

P 98000003858

Florida Department of State
Division of Corporations
Public Access System
Sandra B. Mortham, Secretary of State

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H98000016832 1)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To: Division of Corporations
Fax Number : (850) 922-4000

From: Account Name : EDWARDS & ANGELL
Account Number : 075410001517
Phone : (561) 833-7700
Fax Number : (561) 655-8719

FILED
98 SEP 10 PM 1:08
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

BASIC AMENDMENT

HIGHTOUCH TECHNOLOGIES, INC.

Certificate of Status	0
Certified Copy	1
Page Count	17
Estimated Charge	\$87.50

Restated Articles

Electronic Filing Menu

Corporate Filing

Public Access Help

09/10/98
DC

SEP-10-98 THU 11:16 AM

FAX NO.

#I198000016832 1

FILED
98 SEP 10 PM 1:08
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF RESTATEMENT
OF
ARTICLES OF INCORPORATION
OF
HIGHTOUCH TECHNOLOGIES, INC.

Pursuant to the provisions of Section 607.1007 of the Florida Business Corporation Act, the undersigned corporation adopts the following Articles of Restatement of its Articles of Incorporation:

1. The name of the corporation is HighTouch Technologies, Inc. (the "Corporation"). The date of filing of the original articles of incorporation of the Corporation was January 13, 1998, effective January 9, 1998, as amended June 30, 1998.

2. The text of the Articles of Incorporation of the Corporation is hereby amended and restated to read as follows:

ARTICLE I. NAME

The name of the corporation shall be HighTouch Technologies, Inc. (the "Corporation").

ARTICLE II. NATURE OF BUSINESS

The Corporation may engage or transact in any or all lawful activities or business permitted under the laws of the United States, the State of Florida or any other state, country, territory or nation.

ARTICLE III. CAPITAL STOCK

The total number of shares of all classes which the Corporation shall be authorized to issue is Three Million Two Hundred Ninety-Four Thousand One Hundred Eighteen (3,441,176), divided into classes as follows:

Four Hundred Forty-One Thousand One Hundred Seventy-Six (441,176) shares shall be preferred stock, \$0.01 par value per share; and

Three Million (3,000,000) shares shall be common stock, \$0.01 par value per share ("Common Stock").

Peter J. Sheptak
Florida Bar #126853
Edwards & Angell
250 Royal Palm Way
Palm Beach FL 33480
561-833-7700

#I198000016832 1

#H98000016832 1

SECTION A

Preferred Stock

1. Designation. The preferred stock of the Corporation shall consist of a series of preferred stock designated as "Series A Convertible Preferred Stock" (hereinafter called the "Series A Preferred Stock") and the number of shares constituting such series shall be 441,176. All capitalized terms used in this Article III, Section A and not otherwise defined shall have the meaning given to such terms in Section 14 of this Article III, Section A.
2. Dividends. The holders of the then outstanding shares of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board out of any funds legally available therefor, such dividends as are declared from time to time by the Board. No dividends shall be declared or paid with respect to the Common Stock at any time unless prior to or contemporaneously therewith, the Board declares and pays a dividend on the Series A Preferred Stock in an amount per share not less than the amount of the dividend proposed to be paid on a share of Common Stock multiplied by the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock on the record date for such dividend.
3. Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the affairs of the Company, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities and obligations of the Company, each holder of Series A Preferred Stock then outstanding shall be paid out of the net assets of the Company available for distribution to its stockholders before any payment or declaration and setting apart for payment of any amount shall be made in respect of the Common Stock, an amount in cash (the "Liquidation Amount") equal to the greater of (i) the aggregate Stated Value for all shares of Series A Preferred Stock held by such holder immediately prior to such liquidation, dissolution or winding up of the Corporation or (ii) the amount each such holder of Series A Preferred Stock would have received had such holder converted all Series A Preferred Stock held by such holder into Common Stock immediately prior to such liquidation, dissolution or winding up of the Corporation. If, upon any such liquidation, dissolution or other winding up of the affairs of the Corporation, the net assets of the Corporation distributable among the holders of all outstanding Series A Preferred Stock shall be insufficient to permit the payment of the Liquidation Amount in full, then the entire net assets of the Corporation remaining after the provision for the payment of the Corporation's debts and other liabilities shall be distributed among the holders of the Series A Preferred Stock ratably in proportion to the full preferential amounts to which they would otherwise be respectively entitled on account of their Series A Preferred Stock. Upon any

#H98000016832 1

such liquidation, dissolution or winding up of the Corporation, after the holders of Series A Preferred Stock shall have been paid in full the preferential amounts to which they shall be entitled to receive on account of their Series A Preferred Stock, the remaining net assets of the Corporation shall be distributed to the other stockholders of the Corporation as their respective interests may appear.

(b) Consolidation, Merger, etc. A consolidation or merger of the Corporation with or into any other corporation or corporations (a "merger"), or a Sale of the Corporation, or the effectuation by the Corporation of a transaction or a series of related transactions in which more than fifty percent (50%) of the voting power of the Corporation is disposed of (a "reorganization") (except in the case of a Qualified Public Offering) shall be deemed to constitute a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 3 and in such event, the Company shall pay each holder of Series A Preferred Stock then outstanding an amount in cash equal to the aggregate Liquidation Value of all shares of Series A Preferred Stock then held by such holder. Any reorganization of the Corporation required by any court or administrative body in order to comply with any provision of law shall be deemed to be an involuntary liquidation, dissolution or winding up of the Corporation unless the preferences, qualifications, limitations, restrictions and special or relative rights granted to or imposed upon the holders of Series A Preferred Stock are not adversely affected by such reorganization. Notwithstanding the foregoing, a consolidation, merger, Sale of the Corporation or reorganization shall not be deemed a liquidation, dissolution or winding up of the Corporation for the purposes of this Section 3 if the holders of the Requisite Percentage or more of the Series A Preferred Stock either waive in writing the provisions of the preceding two sentences, as applicable, or vote in favor of such merger or reorganization.

(c) Holders of Series A Preferred Stock shall not be entitled to any additional distribution in the event of any liquidation, dissolution or winding up of the affairs of the Corporation in excess of the Liquidation Amount.

4. Voting Rights. Except as otherwise required by law or as provided herein and subject to the rights of any class or series of capital stock of the Corporation that hereafter may be issued in compliance with the terms of these Articles of Incorporation, the shares of the Series A Preferred Stock shall vote together with the shares of the Corporation's Common Stock at any annual or special meeting of stockholders of the Corporation, or may act by written consent in the same manner as the Corporation's Common Stock, upon the following basis: each holder of shares of Series A Preferred Stock shall be entitled to such number of votes for the Series A Preferred Stock held by such holder on the record date fixed for such meeting, or on the effective date of such written consent, as shall be equal to the whole number of shares of the Corporation's Common Stock into which such holder's shares of Series A

#I98000016832 1

Preferred Stock are convertible (in accordance with the terms of Section 6 hereof), immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

5. Board of Directors. The Corporation's Board of Directors shall consist of not less than two (2) individuals; provided that upon the issuance of any Series A Preferred Stock, the Corporation's Board of Directors shall consist of not less than four (4) individuals. The holders of Series A Preferred Stock, voting separately for such purpose, shall be entitled to elect one (1) director.

6. Conversion Rights.

(a) Conversion Procedure.

(i) At any time and from time to time, any holder of Series A Preferred Stock shall have the right, at its option, to convert all or any portion of each share of Series A Preferred Stock (including any fraction of a share) held by such holder into a number of shares of fully paid and nonassessable Common Stock computed by dividing the Purchase Price by the Conversion Price in effect on the Conversion Date.

(ii) Each conversion of Series A Preferred Stock shall be deemed to have been effected as of the close of business on the effective date of such conversion specified in a written notice (the "Conversion Date"); provided, however, that the Conversion Date shall not be a date earlier than the date such notice is so given, and if such notice does not specify a conversion date, the Conversion Date shall be deemed to be the date such notice is given to the Corporation. On the Conversion Date, the rights of the holder of such Series A Preferred Stock as such holder (including the right to receive dividends) shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Common Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Common Stock represented thereby.

(iii) As soon as practicable after the Conversion Date (but in any event within ten (10) business days after the holder has delivered the certificates or affidavits of loss in the case of subparagraph (A) below) evidencing the shares of Series A Preferred Stock converted into shares of Common Stock in accordance herewith, the Corporation shall deliver to the converting holder:

(A) a certificate or certificates representing, in the aggregate, the number of shares of Common Stock issued upon such conversion, in the same name or names as the certificates representing the converted shares and in such denomination or denominations as the converting holder shall

#H98000016832 1

specify and a check for cash with respect to any fractional interest in a share of Common Stock as provided in clause (vii) of this Section 6(a); and

(B) a certificate representing any shares that were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but that were not converted.

(iv) The issuance of certificates for shares of Common Stock upon conversion of Series A Preferred Stock shall be made without charge to the holders of such Series A Preferred Stock for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Stock. Upon conversion of any shares of Series A Preferred Stock, the Corporation shall take all such actions as are necessary in order to insure that the Common Stock so issued upon such conversion shall be validly issued, fully paid and nonassessable.

(v) The Corporation shall not close its books against the transfer of Series A Preferred Stock or of Common Stock issued or issuable upon conversion of Series A Preferred Stock in any manner that interferes with the timely conversion of Series A Preferred Stock. The Corporation shall assist and cooperate with any holder of shares of Series A Preferred Stock required to make any governmental filings or obtain any governmental approval prior to or in connection with any conversion of shares of Series A Preferred Stock hereunder (including, without limitation, making any filings required to be made by the Corporation).

(vi) The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of issuance upon the conversion of the Series A Preferred Stock, such number of shares of Common Stock as are issuable upon the conversion of all outstanding Series A Preferred Stock. All shares of Common Stock that are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens and charges. The Corporation shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance).

(vii) No fractional shares of Common Stock or script shall be issued upon conversion of shares of the Series A Preferred Stock. If more than one share of Series A Preferred Stock shall be surrendered for conversion at any one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate

#H98000016832 1

#H98000016832 1

number of shares of Series A Preferred Stock so surrendered. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of any shares of Series A Preferred Stock, the Corporation shall pay a cash adjustment in respect of such fractional interest equal to the fair market value of such fractional interest as determined by the Corporation's Board of Directors.

(b) Conversion Price. The initial conversion price shall be the Purchase Price, which may be adjusted from time to time hereafter (as so adjusted, the "Conversion Price"). If and whenever on or after the Original Issue Date the Corporation issues or sells, or in accordance with Section 6(c) is deemed to have issued or sold, any shares of its Common Stock (other than as a stock dividend and other than upon a subdivision or combination of shares of Common Stock as provided in Section 6(d) below) for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then upon such issue or sale, the Conversion Price shall be reduced to a price determined as follows: (i) if the issuance or sale occurs on or before September 10, 1999, the Conversion Price shall be reduced to an amount equal to the consideration per share applicable to the Common Stock so issued or sold or deemed issued or sold in accordance with Section 6(c); and (ii) if the issuance or sale occurs after September 10, 1999, the Conversion Price shall be reduced to an amount determined by dividing (a) the sum of (1) the product derived by multiplying (i) the Conversion Price in effect immediately prior to such issue or sale times (ii) the number of shares of Common Stock Deemed Outstanding immediately prior to such issue or sale, plus (2) the consideration, if any, received (or deemed received pursuant to Section 6(c)(i) below) by the Corporation upon such issue or sale, by (b) the number of shares of Common Stock Deemed Outstanding immediately after such issue or sale.

(c) Effect on Conversion Price of Certain Events. For purposes of determining the adjusted Conversion Price under this Section 6, the following shall be applicable:

(i) Issuance of Convertible Securities. If the Corporation in any manner issues or sells any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange is less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the maximum number of shares of Common Stock issuable upon conversion or exchange of such Convertible Securities shall be deemed to be outstanding and to have been issued and sold by the Corporation at the time of the issuance or sale of such Convertible Securities for such price per share. For the purposes of this paragraph, the "price per share for which Common Stock is issuable" shall be determined by dividing (a) the total amount received or receivable by the

#H98000016832 1

Corporation as consideration for the issue or sale of such Convertible Securities, plus the cumulative minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise, conversion or exchange thereof and, if applicable, the exercise, conversion and exchange of any other Convertible Securities that such Convertible Securities may be converted into or exchanged for, by (b) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. No further adjustment of the Conversion Price shall be made when Common Stock and, if applicable, any other Convertible Securities, are actually issued upon the exercise, conversion or exchange of such Convertible Securities.

(ii) Change in Exercise Price or Conversion Rate. If the additional consideration payable to the Corporation upon the exercise, conversion or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exchangeable for Common Stock change at any time, the Conversion Price in effect at the time of such change shall be readjusted to the Conversion Price that would have been in effect at such time had such Convertible Securities that are still outstanding provided for such changed additional consideration or changed conversion rate, as the case may be, at the time such Convertible Securities were initially granted, issued or sold; but only if as a result of such adjustment the Conversion Price then in effect hereunder is thereby reduced. On the termination date of any right to exercise, convert or exchange such Convertible Securities without the exercise, conversion or exchange thereof, the Conversion Price then in effect hereunder shall be increased to the Conversion Price that would have been in effect at the time of such termination had such Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(iii) Exceptions for Excluded Securities. Notwithstanding the foregoing, no adjustments shall be made under this Section 6(c) with respect to the issuance of any Excluded Securities.

(d) Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately reduced, and conversely, in the event the outstanding shares of Commons Stock shall be combined (by reverse stock split or otherwise) into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

(e) Certain Events. If an event not specified in this Section 6 occurs that has substantially the same economic effect on the Series A Preferred Stock as those specifically enumerated, then this Section 6 shall be construed liberally, mutatis mutandis, in order to give the Series A Preferred Stock the intended

#H98000016832 1

benefit of the protections provided under this Section 6. In such event, the Corporation's Board of Directors shall make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series A Preferred Stock; provided that no such adjustment shall increase the Conversion Price as otherwise determined pursuant to this Section 6 or decrease the number of shares of Common Stock issuable upon conversion of each share of Series A Preferred Stock.

(f) Notices.

(i) Immediately upon any adjustment of the Conversion Price, the Corporation shall give written notice thereof to all holders of Series A Preferred Stock, setting forth in reasonable detail and certifying the calculation of such adjustment.

(ii) The Corporation shall give written notice to all holders of Series A Preferred Stock at least ten (10) days prior to the date on which the Corporation closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, (b) with respect to any pro rata subscription offer to holders of Common Stock or (c) for determining rights to vote with respect to any dissolution or liquidation.

(g) Mandatory Conversion. Each share of Series A Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock of the Corporation on the basis set forth in Section 6(a) immediately upon the consummation of a Qualified Public Offering. Holders of shares of Series A Preferred Stock so converted may deliver to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to such holders) during its usual business hours, the certificate or certificates for the shares so converted. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with any cash dividends and payment in lieu of fractional shares to which such holder may be entitled pursuant to this Section 6. Until such time as a holder of shares of Series A Preferred Stock shall surrender its certificate or certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof.

7. Preemptive Rights.

(a) The holders of outstanding Series A Preferred Stock (the "Preemptive Holders") shall have the preemptive rights described in this Section 7 with regard to all issuances by the Corporation after the Original Issue Date of

#H98000016832 1

#H98000016832 1

shares of Common Stock or warrants, options or other rights to purchase shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock (collectively, the "New Securities"); provided, however, that the term "New Securities" does not include:

(i) securities issued in connection with any stock splits, stock dividends or other distributions payable pro rata to all holders of Common Stock;

(ii) the Series A Preferred Stock and the Common Stock issued upon the conversion of the Series A Preferred Stock;

(iii) warrants to purchase shares of Common Stock (and the shares of Common Stock issuable upon the exercise of such warrants) issued or to be issued to Communications Equity Associates, Inc. ("CEA") or its designees or assignees pursuant to the Representation Agreement dated March 31, 1998 between CEA and the Corporation (as in effect on the Original Issue Date);

(iv) shares of Common Stock or Convertible Securities (and the shares of Common Stock issuable upon the exercise or conversion of such Convertible Securities) issued or to be issued to employees, officers, directors, consultants or other persons performing services for the Corporation pursuant to any stock option plan, stock purchase plan, management incentive plan, consulting agreement or arrangement or other contract or undertaking approved by the Corporation's Board of Directors;

(v) any shares of Common Stock issued upon the exercise of any Convertible Security so long as such Convertible Security was itself a New Security or was excluded from the definition of New Security pursuant to clauses (iii) or (iv) of this subsection (a); and

(vi) shares of Common Stock or other securities sold to the public pursuant to a Public Offering.

(b) In the event that the Corporation proposes to offer to sell any New Securities, the Corporation shall first give to each of the Preemptive Holders written notice stating such intention. The written notice shall contain a full, accurate and complete description of the price and terms of such proposed sale, and shall contain an unconditional offer to sell a Pro Rata Share (as defined in subsection (d) below) of such New Securities to such Preemptive Holder on the same terms and conditions as set forth in the notice. Each Preemptive Holder shall have fifteen (15) days from the date such written notice is given to elect to purchase all or a portion of such Preemptive Holder's Pro Rata share of

#H98000016832 1

#I198000016832 1

the New Securities, by giving written notice to the Corporation of such election and the quantity of New Securities such Preemptive Holder will purchase. If one or more of the Preemptive Holders fails to elect to purchase all their Pro Rata Share, the other Preemptive Holders shall have no preemptive rights with respect to such New Securities that the Preemptive Holders have failed to purchase.

(c) In the event that any Preemptive Holder elects to purchase any of the New Securities within the election periods described in subsection (b) above, the consideration for such purchases shall be paid to the Corporation and a certificate or other instrument evidencing the New Securities shall be delivered to the electing Preemptive Holder on the date the transaction giving rise to the preemptive rights offer closes or, if elected by the Corporation, by the close of business on the fifth day (or if such day is not a business day, the next succeeding business day) after the end of the 10-day election period described above. The Corporation shall provide notice of such date to the purchasing Preemptive Holders at least three days prior thereto.

(d) As used in this Section 7, the "Pro Rata Share" of the New Securities that a Preemptive Holder will be offered an opportunity to purchase is a fraction of the total New Securities proposed to be issued, the numerator of which is the number of shares of Common Stock then owned by such Preemptive Holder plus the number of shares of Common Stock that could be obtained by conversion on such date of all Series A Preferred Stock held by such Preemptive Holder, and the denominator of which is the aggregate number of shares of Common Stock Deemed Outstanding on such date.

(e) During the 180-day period following the expiration of the 10-day election period described in subsection (b) hereof, the Corporation may issue the New Securities that Preemptive Holders have not purchased pursuant to this Section 7, but only on terms and conditions and at a price no more favorable to the purchasers thereof than was specified in the Corporation's notice to the Preemptive Holders.

(f) All rights accorded to any Preemptive Holder under this Section 7 may be waived or modified, either generally or in the case of any particular issuance of New Securities, and either prospectively or retroactively, if those Preemptive Holders who hold at least sixty-seven percent (67%) of the then outstanding Series A Preferred Stock, voting together as a single class, execute and deliver to the Corporation a written instrument to that effect.

8. Restrictions and Limitations.

(a) So long as any shares of Series A Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent of the

#H98000016832 1

holders of at least fifty percent (50%) of the then outstanding shares of Series A Preferred Stock, merge or consolidate with any Person (other than a merger of a wholly-owned Subsidiary into the Corporation where the Corporation is the surviving corporation), or sell, transfer or otherwise dispose of all or substantially all of the assets of the Corporation in any transaction or series of related transactions (other than sales of software or technology licenses, products, inventory and services, in connection with the replacement of equipment, fixtures and/or furnishings and contractual arrangements in the ordinary course of business);

(b) So long as any shares of Series A Preferred Stock remain outstanding, the Corporation shall not, without the vote or written consent of the holders of at least sixty-seven percent (67%) of the then outstanding shares of Series A Preferred Stock

(i) liquidate, dissolve or effect a recapitalization or reorganization in any form of transaction (including, without limitation, any reorganization into a limited liability company, a partnership or any other non-corporate entity which is treated as a partnership for federal income tax purposes);

(ii) Authorize or issue, or obligate itself to issue, any other equity security (including any security convertible into or exercisable for any equity security) senior to or on a parity with the Series A Preferred Stock as to dividend rights, redemption rights or liquidation preferences; or

(iii) Amend, alter or change the powers, preferences or special rights of the Series A Preferred Stock in an adverse manner.

9. Status of Reacquired Shares. Shares of Series A Preferred Stock which have been issued and reacquired in any manner shall (upon compliance with any applicable provisions of the laws of the State of Florida) have the status of authorized and unissued shares of Series A Preferred Stock issuable in series undesignated as to series and may be redesignated and reissued.

10. Exclusion of Other Rights. Except as may otherwise be required by law, the shares of Series A Preferred Stock shall not have any preferences or relative, participating, optional or other special rights, other than those specifically set forth in these Articles of Incorporation.

11. Identical Rights. Each share of the Series A Preferred Stock shall have the same relative rights and preferences as, and shall be identical in all respects with, all other shares of the Series A Preferred Stock.

#H98000016832 1

12. Certificates. So long as any shares of the Series A Preferred Stock are outstanding, the Corporation shall furnish without charge to each shareholder who so requests, a full statement of the designation and relative rights, preferences and limitations of each class of stock or series thereof that the Corporation is authorized to issue and of the authority of the Board of Directors to designate and fix the relative rights, preferences and limitations of each series.

13. Amendments. Except as otherwise provided herein, any provision of these terms of the Series A Preferred Stock may be amended, modified or waived if and only if the holders of not less than the Requisite Percentage of Series A Preferred Stock have consented in writing or by an affirmative vote to such amendment, modification or waiver of any such provision of these terms of the Series A Preferred Stock.

14. Definitions.

"Affiliate" or "Affiliates" means with respect to any Person, any other Person that would be considered to be an affiliate of the Corporation under Rule 144(a) of the Rules of Regulations of the Securities and Exchange Commission, as in effect on the date hereof, if the Corporation were issuing securities.

"Articles of Incorporation" means the Articles of Incorporation of the Corporation, as amended from time to time.

"Common Stock" means the Corporation's Common Stock, \$.01 par value.

"Common Stock Deemed Outstanding" means, at any given time, the number of shares of Common Stock actually outstanding at such time, plus the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock, plus the number of shares of Common Stock issuable upon the conversion or exercise in full of all Convertible Securities whether or not the Convertible Securities are exercisable for or convertible into Common Stock at such time.

"Conversion Price" shall have the meaning set forth in Section 6(b) hereof.

"Convertible Securities" means securities or obligations that are exercisable for, convertible into or exchangeable for shares of Common Stock. The term includes, without limitation, options, warrants or other rights to subscribe for or purchase Common Stock or to subscribe for or purchase other securities that are convertible into or exchangeable for Common Stock.

#H98000016832 1

#II98000016832 1

"Excluded Securities" means (a) shares of Common Stock issued upon conversion of the Series A Preferred Stock; (b) warrants to purchase shares of Common Stock (and the shares of Common Stock issuable upon the exercise of such warrants) issued or to be issued to Communications Equity Associates, Inc. ("CEA") or its designees or assignees pursuant to the Representation Agreement dated March 31, 1998 between CEA and the Corporation (as in effect on the Original Issue Date); and (c) shares of Common Stock or Convertible Securities (and the shares of Common Stock issuable upon the exercise or conversion of such Convertible Securities) issued or to be issued to employees, officers, directors, consultants or other persons performing services for the Company pursuant to any stock option plan, stock purchase plan, management incentive plan, consulting agreement or arrangement or other contract or undertaking approved by the Corporation's Board of Directors.

"Junior Securities" means any of the Corporation's Common Stock and all other equity securities of the Corporation other than the Series A Preferred Stock.

"Original Issue Date" for any share of Preferred Stock means the date on which such share of Preferred Stock was originally issued.

"Person" means an individual, partnership, corporation, association, trust, joint venture, unincorporated organization and any government, governmental department or agency or political subdivision thereof.

"Preferred Stock" means the Series A Preferred Stock.

"Public Offering" means any offering by the Corporation of its equity securities to the public pursuant to an effective registration statement under the Securities Act of 1933, as amended, or any comparable statement under any similar federal statute then in force.

"Purchase Price" of any share of Series A Preferred Stock shall be \$3.40.

"Qualified Public Offering" means any Public Offering with aggregate gross proceeds to the Corporation of at least \$10,000,000 and an offering price per share to the public equal to or greater than \$10.00 per share (as appropriately adjusted to take into account stock splits, stock dividends and combinations that occurred subsequent to the Original Issue Date of such Series A Preferred Stock).

"Requisite Percentage" means 67%, except that, with respect to any amendment to these Articles of Incorporation that amends this definition, Requisite Percentage means 100%.

#H98000016832 1

#H98000016832 1

"Sale of the Corporation" means a single transaction or a series of transactions pursuant to which a Person or Persons acquire all or substantially all of the Corporation's assets determined on a consolidated basis.

"Second Round Closing Date" means the date on which the Corporation receives at least \$2,500,000 of gross cash proceeds (before deduction of any fees or expenses) from the sale in a single transaction or a contemporaneous series of related transactions of a class or series of capital stock of the Corporation.

"Series A Preferred Stock" means the Corporation's Series A Preferred Stock, \$.01 par value, as in effect on the date hereof.

"Stated Value" means \$3.40 per share of the Series A Preferred Stock.

"Subsidiary" means, with respect to any Person, any corporation, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a partnership, association or other business entity if such Person or Persons shall be allocated a majority of partnership, association or other business entity gains or losses or shall be or control the managing general partner of such partnership, association or other business entity.

15. Severability of Provisions. If any right, preference or limitation of the Series A Preferred Stock set forth in these Articles of Incorporation (as these Articles of Incorporation may be amended from time to time) is invalid, unlawful or incapable of being enforced by reason of any rule, law or public policy, all other rights, preferences and limitations set forth in these Articles of Incorporation (as so amended) which can be given effect without implicating the invalid, unlawful or unenforceable right preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other right, preference or limitation unless so expressed herein.

#H98000016832 1

#H98000016832 1

SECTION B

Common Stock

Each share of Common Stock shall have one vote upon all matters to be voted on by the holders of the Common Stock, and shall be entitled to participate equally in all dividends payable with respect to the Common Stock and to share ratably, subject to the rights and preferences of any series of Preferred Stock, in all assets of the corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the corporation, or upon any distribution of the assets of the corporation.

ARTICLE IV. ADDRESS

The principal street address of the Corporation is 111 2nd Avenue N.E., Suite 500, St. Petersburg, Florida 33701 and the mailing address of the Corporation is 111 2nd Avenue N.E., Suite 500, St. Petersburg, Florida 33701.

The street address of the initial registered office of the Corporation is 250 Royal Palm Way, Suite 300, Palm Beach, Florida 33840 and the name of the initial registered agent of the Corporation at that address is Angell Corporate Services, Inc.

ARTICLE V. TERM OF EXISTENCE

The Corporation is to exist perpetually.

ARTICLE VI. DIRECTORS

The Corporation shall have two (2) directors initially. The names and street addresses of the initial members of the Board of Directors are:

William D. Lovell
17099 Gulf Pine Circle
Wellington, Florida 33414

Jared Hechtkopf
111 2nd Avenue N.E.
Suite 500
St. Petersburg, Florida 33701

ARTICLE VII. INDEMNIFICATION

A. The Corporation shall to the fullest extent permitted by law indemnify any person who was or is a party or is threatened to be made a party

#H98000016832 1

to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise.

B. The Corporation may pay in advance any expenses (including attorneys' fees) that may become subject to indemnification under paragraph A above if the person receiving the advance payment of expenses undertakes in writing to repay such payment if it is ultimately determined that such person is not entitled to indemnification by the Corporation under paragraph A above.

C. The indemnification provided by paragraph A above shall not be exclusive of any other rights to which a person may be entitled by law, bylaw, agreement, vote or consent of shareholders or directors, or otherwise.

D. The indemnification and advance payment provided by paragraphs A and B above shall continue as to a person who has ceased to hold a position named in paragraph A above and shall inure to such person's heirs, executors, and administrators.

E. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or who serves or served at the Corporation's request as a director, officer, employee, agent, partner, or trustee of another corporation or of a partnership, joint venture, trust, or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have power to indemnify such person against such liability under paragraph A above.

F. If any provision in this Article shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and, to the extent possible, effect shall be given to the intent manifested by the provision held invalid, illegal, or unenforceable.

ARTICLE VIII. CERTAIN LIMITATIONS ON LIABILITY OF DIRECTORS

Except to the extent that the Florida Business Corporation Act prohibits the elimination or limitation of liability of directors for breach of the duties of a director, no director of the Corporation shall have any personal liability for monetary damages for any statement, vote, decision, or failure to act, regarding corporate management or policy. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any

#I198000016832 1

director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

ARTICLE IX. INCORPORATOR

The name and address of the incorporator to these Articles of Incorporation are:

Claudia S. Amlie
c/o Edwards & Angell
250 Royal Palm Way
Suite 300
Palm Beach, Florida 33480

ARTICLE X. EFFECTIVE DATE OF INCORPORATION

These Articles of Incorporation shall be effective as of the 9th day of January, 1998.

3. The foregoing restatement contains an amendment to the Articles of Incorporation requiring shareholder approval. The foregoing restatement was adopted and approved by the directors of the Corporation in a unanimous written consent in lieu of a meeting of the Board of Directors on September 9, 1998, and was adopted and approved by the shareholders of the Corporation in a unanimous written consent in lieu of a meeting of the Shareholders on September 9, 1998, and the number of votes cast for the restatement by the Shareholders was sufficient for approval.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Restatement of the Articles of Incorporation as of this 10th day of September, 1998, and does hereby certify that the facts stated in these Articles of Restatement of the Articles of Incorporation are true and correct.

HIGHTOUCH TECHNOLOGIES, INC.

By: 

William D. Lovell
Vice President and Secretary

#I198000016832 1