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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

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**ROTECH HEALTHCARE INC.**

(Exact Name of Registrant as Specified in Its Charter)

**DELAWARE**  
(State or Other Jurisdiction of Incorporation)

**030408870**  
(I.R.S. Employer Identification Number)

**2600 Technology Drive, Suite 300  
Orlando, Florida 32804**  
(Address of Principal Executive Offices) (Zip Code)

**ROTECH HEALTHCARE INC.  
COMMON STOCK OPTION PLAN**

**ROTECH HEALTHCARE INC.  
NONEMPLOYEE DIRECTOR RESTRICTED STOCK PLAN**  
(Full Title of the Plans)

**Philip L. Carter**  
**President and Chief Executive Officer**  
**2600 Technology Drive, Suite 300**  
**Orlando, Florida 32804**  
(Name and Address of Agent For Service)

**(407) 822-4600**  
(Telephone Number, Including Area Code, of Agent for Service)

*Copies to:*

**Stuart Bressman, Esq.**  
**Brown Raysman Millstein Felder & Steiner LLP**  
**900 Third Avenue**  
**New York, New York 10022**

## CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.0001 per share, issuable pursuant to Rotech Healthcare Inc. Common Stock Option Plan	4,025,000	\$19.98	\$80,419,500	\$10,189.16
Common Stock, par value \$0.0001 per share, issuable pursuant to Rotech Healthcare Inc. Nonemployee Director Restricted Stock Plan	200,000	\$19.98	\$3,996,000	\$506.30

- (1) This Registration Statement shall also cover any additional shares of common stock which may become issuable under the Rotech Healthcare Inc. Common Stock Option Plan and the Rotech Healthcare Inc. Nonemployee Director Restricted Stock Plan being registered pursuant to this Registration Statement by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of the registrant's outstanding shares of common stock.
- (2) The price is estimated pursuant to Rules 457(c) and (h) of the Securities Act of 1933, as amended, solely for the purpose of calculating the registration fee and is based upon the average of the bid and asked prices of the registrant's common stock as reported in the "pink sheets" by Pink Sheets LLC on September 14, 2004.

## **PART I**

### **INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

Pursuant to Rule 428 under the Securities Act of 1933, as amended (the "Securities Act"), the documents containing the information specified in Items 1 and 2 of Part I of Form S-8 will be delivered to each participant in the Rotech Healthcare Inc. Common Stock Option Plan and the Rotech Healthcare Inc. Nonemployee Director Restricted Stock Plan. Pursuant to Rule 428 under the Securities Act, these documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus meeting the requirements of Section 10(a) of the Securities Act.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents filed by Rotech Healthcare Inc. (the “Company”) with the Securities and Exchange Commission are incorporated herein by reference:

- (i) The Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2003, filed April 14, 2004.
- (ii) The Company’s Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2004, filed May 17, 2004.
- (iii) The Company’s Current Report on Form 8-K filed on July 6, 2004.
- (iv) The Company’s Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2004, filed August 16, 2004.
- (v) The description of the Company’s common stock contained in its Registration Statement on Form 8-A, filed on September 15, 2004 pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended, including any amendment or report filed for the purpose of updating such description.

In addition to the foregoing, all documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange of 1934, prior to the filing of a post-effective amendment indicating that all of the securities offered hereunder have been sold or deregistering all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document that is also incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

#### ITEM 4. DESCRIPTION OF SECURITIES

Not Applicable.

#### ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not Applicable.

#### ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145 of the Delaware General Corporation Law, inter alia, empowers a Delaware corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee or agent 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 other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Similar indemnity is authorized for such persons against expenses (including attorneys’ fees) actually and reasonably incurred in connection with the defense or settlement of any such threatened, pending or completed action or suit if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and provided further that (unless a court of competent jurisdiction otherwise provides) such person shall not have been adjudged liable to the corporation. Any such indemnification may be made only as authorized in each specific case upon a determination by the shareholders or disinterested directors or by independent legal counsel in a written opinion that indemnification is proper because the indemnitee has met the applicable standard of conduct.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent 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 enterprise, against any liability asserted against him and incurred by him in any such

capacity, or arising out of his status as such, whether or not the corporation would otherwise have the power to indemnify him under Section 145. The Company maintains policies insuring its and its subsidiaries' officers and directors against certain liabilities for actions taken in such capacities, including liabilities under the Securities Act of 1933, as amended.

Article IX of the Company's certificate of incorporation eliminates in certain circumstances the monetary liability of directors of the Company for a breach of their fiduciary duty as directors. These provisions do not eliminate the liability of a director (1) for a breach of the director's duty of loyalty to the corporation or its stockholders; (2) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law; (3) under Section 174 of the Delaware General Corporation Law (relating to the declaration of dividends and purchase or redemption of shares in violation of the Delaware General Corporation Law); or (4) for transactions from which the director derived an improper personal benefit.

Pursuant to Section 145 of the Delaware General Corporation Law a corporation generally has the power to indemnify its present and former directors, officers, employees and agents against expenses and liabilities incurred by them in connection with any suit to which they are, or are threatened to be made, a party by reason of their serving in such positions so long as they acted in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interests of the corporation, and with respect to any criminal action, they had no reasonable cause to believe their conduct was unlawful. With respect to suits by or in the right of a corporation, however, indemnification is generally limited to attorneys' fees and other expenses and is not available if such person is adjudged to be liable to the corporation unless the court determines that indemnification is appropriate. In addition, a corporation has the power to purchase and maintain insurance for such persons.

On May 21, 2002, the Company's board of directors authorized the Company to enter into indemnification agreements with each of its officers and directors. These indemnification agreements grant the indemnitee a contractual right to be indemnified by the Company, to the fullest extent permissible under Delaware law, against any and all expenses, including attorneys' fees, incurred in connection with any actual or threatened suit or other proceeding that may be brought against the Company or its affiliates and to have expenses reimbursed as they are incurred. Consistent with applicable law, however, there are certain circumstances under which the Company is not required to provide indemnification. In particular, the Company is not required to indemnify any indemnitee where such person engaged in willful misconduct, when the indemnitee violated Section 16(b) of the Securities Exchange Act of 1934, or where the indemnitee has been made whole under an insurance policy or other agreement.

#### **ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED**

Not Applicable.

#### **ITEM 8. EXHIBITS**

The following exhibits are filed with or incorporated by reference into this Registration Statement (numbering corresponds to Exhibit Table in Item 601 of Regulation S-K):

- 4.1\* Certificate of Incorporation of Rotech Healthcare Inc. (incorporated by reference to Exhibit 3.1 of the registrant's Registration Statement on Form 8-A filed with the Securities and Exchange Commission on September 15, 2004).
- 4.2\* Bylaws of Rotech Healthcare Inc. (incorporated by reference to Exhibit 3.2 of the registrant's Registration Statement on Form 8-A filed with the Securities and Exchange Commission on September 15, 2004).
- 4.3 Rotech Healthcare Inc. Common Stock Option Plan.
- 4.4 Amendment No. 1 to the Rotech Healthcare Inc. Common Stock Option Plan.
- 4.5\* Amendment No. 2 to the Rotech Healthcare Inc. Common Stock Option Plan (incorporated by reference to Exhibit 4.1 of the registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2003 filed with the Securities and Exchange Commission on November 14, 2003).
- 4.6\* Amendment No. 3 to the Rotech Healthcare Inc. Common Stock Option Plan (incorporated by reference to Exhibit 4.6 of the registrant's Annual Report on Form 10-K for the year ended December 31, 2003 filed with the Securities and Exchange Commission on April 14, 2004).
- 4.7\* Form of specimen common stock certificate (incorporated by reference to Exhibit 4.1 of the registrant's Registration Statement on Form 8-A filed with the Securities and Exchange Commission on September 15, 2004).

- 4.8 Rotech Healthcare Inc. Nonemployee Director Restricted Stock Plan.
- 4.9 Form of Restricted Stock Award Agreement.
- 5 Opinion of Brown Raysman Millstein Felder & Steiner LLP.
- 23.1 Consent of KPMG LLP.
- 23.2 Consent of Deloitte & Touche LLP.
- 23.3 Consent of Brown Raysman Millstein Felder & Steiner LLP (included in Exhibit 5).
- 24 Power of Attorney (included in signature page).

\* Previously filed.

## ITEM 9. UNDERTAKINGS

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

- (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933, as amended;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or together, represent a fundamental change in the information in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement; and
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

*provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the Registration Statement is on Form S-3, Form S-8 or Form F-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, as amended each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, as amended, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised

that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933, as amended, and is, therefore, unenforceable. In the event a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person of the registrant in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933, as amended, and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Orlando, Florida on the 15th day of September, 2004.

ROTECH HEALTHCARE INC.

By: /s/ PHILIP L. CARTER

Name: Philip L. Carter

Title: President and Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Philip L. Carter and Rebecca L. Myers, or either of them, the undersigned's true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting said attorney-in-fact and agent, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or either of them, or their or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons and in the capacities and on the dates indicated.

<u>/s/ PHILIP L. CARTER</u> Philip L. Carter	President, Chief Executive Officer and Director (Principal Executive Officer)	September 15, 2004
<u>/s/ BARRY E. STEWART</u> Barry E. Stewart	Chief Financial Officer (Principal Financial and Accounting Officer)	September 15, 2004
<u>/s/ ARTHUR J. REIMERS</u> Arthur J. Reimers	Chairman of the Board	September 15, 2004
<u>/s/ EDWARD L. KUNTZ</u> Edward L. Kuntz	Director	September 15, 2004
<u>/s/ WILLIAM J. MERCER</u> William J. Mercer	Director	September 15, 2004
<u>/s/ WILLIAM WALLACE ABBOTT</u> William Wallace Abbott	Director	September 15, 2004
<u>/s/ GUY P. SANSONE</u> Guy P. Sansone	Director	September 15, 2004
<u>/s/ ARTHUR SIEGEL</u> Arthur Siegel	Director	September 15, 2004

## INDEX TO EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
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24	Power of Attorney (included in signature page).

\* Previously filed.

**ROTECH HEALTHCARE INC.  
COMMON STOCK OPTION PLAN**

1. Purpose.

The purpose of the Rotech Healthcare Inc. Common Stock Option Plan (the “Plan”) is to enhance the ability of Rotech Healthcare Inc. (the “Company”) to attract and retain employees, officers, consultants and nonemployee members of the Board of Directors of the Company of outstanding ability, and provide them with an interest in the growth and continued success of the Company by granting them Options to purchase shares of the Company’s common stock.

2. Definitions.

Whenever the following terms are used in this Plan, they shall have the meaning specified below unless the context clearly indicates to the contrary.

“Board” shall mean the Board of Directors of the Company or a committee thereof, including any compensation committee created by the Board of Directors.

“Cause” shall mean (i) a Participant’s gross neglect of or willful failure to perform his or her material duties with the Company, which neglect or failure shall continue for a period of two (2) days after receipt by Participant of written notice from the Company directing such Participant to perform his or her material duties, (ii) a Participant’s willful engaging in conduct which is materially injurious to the Company or any subsidiary, which injury shall not have been remedied with two (2) days after receipt by Participant of written notice from the Company of the injury caused by such conduct, (iii) a Participant’s theft or misappropriation of funds of the Company, or any subsidiary, (iv) a Participant’s conviction of, or plea of nolo contendere to, a felony or a misdemeanor involving moral turpitude, or (v) a Participant’s causing the Company to violate a local, state or federal law where such violation is materially injurious to the Company; provided, that if the Participant has entered into an agreement with the Company, the Board shall substitute the definition of Cause set forth in such agreement for the above.

“Change in Control” shall mean the occurrence of any of the following:

(a) any Person (other than the Company or any subsidiary or any trustee or other fiduciary holding securities under an employee benefit plan of the Company), becomes the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act) directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company’s then outstanding securities;

(b) during any two consecutive years, individuals who at the beginning of such period constitute the Board, and any new director (whose election by the Board or nomination for election by the Company’s shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of the

period or whose election or nomination for election was previously so approved), cease for any reason to constitute at least a majority of the Board;

(c) the stockholders of the Company approve a merger or consolidation of the Company with any other company other than (i) a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the voting securities of the Company (or such surviving entity) outstanding immediately after such merger or consolidation, or (ii) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no "person" (as hereinafter defined) acquires more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities; or

(d) the stockholders of the Company adopt a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Company" shall mean Rotech Healthcare Inc., a Delaware corporation, and any successor corporation.

"Disability" shall mean the inability to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Fair Market Value" per Share as of a particular date shall mean, unless otherwise determined by the Board:

(i) the closing sales price per Share on a national securities exchange for the business day preceding the exercise date on which there was a sale of Shares on such exchange;

(ii) if clause (i) does not apply and the Shares are then quoted on the National Association of Securities Dealers Automated Quotation system (known as "NASDAQ"), the closing price per Share as reported on such system for the business day preceding the exercise date on which a sale was reported;

(iii) if clause (i) or (ii) does not apply and the Shares are then traded on an over-the-counter market, the closing price for the Shares in such over-the-counter market for the business day preceding the exercise date; or

(iv) if the Shares are not then listed on a national securities exchange or traded in an over-the-counter market, such value as the Board in its sole discretion may reasonably determine.

“Immediate Family Member” shall include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the Participant’s household (other than a tenant or employee), a trust in which these persons have more than fifty percent (50%) of the beneficial interest, a foundation in which these persons (or the Participant) control the management of assets, and any other entity in which these persons (or the Participant) own more than fifty percent (50%) of the voting interests.

“Incentive Stock Option” shall mean an Option intended to meet the requirements of Section 422 of the Code.

“Initial Public Offering” shall mean the consummation of the first underwritten public offering of the Company’s Shares for the account of the Company pursuant to a registration statement (other than on Form S-4 or Form S-8 or successor forms) filed with, and declared effective by, the United States Securities Exchange Commission.

“Nonqualified Stock Option” shall mean any option which is not an Incentive Stock Option.

“Option” shall mean an option to purchase Shares granted pursuant to the Plan.

“Option Agreement” shall mean an Option Agreement between the Company and any Participant, which shall set forth the terms and conditions of the Option granted to such Participant.

“Participant” shall mean any Person who is granted an Option under the Plan.

“Person” shall have the meaning set forth in Sections 13(d) and 14(d) of the Exchange Act.

“Share” shall mean a share of the Company’s common stock, \$0.0001 par value.

“Ten Percent Shareholder” shall mean any Participant who owns Shares possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any parent or subsidiary corporation within the meaning of Section 424 of the Code.

### 3. Shares Subject to the Plan.

(a) Shares Subject to the Plan. Subject to adjustment as set forth in Section 3(b), the maximum number of Shares that may be issued or transferred pursuant to Options under this Plan shall be three million twenty-five thousand (3,025,000) which may be authorized but unissued Shares or Shares held in the Company’s treasury, or a combination thereof. Any Shares

subject to an Option that cease to be subject thereto may again be the subject of Options hereunder. Subject to adjustment in accordance with Section 3(b), no Participant shall be granted in any calendar year Options to purchase more than six hundred thousand (600,000) Shares solely for such time as the Company is subject to Section 162(m) of the Code.

(b) Changes in Company's Shares. In the event that any stock dividend, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination, exchange of shares, warrants or rights offering to purchase Shares, or other similar corporate event, affects the value of the Shares such that an adjustment is required in order to preserve the benefits or potential benefits intended to be made available under this Plan, the Board shall adjust any or all of (a) the number and kind of Shares subject to outstanding Options, and (b) the exercise price with respect to any Option or (c) make provision for a cash payment to any Participant or a person who has an outstanding Option (in an amount equal to the then difference between the exercise price and the Fair Market Value of a Share) in order to preserve such benefits.

#### 4. Participation.

Each employee, officer and nonemployee director of, and each consultant to, the Company shall be eligible to participate in the Plan, provided that the Board shall have the discretion to determine who shall receive a grant of Options hereunder and become a Participant.

#### 5. Terms of Options and Shares.

(a) Terms. The Options granted hereunder shall have the following terms and conditions:

(i) Type of Option. The Board shall have the right to grant either or both of Incentive Stock Options and Nonqualified Stock Options, which characterization shall be set forth in the Option Agreement; provided, however, that Incentive Stock Options shall only be granted to employees of the Company, and provided further that no employee shall be granted Incentive Stock Options which, when first exercisable during any calendar year (combined with all other incentive stock option plans of the Company), will permit such employee to purchase Shares that have an aggregate Fair Market Value (determined as of the time the Option is granted) of more than \$100,000 and any Option granted in excess of such amount shall automatically be deemed to be a Nonqualified Stock Option.

(ii) Exercise Price. The exercise price of any Option shall be one hundred percent (100%) of the Fair Market Value of a Share as of the date the Option is granted; provided, however, that (1) the Board, in its sole discretion, may grant Nonqualified Stock Options with an exercise price above or below Fair Market Value, and (2) the exercise price of any incentive Stock Option granted to a Ten Percent Shareholder shall be no less than one hundred and ten percent (110%) of the Fair Market Value of a Share on the date of grant. It is contemplated by the Company that each Company Share will have a value of approximately nineteen dollars (\$19.00) upon the occurrence of the effective date of the Amended Joint Plan of Reorganization of Rotech Medical Corporation and its Subsidiaries Under Chapter 11 of the

Bankruptcy Code filed by the Company with the United States District Court for the District of Delaware on December 20, 2001.

(iii) Term. Subject to the discretion of the Board, the term of an Option shall not exceed ten years (10) from the date it is granted; provided, however, that in the case of Incentive Stock Options granted to a Ten Percent Shareholder, the term of such Option shall not exceed five (5) years from the date of grant.

(iv) Vesting. An Option shall become exercisable (a) with respect to one-quarter (25%) of the original aggregate number of Shares purchasable upon exercise of such Option on each of the first four anniversaries of the date it is granted, (b) one-half (50%) to one hundred percent (100%) of the Shares under such Option upon a Change in Control, such percentage to be determined at the sole discretion of the Board, and (c) one-quarter (25%) of the original aggregate number of Shares purchasable upon exercise of such Option upon the consummation of an Initial Public Offering. (For purposes of illustration, assuming a Participant were granted at the beginning of Year 1 an Option to purchase one hundred thousand (100,000) Shares and at the end of Year 2 the Company were to consummate an Initial Public Offering, such Option would vest and become exercisable as follows: (x) twenty-five thousand (25,000) Shares at the end of Year 1, (y) twenty-five thousand (25,000) Shares at the end of Year 2 (each as provided in clause (a) above) and (z) an additional twenty-five thousand (25,000) Shares in Year 2 (as provided in clause (c) above). The remaining twenty-five thousand (25,000) Shares would vest and become exercisable at the end of Year 3 (as provided in clause (a) above)) Notwithstanding the foregoing, in its sole discretion, the Board shall be entitled to substitute a more accelerated vesting schedule at any time for any Participant.

(v) Number. Subject to Section 5(a)(i), the Board shall have the discretion to determine the number of Options to be granted to any Participant, and to determine the terms and conditions of any such grant, all as set forth in the Option Agreement covering such, Option.

(b) (1) Termination of Service. A Participant who ceases to be an employee, officer, nonemployee director or consultant for any reason other than death, retirement on or after age 65, or Disability shall have forty-five (45) calendar days from the date of such cessation to exercise any then exercisable Options, after which all such Options shall terminate and be of no further force or effect; provided, that the Board may determine that the period of exercise shall be any such other longer period in the Option Agreement. If a Participant ceases to be an employee, officer, nonemployee director or a consultant due to death, retirement on or after age 65, or Disability, all outstanding Options held by such Participant that are exercisable on such date shall remain exercisable for their term, and shall thereafter terminate and be of no further force or effect. Any Options that are not exercisable at the time a Participant ceases to be an employee, officer, director or consultant shall terminate at such time and be of no further force or effect.

(2) Puts and Calls Following Termination of Employment. Notwithstanding anything herein to the contrary, so long as there has not been an Initial Public Offering, in the event a Participant's employment terminates because of death or Disability, the Participant or such Participant's estate, as applicable, shall have the right for one (1) year after

such death or Disability to sell (“put”) all (but not less than all) of his then exercisable Options and Shares previously issued upon exercise of Options (“Option Shares”) to the Company, and the Company shall be obligated to purchase such Options and Option Shares for an amount in cash, check, or wire transfer (in each case, after offsetting any amount the Participant is indebted to pay the Company or any subsidiary as of such time), payable as promptly as possible following such put, equal to the then Fair Market Value of any Shares (less the exercise price per Option in the case of Options) for each such Option and Option Shares. The Company shall have a corresponding privilege in the case of the Participant’s death or Disability, or in the event of his termination of employment for any reason for the same one (1) year period to compel the Participant to sell his Options and Option Shares at the same purchase price per share indicated in the preceding sentence; provided, however, that, in the event of termination for Cause, the purchase price shall be equal to the lesser of Fair Market Value and the exercise price. The Company’s obligation to honor any put shall be subject to the Company being permitted to do so under applicable law and the honoring of any put not violating or resulting in a default or event of default under the Company’s Senior Subordinated Notes due 2012 (or the indenture under which they were issued) or under the Company’s credit agreement governing the Company’s senior secured credit facilities (in either case as they may be amended).

(c) Option Agreement. Options shall be granted only pursuant to a written Option Agreement, which shall be executed by the Participant and an authorized officer of the Company, and which shall contain such terms and conditions as the Board shall determine, consistent with the Plan. To the extent an inconsistency exists between any term of any Option Agreement and any term of the Plan, the Plan shall govern.

(d) Nontransferability. No Option granted hereunder shall be transferable by a Participant to whom granted other than by will or the laws of descent and distribution, and an Option may be exercised during the lifetime of such Participant only by a Participant or his guardian or legal representative, provided, that a Participant may transfer Options that are not Incentive Stock Options to his or her Immediate Family Members. The terms of such Option shall be binding upon the Immediate Family Members, beneficiaries, executors, administrators, heirs and successors of the Participant.

(e) Method of Exercise. The exercise of an Option shall be made only by delivery of a written notice (in person or by first class mail to the Secretary of the Company at the Company’s principal executive office) specifying the number of Shares to be purchased and accompanied by full payment therefor and otherwise in accordance with the Option Agreement pursuant to which the Option was granted. The exercise price for any Shares purchased pursuant to the exercise of an Option shall be paid in full upon such exercise (i) in cash, by check or, (ii) at the discretion of the Board and upon such terms and conditions as the Board shall approve, by surrender of Shares that were owned by the Participant for at least six (6) months prior to the exercise of the Option (or such longer or shorter period as may be required to not result in a charge to earnings for financial accounting purposes), (iii) by directing the Company to subtract from the number of Shares underlying the Option, that number of Shares having a Fair Market Value equal to the purchase price (or portion thereof) required to be paid upon such exercise, (iv) solely at a time when the Shares are publicly-traded, pursuant to a “cashless exercise” of the Option pursuant to the establishment of procedures whereby the Participant, by a properly executed written notice, directs (A) an immediate market sale or margin loan respecting all or a

part of the Shares to which he is entitled upon exercise pursuant to an extension of credit by the Company to the Participant, (B) the delivery of the Shares from the Company directly to a brokerage firm and (C) the delivery of the Option price from sale or margin loan proceeds from the brokerage firm directly to the Company, or (v) by any combination thereof. Any Shares transferred to the Company as payment of the exercise price shall be valued at their Fair Market Value on the day preceding the date of exercise of such Option. If requested by the Board, the Participant shall deliver the Option Agreement evidencing the Option to the Secretary of the Company who shall endorse thereon a notation of such exercise and return such Option Agreement to the Participant. Not less than one hundred (100) Shares may be purchased at any time upon the exercise of an Option unless the number of Shares so purchased constitutes the total number of Shares then purchasable under the Option or the Board determines otherwise in its sole discretion.

(f) Rights as Stockholder. No Participant shall be deemed for any purpose to be or to have the rights and privileges of the owner of any Shares subject to any Option unless and until (a) the Option shall have been exercised pursuant to the terms thereof, and (b) the Company shall have issued the Shares to the Participant.

6. Administration. The Plan shall be administered by the Board prior to an Initial Public Offering, and following such an Initial Public Offering, unless and until the Board shall appoint a committee to administer the Plan. All references to the "Committee" shall mean the Board if no such Committee has been appointed. Subject to the provisions of the Plan, the Board shall be authorized to select Participants, determine the type and number of Options, to interpret and construe the Plan and the Option Agreements, to establish, amend, and rescind any rules and regulations relating to the Plan, and to make all other determinations necessary or advisable for the administration of the Plan and to carry out its purpose. The determinations of the Board (or the Committee) in the administration of the Plan, as described herein, shall be final, conclusive and binding. The Secretary of the Company shall be authorized to implement the Plan in accordance with its terms and to take such actions of a ministerial nature as shall be necessary to effectuate the intent and purposes thereof.

#### 7. Other Provisions.

(a) Effective Date; Grant Limitation. The Plan shall be effective as of the date of effectiveness of the Company's Joint Plan of Reorganization filed with the United States Bankruptcy Court for the District of Delaware (the "Effective Date"). No Option to purchase Shares under the Plan shall be granted to any Participant by the Board after the tenth (10th) anniversary of the Effective Date.

(b) Amendment, Suspension or Termination of the Plan. The Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board; provided, however, that, except as provided in Section 3(b) and (d)(ii) of this Section 7, no amendment, suspension nor termination shall, without the written consent of the Participant, alter or impair any rights or obligations under any Option theretofore granted.

(c) Governing Law. The Plan and the rights of all persons claiming hereunder shall be construed and determined in accordance with the laws of the State of Delaware without giving effect to the conflicts of law principles thereof.

(d) Regulations and Other Approvals. (i) The obligation of the Company to sell or deliver Shares with respect to Options granted under the Plan shall be subject to all applicable laws, rules and regulations, including all applicable federal and state securities laws, and the obtaining of all such approvals by governmental agencies as may be deemed necessary or appropriate by the Board.

(ii) The Board may make such changes as may be necessary or appropriate to comply with the rules and regulations of any government authority.

(iii) Each Option is subject to the requirement that, if at any time the Board determines, in its sole discretion, that the listing, registration or qualification of Shares issuable pursuant to the Plan is required by any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the grant of an Option or the issuance of Shares, no Options shall be granted or payment made or Shares issued, in whole or in part, unless listing, registration, qualification, consent or approval has been effected or obtained free of any conditions as acceptable to the Board.

(iv) In the event that the disposition of Shares acquired pursuant to the Plan is not covered by a then current registration statement under the Securities Act of 1933, as amended (the "Securities Act"), and is not otherwise exempt from such registration, such Shares shall be restricted against transfer to the extent required by the Securities Act or regulations there under, and the Board may require any individual receiving Shares pursuant to the Plan, as a condition precedent to receipt of such Shares, to represent to the Company in writing that the Shares acquired by such individual are acquired for investment only and not with a view to distribution. The certificate representing Shares shall include any legend that the Board deems appropriate to reflect any restrictions on transfer.

(e) Withholding of Taxes. As a condition to the exercise of an Option and to the extent required by law, no later than the date as of which an amount first becomes includible in the gross income of a Participant for federal income tax purposes with respect to an Option granted under the Plan, the Participant shall pay to the Company, or make arrangements satisfactory to the Company regarding the payment of, any federal, estate, or local taxes of any kind required by law to be withheld with respect to such amount. The obligations of the Company under the Plan shall be conditioned on such payment or arrangements, and the Company shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the Participant. In its discretion, the Board may permit a Participant to satisfy withholding obligations (i) by delivering previously owned Shares, (ii) by having Shares withheld or (iii) by cash and any combination of the above.

(f) Titles; Construction. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of the Plan. The masculine pronoun shall include the feminine and neuter and the singular shall include the plural, when the context so indicates.

**AMENDMENT NO. 1 TO THE  
ROTECH HEALTHCARE INC.  
COMMON STOCK OPTION PLAN**

**WHEREAS**, Rotech Healthcare Inc. (the “Company”) has established and maintains the Rotech Healthcare Inc. Common Stock Option Plan (the “Plan”); and

**WHEREAS**, pursuant to Section 7(b) of the Plan, the Company’s Board of Directors (the “Board”) may at any time amend the Plan, subject to certain limitations;

**WHEREAS**, the Board deems it to be in the best interests of the Company to amend the Plan to increase the number of shares of common stock reserved for issuance under the Plan from three million twenty-five thousand (3,025,000) to four million twenty-five thousand (4,025,000); and

**WHEREAS**, on December 19, 2002, the Board approved such amendment to the Plan and on May 20, 2003, the shareholders of the Company ratified and approved such amendment to the Plan;

**NOW, THEREFORE**, the Plan is hereby amended, effective as of December 19, 2002 as follows:

FIRST: The first sentence of Section 3(a) of the Plan is hereby amended to read in its entirety as follows:

“(a) Shares Subject to the Plan. Subject to adjustment as set forth in Section 3(b), the maximum number of Shares that may be issued or transferred pursuant to Options under this Plan shall be four million twenty-five thousand (4,025,000) which may be authorized but unissued Shares or Shares held in the Company’s treasury, or a combination thereof.”

SECOND: Except to the extent hereinabove set forth, the Plan shall remain in full force and effect without change or modification.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, and as evidence of the adoption of the foregoing, the Company has caused this Amendment No. 1 to be executed by a duly authorized officer this 20th day of May, 2003.

ROTECH HEALTHCARE INC.

By: /s/ JANET L. ZIOMEK

Name: Janet L. Ziomek

Title: Chief Financial Officer

**ROTECH HEALTHCARE INC.**  
**NONEMPLOYEE DIRECTOR RESTRICTED STOCK PLAN**

**ARTICLE I**  
**PURPOSE**

The purpose of this Rotech Healthcare Inc. Nonemployee Director Restricted Stock Plan (the "Plan") is to benefit the shareholders of Rotech Healthcare Inc., a Delaware corporation (the "Company"), by assisting the Company to attract, retain and provide incentives to nonemployee directors of the Company and its Affiliates, and to align the interests of such nonemployee directors with those of the Company's shareholders.

**ARTICLE II**  
**DEFINITIONS**

The following definitions shall be applicable throughout the Plan unless the context otherwise requires:

"Affiliate" shall mean any person or entity which, at the time of reference, directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Company.

"Board" shall mean the Board of Directors of the Company.

"Code" shall mean the Internal Revenue Code of 1986, as amended. References in the Plan to any section of the Code shall be deemed to include any amendments or successor provisions to any section and any regulation under such section.

"Committee" shall mean the Compensation Committee of the Board.

"Common Stock" shall mean the Company's common stock, par value \$0.0001 per share, of the Company.

"Company" shall mean Rotech Healthcare Inc., a Delaware corporation, and any successor thereto.

"Director" shall mean a member of the Board or a member of the board of directors of an Affiliate.

"Effective Date" shall mean August 1, 2004.

"Employee" shall mean any person employed by the Company or an Affiliate.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Fair Market Value" per share of Company Stock ("Share") as of a particular date shall mean, unless otherwise determined by the Committee:

(i) the closing sales price per Share on a national securities exchange for the business day preceding the exercise date on which there was a sale of Shares on such exchange;

(ii) if clause (i) does not apply and the Shares are then quoted on the National Association of Securities Dealers Automated Quotation system (known as “NASDAQ”), the closing price per Share as reported on such system for the business day preceding the exercise date on which a sale was reported;

(iii) if clause (i) or (ii) does not apply and the Shares are then traded on an over-the-counter market, the closing price for the Shares in such over-the-counter market for the business day preceding the exercise date; or

(iv) if the Shares are not then listed on a national securities exchange or traded in an over-the-counter market, such value as the Board in its sole discretion may reasonably determine.

“Family Member” shall mean any child, stepchild, grandchild, parent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, including adoptive relationships, any person sharing the Holder’s household (other than a tenant of the Holder), a trust in which such persons have more than fifty percent (50%) of the beneficial interest, a foundation in which such persons (or the Holder) control the management of assets, and any other entity in which such persons (or the Holder) own more than fifty percent (50%) of the voting interests.

“Holder” shall mean a Nonemployee Director who has been granted a Restricted Stock Award or any such Nonemployee Director’s beneficiary, estate or representative, to the extent applicable.

“Nonemployee Director” shall mean a Director who is not an Employee.

“Plan” shall mean this Rotech Healthcare Inc. Nonemployee Director Restricted Stock Plan, as amended from time to time, together with each of the Restricted Stock Award Agreements utilized hereunder.

“Restricted Stock Award” shall mean an award granted under the Plan of shares of Common Stock, the transferability of which by the Holder shall be subject to Transfer Restrictions.

“Restricted Stock Award Agreement” shall mean a written agreement between the Company and a Holder with respect to a Restricted Stock Award.

“Restriction Period” shall mean the period of time for which shares of Common Stock subject to a Restricted Stock Award shall be subject to Transfer Restrictions, as set forth in the applicable Restricted Stock Award Agreement.

“Rule 16b-3” shall mean Rule 16b-3 promulgated by the Securities and Exchange Commission under the Exchange Act, as such may be amended from time to time, and any successor rule, regulation or statute fulfilling the same or a substantially similar function.

“Totally and Permanently Disabled” shall mean the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months, all as described in Section 22(e)(3) of the Code and determined in the sole discretion of the Committee.

“Transfer Restrictions” shall mean restrictions on the transferability of shares of Common Stock awarded to a Nonemployee Director under the Plan pursuant to a Restricted Stock Award Agreement.

**ARTICLE III  
EFFECTIVE DATE OF PLAN**

The Plan shall be effective as of the Effective Date.

**ARTICLE IV  
ADMINISTRATION**

Section 4.1 Committee. The Plan shall be administered by the Committee. If a member of the Committee shall be eligible to receive a Restricted Stock Award under the Plan, such Committee member shall have no authority hereunder with respect to his or her own Restricted Stock Award.

Section 4.2 Powers. Subject to the express provisions of the Plan, the Committee is authorized to construe the Plan and the respective Restricted Stock Award Agreements executed hereunder, to prescribe such rules and regulations relating to the Plan as it may deem advisable to carry out the intent of the Plan, and to make all determinations necessary or advisable for administering the Plan. The Committee may correct any defect or supply any omission or reconcile any inconsistency in any Restricted Stock Award Agreement in the manner and to the extent it shall deem expedient to carry it into effect. The determinations of the Committee on the matters referred to in this Article IV shall be conclusive.

Section 4.3 Committee Action. In the absence of specific rules to the contrary, action by the Committee shall require the consent of a majority of the members of the Committee, expressed either orally at a meeting of the Committee or in writing in the absence of a meeting.

**ARTICLE V  
STOCK SUBJECT TO PLAN AND LIMITATIONS THEREON**

Section 5.1 Stock Grant and Award Limits. The aggregate number of shares of Common Stock that may be issued under the Plan shall not exceed two hundred thousand (200,000) shares. Shares shall be deemed to have been issued under the Plan solely to the extent actually issued and delivered pursuant to a Restricted Stock Award. To the extent that a Restricted Stock Award lapses or the rights of its Holder terminate, any shares of Common Stock subject to such Restricted Stock Award shall again be available for the grant of a new Restricted Stock Award.

Section 5.2 Stock Offered. The stock to be offered pursuant to the grant of a Restricted Stock Award may be authorized but unissued Common Stock, Common Stock purchased on the open market or Common Stock previously issued and outstanding and reacquired by the Company.

**ARTICLE VI**  
**RESTRICTED STOCK AWARDS; TERMINATION OF**  
**NONEMPLOYEE DIRECTOR STATUS**

Section 6.1 Awards Formula. On or following the Effective Date, each Nonemployee Director shall receive (i) a Restricted Stock Award for 8,000 shares of Common Stock for his or her initial year as a Nonemployee Director, provided that such directorship commences on or after the Effective Date, (ii) a Restricted Stock Award for 4,000 shares of Common Stock for each year commencing on or after the Effective Date during which he or she continues to serve as a Nonemployee Director and (iii) in the event that the Chairman of the Board is also a Nonemployee Director, in lieu of any other Restricted Stock Award to be granted hereunder, such director shall receive a Restricted Stock Award for 12,000 shares of Common Stock for each year he or she serves in such capacity. In an individual's initial year as a Nonemployee Director, it is intended that he or she shall only receive the Restricted Stock Award referred to in clause (i) above and not both of the Restricted Stock Awards referred to in clauses (i) and (ii) above.

Section 6.2 Termination of Nonemployee Director's Board Membership. If a Holder's membership on the Board is terminated pursuant to his or her (i) removal by the Board for "Cause" (as defined in Section 6.3), (ii) not being renominated for Board membership for the next succeeding year for "Cause," (iii) being nominated for Board membership for the next succeeding year but not being reelected for Board membership for such year by the Company's shareholders, or (iv) resignation from the Board within twelve (12) months of his or her receipt of the applicable Restricted Stock Award, in any such case, prior to the actual or deemed satisfaction and/or lapse of the Transfer Restrictions applicable to such Restricted Stock Award, then such Restricted Stock shall immediately be canceled, and the Holder (and such Holder's estate, designated beneficiary or other legal representative) shall forfeit any rights or interests in and with respect to any such Restricted Stock. In addition, should a Holder die or become Totally and Permanently Disabled, all of his or her Restricted Stock shall thereupon become fully vested and the Transfer Restrictions applicable to his or her Restricted Stock Award shall immediately be cancelled.

Section 6.3 "Cause" Definition. For purposes of the Plan, a Nonemployee Director's membership on the Board may be terminated for "Cause," as determined by a vote of the majority of the other members of the Board, for his or her (i) act or acts of willful misconduct or misrepresentation, fraud or willful dishonesty involving the Company, (ii) material, willful and knowing violation or violations of the Nonemployee Director's fiduciary duty to the Company; or (iii) conviction of, or pleading nolo contendere or guilty to a felony; provided, however, in the case of clauses (i) and (ii) only, solely after the Nonemployee Director has been granted, if requested thereby, a hearing by the Board, in which he or she may be represented by legal counsel, and, if acceptable to the majority of the remaining Board, a reasonable cure opportunity.

Section 6.4 Special Termination Rule. Except to the extent inconsistent with the terms of the applicable Restricted Stock Award Agreement, and notwithstanding anything to the contrary contained in this Article VI, if a Holder's status as a Nonemployee Director shall terminate other than for "Cause", if, within ninety (90) days of such termination, such Holder shall become an Employee, or such Holder's rights with respect to any Restricted Stock Award or portion thereof granted thereto prior to the date of such termination may be preserved, if and

to the extent determined by the Committee in its sole discretion, as if such Holder had been an Employee for the entire period during which such Restricted Stock Award or portion thereof had been outstanding. Should the Committee effect such determination with respect to such Holder, for all purposes of the Plan, such Holder shall not be treated as if his or her employment or Nonemployee Director status had terminated until such time as his or her Employee status shall terminate, in which case his or her Restricted Stock Award, as it may have been reduced in connection with the Holder's becoming an Employee, shall be treated pursuant to the provisions of Section 6.2. Should a Holder's status as an Employee terminate, if, within ninety (90) days of such termination, such Holder shall again become a Nonemployee Director, such Holder's rights with respect to any Restricted Stock Award or portion thereof granted thereto prior to the date of such termination may be preserved, if and to the extent determined by the Committee in its sole discretion, as if such Holder had been a Nonemployee Director, as applicable, for the entire period during which such Restricted Stock Award or portion thereof had been outstanding, and, should the Committee effect such determination with respect to such Holder, for all purposes of the Plan, such Holder shall not be treated as if his or her Employee status had terminated until such time as his or her Nonemployee Director status, as applicable, shall terminate, in which case his or her Restricted Stock Award shall be treated pursuant to the provisions of Section 6.2.

## **ARTICLE VII AWARDS**

Section 7.1 Restriction Period. All Restricted Stock Awards shall be subject to a Restriction Period pursuant to which the Transfer Restrictions shall lapse, provided that the Holder shall continue to be a Nonemployee Director, upon the earlier of (a) the one-year anniversary of the date on which the applicable Restricted Stock Award was made, or (b) the date of the next meeting of the shareholders of the Company at which directors are elected, following the date on which the applicable Restricted Stock Award was made. Notwithstanding the foregoing, if a Holder resigns from the Board more than six (6) months after his or her receipt of a Restricted Stock Award, then the Transfer Restrictions shall lapse with respect to all of the shares of Common Stock subject to such Restricted Stock Award.

Section 7.2 Other Terms and Conditions. Common Stock awarded pursuant to a Restricted Stock Award shall be represented by a stock certificate registered in the name of the Holder of such Restricted Stock Award. If provided for under the Restricted Stock Award Agreement, the Holder shall have the right to vote Common Stock subject thereto and to enjoy all other shareholder rights, except that (i) the Holder shall not be entitled to delivery of the stock certificate until the Restriction Period shall have expired, (ii) the Company shall retain custody of the stock certificate during the Restriction Period, (iii) the Holder may not sell, transfer, pledge, exchange, hypothecate or otherwise dispose of the Common Stock during the Restriction Period, (iv) the Holder shall be entitled to receive dividends on the Common Stock during the Restriction Period and (v) a breach of the terms and conditions established by the Committee pursuant to the Restricted Stock Award Agreement shall cause a forfeiture of the Restricted Stock Award.

Section 7.3 Payment for Restricted Stock. The Committee shall determine the amount and form of any payment for Common Stock received pursuant to a Restricted Stock Award, provided that in the absence of such a determination, a Holder shall not be required to make any payment for Common Stock received pursuant to a Restricted Stock Award, except to the extent otherwise required by law.

Section 7.4 Restricted Stock Award Agreements. At the time any Restricted Stock Award is made under this Article VII, the Company and the Holder shall enter into a Restricted Stock Award Agreement setting forth each of the matters contemplated hereby and such other matters as the Committee may determine to be appropriate.

## **ARTICLE VIII RECAPITALIZATION OR REORGANIZATION**

Section 8.1 Adjustments to Common Stock. The shares with respect to which Restricted Stock Awards may be granted under the Plan are shares of Common Stock as presently constituted; provided, however, that if, and whenever, prior to the expiration or distribution to the Holder of a Restricted Stock Award theretofore granted, the Company shall effect a subdivision or consolidation of shares of Common Stock or the payment of a stock dividend on Common Stock without receipt of consideration by the Company, the number of shares of Common Stock with respect to which such Restricted Stock Award may thereafter be exercised or satisfied, as applicable, (i) in the event of an increase in the number of outstanding shares, shall be proportionately increased, and the purchase price per share shall be proportionately reduced, and (ii) in the event of a reduction in the number of outstanding shares, shall be proportionately reduced, and the purchase price per share shall be proportionately increased.

Section 8.2 Recapitalization. If the Company recapitalizes or otherwise changes its capital structure, thereafter upon any exercise or satisfaction, as applicable, of a previously granted Restricted Stock Award, the Holder shall be entitled to receive (or entitled to purchase, if applicable) under such Restricted Stock Award, in lieu of the number of shares of Common Stock then covered by such Restricted Stock Award, the number and class of shares of stock and securities to which the Holder would have been entitled pursuant to the terms of the recapitalization if, immediately prior to such recapitalization, the Holder had been the holder of record of the number of shares of Common Stock then covered by such Restricted Stock Award.

Section 8.3 Other Events. In the event of changes to the outstanding Common Stock by reason of recapitalization, reorganization, mergers, consolidations, combinations, exchanges or other relevant changes in capitalization occurring after the date of the grant of any Restricted Stock Award and not otherwise provided for under this Article VIII, any outstanding Restricted Stock Awards and any Restricted Stock Award Agreements evidencing such Restricted Stock Awards shall be subject to adjustment by the Committee in its discretion as to the number and price of shares of Common Stock or other consideration subject to such Restricted Stock Awards. In the event of any such change to the outstanding Common Stock, the aggregate number of shares available under the Plan may be appropriately adjusted by the Committee, the determination of which shall be conclusive.

Section 8.4 Powers Not Affected. The existence of the Plan and the Restricted Stock Awards granted hereunder shall not affect in any way the right or power of the Board or of the shareholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change of the Company's capital structure or business, any merger or consolidation of the Company, any issue of debt or equity securities ahead of or affecting Common Stock or the rights thereof, the dissolution or liquidation of the Company or any sale, lease, exchange or other disposition of all or any part of its assets or business or any other corporate act or proceeding.

Section 8.5 No Adjustment for Certain Restricted Stock Awards. Except as hereinabove expressly provided, the issuance by the Company of shares of stock of any class or securities convertible into shares of stock of any class, for cash, property, labor or services, upon direct sale, upon the exercise of rights or warrants to subscribe therefor or upon conversion of shares or obligations of the Company convertible into such shares or other securities, and in any case whether or not for fair value, shall not affect previously granted Restricted Stock Awards, and no adjustment by reason thereof shall be made with respect to the number of shares of Common Stock subject to Restricted Stock Awards theretofore granted or the purchase price per share, if applicable.

#### **ARTICLE IX AMENDMENT AND TERMINATION OF PLAN**

The Board in its discretion may terminate the Plan at any time with respect to any shares for which Restricted Stock Awards have not theretofore been granted. The Board shall have the right to alter or amend the Plan or any part hereof from time to time; provided, however, that no change in any Restricted Stock Award theretofore granted may be made which would materially and adversely impair the rights of a Holder without the consent of the Holder.

#### **ARTICLE X MISCELLANEOUS**

Section 10.1 No Right to Restricted Stock Award. Neither the adoption of the Plan by the Company nor any action of the Board or the Committee shall be deemed to give a Nonemployee Director any right to a Restricted Stock Award except as may be evidenced by a Restricted Stock Award Agreement duly executed on behalf of the Company, and then solely to the extent and on the terms and conditions expressly set forth therein.

Section 10.2 No Rights Conferred. Nothing contained in the Plan shall (i) confer upon any Nonemployee Director any right with respect to continuation of such Nonemployee Director's membership on the Board, or (ii) interfere in any way with the right of the Board to terminate a Nonemployee Director's Board membership at any time.

Section 10.3 Other Laws. The Company shall not be obligated to issue any Common Stock pursuant to any Restricted Stock Award granted under the Plan at any time when the shares covered by such Restricted Stock Award have not been registered under the Securities Act of 1933 and under such other state and federal laws, rules or regulations as the Company or the Committee deems applicable and, in the opinion of legal counsel of the Company, if there is no exemption from the registration requirements of such laws, rules or regulations available for the issuance and sale of such shares. No fractional shares of Common Stock shall be delivered, nor shall any cash in lieu of fractional shares be paid.

Section 10.4 No Restriction on Corporate Action. Nothing contained in the Plan shall be construed to prevent the Company or any Affiliate from taking any corporate action which is deemed by the Company or such Affiliate to be appropriate or in its best interest, whether or not such action would have an adverse effect on the Plan or any Restricted Stock Award made under the Plan. No Nonemployee Director's beneficiary or other person shall have any claim against the Company or any Affiliate as a result of any such action.

Section 10.5 Restrictions on Transfer. No Restricted Stock Award under the Plan or any Restricted Stock Award Agreement and no rights or interests herein or therein, shall or may be assigned, transferred, sold, exchanged, encumbered, pledged or otherwise hypothecated or disposed of by a Holder except (i) by will or by the laws of descent and distribution, or (ii) by gift to any Family Member of the Holder.

Section 10.6 Beneficiary Designations. Each Holder may, from time to time, name a beneficiary or beneficiaries (who may be contingent or successive beneficiaries) for purposes of receiving any amount which is payable in connection with a Restricted Stock Award under the Plan upon or subsequent to the Holder's death. Each such beneficiary designation shall serve to revoke all prior beneficiary designations, be in a form prescribed by the Company and be effective solely when filed by the Holder in writing with the Company during the Holder's lifetime. In the absence of any such written beneficiary designation, for purposes of the Plan, a Holder's beneficiary shall be the Holder's estate.

Section 10.7 Rule 16b-3. It is intended that, at any time when the Common Stock is listed on a national securities exchange or quoted on NASDAQ, the Plan and any Restricted Stock Award made to a person subject to Section 16 of the Exchange Act shall meet all of the requirements of Rule 16b-3. If any provision of the Plan or of any such Restricted Stock Award would disqualify the Plan or such Restricted Stock Award under, or would otherwise not comply with the requirements of, Rule 16b-3, such provision or Restricted Stock Award shall be construed or deemed to have been amended as necessary to conform to the requirements of Rule 16b-3.

Section 10.8 Limits of Liability. Any liability of the Company with respect to a Restricted Stock Award shall be based solely upon the contractual obligations created under the Plan and the Restricted Stock Award Agreement. Neither the Company nor any member of the Committee shall have any liability to any party for any action taken or not taken, in good faith, in connection with or under the Plan.

Section 10.9 Governing Law. Except as otherwise provided herein, the Plan shall be construed in accordance with the laws of the State of Delaware.

Section 10.10 Severability of Provisions. If any provision of the Plan is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Plan, and the Plan shall be construed and enforced as if such invalid or unenforceable provision had not been included in the Plan.

Section 10.11 Headings. Headings used throughout the Plan are for convenience only and shall not be given legal significance.

**ROTECH HEALTHCARE INC.**  
**NONEMPLOYEE DIRECTOR RESTRICTED STOCK PLAN**  
**FORM OF**  
**RESTRICTED STOCK AWARD AGREEMENT**

THIS AGREEMENT made as of \_\_\_\_\_, 200\_\_, (the "Agreement") by and between Rotech Healthcare Inc., a Delaware corporation (the "Company"), and \_\_\_\_\_ (the "Awardee").

**WITNESSETH:**

WHEREAS, the Company has adopted the Rotech Healthcare Inc. Nonemployee Director Restricted Stock Plan (the "Plan") for the benefit of its nonemployee directors and the nonemployee directors of its affiliates, and

WHEREAS, the Plan provides for the award to the Awardee of shares of Restricted Stock ("Restricted Shares"), on the terms and conditions set forth in the Plan and as hereinafter provided,

NOW, THEREFORE, in consideration of the premises contained herein, the Company and the Awardee hereby agree as follows:

1. Definitions.

Terms used in this Agreement which are defined in the Plan shall have the same meanings as set forth in the Plan.

2. Award of Restricted Shares.

The Committee hereby awards to the Awardee \_\_\_\_\_ Restricted Shares. All such Restricted Shares shall be subject to the transferability restrictions and forfeiture provisions contained in Sections 4 and 5, such restrictions to become effective immediately upon execution of this Agreement by the parties hereto.

3. Stock Certificates.

The Awardee hereby acknowledges that \_\_\_\_\_ stock certificates for Restricted Shares are hereby awarded to the Awardee hereunder, each bearing the following legend:

"The transferability of this certificate and the shares of stock represented hereby are subject to the terms and conditions (including forfeiture) of an Agreement entered into between the registered owner and Rotech Healthcare Inc., effective as of \_\_\_\_\_, 200\_\_. Copies of such Agreement are on file in the offices of the Secretary, 2600 Technology Drive, Suite 300, Orlando, Florida 32804.

4. Vesting.

The Restricted Shares shall vest, no longer be subject to Transfer Restrictions and become transferable pursuant to the terms of the Plan pursuant to the following schedule:

<u>Service Requirement as a Nonemployee Director</u>	<u>Vested Percentage</u>
Provided that the Awardee continues to be a Nonemployee Director, upon the earlier of (a) the one-year anniversary of the date of this Agreement, or (b) the date of the next meeting of the shareholders of the Company following the date of this Agreement at which Directors are elected.	100%

In addition, and notwithstanding the foregoing, if the Awardee should die or become Totally and Permanently Disabled, then his or her Restricted Shares shall thereupon become fully vested and the Transfer Restrictions applicable to his or her Restricted Stock Award shall immediately be cancelled.

5. Restriction on Transferability.

Subject to Section 9, the Restricted Shares shall not be transferable unless and until (and solely to the extent) the Awardee satisfies the vesting requirements contained in Section 4.

6. Voting and Dividend Rights.

The Awardee shall have the voting and dividend rights of a shareholder of Common Stock with respect to the Restricted Shares; provided, however, that dividends paid in shares of Common Stock shall be deposited with the Company, together with a stock power endorsed in blank or other appropriate instrument of transfer and shall be subject to the same Transfer Restrictions as the Restricted Shares.

7. Regulation by the Committee.

This Agreement and the Restricted Shares shall be subject to the administrative procedures and rules as the Committee shall adopt. All decisions of the Committee upon any question arising under the Plan or under this Agreement, shall be conclusive and binding upon the Awardee.

8. Registration.

The Restricted Shares have not been registered under the Securities Act of 1933, as amended, and may be offered and sold solely if registered pursuant to the provisions of that Act or if an exemption from registration is available. The Awardee hereby acknowledges that the Restricted Shares have not been so registered and agrees to offer or sell the Restricted Shares solely if they are registered pursuant to the provisions of that Act or if an exemption from registration is available. If the Restricted Shares are not so registered at the expiration of the applicable Transfer Restrictions, the Awardee understands that the Company will place stop-transfer instructions with its transfer agents with respect to the Common Stock certificates replacing the Restricted Shares certificates and will cause all certificates representing such Common Stock to be conspicuously legended to evidence the fact that the Common Stock has not been registered under the Securities Act of 1933, as amended, and may be offered or sold

solely if registered pursuant to the provisions of that Act or if an exemption from registration is available. The Awardee hereby represents that the Awardee accepts the Restricted Shares for his or her own account for investment and not with a view to, or for sale in connection with, the distribution of any part thereof and the Awardee acknowledges that the Awardee or the Awardee's beneficiary may be required by the Committee to repeat this representation in writing upon the delivery of Common Stock under the Plan. The Awardee further represents that the Awardee has knowledge and experience in financial and business matters, that he or she is capable of evaluating the merits and risks of owning the Restricted Shares and that the Awardee is able to bear the economic risk of such ownership.

#### 9. Change in Control.

Notwithstanding the vesting requirements contained in Section 4, upon a Change in Control, in the sole discretion of the Committee, either (a) all of the Restricted Shares shall automatically become fully vested, no longer subject to Transfer Restrictions and freely transferable, in each case as of the date of such Change in Control, or (b) the shares of Restricted Stock shall be cancelled and the Company shall, within thirty (30) days, make a cash payment to the Awardee equal to the Fair Market Value of such Shares immediately prior to the Change in Control. If the Company fails to make the payment described in clause (b) of the immediately preceding sentence within thirty (30) days following the Change in Control, the Restricted Shares shall automatically become fully vested, no longer subject to Transfer Restrictions and freely transferable as of the next day.

For purposes of this Agreement, the term "Change in Control" shall mean the earliest of the following to occur:

(a) any "person" (as defined in Sections 13(d) and 14(d) of the Exchange Act) (other than the Company or any subsidiary or any trustee or other fiduciary holding securities under an employee benefit plan of the Company), becomes the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act) directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the combined voting power of the Company's then outstanding securities; or

(b) during any two (2)-year period, individuals who at the date on which the period commences constitute a majority of the Board (the "Incumbent Directors") cease to constitute a majority thereof for any reason; provided, however, that a Board member who was not an Incumbent Director shall be deemed to be an Incumbent Director if such Board member was elected by, or on the recommendation of, at least two-thirds of the Incumbent Directors (either actually or by prior operation of this provision), other than any Board Member who is so approved in connection with any actual or threatened contest for election to positions on the Board; or

(c) the stockholders of the Company approve a merger or consolidation (other than a transaction involving only the Company and one or more of its subsidiaries) of the Company with any other company other than (i) a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the combined voting power of the voting securities of the Company (or such surviving entity) outstanding immediately after such merger or consolidation, or (ii) a merger or

consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no “person” (as defined in Sections 13(d) and 14(d) of the Exchange Act) acquires more than fifty percent (50%) of the combined voting power of the Company’s then outstanding securities; or

(d) the stockholders of the Company approve an agreement or adopt a plan relating to the complete liquidation of the Company or approve an agreement for the sale or disposition by the Company of all or substantially all of the Company’s assets.

10. Amendment.

The Committee may amend this Agreement at any time and from time to time; provided, however, that no amendment of this Agreement that would impair the Awardee’s rights or entitlements with respect to the Restricted Shares shall be effective without the prior written consent of the Awardee.

11. Plan Terms.

The terms of the Plan are hereby incorporated herein by reference.

12. Effective Date of Award.

The award of each Restricted Share shall be effective as of the date first written above.

13. Awardee Acknowledgment.

By executing this Agreement, the Awardee hereby acknowledges that he or she has received and read the Plan and this Agreement and that he or she agrees to be bound by all of the terms of both the Plan and this Agreement.

ATTEST:

\_\_\_\_\_

ROTECH HEALTHCARE INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_, Awardee

[Name]

**Brown Raysman Millstein Felder & Steiner LLP**  
**900 Third Avenue**  
**New York, NY 10022**

September 15, 2004

Rotech Healthcare Inc.  
2600 Technology Drive, Suite 300  
Orlando, Florida 32804

Ladies and Gentlemen:

We refer to the Registration Statement on Form S-8 (the "Registration Statement") to be filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Act"), on behalf of Rotech Healthcare Inc., a Delaware corporation (the "Company"), relating to an aggregate of four million two hundred twenty-five thousand (4,225,000) shares of the Company's common stock, par value \$.0001 per share (the "Common Stock") which may be issued pursuant to the Rotech Healthcare Inc. Common Stock Option Plan and the Rotech Healthcare Inc. Nonemployee Director Restricted Stock Plan (collectively, the "Plans").

We have examined originals or copies authenticated to our satisfaction of such corporate records and other documents, and we have made such examinations of law and fact, as we have deemed necessary or appropriate in order to render the opinions hereinafter expressed. In such examinations we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as copies, and the authenticity of the originals of all such copies.

Based upon the foregoing, we are of the opinion that the shares of Common Stock being registered pursuant to the Registration Statement to be issued pursuant to the Plans, when issued and paid for in accordance with the terms of the Plans, will be validly issued, fully paid and non-assessable.

We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not admit that we come within the category of persons whose consent is required to be filed with the Registration Statement under the provisions of the Act or the rules and regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

/s/ Brown Raysman Millstein Felder & Steiner LLP

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Rotech Healthcare Inc.:

We consent to the incorporation by reference in the registration statement on Form S-8 related to the Rotech Healthcare Inc. Common Stock Option Plan and Rotech Healthcare Inc. Nonemployee Director Restricted Stock Plan of our report dated February 22, 2002, with respect to the consolidated statements of operations, changes in shareholder's equity and cash flows of Rotech Medical Corporation and Subsidiaries for the year ended December 31, 2001, which report appears in the December 31, 2003 annual report on Form 10-K of Rotech Healthcare Inc.

/s/ KPMG LLP  
Baltimore, Maryland  
September 8, 2004

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement of Rotech Healthcare Inc. (the “Company”) on Form S-8 of our report dated April 13, 2004 (which report expresses an unqualified opinion and includes explanatory paragraphs relating to the Company changing its method of accounting for preferred stock to conform to Statement of Financial Accounting Standards No. 150 “Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity”, described in Note 2 and the Company’s bankruptcy reorganization described in Note 5), appearing in the Annual Report on Form 10-K of Rotech Healthcare Inc. for the year ended December 31, 2003, which is a part of this Registration Statement.

/s/ DELOITTE & TOUCHE LLP

Orlando, Florida  
September 8, 2004