stock immediately prior to the liquidation, dissolution or winding up at the conversion rate then in effect, if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such shares of Series Preferred into shares of Common Stock. If any such holder shall be deemed to have converted shares of Series Preferred into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of Series Preferred that have not converted (or have not been deemed to have converted) into shares of Common Stock.

(f) If, upon any liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series Preferred of the liquidation preference set forth in Sections 3(a) and 3(h) above, as applicable, then such assets shall be distributed among the holders of Series Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(g) The following events shall be considered a liquidation under Section 3:

(i) any consolidation or merger of the Corporation with or into any other corporation or other entity or person, or any other corporate reorganization, in which the shareholders of the Corporation immediately prior to such consolidation, merger or reorganization, own less than 50% of the Corporation's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions other than a merger effected exclusively for the purpose of changing the domicile of the Company (an "Acquisition"); or

(ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation (an "Asset Transfer").

(h) If the consideration distributed by this Corporation in any liquidation, dissolution or winding up is other than cash, its value will be deemed its fair market value as determined in good faith by the Corporation's Board of Directors. Any securities shall be valued as follows:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by (ii) below:

(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 quotation system over the thirty (30) day period ending three (3) 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 thirty (30) day period ending three (3) days prior to the closing; and

(C) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(ii) 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 shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (i)(A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

4. **Conversion Rights.**

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "**Conversion Rights**"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series A Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series A Preferred being converted. The number of shares of Common Stock to which a holder of Series B Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series B Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series B Preferred being converted. The number of shares of Common Stock to which a holder of Series C Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series C Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series C Preferred being converted. The number of shares of Common Stock to which a holder of Series D Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series D Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series D Preferred being converted.

(b) **Conversion Rate.**

(i) The conversion rate in effect at any time for conversion of the Series A Preferred (the "**Series A Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series A Preferred by the "Series A Conversion Price," calculated as provided in Section 4(c).

(ii) The conversion rate in effect at any time for conversion of the Series B Preferred (the "**Series B Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series B Preferred by the "Series B Conversion Price," calculated as provided in Section 4(c).

(iii) The conversion rate in effect at any time for conversion of the Series C Preferred (the "**Series C Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series C Preferred by the "Series C Conversion Price," calculated as provided in Section 4(c).

(iv) The conversion rate in effect at any time for conversion of the Series D Preferred (the "**Series D Conversion Rate**") shall be the quotient obtained by dividing the Original Issue Price of the Series D Preferred by the "**Series D Conversion Price**," calculated as provided in Section 4(c).

(c) **Conversion Price.** The conversion price for each series of Series Preferred shall initially be the Original Issue Price of such series of Series Preferred (the "**Series Preferred Conversion Price**" for such series). Such initial Series Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Series Preferred Conversion Price herein shall mean the Series Preferred Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the Series Preferred, and shall give written notice to the Corporation at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Series Preferred being converted. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date; provided, however, that if the conversion is in connection with an underwritten offer of securities registered pursuant to the Securities Act or an Acquisition or Asset Transfer, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing of such transaction, in which event the holder entitled to receive the Common Stock issuable upon such conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such transaction.

(e) **Adjustment for Stock Splits and Combinations.** If the Corporation shall at any time or from time to time after the date on which these Amended and Restated Articles of Incorporation are filed with the Secretary of State of the State of California (the "**Effective Date**") effect a subdivision of the outstanding Common Stock, the Series Preferred Conversion Price for each series of Series Preferred then in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Corporation shall at any time or from time to time after the Effective Date combine the outstanding shares of Common Stock into a smaller number of shares, the Series Conversion Price for each series of Series Preferred then in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) Adjustment for Common Stock Dividends and Distributions.

If the Corporation at any time or from time to time after the Effective Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Series Preferred Conversion Price for each series then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series Preferred Conversion Price for each series of Series Preferred then in effect by a fraction (1) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (2) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Price for each series shall be recomputed accordingly as of the close of business on such record date and thereafter the Series Preferred Conversion Price for each series shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

(g) Adjustments for Other Dividends and Distributions.

If the Corporation at any time or from time to time after the Effective Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation other than shares of Common Stock, 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 amount of other securities 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, retained such securities receivable by them as aforesaid during such period, subject 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 or with respect to such other securities by their terms.

(h) Adjustment for Reclassification, Exchange and Substitution.

If at any time or from time to time after the Effective Date, the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 3(c) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(i) **Reorganizations, Mergers, Consolidations or Sales of Assets.** If at any time or from time to time after the Effective Date, there is a capital reorganization of the Common Stock (other than an Acquisition or Asset Transfer as defined in Section 3(c) or as recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, 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 to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(j) **Sale of Shares Below Series Preferred Conversion Price.**

(i) If at any time or from time to time after the Effective Date, the Corporation issues or sells, or is deemed by the express provisions of this subsection (j) to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), other than as a dividend or other distribution on any class of stock as provided in Section 4(f) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price (as hereinafter defined) less than the then effective Series Preferred Conversion Price for each series, the then existing Series Preferred Conversion Price for such series shall be reduced, as of the opening of business on the date of such issue or sale,

(A) in the case of the Series D Preferred, to a price determined by multiplying the Series D Conversion Price by a fraction (1) the numerator of which shall be (x) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale (but excluding any shares of Common Stock which would be deemed outstanding upon conversion of the Series D Preferred), plus (y) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (j)(ii)) by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price, and (2) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale (but excluding any shares of Common Stock which would be deemed outstanding upon conversion of the Series D Preferred) plus the total number of Additional Shares of Common Stock so issued;

(B) in the case of the Series C Preferred, Series B Preferred and Series A Preferred, to a price determined by multiplying the applicable Series Preferred Conversion Price by a fraction (1) the numerator of which shall be (x) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (y) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (j)(ii)) by the

Corporation for the total number of Additional Shares of Common Stock so issued would purchase at such Conversion Price, and (2) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued.

For the purposes of this Section 4(j), the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (X) the number of shares of Common Stock actually outstanding, (Y) the number of shares of Common Stock into which the then outstanding shares of Series Preferred could be converted if fully converted on the day immediately preceding the given date, and (Z) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this Section 4(j), the consideration received by the Corporation for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as hereinafter defined) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 4(j), if the Corporation issues or sells any rights or options for the purchase of, or stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or rights or options for the purchase of Convertible Securities, and if the Effective Price of such Additional Shares of Common Stock is less than the Series Conversion Price for any series, in each case the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities, including the elimination of liquidation preference and cancellation of accrued dividends) upon the conversion thereof; provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided further that if the minimum amount of

consideration payable to the Corporation upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided further* that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities, including the elimination of liquidation preference and cancellation of accrued dividends) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series Preferred.

(iv) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Corporation or deemed to be issued pursuant to this Section 4(j), whether or not subsequently reacquired or retired by the Corporation other than (A) shares of Common Stock issued upon conversion of the Series Preferred; (B) up to 4,212,412 currently unallocated shares of Common Stock (including 482,872 reserved, unallocated shares in the Corporation's 1997 Equity Incentive Plan and 2004 Equity Incentive Plan) until March 31, 2008, and thereafter as determined in accordance with the Corporation's incentive stock option plans (provided that any increases shall not exceed in the aggregate 2.0% of the outstanding capital stock of the Corporation in any single year) available to be issued to employees, consultants or directors pursuant to incentive stock option plans approved by the Corporation's Board of Directors; (C) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Effective Date; (D) shares of Common Stock issued as a dividend or distribution on Common Stock or Preferred Stock; (E) shares of Common Stock issued in connection with a closing of a firmly underwritten public offering of shares of Common Stock at a per share public offering price equal to or greater than two (2) times the Original Issue Price per share of the Series D Preferred (as adjusted for any stock split, dividend, combination or other recapitalization) in which the gross cash proceeds to the Corporation (before underwriting discounts, commissions and fees) are at least \$30,000,000 (a "Qualified Public Offering"); (F) shares of Common Stock issued or issuable pursuant to an

acquisition of another corporation by the Corporation; or (G) shares of Common Stock that are otherwise excluded by vote or written consent of holders of (1) at least two-thirds (2/3) of the Series C Preferred and Series D Preferred, voting as a single class on an as-converted to Common Stock basis and (2) a majority of the Series Preferred, voting as a single class on an as-converted to Common Stock basis. The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Corporation under this Section 4(j), into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this Section 4(j), for such Additional Shares of Common Stock.

(k) **Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series Preferred Conversion Price for each series the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 4, the Corporation, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred at the holder's address as shown in the Corporation's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Corporation for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series Preferred.

(l) **Notices of Record Date.** Upon (i) 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 (ii) any Acquisition (as defined in Section 3(c)) or other capital reorganization of the Corporation, any reclassification or recapitalization of the capital stock of the Corporation, any merger or consolidation of the Corporation with or into any other corporation, or any Asset Transfer (as defined in Section 3(c)), or any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, the Corporation shall mail, by first class mail, postage prepaid, to each holder of Series Preferred at least twenty (20) days prior to the record date specified therein a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, 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 Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(m) Automatic Conversion.

(i) Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series Preferred Conversion Price, upon the earlier to occur of (A) the affirmative vote or written consent of the holders of (1) at least two thirds (2/3) of the then outstanding shares of the Series C Preferred and Series D Preferred voting together as a single class on an as-converted to Common Stock basis and (2) at least a majority of the then outstanding shares of the Series Preferred voting together as a single class on an as-converted to Common Stock basis, or (B) immediately upon the closing of a Qualified Public Offering. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(ii) Upon the automatic conversion of all of the Preferred Stock pursuant to paragraph (i) above, the outstanding shares of Series Preferred shall be converted automatically 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; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Corporation or its transfer agent as provided below, or the holder notifies the Corporation or its transfer agent 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 with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(n) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined in good faith by the Corporation's Board of Directors) on the date of conversion.

(o) **Reservation of Stock Issuable Upon Conversion.** 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. 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, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(p) **Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed telex or facsimile in accordance with the provisions of Section 20 of the California Corporations Code and 15 U.S.C. §7001(c)(1), (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Corporation.

(q) **Payment of Taxes.** The Corporation will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

(r) **No Dilution or Impairment.** Except as provided by law, or upon obtaining the consents required under Section 2 of this Article III, the Corporation shall not amend its Restated Articles or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series Preferred against dilution or other impairment.

5. **No Reissuance of Series Preferred.** No share or shares of Series Preferred acquired by the Corporation by reason of purchase, conversion or otherwise shall be reissued.

6. **No Preemptive Rights.** Shareholders shall have no preemptive rights.

IV.

A. The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

B. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) for breach of duty to the Corporation and its shareholders through bylaw provisions, agreements with agents, votes of shareholders or disinterested directors or any or all of the above, in excess of the indemnification otherwise permitted by Section 317 of the General Corporation Law of California, subject to the limits on such excess indemnification set forth in Section 204 of the General Corporation Law of California. If, after the effective date of this Article, California law is amended in a manner

which permits a corporation to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or to authorize indemnification of, or advancement of such defense expenses to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended.

C. Any repeal or modification of this Article shall only be prospective and shall not affect the rights under this Article in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability."

THREE: The foregoing amendment and restatement of the articles of incorporation has been duly approved by the Board of Directors of this Corporation.

FOUR: The foregoing amendment and restatement of the articles of incorporation has been duly approved by the required vote of shareholders in accordance with Sections 902 and 903 of the California Corporations Code. The Corporation has two classes of stock outstanding and such classes of stock are entitled to vote with respect to the amendment herein set forth. The total number of outstanding shares of Common Stock of the Corporation is 5,920,587, the total number of outstanding shares of Series A Preferred is 4,030,000, the total number of outstanding shares of Series B Preferred is 4,520,000, and the total number of outstanding shares of Series C Preferred is 18,731,107. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%) of the outstanding shares of Common Stock, voting as a separate class, more than fifty percent (50%) of the outstanding shares of Preferred Stock, voting as a separate class, more than fifty percent (50%) of the outstanding shares of Series A Preferred, Series B Preferred and Series C Preferred, in each case, voting separately as a single class and more than sixty-six and two thirds percent (66 2/3%) of the Series Preferred, voting together as a single class.

The undersigned, Donald B. Rice and Alan C. Mendelson, the President and Secretary, respectively, of Agensys, Inc., declare under penalty of perjury that the matters set out in the foregoing Certificate are true of their own knowledge.

Executed at Santa Monica and Menlo Park, California on June 26, 2007.


DONALD B. RICE, President


ALAN C. MENDELSON, Secretary