

# INSMED INCORPORATED

## Amended and Restated Charter of the Audit Committee

(As of December 10, 2003)

Pursuant to Section 13.1-689 of the Virginia Stock Corporation Act and Article III, Section 3(b) of the Amended and Restated Bylaws of Insmmed Incorporated, incorporated under the laws of the Commonwealth of Virginia (the "Corporation"), the following shall constitute the Charter of the Audit Committee (the "Charter") of the board of directors of the Corporation:

### **I. ORGANIZATION**

There shall be constituted a standing committee of the board of directors of the Corporation (the "Board") to be known as the audit committee (the "Audit Committee"). The Audit Committee shall be wholly composed of directors of the Corporation who are "independent" within the meaning of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), the rules promulgated by the Securities and Exchange Commission (the "SEC") under the Exchange Act (the "SEC Rules") and the Rules of The Nasdaq Stock Market, Inc. (the "Nasdaq Rules").\*

### **II. STATEMENT OF POLICY**

The Audit Committee shall assist the Board in fulfilling its responsibility to the Corporation's shareholders relating to corporate accounting and reporting practices of the Corporation, and to the quality and integrity of the financial statements of the Corporation.

### **III. PURPOSE, OBJECTIVES AND DUTIES**

3.1. The primary function of the Audit Committee shall be to assist the Board in fulfilling its oversight responsibilities relating to the accounting, reporting and financial practices of the Corporation and its subsidiaries by reviewing and overseeing:

- (a) the financial reports and other financial information provided by the Corporation to any governmental body or the public;

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\* One director who (i) is not "independent" as defined in Rule 4200 of the Nasdaq Rules, (ii) meets the "independence" criteria set forth in Section 10A(m)(3) of the Exchange Act, and (iii) is not a current officer or employee or a Family Member (as defined in the Nasdaq Rules) of such person, may be appointed to the Audit Committee, if the Board, under "exceptional and limited circumstances," determines that membership on the Audit Committee by such individual is required by the best interests of the Corporation and its shareholders, and the Board discloses, in the Corporation's next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination. A member appointed under this exception may not serve longer than two years and may not chair the Audit Committee.

- (b) the Corporation's systems of internal controls regarding finance and accounting that management and the Board have established;
- (c) the Corporation's auditing, accounting and financial reporting processes generally;
- (d) the independent accountant's qualifications and independence;
- (e) the performance of the Corporation's independent accountants and internal audit functions, if any; and
- (f) the Corporation's compliance with legal and regulatory requirements.

3.2. The Audit Committee's primary objectives include providing an independent, direct and open avenue of communication among the Corporation's independent accountant, management and company personnel, if any, in charge of internal auditing and the Board; serving as an independent and objective party to review the Corporation's financial reporting processes and internal control systems; overseeing with management the reliability and integrity of the Corporation's accounting policies and financial reporting and disclosure practices; reviewing and considering the work of the Corporation's independent accountant and company personnel, if any, in charge of internal auditing; reviewing the adequacy of the personnel, if any, assigned to the internal audit function; and serving as an independent and objective party to review pending and threatened litigation, matters subject to review by regulatory agencies, and conflicts of interest and ethics policies. Further, the Audit Committee's primary duties and responsibilities shall specifically include:

- (a) Having the sole authority and responsibility to appoint, compensate, retain and oversee the work of any registered public accounting firm employed by the Corporation (including resolution of disagreements between management and the Corporation's independent accountant regarding financial reporting) for the purpose of preparing or issuing an audit report or related work.
- (b) Having the sole authority and responsibility to pre-approve all auditing services and permissible non-audit services by the Corporation's independent accountant.
- (c) Establishing procedures for the receipt, retention and treatment of complaints received by the Corporation regarding accounting, internal accounting controls or auditing matters and the confidential, anonymous submission by employees of the Corporation of concerns regarding questionable accounting or auditing matters.
- (d) Overseeing the accounting and financial reporting processes of the Corporation and the audits of the financial statements of the Corporation.
- (e) Ensuring that the Corporation's independent accountant submit on a periodic basis to the Audit Committee a formal written statement delineating all relationships between the independent accountant and the Corporation, consistent with Independence Standards Board Standard Number 1, which requires the Corporation's independent accountant to:

(i) disclose to the Audit Committee of the Corporation, in writing, all relationships between the independent accountant and its related entities and the Corporation and its related entities that in the independent accountant's professional judgment may reasonably be thought to bear on independence;

(ii) confirm in the letter that, in its professional judgment, it is independent of the Corporation within the meaning of the Securities Act of 1933, as amended; and

(iii) discuss the independent accountant's independence with the Audit Committee.

(f) If applicable, ensuring that the formal written statement of the Corporation's independent accountant also includes descriptions of:

(i) the independent accountant's internal quality-control procedures;

(ii) any material issues raised by the most recent internal quality control review, or peer review, or by any inquiry or investigation by governmental or professional authorities in the preceding five years respecting one or more independent audits carried out by the firm;

(iii) any steps taken to deal with such issues; and

(iv) any other relationships that may adversely affect the independence of the accountant.

(g) Engaging actively in a dialogue with the Corporation's independent accountant with respect to any disclosed relationships or services that may impact the objectivity and independence of the independent accountant and recommend that the Board take appropriate action in response to the independent accountant's report to satisfy itself of the independent accountant's independence.

(h) Having the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

(i) Determining the appropriate funding to be provided by the Corporation for payment of:

(i) compensation to the registered public accounting firm employed by the Corporation for the purpose of rendering or issuing an audit report;

(ii) compensation to advisers employed by the Audit Committee; and

(iii) administrative expenses of the Audit Committee that are necessary or appropriate in carrying out its duties.

#### **IV. COMPOSITION AND SELECTION**

4.1. The Audit Committee shall be comprised of three or more directors as determined by the Board, each of whom shall be “independent” in accordance with Article I. All members of the Audit Committee must be able to read and understand fundamental financial statements, including the Corporation’s balance sheet, income statement and cash flow statement, in compliance with the Nasdaq Rules. Furthermore, at least one member of the Audit Committee shall be an “audit committee financial expert,” as such term is defined by the SEC, and shall have accounting or related financial management expertise in compliance with the Nasdaq Rules.

4.2. No member of the Audit Committee may have participated in the preparation of the Corporation’s or any of its current subsidiary’s financial statements at any time during the three years prior to such member’s appointment to the Audit Committee.

4.3. No member of the Audit Committee may be an affiliated person (as defined by the SEC) of the Corporation or any of its subsidiaries.

4.4. No member of the Audit Committee may serve on the audit committees of more than three public companies unless the Board determines that such simultaneous service would not impair the ability of such member to effectively serve on the Corporation’s Audit Committee and discloses such determination in the annual proxy statement.

4.5. No member of the Audit Committee may accept, directly or indirectly, any consulting, advisory or other compensatory fee from the Corporation or any of its subsidiaries other than fees for Board or committee service; subject to the Nasdaq Rules, the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service (provided that such compensation is not contingent upon continued service) will not preclude Audit Committee service.

4.6. The members of the Audit Committee shall be elected by the Board at the annual meeting of the Board, on the recommendation of the majority of the independent directors or the Executive or Governance Committee, if constituted at such time, and shall serve for one year or until their successors are duly elected and qualified. An Audit Committee member may be removed by the Board. The Chairman of the Audit Committee shall be elected by the full Board.

4.7. The duties and responsibilities of a member of the Audit Committee contained herein shall be in addition to those duties otherwise required for a member of the Board.

4.8. The Corporation shall disclose in its annual proxy statement whether any member of the Audit Committee is deemed independent in accordance with Article I and such member owns, directly or indirectly, 10% or more of any class of voting equity securities of the Corporation.

#### **V. MEETINGS**

The Audit Committee shall meet separately, as often as may be deemed necessary or appropriate in its judgment, but at least quarterly, and shall report to the Board following each meeting of the Audit Committee at the next regularly scheduled meeting of the Board or sooner,

as circumstances may dictate. As part of its primary duty and responsibility to foster independent, direct and open communications pursuant to Section III herein, the Audit Committee shall meet at least quarterly with the Corporation's management, internal audit personnel, if any, and its independent accountant in separate executive sessions to discuss any matters that the Audit Committee or each of these groups believes should be discussed privately. In addition, the Chairman of the Audit Committee shall meet quarterly, in person or by telephone, with the Corporation's independent accountant and the Corporation's chief financial officer to review the Corporation's financial statements, consistent with Section VI below.

## **VI. RESPONSIBILITIES AND DUTIES**

To fulfill its primary objectives, responsibilities and duties hereunder, the Audit Committee shall undertake the following:

### **6.1. Documents/Reports Review.**

(a) Review and update this Charter periodically, and at least annually, and recommend any proposed changes to the Board for approval.

(b) Review the Corporation's Annual Report on Form 10-K, its annual financial statements and related notes thereto, including disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations," and recommend to the Board whether the audited financial statements should be included in the Corporation's Annual Report on Form 10-K.

(c) Review any reports or other financial information submitted to any governmental body or the public, including any certification, report, analysis, opinion, or review rendered by the independent accountant.

(d) Review with the financial management of the Corporation and the Corporation's independent accountant each Quarterly Report on Form 10-Q (or any successor reports thereto under the rules and regulations of the SEC) and all financial statements and related notes contained therein, including the independent accountant's reviews of the quarterly financial statements, prior to its filing or prior to the public release of the Corporation's earnings.

(e) Review filings made with the SEC and other published documents containing the Corporation's financial statements and consider whether the information contained in such documents is consistent with the information contained in the Corporation's financial statements.

(f) Include in the Corporation's proxy or information statements relating to annual meetings of shareholders at which directors are to be elected (or special meetings or written consents in lieu of such meetings), a report of the Audit Committee that complies with the SEC's regulations for such reports.

(g) Review and discuss with management and the independent accountant:

(i) any material financial or non-financial arrangements of the Corporation that do not appear on the financial statements of the Corporation; and

(ii) any transactions or courses of dealing with parties related to the Corporation which transactions are significant in size or involve terms or other aspects that differ from those that would likely be negotiated with independent parties and that are relevant to an understanding of the Corporation's financial statements.

(h) Review and discuss with management its policies and practices regarding earnings press releases, as well as financial information and earnings guidance given to analysts and ratings agencies, giving attention to any use of "pro forma" or "adjusted" non-GAAP financial measures or other non-GAAP information.

(i) Discuss with management and the independent accountant the effect of regulatory and accounting initiatives, as well as off-balance sheet structures on the Corporation's financial statements.

(j) Make regular reports to the Board, and review with the Board any issues that arise with respect to the quality or integrity of the Corporation's financial statements, the Corporation's compliance with legal or regulatory requirements, the performance and independence of the Corporation's independent auditors, or the performance of the internal audit function.

## 6.2. Independent Accountant.

(a) Select, evaluate and, where appropriate, replace the Corporation's independent accountant (or nominate the independent accountant to be proposed for shareholder approval in any proxy statement); consider the independence and effectiveness of such independent accountant, and approve the fees and other compensation to be paid to such independent accountant and the range and cost of audit and non-audit services performed by the independent accountant. On an annual basis, the Audit Committee shall review and discuss with the independent accountant all significant relationships that the independent accountant has with the Corporation in order to determine such independent accountant's independence.

(b) Review the performance of the Corporation's independent accountant and make decisions regarding the appointment or termination of such independent accountant when circumstances warrant.

(c) Periodically consult with the Corporation's independent accountant, out of the presence of the Corporation's management, about the Corporation's internal controls, including any special audit steps adopted in light of material control deficiencies, and the completeness and accuracy of the Corporation's financial statements.

(d) Evaluate the qualifications, experience, performance and independence of the senior members of the independent accountant's team, including that of the independent accountant's lead partner, taking into consideration the opinions of

management and the internal accountant, if any, and present its conclusions with respect to such evaluations to the full Board.

(e) Set clear hiring policies for employees or former employees of the independent accountant, taking into account pressures that may exist for such accountant consciously or subconsciously seeking a job with the Corporation.

(f) Discuss with the independent accountant its ultimate accountability to the Board through the Audit Committee.

(g) Establish policies and procedures for the engagement of the independent accountant to provide permissible non-audit services and consider whether the independent accountant's performance of permissible non-audit services is compatible with the accountant's independence.

(h) Assure the regular rotation of the lead audit partner as required by law, and consider whether there should be regular rotation of the independent auditing firm itself, in order to assure continuing independence of the independent accountant.

### 6.3. Financial Reporting Process.

(a) In consultation with the Corporation's independent accountant, review the integrity of the Corporation's financial reporting processes, both internal and external.

(b) Confer with the independent accountant concerning the scope of its examinations of the books and records of the Corporation and its subsidiaries.

(c) Review and approve the independent accountant's annual engagement letter.

(d) Review and approve the Corporation's annual audit plans and budgets.

(e) Direct the special attention of the independent accountant to specific matters or areas deemed by the Audit Committee or the independent accountant to be of special significance.

(f) Authorize the independent accountant to perform such supplemental reviews or audits as the Audit Committee may deem desirable.

(g) Consider the independent accountant's judgments about the quality and appropriateness of the Corporation's accounting principles, standards and practices as applied in its financial reporting.

(h) Consider and approve, if appropriate, major changes to the Corporation's auditing and accounting principles, standards and practices as suggested by the Corporation's independent accountant or management.

(i) Review and discuss with the independent accountant the audit planning and procedures, including the scope, fees, staffing and timing of the audit; review and discuss the results of the audit exam and management letters, and any reports of the independent accountant with respect to any interim period.

(j) Review and discuss with management and the independent accountant accounting policies and financial reporting issues and judgments that may be viewed as critical; review and discuss analyses prepared by management and/or the independent accountant setting forth significant financial reporting issues and judgments made in connection with the preparation of financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; and review and discuss major issues as to the adequacy of the Corporation's internal controls and any special audit steps adopted in light of material control deficiencies.

#### 6.4. Process Improvement.

(a) Establish regular and separate systems of reporting to the Audit Committee by the Corporation's management and the independent accountant regarding any significant judgments made in management's preparation of the financial statements, and the view of each as to appropriateness of such judgments.

(b) Following completion of the Corporation's annual audit, review separately with the Corporation's management and the independent accountant any significant difficulties encountered during the course of the audit, including

(i) difficulties with management's response;

(ii) any restrictions on the scope of work or access to required information, and

(iii) the nature and extent of any significant changes in accounting principles or the application therein.

(c) Review any significant disagreement among the Corporation's management and its independent accountant in connection with the preparation of the Corporation's financial statements.

(d) Review with the Corporation's independent accountant and management the extent to which changes or improvements in financial or accounting practices and standards, as approved by the Audit Committee, have been implemented, with such review to be conducted at an appropriate time subsequent to the implementation of any changes or improvements thereto, as decided by the Audit Committee in its discretion.

(e) Inquire of the Corporation's management and the independent accountant about significant risks or exposures and assess the steps that management has taken to monitor, control and minimize such risks to the Corporation, including the Corporation's risk assessment and risk management policies.

(f) Review with the Corporation's internal audit personnel, if any, and the independent accountant the coordination of their respective audit efforts to assure completeness of coverage, reduction of redundant efforts and effective use of audit resources.

(g) Review, at least annually, the Audit Committee's performance.

(h) Review with the independent accountant any audit problems or difficulties and management's response. Such review shall include any accounting adjustments that were noted or proposed by the accountant but were "passed" (as immaterial or otherwise).

(i) Review any "management" or "internal control" letters issued, or proposed to be issued, by the audit firm to the Corporation and any discussions with the independent accountant's national office respecting auditing or accounting issues presented by the engagement.

#### 6.5. Oversight of the Corporation's Internal Audit Function.

(a) Review the appointment, replacement, reassignment or dismissal of the members of the Corporation's internal auditing staff, if any, including, if appropriate, the appointment and replacement of the senior internal auditing employee.

(b) Review the regular internal reports to management prepared by the internal auditing staff, if any, and management's responses.

(c) Discuss with the independent auditor, if appropriate, the internal audit staff's responsibilities, budget and staffing, and any recommended changes in the planned scope of the internal audit.

#### 6.6. Compliance Oversight Responsibilities.

(a) Obtain from the independent accountant assurance that Section 10A of the Exchange Act has not been implicated.

(b) Obtain reports from management, the Corporation's senior internal auditing executive, if any, and the independent accountant that the Corporation and its subsidiary/foreign affiliated entities are in conformity with applicable legal requirements and the Corporation's Code of Business Conduct and Ethics.

(c) Review reports and disclosures of insider and affiliated party transactions.

(d) Advise the Board with respect to the Corporation's policies and procedures regarding compliance with applicable laws and regulations and with the Corporation's Code of Business Conduct and Ethics.

(e) Discuss with management and the independent accountant any correspondence with regulators or governmental agencies and any employee complaints

or published reports that raise material issues regarding the Corporation's financial statements or accounting policies.

(f) Review any material pending legal proceedings involving the Corporation and other contingent liabilities.

(g) Discuss with the Corporation's General Counsel or Chief Executive Officer legal matters that may have a material impact on the financial statements or the Corporation's compliance policies.

(h) Establish procedures for:

(i) the receipt, retention, and treatment of complaints received by the Corporation regarding accounting, internal accounting controls, or auditing matters; and

(ii) the confidential, anonymous submission by employees of the Corporation of concerns regarding questionable accounting or auditing matters.

## **VII. LIMITATION OF AUDIT COMMITTEE'S ROLE**

While the Audit Committee has the responsibilities and powers set forth in this Charter, it is not the duty of the Audit Committee to plan or conduct audits, to certify the Corporation's financial statements or to guarantee the accountant's report. These are the responsibilities of management and the independent accountant.

## **VIII. INVESTIGATIVE AUTHORITY**

The Audit Committee shall have the authority to conduct or authorize investigations into any matters within its scope of responsibilities and shall have the authority to retain outside advisors to assist the Committee in the conduct of any investigation.

## **IX. CONSISTENCY WITH ARTICLES OF INCORPORATION, AS AMENDED, OR AMENDED AND RESTATED BYLAWS**

To the extent that any provision or section of this Charter may be inconsistent with any article, provision or section of the Articles of Incorporation, as amended, or the Amended and Restated Bylaws of the Corporation, the Articles of Incorporation, as amended, or the Amended and Restated Bylaws, as appropriate, shall fully control.

**X. CERTIFICATION**

This Amended and Restated Charter of the Audit Committee was duly approved and adopted by the Board of the Corporation on the 10<sup>th</sup>.day of December, 2003.

W. McIlwaine Thompson, Jr. /s/  
W. McIlwaine Thompson, Jr., Esq.  
Secretary