



THE UNITED STATES
CORPORATION
COMPANY

P98000027151

ACCOUNT NO. : 072100000032

REFERENCE : 919949 4728359

AUTHORIZATION

Patricia Pujols

COST LIMIT : \$ 87.50

ORDER DATE : August 7, 1998

ORDER TIME : 10:15 AM

ORDER NO. : 919949-005

CUSTOMER NO: 4728359

CUSTOMER: Barbara Rowe, Legal Assistant
Bush Ross Gardner Warren &
220 South Franklin Street

Amend

400002610554--0

Tampa, FL 33602

DOMESTIC AMENDMENT FILING

NAME: PHYSIOMETRICS, INC.

EFFECTIVE DATE:

ARTICLES OF AMENDMENT

RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

CERTIFIED COPY

PLAIN STAMPED COPY

CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Abby Capaz

EXAMINER'S INITIALS:

Roll
8/7/98

FILED
98 AUG -7 PM 2:44
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

RECEIVED
AM 11:12
CORPORATION
DIVISION OF
93126

FILED
98 AUG -7 PM 2:44
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**ARTICLES OF AMENDMENT TO
THE ARTICLES OF INCORPORATION OF
PHYSIOMETRICS, INC.**

**DETERMINING AND DESIGNATING THE
PREFERENCES, LIMITATIONS AND RELATIVE RIGHTS OF
SERIES A CONVERTIBLE PREFERRED STOCK**

**Pursuant to Sections 607.0601 and .0602
of the
Florida Business Corporation Act**

PHYSIOMETRICS, Inc., a Florida corporation maintaining administrative offices at 13500 Wright Circle, Tampa, FL 33626 (the "**Corporation**"), hereby certifies that pursuant to authority conferred upon its Board of Directors by the Articles of Incorporation of the Corporation, and by the provisions of Sections 607.0601, .0602 and .0821, Florida Statutes, such Board, by unanimous written action taken as of July 31, 1998, has adopted a resolution approving and providing for the designation and issuance of a series of its 10,000,000 shares of authorized preferred stock, \$.001 par value, the content of which resolution is hereafter set forth in its entirety:

RESOLVED, that pursuant to the authority expressly granted and vested in the Board of Directors of this Corporation by Section 4.2 of its Articles of Incorporation, a series of the Corporation's single authorized class of preferred stock, \$.001 par value, to consist of 2,266,667 shares, is hereby established and designated as its Series A Convertible Preferred Stock, \$.001 Par Value (the "**Series A Preferred Stock**"), the powers, preferences and relative, participating, optional or other special rights of which, and the qualifications, limitations and restrictions to which shares of the Series shall be subject, are as follows:

1. Stated Value. Notwithstanding its \$.001 par value, the stated value of each issued share of Series A Preferred Stock (the "**Stated Value**") shall initially be deemed to be \$.2205882, and shall thereafter be automatically increased by the amount of \$.2205882 each time that a single Supplementary Purchase Price payment is made in accordance with the terms of that certain Capital Stock Purchase Agreement, to be entered into in August 1998 by and between the Corporation and OSI Systems, Inc., a California corporation (in its initial or any amended version, the "**Purchase Agreement**") as the purchaser thereunder (the "**Purchaser**") of the Series A Preferred Stock, a complete and correct copy of which Purchase Agreement will be furnished to each holder of such Stock promptly upon request and without charge.

2. Relative Seniority; Definition of Common Stock. The Series A Preferred Stock shall rank senior in all respects to shares of the Corporation's existing class of common stock, \$.001 par value (the "**Common Stock**") and to any other class or series of the Corporation's capital stock, including, without limitation, in respect of voting rights, the right to participate in the payment of dividends and in the right to receive other distributions made upon any dissolution or winding up

of the Corporation's legal existence and associated liquidation of its assets, or otherwise. As used in this Resolution the term "**Common Stock**" shall mean all shares of the Corporation's common stock authorized at the date of the initial issuance of shares of the Series A Preferred Stock or, in the case of any future reclassification or exchange of such common stock, shares of the Corporation's capital stock into or for which such common stock shall be reclassified or exchanged, and all provisions of this Resolution shall be applied appropriately thereto.

3. **Voting Rights.** Each issued and outstanding share of Series A Preferred Stock shall entitle the record holder thereof to fully participate in all meetings of the Corporation's shareholders and to cast that number of votes, on each matter with respect to which shareholders of the Corporation have the right or are asked to vote or provide their written consent, equal to the number of shares of Common Stock into which it is convertible on the record date for determining shareholders eligible to vote on such matter or, if no such record date is established, on the date such vote is taken or any written consent of shareholders is solicited; provided, however, that at no time following the initial issuance of the Series A Preferred Stock shall any action be taken without the prior consent of the record owners of a majority in interest of such shares, which affects such shares or the powers, preferences or rights thereof.

4. **Dividends.** Each holder of shares of the Series A Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, if at all, dividends on a parity with each holder of shares of Common Stock; provided, however, that no dividend or other distribution shall be declared or paid with respect to the Common Stock or any other securities of the Corporation at any time prior to the receipt by each holder of Series A Preferred Stock of (a) one or more distributions from the Corporation having an aggregate value equal to the Stated Value of such shares, and (b) evidence reasonably satisfactory to such holder that the Purchaser has been fully and forever relieved of and released from whatever obligation it then may have to make any further Supplementary Purchase Price payment under the Purchase Agreement, unless the Corporation shall first be in receipt of the prior consent of the record owners of a majority in interest of such shares. Any dividend or other distribution meeting the requirements of this Section shall be payable per share of Series A Preferred Stock in an amount equal to the dividend or other distribution per share payable on the number of shares of Common Stock into which each share of Series A Preferred Stock is convertible on the record date for determining eligibility to receive such dividend or other distribution, or if no such record date is established, on the date such dividend or other distribution is actually paid. The capital return directed by Section 8. below shall not be deemed a dividend or other distribution for purposes of this Section 4.

5. **No Redemption Rights.** No holder of shares of Series A Preferred Stock shall have the right to require the Corporation to redeem any portion thereof, and the Corporation shall similarly have no right to require such a redemption.

6. **Voluntary Conversion of Series A Preferred Stock into Common Stock.**

a. **In General:** Subject to the remaining provisions of this Section 6, each holder of record of one or more shares of Series A Preferred Stock shall have the continuing right,

exercisable at its option and at any time(s) (in whole or in part) following the date of filing with the Florida Department of State of the Articles of Amendment of which this Resolution forms a part, to convert each share of Series A Preferred Stock then held by it into one fully paid and non-assessable share of Common Stock (in its unadjusted or any subsequently adjusted form, the "**Conversion Factor**"). To ensure, however, that the relative value of the shares of Common Stock to be issued in connection with each such conversion shall not have been diluted, by actions of the Corporation hereinafter described, from the value which would exist were the conversion of all shares of Series A Preferred Stock effected as of the date of the initial issuance of the Series A Preferred Stock, the Stated Value of each share of Series A Preferred Stock shall, in connection with each conversion, be divided by \$.2205882 or whatever multiple thereof is required by reason of one or more additional Supplementary Purchase Price payments having been made by the Purchaser under the Purchase Agreement (as contemplated by Section 1 of this Resolution), and as adjusted in accordance with the provisions of Section 6.c(3) below, (whether in its original or multiplied, unadjusted or any adjusted form, the "**Divisor**"); the resulting quotient, calculated to the nearest 1/1,000,000th, shall be multiplied by the Conversion Factor (as adjusted in accordance with the provisions of Section 6.c(1) and (2)); and the product of that latter calculation shall constitute the new Conversion Factor. In turn, the product of the new Conversion Factor multiplied by the number of shares of Series A Preferred Stock that are made the subject of the conversion election shall constitute the number of fully paid and non-assessable shares of Common Stock that shall be issued upon such conversion.

b. Procedure: In order to convert shares of Series A Preferred Stock into shares of Common Stock, a holder shall (i) notify the Corporation of its election to convert shares of Series A Preferred Stock and of the number of such shares to be converted; (ii) surrender each certificate evidencing the shares of Series A Preferred Stock to be converted, duly endorsed to the Corporation or in blank and accompanied by proper instruments of transfer, at the executive office of the Corporation or such other location as may reasonably be designated by the Corporation; and (iii) state in writing the name or names in which the holder wishes each certificate for shares of Common Stock to be issued. The date upon which the holder satisfies the last of such requirements is herein referred to as the "**Conversion Date**". Within five business days after the Conversion Date, the Corporation shall deliver one or more certificates, registered in the name(s) of the person(s) identified by the converting holder of Series A Preferred Stock, for the number of full shares of Common Stock issuable upon the conversion, together with, as applicable, a new certificate representing any unconverted portion of the shares of Series A Preferred Stock represented by the certificate(s) surrendered for conversion, and cash in lieu of any fraction of a share as provided in Section 6.h below. The person(s) in whose name(s) the certificate(s) for the Common Stock are registered shall become shareholder(s) of record of Common Stock on the Conversion Date. If the Common Stock issuable upon conversion is to be registered in a name other than the holder exercising the conversion privilege, such holder shall also deliver, on or before the Conversion Date, such evidence of authorization for the transfer and of the transferee's compliance with the provisions of any agreements restricting further transfer and any applicable securities laws as the Corporation may reasonably request.

c. Adjustments: Except as (i) provided in clauses (1) through (6) of this subsection c; (ii) contemplated elsewhere in this Resolution; or (iii) otherwise authorized hereafter by the unanimous action of all members of the Corporation's board of directors, who shall be required, promptly upon receipt of a Purchaser request, to (A) consider and determine whether an adjustment is equitable and appropriate notwithstanding the lack of any specific direction therefore in this Resolution, (B) act reasonably, in good faith and in accordance with their fiduciary obligations to shareholders, (C) memorialize, in the form of resolution(s), the basis of their consideration and determination, and (D) provide Purchaser with a copy of such resolution(s), no adjustment to the Divisor shall be made because the Corporation issues, in exchange for cash, property or services, Common Stock, or any securities convertible into or exchangeable for Common Stock, or securities carrying the right to purchase Common Stock or such convertible or exchangeable securities. Furthermore, no adjustment to the Divisor need be made under this Section 6 solely as a result of the par value of the Common Stock being modified or eliminated or subsequently reinstated.

(1) If, prior to any conversion, the outstanding shares of Common Stock are subdivided into a greater number or combined into a smaller number of shares (by way of reclassification, forward or reverse split or in any other manner), then, although no adjustment will be required to be made to the Divisor, the Conversion Factor shall be increased or reduced to an amount equal to the product of (A) a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately after the subdivision or combination and the denominator of which shall be the number of such shares outstanding immediately prior thereto, times (B) the pre-existing Conversion Factor.

(2) If, prior to any conversion, there is legally paid with respect to the Common Stock, but not with respect to the Series A Preferred Stock, any dividend or other distribution in the form of shares of Common Stock, then the Conversion Factor shall be increased to an amount equal to the product of (A) a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately after the payment of such dividend and the denominator of which shall be the number of such shares outstanding immediately prior thereto, times (B) the pre-existing Conversion Factor.

(3) If, prior to any conversion, the Corporation shall issue or sell shares of Common Stock (except as provided in clause (4) below) without consideration or for a consideration per share of less than the then existing "Conversion Price" of a single share of the Series A Preferred Stock (which price shall be deemed to constitute the quotient of (a) the product of the Stated Value of each share of Series A Preferred Stock times the aggregate number of such shares, divided by (b) the number of shares of Common Stock issuable upon conversion of all shares of Series A Preferred Stock [which number is, itself, the product of the Conversion Factor, as adjusted, times the aggregate number of shares of Series A Preferred Stock],

initially \$.2205882), then the Divisor shall be decreased to that percentage of itself constituting the quotient (also stated as a percentage) of (i) the sum of (x) the number of shares of Common Stock outstanding immediately prior to such issuance or sale, plus (y) the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of such shares of Common Stock so issued or sold would purchase at the Conversion Price, divided by (ii) the number of shares of Common Stock outstanding immediately after such issuance or sale; and the Conversion Price, from and after the date of such issuance and sale (and subject to further adjustment as provided herein), shall be the product of the Conversion Price in effect immediately prior to such issuance and sale multiplied by the same percentage to which the Divisor shall be decreased.

As an example of the manner in which the preceding paragraph is intended to operate in concert with Section 6.a, assume that at the time of issuance of the Series A Preferred Stock there are issued and outstanding 3,400,000 shares of Common Stock, that the Purchaser subsequently pays an additional \$.6617646 per share of Series A Preferred Stock, and thereafter (but prior to the conversion of any of the Series A Preferred Stock) the Corporation issues 2,500,000 shares of Common Stock at a per share selling price of \$.50. To determine whether an adjustment will thereafter be required to be made to the Divisor, the Corporation must first determine whether the \$.50 per share selling price of the newly issued Common Stock is less than the then existing Conversion Price of the Series A Preferred Stock. The Conversion Price is determined by the following formula:

$$\frac{SV \times PS}{CF \times PS} = CP$$

where SV = the Stated Value of a single share of Series A Preferred Stock, or \$.8823528;

PS = the number of shares of Series A Preferred Stock, or 2,266,667;

CF = the Conversion Factor, or 1.0000000 in its unadjusted form; and

CP = the Conversion Price of a single share of Series A Preferred Stock

or

$$\frac{$.8823528 \times 2,266,667}{1.0000000 \times 2,266,667} = $.8823528$$

Since the Conversion Price, at its then existing level, is higher than the selling price of the newly issued Common Stock, the Divisor must be decreased to that percentage of itself which is determined by the following formula:

$$\frac{C/S + N/S}{A/S}$$

where C/S = the number of shares of Common Stock outstanding immediately prior to the new issue;

N/S = the number of shares of Common Stock that the aggregate consideration received by the Corporation for the shares actually issued would have purchased at the Conversion Price; and

A/S = the number of shares of Common Stock outstanding immediately after the new issue

or

$$\frac{3,400,000 + (\$1,250,000 \div .8823528)}{5,900,000} = .8163842$$

or, stated as a percentage, 81.63842%

Accordingly, the Divisor must be decreased to 81.63842% of its former level, or from \$.8823528 to \$.7203389, such that if any of the shares of Series A Preferred Stock are thereafter converted the New Conversion Factor to be applied to each, so as to calculate the number of shares of Common Stock to be issued, will be determined under Section 6.a by reference to the following formula:

$$\frac{\text{Stated Value}}{\text{Divisor}} \times \text{CF} = \text{New Conversion Factor}$$

or

$$\frac{\$.8823528 \times 1.00000}{.7203389} = 1.2249135$$

and from the date of the new issuance and sale of Common Stock the Conversion Price, subject to subsequent adjustment, will be decreased to 81.63842% of its former level.

For the purpose of this clause (3) the following provisions shall be applicable:

(i) In the case of any issuance or sale for cash, the consideration shall be deemed to be the cash proceeds received by the Corporation for such shares (or if such shares are offered by the Corporation for subscription, the subscription price, or, if such shares are sold to underwriters or dealers for public offering without a subscription offering, the public offering price), without deducting therefrom any compensation or discount in the sale, subscription or underwriting thereof by underwriters, dealers or others performing similar services, or for any expenses reasonably incurred in

connection therewith. In the case of any issuance or sale (otherwise than upon conversion or exchange of securities by their terms convertible or exchangeable into Common Stock) for a consideration other than cash, the amount of such consideration shall be deemed to be the fair value thereof as determined by the unanimous action of all members of the Corporation's board of directors, irrespective of the accounting treatment thereof, which determination shall be made at any time on or prior to the date of issuance or sale irrespective of the fact that definitive agreements providing for the issuance may have been previously approved by the Corporation's board of directors or shareholders.

(ii) If the Corporation issues options (including capital stock purchase warrants) or rights to subscribe, upon exercise, for shares of Common Stock or issues securities convertible into, exchangeable for, or carrying rights of purchase of, shares of Common Stock, and if the consideration per share of the Common Stock deliverable upon any such exercise, conversion or exchange (determined by dividing the aggregate consideration received or receivable by the Corporation as consideration for the granting of such options or rights or the issue or sale of such convertible or exchangeable securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise, conversion or exchange thereof, by the total maximum number of shares of Common Stock issuable upon such exercise, conversion or exchange), is less than the Conversion Price of the Common Stock:

(A) In the case of options or rights, the shares of Common Stock deliverable upon their exercise shall be deemed to have been issued at the time of issuance of such options or rights and the aggregate consideration shall be the minimum purchase price payable to the Corporation upon exercise of such options or rights plus any additional consideration received by it for such options or rights at the time of their issuance.

(B) In the case of convertible or exchangeable securities, the maximum number of shares of Common Stock initially deliverable upon their conversion or exchange shall be deemed to be issued at the time of issuance or sale of such securities, and the aggregate consideration shall be the consideration received by the Corporation for such securities, before deducting any discounts, commissions or other expenses in connection with the issuance and sale of such securities, plus the minimum additional consideration, if any, receivable by the Corporation upon the conversion or exchange thereof.

(C) No further adjustment of the number of shares of Common Stock into which each share of Series A Preferred Stock may be converted shall be

made, upon the actual issue of such Common Stock, upon the exercise of such rights or options or upon the conversion or exchange of such convertible or exchangeable securities.

(D) Upon the expiration of such options or rights, or the termination of such right to convert or exchange, the number of shares of Common Stock into which each share of Series A Preferred Stock may be converted shall forthwith be readjusted to such number as would have obtained had the adjustment made upon the issuance of such options, rights or convertible or exchangeable securities been made upon the basis of the issuance or sale of only the number of shares of Common Stock actually issued upon the exercise of such options or rights or upon the conversion or exchange of such securities.

(E) In the event that, prior to the expiration of such options or rights or the termination of such right to convert or exchange, the consideration payable on the issuance, sale or delivery of the shares of Common Stock shall change, or the number of shares of Common Stock deliverable upon conversion of or in exchange for any such convertible or exchangeable security shall change, the number of shares of Common Stock into which each share of Series A Preferred Stock may be converted shall forthwith be readjusted to such number as would have obtained had the adjustment made upon the issuance of such options, rights or convertible or exchangeable securities been made (except with respect to options or rights exercised or securities converted or exchanged prior to such readjustment) upon the basis of such consideration then payable or number of shares then deliverable.

(F) Options or rights issued or granted pro rata to shareholders without consideration and securities convertible into, exchangeable for, or carrying rights of purchase of, shares of Common Stock, which securities are issuable by way of dividend or other distribution to shareholders, shall be deemed to have been issued or granted at the close of business on the date fixed for the determination of shareholders entitled thereto and shall be deemed to have been issued without consideration.

(G) In the case of any options or rights which expire by their terms not more than 45 days after the date of issue, sale or grant thereof, no adjustment of the number of shares of Common Stock into which each share of Series A Preferred Stock may be converted shall be made until the expiration or exercise of all such options or rights, whereupon such adjustment shall be made in the manner provided in clause (D) above; provided that if a conversion of any shares of Series A Preferred Stock is effected hereunder subsequent to the date of issuance, sale or grant of any such options or rights but prior to its date of exercise, any adjustment subsequently required as a

result of such exercise shall be deemed made retroactively as of the date of issuance, sale or grant so as to be considered in determining the Conversion Factor or Conversion Price applicable to such conversion.

(H) Shares of Common Stock issued or deemed to be issued pursuant to clauses (A) or (B) above with respect to which any adjustment in the number of shares of Common Stock into which each share of Series A Preferred Stock may be converted is required to be made shall be deemed to be outstanding as of and after the date on which such adjustment is made and until any readjustment is made with respect thereto pursuant to clause (D) or (E) above, in which case the shares with respect to which such readjustment is made shall no longer be deemed to be outstanding as of the date of such readjustment.

(4) No adjustment in the number of shares of Common Stock into which each share of Series A Preferred Stock may be converted shall be made by reason of the issuance and sale, in conformity with all applicable provisions of the Purchase Agreement, of (i) Common Stock pursuant to the Company's 1998 Stock Option Plan for Employees, Directors and Consultants; (ii) options to acquire Common Stock granted or to be granted under such Plan; or (iii) the Series A Preferred Stock created hereby, or any shares of Common Stock issued upon conversion of the shares of such Series.

(5) In case of any capital reorganization or any reclassification of the capital stock of the Corporation, or the consolidation or merger of the Corporation with another corporation, or any sale or conveyance of all or substantially all of the property and assets of the Corporation, each share of Series A Preferred Stock shall thereafter be convertible into the number of shares of stock or other securities or cash or other property receivable upon such capital reorganization, reclassification of capital stock, consolidation, merger, sale or conveyance, as the case may be, by a holder of the number of shares of Common Stock into which such share of Series A Preferred Stock shall have been convertible immediately prior to such capital reorganization, reclassification of capital stock, consolidation, merger, sale or conveyance.

(6) No adjustment in the number of shares of Common Stock into which each share of Series A Preferred Stock may be converted, as a result of the application of the foregoing provisions, is to be given effect unless, by making such adjustment, the number of shares of Common Stock into which each share of Series A Preferred Stock may be converted would be changed by 1% or more, but any adjustment which would change the number of shares of Common Stock into which each share of Series A Preferred Stock may be converted by less than 1% is to be carried forward and given effect in making future adjustments; provided that the

Board of Directors may make an adjustment of less than 1% to avoid a deemed stock distribution to holders of the Common Stock.

d. Notification to Holders: Whenever the number of shares of Common Stock into which each share of Series A Preferred Stock may be converted shall be adjusted pursuant to the provisions hereof, the Corporation shall promptly furnish each holder of Series A Preferred Stock, in the manner contemplated by Section 9 below, with a statement, signed by its Chief Executive and Chief Financial Officer(s), describing the adjusted number of shares of Common Stock into which each share of Series A Preferred Stock may be converted and setting forth in reasonable detail the method of calculation and the facts requiring such adjustment and upon which such calculation is based. Each adjustment shall remain in effect until a subsequent adjustment hereunder is required.

e. Reservation: The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock, the full number of shares of Common Stock deliverable upon the conversion of all outstanding shares of Series A Preferred Stock and all other outstanding shares and other securities which are convertible into Common Stock, and upon exercise of any outstanding rights or options to purchase Common Stock.

f. Replacement Certificates: As promptly as practicable after the surrender for conversion of any Series A Preferred Stock, the Corporation shall deliver or cause to be delivered at the principal office of the Corporation (or such other place as may be designated by the Corporation), to or upon the written order of the holder of such Series A Preferred Stock, one or more certificates representing the shares of Common Stock issuable upon such conversion, issued in such name or names as such holder may reasonably direct.

g. Payment of Accrued Dividends: At the time of such conversion, to the extent it is legally able to do so, the Corporation shall pay to each holder of record of any share of Series A Preferred Stock being converted any dividends accrued but unpaid with respect thereto.

h. No Fractional Shares: The Corporation shall not be required to issue any fractions of shares of Common Stock upon conversions of Series A Preferred Stock. If any interest in a fractional share of Common Stock would otherwise be deliverable upon the conversion of any Series A Preferred Stock, the Corporation shall make adjustment for such fractional share interest by payment to the converting shareholder of cash in an amount bearing the same ratio to the fair market value of a whole share of Common Stock of the Corporation, as determined by the unanimous action of all members of the Corporation's board of directors, as the fractional interest to which the shareholder would otherwise be entitled bears to a whole share of Common Stock.

i. Validly Issued: All shares of Common Stock which may be issued upon conversion of the shares of Series A Preferred Stock will upon issuance by the Corporation

be validly issued, fully paid, nonassessable and free from all taxes, liens, and charges with respect to the issuance thereof.

j. Expenses: The issuance of certificates representing shares of Common Stock upon conversion of the Series A Preferred Stock shall be made to each applicable shareholder without charge for any excise tax in respect of such issuance. However, if any certificate is to be issued in a name other than that of the holder of record of the Series A Preferred Stock so converted, the person or persons requesting the issuance thereof shall pay the amount of any tax which may be payable in respect of any transfer involved in such issuance.

k. Status of Converted Stock: In case any shares of Series A Preferred Stock shall be converted, the shares so converted shall resume the status of authorized but unissued shares of preferred stock.

7. Mandatory Conversion. Any Series A Preferred Stock then outstanding shall be converted into Common Stock contemporaneously with the consummation of the Corporation's first fully underwritten, firm commitment public offering, by way of an effective registration statement under the Securities Act of 1933, as amended (or successor legislation), of shares of Common Stock, pursuant to which the aggregate price paid by the public for the purchase of all shares of Common Stock sold by the Corporation subject thereto shall be at least \$10,000,000, and the per share price to be paid by the public shall be at least five times the maximum per share price payable for shares of Series A Preferred Stock under the Purchase Agreement, taking into effect in determining whether such price threshold is met each reorganization, merger, consolidation, reclassification, recapitalization, combination or exchange of shares, stock split, stock dividend, rights offering, or other similar corporate finance event, as is effected subsequent to the date of this Resolution (the "Qualified IPO"). Consummation, as referenced in the preceding sentence, shall be deemed to have occurred once the Corporation is in receipt of the net proceeds derived from such Qualified IPO. The provisions of this Resolution regarding the number of shares of Common Stock which shall be issuable upon the conversion of Series A Preferred Stock into Common Stock shall be applicable to such mandatory conversion. The Corporation shall give notice of the date of consummation of the Qualified IPO (the "Mandatory Conversion Date") to each holder of record of Series A Preferred Stock, no later than one business day after the Mandatory Conversion Date, specifying that the shares have been converted and calling upon such holder to surrender to the Corporation each certificate representing its shares of Series A Preferred Stock, duly endorsed or accompanied by proper instruments of transfer.

Within 10 days after the Mandatory Conversion Date, each holder of shares of Series A Preferred Stock shall present and surrender its share certificate(s) to the Corporation, at its principal executive office, and within 30 days after such presentation shall be issued new certificates representing the shares of Common Stock issuable upon such conversion. Upon the Mandatory Conversion Date, each holder of Series A Preferred Stock shall be deemed to have become the holder of the Common Stock to be issued on conversion and not of the Series A Preferred Stock being converted, and all rights of such holder shall cease with respect to such Preferred Stock except

for rights in connection therewith which have become matured obligations to such holder prior to such conversion and the right to receive the certificates representing the shares of Common Stock to be issued upon such conversion.

8. Priority in the Event of Liquidation or Dissolution. In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Corporation and before any distribution shall be made to the holders of Common Stock or any other class or series of the Corporation's capital stock, each holder of Series A Preferred Stock shall be entitled to receive, out of the net assets of the Corporation and in exchange for the tender and cancellation for each share of Series A Preferred Stock so held, the lesser of: (a) the then existing Stated Value (together with an amount equal to all dividends accrued and unpaid on each such share up to the date fixed for distribution); or (b) that portion of all remaining net assets of the Corporation which bears the same ratio to such net assets as the number of shares owned by the holder bears to all then issued and outstanding shares of Series A Preferred Stock, and if the Purchaser shall then be a holder of the Series A Preferred Stock it shall separately be entitled to receive an instrument, approved by the Corporation's board of directors and executed by one or more of its authorized officers, fully and forever relieving Purchaser of, and releasing it from, whatever obligation it otherwise then may have to make any further Supplementary Purchase Price payment under the Purchase Agreement. After any such required payment shall have been made in full to the holders of Series A Preferred Stock under the provisions of clause (a) above, or funds necessary for such payment shall have been set aside in trust for the exclusive benefit of such holders, any excess balance of the Corporation's net assets shall be paid to or set aside for the holders of shares of Common Stock in an amount per share equal to the quotient of such excess balance divided by the aggregate number of shares of Common Stock then outstanding, provided that, for purposes of such calculation, allocation and distribution, each then outstanding share of Series A Preferred Stock shall be deemed to have been converted into Common Stock, in accordance with all applicable terms of this Resolution.

9. Notices. All notices, consents, elections, requests, waivers and other communications required or allowed pursuant to this Agreement shall be in writing and shall be deemed to have been duly given or made the third business day after the date of mailing, if delivered by registered or certified mail, postage prepaid and return receipt required; upon delivery, if sent by hand delivery; upon delivery, if sent by prepaid courier and a record of receipt is generated and furnished to the sender; or the next day after the date of transmission, if sent by facsimile transmission (with a copy simultaneously sent by registered or certified mail, postage prepaid, return receipt required) and evidence of receipt is generated at the time of transmission. Each such communication shall be transmitted, if to the Corporation, at its principal business address, and if to a holder of Series A Preferred Stock, at the address set forth in the shareholder records as maintained by the Corporation, or to such other address as any such shareholder may have designated by like notice forwarded to the Corporation. Notice of any change in any such address shall also be given in the manner set forth above. Whenever the giving of notice is required, the giving of such notice may be waived by the party entitled to receive such notice.

10. Amendment. The Corporation shall not authorize or issue additional shares of Series A Preferred Stock, reissue shares of Series A Preferred Stock redeemed or repurchased by the Corporation, alter the preferences, special rights or powers of the Series A Preferred Stock so as to adversely affect the Series A Preferred Stock, or establish or issue a separate series of preferred stock or class of any other equity securities (including, without limitation, instruments convertible into, exchangeable for or otherwise carrying rights to acquire equity securities) having priority (including, without limitation, any priority as to voting, dividend, other distribution or liquidation rights) over or on a parity with the Series A Preferred Stock, unless there is first obtained the affirmative consent (furnished in writing or at a meeting duly called for that purpose) of the holders of a majority of the aggregate number of shares of Series A Preferred Stock then outstanding; or, alternatively, a waiver of the application thereof in any particular instance; provided, however, that no such change shall be effective as to any holder of Class A Preferred Stock which increases the Conversion Price (as defined in Section 6.c(3) above), decreases the number or modifies the character of the shares into which Series A Preferred Stock may be converted, or adversely affects the rights and preferences set forth in Sections 7 and 8 of this Resolution, in each case without such holder first voting in favor of or consenting to such change.

11. Integration with Purchase Agreement. This Resolution is intended to establish the Series A Preferred Stock in such a manner as will cause its future issuance to and subsequent ownership by the Purchaser or any of its legal successors in interest (expressly including, without limitation, any of its equity owners and Affiliates) or other transferees to be effected in accordance with and subject to each of the applicable terms of the Purchase Agreement. Accordingly, for such period as any shares of Series A Preferred Stock are outstanding, the Corporation shall take no action otherwise required, permitted or contemplated hereunder, and whether affirmative or by omission, which shall, in any manner, conflict with the provisions of the Purchase Agreement unless the Corporation shall first have obtained the consent of a majority in interest of the then existing holder(s) of the Series A Preferred Stock.

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The foregoing amendment shall become effective as of the close of business on the date these Articles of Amendment are accepted for filing by the Florida Department of State and all filing fees then due have been paid, all in accordance with the corporation laws of the State of Florida.

IN WITNESS WHEREOF, PHYSIOMETRICS, INC. has caused these Articles of Amendment to be prepared under the signature of its President this 6th day of August 1998.

PHYSIOMETRICS, INC.

By: _____

Joseph M. Looney, Jr., President