



## DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

SAMPLE TECHNOLOGIES, INC.

SERIES B CONVERTIBLE PREFERRED STOCK

PURCHASE AGREEMENT

Dated as of June \_\_, 1999

Sample Technologies, Inc.

SERIES B CONVERTIBLE

PREFERRED STOCK PURCHASE AGREEMENT

This Agreement dated as of June \_\_, 1999 is entered into by and among Sample Technologies, Inc., a Delaware corporation (the "Company"), and the individuals and entities listed on Exhibit A hereto (the "Purchasers").

In consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

### 1. Authorization and Sale of Shares.

1.1 Authorization. The Company has, or before the Closing (as defined in Section 2) will have, duly authorized the sale and issuance, pursuant to the terms of this Agreement, of 888,888 shares of its Series B Convertible Preferred Stock, \$.01 par value per share (the "Series B Preferred"), having the rights, restrictions, privileges and preferences set forth in the Certificate of Amendment attached hereto as Exhibit B (the "Certificate of Amendment"). The Company has, or before the Closing will have, adopted and filed the Certificate of Amendment with the Secretary of State of the State of Delaware.

1.2 Sale of Shares. Subject to the terms and conditions of this Agreement, at the Closing the Company will sell and issue to each of the Purchasers, and each of the Purchasers will purchase, the number of shares of Series B Preferred set forth opposite such Purchaser's name on Exhibit A for the purchase price of \$2.25 per share (the "Purchase Price"). The shares of Series B Preferred sold under this Agreement are referred to as the "Shares." The Company's agreement with each of the Purchasers is a separate agreement, and the sale of Shares to each of the Purchasers is a separate sale.

1.3 Use of Proceeds. The Company will use the proceeds from the sale of the Shares for product development and other general corporate purposes.

2. The Closing. The closing (the "Closing") of the sale and purchase of the Shares under this Agreement shall take place at the offices of xxxx & xxxxxx LLP, [Address] at 10 a.m. on June \_\_, 1999, or at such other time, date and place as are mutually agreeable to the Company and the Purchasers, but in no event later than June [

], 1999. At the Closing, the Company shall deliver to each of the Purchasers a certificate for the number of Shares being purchased at the Closing by such Purchaser, registered in the name of such Purchaser, against payment to the Company of the Purchase Price, by wire transfer, check, cancellation of indebtedness or other method acceptable to the Company. The date of the Closing is hereinafter referred to as the "Closing Date." If at the Closing any of the conditions specified in Section 5 shall not have been fulfilled, each of the Purchasers shall, at his or its election, be relieved of all of his or its obligations under this Agreement without thereby waiving any other rights he or it may have by reason of such failure or such non-fulfillment.

3. Representations of the Company. Except as disclosed by the Company in Exhibit C hereto, the Company hereby represents and warrants to each of the Purchasers that the statements contained in this Section 3 are true and correct. Exhibit C shall be arranged in paragraphs corresponding to the numbered and lettered paragraphs contained in this Section 3, and the disclosures in any paragraph of Exhibit C shall qualify only the corresponding paragraph of this Section 3, unless otherwise specified.

3.1 Organization and Standing. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power and authority to conduct its business as presently conducted and as proposed to be conducted by it and to enter into and perform this Agreement and all other agreements required to be executed by the Company at or prior to the Closing pursuant to Section 5.4 (the "Ancillary Agreements") and to carry out the transactions contemplated by this Agreement and the Ancillary Agreements. The Company is duly qualified to do business as a foreign corporation and is in good standing in every other jurisdiction in which the failure so to qualify would have a material adverse effect on the business, assets or condition (financial or otherwise) of the Company (a "Company Material Adverse Effect"). The Company has furnished to the Purchasers true and complete copies of its Certificate of Incorporation and By-Laws, each as amended to date and presently in effect. The Company has at all times complied with all provisions of its Certificate of Incorporation and By-laws and is not in default under, or in violation of, any such provision.

3.2 Capitalization. The authorized capital stock of the Company (immediately prior to the Closing) consists of 7,555,555 shares of common stock, \$0.01 par value per share (the "Common Stock"), of which 4,095,305 shares are issued and outstanding and 1,506,360 shares have been reserved for issuance pursuant to the 1999 Stock Option Plan of the Company, and 1,953,888 shares of Preferred Stock, \$.01 par value per share, of which 1,065,000 shares have been designated as Series A Convertible Preferred (the "Series A Preferred Stock"), of which 1,065,000 are issued and outstanding, and 888,888 shares have been designated Series B Convertible Preferred, none of which shares are issued or outstanding. All of the issued and outstanding shares of Common Stock and Series A Preferred Stock have been duly authorized and validly issued and are fully paid and nonassessable. Except for the Series A Preferred Stock and as provided in this Agreement, (i) no subscription, warrant, option, convertible security or other right (contingent or otherwise) to purchase or acquire any shares of capital stock of the Company is authorized or outstanding, (ii) the Company has no obligation (contingent or otherwise) to issue any subscription, warrant, option, convertible security or other such right or to issue or distribute to holders of any shares of its capital stock any evidences of indebtedness or assets of the Company, (iii) the Company has no obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any shares of its capital stock or any interest therein or to pay any dividend or make any other distribution in respect thereof, and (iv) there are no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to the Company. All of the issued and outstanding shares of capital stock of the Company have been offered, issued and sold by the Company in compliance with applicable federal and state securities laws.

3.3 Subsidiaries, Etc. The Company has no subsidiaries and does not own or control, and has no commitment or obligation to acquire, directly or indirectly, any shares of capital stock of any other corporation or any interest in any partnership, joint venture or other non-corporate business enterprise.

3.4 Securityholder Lists and Agreements. Attached as Exhibit D is a true and complete list of the

securityholders of the Company, showing the number of shares of Common Stock or other securities of the Company held by each securityholder as of the date of this Agreement and, in the case of options, warrants and other convertible securities, the exercise price thereof and the number and type of securities issuable thereunder. Except as provided in this Agreement and the Ancillary Agreements, there are no agreements, written or oral, between the Company and any holder of its securities, or, to the best of the Company's knowledge, among any holders of its securities, relating to the acquisition (including, without limitation, rights of first refusal, anti-dilution or pre-emptive rights), disposition, registration under the Securities Act of 1933, as amended (the "Securities Act"), or voting of the capital stock of the Company.

**3.5 Issuance of Shares.** The issuance, sale and delivery of the Shares in accordance with this Agreement, and the issuance and delivery of the shares of Common Stock issuable upon conversion of the Shares, have been, or will be on or prior to the Closing, duly authorized by all necessary corporate action on the part of the Company, and all such shares have been duly reserved for issuance. The Shares when so issued, sold and delivered against payment therefor in accordance with the provisions of this Agreement, and the shares of Common Stock issuable upon conversion of the Shares, when issued upon such conversion, will be duly and validly issued, fully paid and non-assessable.

**3.6 Authority for Agreement; No Conflict.** The execution, delivery and performance by the Company of this Agreement and the Ancillary Agreements, and the consummation by the Company of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action. This Agreement has been, and the Ancillary Agreements when executed at the Closing will be, duly executed and delivered by the Company and constitute valid and binding obligations of the Company enforceable in accordance with their respective terms. The execution of and performance of the transactions contemplated by this Agreement and the Ancillary Agreements and compliance with their respective provisions by the Company will not (a) conflict with or violate any provision of the Certificate of Incorporation or By-laws of the Company, (b) require on the part of the Company any filing with, or any permit, authorization, consent or approval of, any court, arbitrational tribunal, administrative agency or commission or other governmental or regulatory authority or agency (each of the foregoing is hereafter referred to as a "Governmental Entity"), (c) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, any contract, lease, sublease, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, Security Interest (as defined below) or other arrangement to which the Company is a party or by which the Company is bound or to which its assets are subject, (d) result in the imposition of any Security Interest upon any assets of the Company or (e) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company or any of its properties or assets. For purposes of this Agreement, "Security Interest" means any mortgage, pledge, security interest, encumbrance, charge, or other lien (whether arising by contract or by operation of law).

**3.7 Governmental Consents.** No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Entity is required on the part of the Company in connection with the execution and delivery of this Agreement or the Ancillary Agreements, the offer, issuance, sale and delivery of the Shares, the issuance and delivery of the shares of Common Stock issuable upon conversion of the Shares or the other transactions to be consummated at the Closing, as contemplated by this Agreement and the Ancillary Agreements, except such filings as shall have been made prior to and shall be effective on and as of the Closing and such filings required to be made after the Closing under applicable federal and state securities laws. Based on the representations made by each of the Purchasers in Section 4 of this Agreement, the offer and sale of the Shares to each of the Purchasers will be in compliance with applicable federal and state securities laws.

**3.8 Litigation.** There is no action, suit or proceeding, or governmental inquiry or investigation, pending, or, to the best of the Company's knowledge, any basis therefor or threat thereof, against the Company, which

questions the validity of this Agreement or the right of the Company to enter into it, or which might result, either individually or in the aggregate, in a Company Material Adverse Effect, nor is there any litigation pending, or, to the best of the Company's knowledge, any basis therefor or threat thereof, against the Company by reason of the proposed activities of the Company, or negotiations by the Company with possible investors in the Company. The Company is not subject to any outstanding judgment, order or decree.

3.9 Financial Statements. The Company has furnished to each of the Purchasers the unaudited balance sheet of the Company (the "Balance Sheet") at June 1, 1999 (the "Balance Sheet Date"). The Balance Sheet is complete and correct, is in accordance with the books and records of the Company and presents fairly the financial condition of the Company, as at its dates; however, the Balance Sheet may not be in accordance with generally accepted accounting principles ("GAAP") because of the absence of footnotes normally contained therein and is subject to normal year-end audit adjustments which in the aggregate will not be material.

3.10 Absence of Undisclosed Liabilities. The Company does not have any liability (whether known or unknown and whether absolute or contingent), except for (a) liabilities shown on the Balance Sheet, (b) liabilities which have arisen since the Balance Sheet Date in the ordinary course of business and which are similar in nature and amount to the liabilities which arose during the comparable period of time in the immediately preceding fiscal period and (c) contractual and other liabilities incurred in the ordinary course of business which are not required by GAAP to be reflected on a balance sheet.

3.11 Taxes. The amount shown on the Balance Sheet as provision for taxes is sufficient in all material respects for payment of all accrued and unpaid federal, state, county, local and foreign taxes for the period then ended and all prior periods. The Company has filed or has obtained presently effective extensions with respect to all federal, state, county, local and foreign tax returns which are required to be filed by it, such returns are true and correct and all taxes shown thereon to be due have been timely paid with exceptions not material to the Company. Federal income tax returns of the Company have not been audited by the Internal Revenue Service, and no controversy with respect to taxes of any type is pending or, to the best of the Company's knowledge, threatened. The Company has withheld or collected from each payment made to its employees the amount of all taxes required to be withheld or collected therefrom and has paid all such amounts to the appropriate taxing authorities when due. Neither the Company nor any of its stockholders has ever filed (a) an election pursuant to Section 1362 of the Internal Revenue Code of 1986, as amended (the "Code"), that the Company be taxed as an S Corporation or (b) a consent pursuant to Section 341(f) of the Code relating to collapsible corporations.

3.12 Property and Assets. The Company has good title to, or a valid leasehold interest in, all of its material properties and assets, including all properties and assets reflected in the Balance Sheet, except those disposed of since the date thereof in the ordinary course of business, and none of such properties or assets is subject to any mortgage, pledge, lien, security interest, lease, charge or encumbrance other than those the material terms of which are described in the Balance Sheet or in Exhibit C.

3.13 Intellectual Property. (a) The Company owns, free and clear of all Security Interests, or has the valid right to use all Intellectual Property (as defined below in this Section 3.13) used by it in its business as currently conducted or as currently proposed to be conducted. No other person or entity (other than licensors of software that is generally commercially available, licensors of Intellectual Property under the agreements disclosed pursuant to paragraph (d) below and non-exclusive licensees of the Company's Intellectual Property in the ordinary course of the Company's business) has any rights to any of the Intellectual Property owned or used by the Company, and, to the Company's knowledge, no other person or entity is infringing, violating or misappropriating any of the Intellectual Property that the Company owns. For purposes of this Agreement, "Intellectual Property" means all material (i) patents, patent applications, patent disclosures and all related continuation, continuation-in-part, divisional, reissue, reexamination, utility model, certificate of invention and design patents, patent applications, registrations and applications for registrations, (ii)

trademarks, service marks, trade dress, logos, trade names and corporate names and registrations and applications for registration thereof, (iii) copyrights and registrations and applications for registration thereof, (iv) computer software (in both source code and object code form), data and documentation, (v) trade secrets and confidential business information, whether patentable or unpatentable and whether or not reduced to practice, know-how, manufacturing and production processes and techniques, research and development information, copyrightable works, financial marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, and (vi) other proprietary rights relating to any of the foregoing.

(b) To the Company's knowledge, none of the activities or business conducted by the Company or proposed to be conducted by the Company infringes, violates or constitutes a misappropriation of (or in the past infringed, violated or constituted a misappropriation of) any Intellectual Property of any other person or entity. The Company has not received any complaint, claim or notice alleging any such infringement, violation or misappropriation, and to the knowledge of the Company, there is no basis for any such complaint, claim or notice.

(c) Exhibit C hereto identifies each (i) patent that has been issued or assigned to the Company with respect to any of its Intellectual Property, (ii) pending patent application that the Company has made with respect to any of its Intellectual Property, (iii) any copyright or trademark registration or application with respect to the Company's Intellectual Property, and (iv) license or other agreements pursuant to which the Company has granted any rights to any third party with respect to any of its Intellectual Property (except non-exclusive license agreements entered into in the ordinary course of business).

(d) Exhibit C hereto identifies each agreement with a third party pursuant to which the Company obtains rights to Intellectual Property material to the business of the Company (other than software that is generally commercially available) that is owned by a party other than the Company. Other than license fees for software that is generally commercially available, the Company is not obligated to pay any royalties or other compensation to any third party in respect of its ownership, use or license of any of its Intellectual Property.

(e) The Company has taken reasonable precautions (i) to protect its rights in its Intellectual Property and (ii) to maintain the confidentiality of its trade secrets, know-how and other confidential Intellectual Property, and to the Company's knowledge, there have been no acts or omissions (other than those made based on reasonable, good faith business decisions) by the officers, directors, shareholders and employees of the Company the result of which would be to materially compromise the rights of the Company to apply for or enforce appropriate legal protection of the Company's Intellectual Property.

(f) All of the Company's Intellectual Property has been created by employees of the Company within the scope of their employment by the Company or by independent contractors of the Company who have executed agreements expressly assigning all right, title and interest in such Intellectual Property to the Company. Except as set forth in Exhibit C, no portion of the Company's Intellectual Property was jointly developed with any third party.

3.14 Insurance. The Company maintains valid policies of workers' compensation insurance and of insurance with respect to its properties and business of the kinds and in the amounts not less than is customarily obtained by corporations of established reputation engaged in the same or similar business and similarly situated, including, without limitation, insurance against loss, damage, fire, theft, public liability and other risks.

3.15 Material Contracts and Obligations. Exhibit C sets forth a list of all material agreements or commitments of any nature (whether written or oral) to which the Company is a party or by which it is bound, including, without limitation, (a) any agreement which requires future expenditures by the Company in excess of \$25,000 or which might result in payments to the Company in excess of \$25,000, (b) any employment and

consulting agreements, employee benefit, bonus, pension, profit-sharing, stock option, stock purchase and similar plans and arrangements, (c) any distributor, sales representative or similar agreement, (d) any agreement with any current or former stockholder, officer or director of the Company, or any "affiliate" or "associate" of such persons (as such terms are defined in the rules and regulations promulgated under the Securities Act), including, without limitation, any agreement or other arrangement providing for the furnishing of services by, rental of real or personal property from, or otherwise requiring payments to, any such person or entity, (e) any agreement under which the Company is restricted from carrying on any business or other services anywhere in the world, (f) any agreement relating to indebtedness for borrowed money, (g) any agreement for the disposition of a material portion of the Company's assets (other than for the sale of inventory in the ordinary course of business), and (h) any agreement for the acquisition of the business or shares of another party. The Company has delivered to the Purchasers copies of such of the foregoing agreements (or an accurate summary of any oral agreement) as requested. All of such agreements and contracts are valid, binding and in full force and effect. Neither the Company, nor, to the Company's knowledge, any other party thereto, is in default of any of its obligations under any of the agreements or contracts listed on Exhibit C, in a manner which could have a Company Material Adverse Effect.

3.16 Compliance. The Company has, in all material respects, complied with all laws, regulations and orders applicable to its present and proposed business and has all material permits and licenses required thereby. There is no term or provision of any mortgage, indenture, contract, agreement or instrument to which the Company is a party or by which it is bound, or, to the best of the Company's knowledge, of any provision of any state or federal judgment, decree, order, statute, rule or regulation applicable to or binding upon the Company, which materially adversely affects or, so far as the Company may now foresee, in the future is reasonably likely to result in or have a Company Material Adverse Effect. To the best of the Company's knowledge, no employee of the Company is in violation of any term of any contract or covenant (either with the Company or with another entity) relating to employment, patents, assignment of inventions, proprietary information disclosure, non-competition or non-solicitation.

3.17 Absence of Changes. Since the Balance Sheet Date, there has not been: (a) any change in the assets, liabilities, financial condition or operations of the Company from that reflected in the Balance Sheet, except changes in the ordinary course of business that have not been, either individually or in the aggregate, materially adverse; (b) any change (individually or in the aggregate), except in the ordinary course of business, in the contingent obligations of the Company by way of guaranty, endorsement, indemnity, warranty or otherwise; (c) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting the properties or business of the Company; (d) any waiver or compromise by the Company of a valuable right or of a material debt owed to it; (e) any loans made by the Company to its employees, officers or directors other than travel advances made in the ordinary course of business; (f) any extraordinary increases in the compensation of any Company's employees, officers or directors; (g) any declaration or any payment of any dividend or other distribution of the assets of the Company; (h) any issuance or a sale by the Company of any shares of its Common Stock or other securities; (i) to the best of the Company's knowledge, any other event or condition of any character that has materially and adversely affected the Company's business or prospects; or (j) any agreement or commitment by the Company to do any of the things described in this Section 3.17.

3.18 Employees. All employees of the Company who have access to confidential or proprietary information of the Company have executed and delivered nondisclosure and assignment of invention agreements in the form of Exhibit E-1 and non-competition agreements in the form of Exhibit E-2, and all of such agreements are in full force and effect. Except as set forth in Exhibit C, the Company does not owe any debt, including any outstanding interest, to any members of management, principals, founders, affiliates or key employees of the Company. The Company is not aware that any employee of the Company has plans to terminate his or her employment relationship with the Company. All employees of the Company are engaged by the Company on a full time basis. The Company has complied in all material respects with all applicable laws relating to wages,

hours, equal opportunity, collective bargaining, workers' compensation insurance and the payment of social security and other taxes. None of the employees of the Company is represented by any labor union, and there is no labor strike or other labor trouble pending with respect to the Company (including, without limitation, any organizational drive) or, to the best of the Company's knowledge, threatened.

3.19 ERISA. Except as set forth on Exhibit C, the Company does not have or otherwise contribute to or participate in any employee benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended, other than a medical benefit plan with respect to which the Company has made all required contributions and has complied with all applicable laws.

3.20 Books and Records. The minute books of the Company contain complete and accurate records of all meetings and other corporate actions of its stockholders and its Board of Directors and committees thereof. The stock ledger of the Company is complete and reflects all issuances, transfers, repurchases and cancellations of shares of capital stock of the Company.

3.21 Permits. Exhibit C sets forth a list of all permits, licenses, registrations, certificates, orders or approvals from any Governmental Entity ("Permits") issued to or held by the Company. Such listed Permits are the only Permits that are required for the Company to conduct its business as presently or proposed to be conducted, except for those the absence of which would not have a Company Material Adverse Effect. Each such Permit is in full force and effect and, to the best of the knowledge of the Company, no suspension or cancellation of such Permit is threatened and there is no basis for believing that such Permit will not be renewable upon expiration.

3.22 Environmental Matters. (a) The Company has complied in all material respects with all applicable Environmental Laws (as defined below in this Section 3.22(a)). There is no pending or, to the knowledge of the Company, threatened civil or criminal litigation, written notice of violation, formal administrative proceeding, or investigation, inquiry or information request by any Governmental Entity, relating to any Environmental Law involving the Company. For purposes of this Agreement, "Environmental Law" means any federal, state or local law, statute, rule or regulation or the common law relating to the protection of human health or the environment, including, without limitation, CERCLA (as defined below), the Resource Conservation and Recovery Act of 1976, any statute, regulation or order pertaining to (i) treatment, storage, disposal, generation and transportation of industrial, toxic or hazardous materials or substances or solid or hazardous waste; (ii) air, water and noise pollution; (iii) groundwater and soil contamination; (iv) the release or threatened release into the environment of industrial, toxic or hazardous materials or substances, or solid or hazardous waste, including, without limitation,, emissions, discharges, injections, spills, escapes or dumping of pollutants, contaminants, or chemicals; (v) the protection of wild life, marine life and wetlands, including, without limitation, all endangered and threatened species; (vi) storage tanks, vessels, abandoned or discarded barrels, containers and other closed receptacles; (vii) health and safety of employees and other persons; and (viii) manufacture, processing, use, distribution, treatment, storage, disposal, transportation or handling of pollutants, contaminants, toxic or hazardous materials or substances or oil or petroleum products or solid or hazardous waste. As used in this Section 3.22, the terms "release" and "environment" shall have the meaning set forth in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA").

(b) Neither the Company nor, to the best knowledge of the Company, any third party has released any Materials of Environmental Concern (as defined below in this Section 3.22(b)) into the environment at any parcel of real property or any facility formerly or currently owned, operated or controlled by the Company. The Company is not aware of any releases of Materials of Environmental Concern at parcels of real property of facilities other than those owned, operated or controlled by the Company that could reasonably be expected to have an impact on the real property or facilities owned, operated or controlled by the Company. For purposes of this Agreement, "Materials of Environmental Concern" means any chemicals, pollutants or contaminants, hazardous substances (as such term is defined under CERCLA), solid wastes and hazardous

wastes (as such terms are defined under the federal Resource Conservation and Recovery Act), toxic materials, oil or petroleum and petroleum products, or any other material subject to regulation under any Environmental Law.

(c) The Company is not aware of any material environmental liability of the solid and hazardous waste transporters and treatment, storage and disposal facilities that have been utilized by the Company.

(d) Set forth in Exhibit C is a list of all environmental reports, investigations and audits of which the Company is aware (whether conducted by or on behalf of the Company or a third party, and whether done at the initiative of the Company or directed by a Governmental Entity or other third party) issued or conducted during the five years preceding the date hereof relating to premises currently or previously owned, occupied or operated by the Company. Complete and accurate copies of each such report, or the results of each such investigation or audit, have been provided to special counsel for each Purchaser.

3.23 U.S. Real Property Holding Corporation. The Company is not now and has never been a "United States Real Property Holding Corporation" as defined in Section 897(c)(2) of the Code and Section 1.897-2(b) of the Regulations promulgated by the Internal Revenue Service.

3.24 Disclosures. Neither this Agreement nor any Exhibit hereto, nor any report, certificate or instrument furnished to any of the Purchasers or their special counsel in connection with the transactions contemplated by this Agreement, when read together, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

3.25 Year 2000. The Company reasonably believes that all material computer systems of the Company (including, without limitation, all software, hardware, workstations and related components, automated devices, embedded chips and other date sensitive equipment such as security systems, alarms, elevators and HVAC systems) are Year 2000 Compliant or will be Year 2000 Compliant by December 31, 1999, except to the extent that the failure of a computer system to be Year 2000 Compliant could not reasonably be expected to have a material adverse effect on the Company's business, operations, assets or condition (financial or otherwise). The term "Year 2000 Compliant" as used herein means that the computer systems (1) are capable of recognizing, processing, managing, representing, interpreting, and manipulating correctly date-related data for dates earlier and later than January 1, 2000, including, but not limited to, calculating, comparing, sorting, storing, tagging and sequencing, without resulting in or causing logical or mathematical errors or inconsistencies in any user-interface functionalities or otherwise, including data input and retrieval, data storage, data fields, calculations, reports, processing, or any other input or output; and (2) have the ability to recognize all "leap years," including February 29, 2000.

4. Representations of the Purchasers. Each of the Purchasers severally represents and warrants to the Company as follows:

4.1 Investment. Such Purchaser is acquiring the Shares, and the shares of Common Stock into which the Shares may be converted, for his, her or its own account for investment and not with a view to, or for sale in connection with, any distribution thereof, nor with any present intention of distributing or selling the same; and, except as contemplated by this Agreement and the Exhibits hereto, such Purchaser has no present or contemplated agreement, undertaking, arrangement, obligation, indebtedness or commitment providing for the disposition thereof. Such Purchaser is an "accredited investor" as defined in Rule 501(a) under the Securities Act.

4.2 Authority. Such Purchaser has full power and authority to enter into and to perform this Agreement in accordance with its terms. Any Purchaser which is a corporation, partnership or trust represents that it has not been organized, reorganized or recapitalized specifically for the purpose of investing in the Company.



4.3 Experience. Such Purchaser has carefully reviewed the representations concerning the Company contained in this Agreement and has made detailed inquiry concerning the Company, its business and its personnel; the officers of the Company have made available to such Purchaser any and all written information which he, she or it has requested and have answered to such Purchaser's satisfaction all inquiries made by such Purchaser; and such Purchaser has sufficient knowledge and experience in finance and business that he, she or it is capable of evaluating the risks and merits of his, her or its investment in the Company and such Purchaser is able financially to bear the risks thereof.

5. Conditions to the Obligations of the Purchasers. The obligation of each of the Purchasers to purchase Shares at the Closing is subject to the fulfillment, or the waiver by such Purchaser, of each of the following conditions on or before the Closing:

5.1 Accuracy of Representations and Warranties. Each representation and warranty contained in Sections 3 shall be true on and as of the Closing Date with the same effect as though such representation and warranty had been made on and as of that date.

5.2 Performance. The Company shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by the Company prior to or at the Closing.

5.3 Opinion of Counsel. Each Purchaser shall have received an opinion from \_\_\_\_\_ J.D., in-house counsel to the Company, and from outside counsel for the Company, dated the Closing Date, addressed to the Purchasers, and satisfactory in form and substance to each Purchaser, to the effect set forth on Exhibit F.

<5.4 Ancillary Agreements. (a) Stockholders' Voting Agreement. The Amended and Restated Stockholders' Voting Agreement attached hereto as Exhibit G (the "Stockholders' Voting Agreement") shall have been executed and delivered by each of the Purchasers and the other parties named therein. All such action shall have been taken as may be necessary to elect a Board of Directors of the Company, effective upon the Closing, in accordance with the Stockholders' Voting Agreement.

(b) Investor Rights Agreement. The Investor Rights Agreement attached hereto as Exhibit H (the "Investor Rights Agreement") shall have been executed and delivered by the Company, each of the Purchasers and the other parties named therein.

(c) Co-Sale Agreement. The Amended and Restated Right of First Refusal and Co-Sale Agreement attached hereto as Exhibit I (the "Co-Sale Agreement") shall have been executed and delivered by each of the Purchasers and the other parties named therein.

(d) Non-Competition Agreement. Each of Person A, Person B, Person C, Person D, Person E (collectively, the "Principal Stockholders"), and the Company has entered into a Non-Competition Agreement in the form of Exhibit E-2.

(e) First Refusal Agreement. The Purchaser Right of First Refusal Agreement attached hereto as Exhibit J (the "Right of First Refusal Agreement") shall have been executed by each of the Purchasers and the other parties named therein.

(f) Side Letter. The Side Letter attached hereto as Exhibit K shall have been executed and delivered by the parties named therein.

5.5 Certificates and Documents. The Company shall have delivered to special counsel to the Purchasers:

(a) The Certificate of Incorporation of the Company, as amended and in effect as of the Closing Date (including the Certificate of Amendment), certified by the Secretary of State of the State of Delaware;

(b) Certificates, as of the most recent practicable dates, as to the corporate good standing of the Company issued by the Secretary of State of the State of Delaware;

(c) By-laws of the Company, certified by its Secretary or Assistant Secretary as of the Closing Date; and

(d) Resolutions of the Board of Directors and stockholders of the Company, authorizing and approving all matters in connection with this Agreement and the transactions contemplated hereby, certified by the Secretary or Assistant Secretary of the Company as of the Closing Date.

5.6 Blue Sky Approvals. The Company shall have taken all actions necessary for the exemptions from the state securities laws of all jurisdictions in which shares of Series B Preferred are being sold, on or before the Closing Date or at such time thereafter as may be required by the applicable statute.

5.7 Compliance Certificates. The Company shall have delivered to the Purchasers a certificate, executed by the President of the Company, dated the Closing Date, certifying to the fulfillment of the conditions specified in Sections 5.1, 5.2, 5.4 and 5.5 of this Agreement.

5.8 Other Matters. All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be reasonably satisfactory in substance and form to the Purchasers and their special counsel, and the Purchasers and their special counsel shall have received all such counterpart originals or certified or other copies of such documents as they may reasonably request.

6. Condition to the Obligations of the Company. The obligations of the Company under Section 1.2 of this Agreement are subject to fulfillment, or the waiver, of the following condition on or before the Closing:

6.1 Accuracy of Representations and Warranties. The representations and warranties of the Purchasers contained in Section 4 shall be true on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of that date.

6.2 Minimum Investment. Purchasers shall have tendered at the Closing aggregate consideration of not less than \$1,999,998 for the purchase of Shares.

6.3 Blue Sky Approvals. The Company shall have obtained all necessary Blue Sky permits and qualifications, or secured an exemption therefrom, required by any state for the offer and sale of the Series B Preferred.

7. Affirmative Covenants of the Company.

7.1 Inspection Rights. So long as any Purchaser continues to own at least twenty-five percent (25%) of the Shares purchased by it (Shares held by affiliates of such Purchaser or distributed to its partners shall be deemed to be owned by such Purchaser for the purposes of calculating such percentage), the Company shall permit such Purchaser, or any authorized representative thereof, to visit and inspect the properties of the Company, including its corporate and financial records, and to discuss its business and finances with officers of the Company, during normal business hours following reasonable notice and as often as may be reasonably requested, provided that such Purchaser or authorized representative is not employed by or associated with a competitor of the Company (as determined in good faith by the Board of Directors of the Company).

7.2 Books of Account. The Company shall maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with Company practices, and shall set aside on its books all such proper accruals and reserves in accordance with Company practices.

7.3 Financial Statements and Other Information. (a) So long as any Purchaser shall hold not less than

100,000 shares of Series B Preferred or Common Stock, the Company shall deliver to each such Purchasers:

(i) within 90 days after the end of each fiscal year of the Company, beginning with the fiscal year ending December 31, 1999, an audited balance sheet of the Company as at the end of such year and audited statements of income, changes in equity and of cash flows of the Company for such year, certified by certified public accountants of established national reputation selected by the Company, and prepared in accordance with GAAP consistently applied (except as noted), and setting forth in each case in comparative form the figures from the previous fiscal year, with an explanation of any unusual difference between them, all in reasonable detail. Such financial statements shall be accompanied by a report by management with a discussion of the Company's business, including any changes in the Company's financial condition and any significant business developments;

(ii) within 45 days after the end of each fiscal quarter of the Company, an unaudited balance sheet of the Company as at the end of such quarter, and unaudited statements of income and of cash flows of the Company for such fiscal quarter and for the current fiscal year to the end of such fiscal quarter, prepared in accordance with Company practices, and setting forth in each case in comparative form the figures from the previous quarter and year-to-date periods, with an explanation of any material differences between them. Such financial statements shall be accompanied by a report by management with a discussion of the Company's business, including any changes in the Company's financial condition and any significant business developments;

(iii) as soon as available, but in any event prior to the commencement of each new fiscal year, a business plan and projected financial statements for such fiscal year;

(iv) such other periodic notices, information and data with respect to the Company as the Company delivers to the holders of its capital stock or the Company's Board of Directors at the same time it delivers such items to such holders or the Board of Directors, as the case may be; and

(v) such information as is reasonably requested, provided that such Purchaser is not employed by or associated with a competitor of the Company (as determined in good faith by the Board of Directors of the Company).

(b) The foregoing financial statements shall be prepared on a consolidated basis if the Company then has any subsidiaries. The financial statements delivered pursuant to clause (i) of paragraph (a) shall be accompanied by a certificate of the chief financial officer of the Company stating that such statements have been prepared in accordance with GAAP consistently applied (except as noted) and fairly present the financial condition and results of operations of the Company at the date thereof and for the periods covered thereby.

7.4 Material Changes and Litigation. The Company shall promptly notify the Purchasers of any material adverse change in the business, prospects, assets or condition, financial or otherwise, of the Company and of any litigation or governmental proceeding or investigation brought or, to the best of the Company's knowledge, threatened against the Company, or against any officer, director, key employee or principal stockholder of the Company which, if adversely determined, would have a Company Material Adverse Effect.

7.5 Key Man Insurance. To the extent commercially reasonable, for a period of three years after the Closing Date, the Company shall maintain term life insurance upon the life of such of the Principal Stockholders as shall be thought necessary by at least 80% of the members of the Board of Directors of the Company, in an amount reasonably acceptable to the Purchasers, with the proceeds payable to the Company.

7.6 Agreements with Employees. The Company shall require all persons now or hereafter employed by the Company who have access to confidential and proprietary information of the Company to enter into

nondisclosure and assignment of inventions agreements substantially in the form of Exhibit E -1 and, with respect to all employees at the level of director or above or who are otherwise determined by the Board of Directors to be key employees, non-competition agreements substantially in the form of Exhibit E-2, or such other form as may be approved by the Board of Directors of the Company.

.7 Directors. (a) The Company shall promptly reimburse in full each director of the Company who is not an employee of the Company and who was elected as a director solely or in part by the holders of Series B Preferred for all of his reasonable and documented out-of-pocket expenses incurred in attending each meeting of the Board of Directors of the Company or any committee thereof, or any other activities which are required or requested by the Company or on its behalf.

(b) The Company shall maintain provisions in its Certificate of Incorporation or Bylaws that provide for indemnification of its directors to the full extent provided by law.

(c) The Board of Directors shall meet at least once every three months, unless otherwise agreed to meet less frequently by a majority of the members of the Board of Directors who are not employees of the Company or a subsidiary of the Company.

7.8 Reservation of Common Stock. The Company shall reserve and maintain a sufficient number of shares of Common Stock for issuance upon conversion of all of the outstanding Shares.

7.9 Related Party Transactions. (a) The Company shall not enter into any agreement with any stockholder, officer or director of the Company, or any "affiliate" or "associate" of such persons (as such terms are defined in the rules and regulations promulgated under the Securities Act), including, without limitation, any agreement or other arrangement providing for the furnishing of services by, rental of real or personal property from, or otherwise requiring payments to, any such person or entity, without the consent of at least a majority of the members of the Company's Board of Directors having no interest in such agreement or arrangement.

(b) The affirmative vote of a majority of the members of the Board of Directors shall be required to (i) establish or increase the compensation of executive officers of the Company or (ii) grant stock options to any executive officer of the Company.

7.10 Stock Vesting. Unless otherwise approved by the Board of Directors, all stock options, restricted stock and other stock equivalents issued to employees, directors, consultants and other service providers after the date of this Agreement shall be subject to vesting over a minimum of a four-year period.

7.11 Termination of Covenants. The covenants of the Company contained in Sections 7.1 through 7.10 shall terminate, and be of no further force or effect, upon the closing of the Company's first public offering of Common Stock pursuant to an effective registration statement under the Securities Act, resulting in net proceeds to the Company of at least \$25,000,000.

7.12 International Investment and Trade in Services Survey Act. The Company shall use its reasonable best efforts to file on a timely basis all reports required to be filed by it under 22 U.S.C. Section 3104, or any similar statute, relating to a foreign person's direct or indirect investment in the Company.

7.13 Indemnification. The Company shall indemnify and hold harmless the Purchasers from any claim, loss, expense, damage or injury suffered or sustained by it by reason of any judgment, award, settlement or other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim against the Company relating to or arising out of any employment by the Company of an employee which is in violation or alleged violation of any non-compete or similar agreement to which such employee is subject.

8. Transfer of Shares.

8.1 Restricted Shares. "Restricted Shares" means (i) the Shares, (ii) the shares of Common Stock issued or issuable upon conversion of the Shares, (iii) any shares of capital stock of the Company acquired by the Purchasers pursuant to the Investor Rights Agreement, the Co-Sale Agreement or the Right of First Refusal Agreement, and (iv) any other shares of capital stock of the Company issued in respect of such shares (as a result of stock splits, stock dividends, reclassifications, recapitalizations, or similar events); provided, however, that shares of Common Stock which are Restricted Shares shall cease to be Restricted Shares (x) upon any sale pursuant to a registration statement under the Securities Act, Section 4(1) of the Securities Act or Rule 144 under the Securities Act or (y) at such time as they become eligible for sale under Rule 144(k) under the Securities Act.

8.2 Requirements for Transfer. (a) Restricted Shares shall not be sold or transferred unless either (i) they first shall have been registered under the Securities Act, or (ii) the Company first shall have been furnished with an opinion of legal counsel, reasonably satisfactory to the Company, to the effect that such sale or transfer is exempt from the registration requirements of the Securities Act.

(b) Notwithstanding the foregoing, no registration or opinion of counsel shall be required for (i) a transfer by a Purchaser to an "Affiliate" (as defined below in Section 9.1), a transfer by a Purchaser which is a partnership to a partner of such partnership or a retired partner of such partnership who retires after the date hereof, or to the estate of any such partner or retired partner, or a transfer by a Purchaser which is a limited liability company to a member of such limited liability company or a retired member who resigns after the date hereof or to the estate of any such member or retired member; provided that the transferee in each case agrees in writing to be subject to the terms of this Section 8 to the same extent as if it were the original Purchaser hereunder, or (ii) a transfer made in accordance with Rule 144 under the Securities Act.

<8.3 Legend. Each certificate representing Restricted Shares shall bear a legend substantially in the following form:

"The shares represented by this certificate have not been registered under the Securities Act of 1933, as amended, and may not be offered, sold or otherwise transferred, pledged or hypothecated unless and until such shares are registered under such Act or an opinion of counsel satisfactory to the Company is obtained to the effect that such registration is not required."

The foregoing legend shall be removed from the certificates representing any Restricted Shares, at the request of the holder thereof, at such time as they become eligible for resale pursuant to Rule 144(k) under the Securities Act.

## 9. Miscellaneous.

9.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. This Agreement, and the rights and obligations of each Purchaser hereunder, may be assigned by such Purchaser to any person or entity to which Shares are transferred by such Purchaser, and such transferee shall be deemed a "Purchaser" for purposes of this Agreement; provided that (i) such assignment is approved by a majority of the members of the Company's Board of Directors having no interest in such assignment, which approval shall not be unreasonably withheld, and (ii) the transferee provides written notice of such assignment to the Company; provided further that clause (i) of the immediately preceding proviso shall not apply to an assignment by a Purchaser to an Affiliate (as defined below). The Company may not assign its rights under this Agreement. "Affiliate" shall mean any entity or person that, directly or indirectly, owns and controls all of the issued and outstanding voting stock or other voting interests of a Purchaser or any entity or person all of whose outstanding voting stock or other voting interests are, directly or indirectly, owned and controlled by a Purchaser.

9.2 Confidentiality. Each Purchaser agrees that he, she or it will keep confidential and will not disclose,

divulge or use for any purpose other than to monitor his, her or its investment in the Company any confidential, proprietary or secret information which such Purchaser may obtain from the Company pursuant to financial statements, reports and other materials submitted by the Company to such Purchaser pursuant to this Agreement, or pursuant to visitation or inspection rights granted hereunder, unless such information is known, or until such information becomes known, to the public (other than as a result of a breach of this Section 9.2 by such Purchaser); provided, however, that a Purchaser may disclose such information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company, provided that such consultants and professionals (other than attorneys and accountants) agree in writing to be bound by the provisions of this Section, (ii) to any prospective purchaser of any Shares from such Purchaser as long as such prospective purchaser agrees in writing to be bound by the provisions of this Section, (iii) to any affiliate of such Purchaser or to a partner, stockholder or subsidiary of such Purchaser, provided that such affiliate agrees in writing to be bound by the provisions of this Section 9.2, or (iv) as may otherwise be required by law, provided that the Purchaser takes reasonable steps to minimize the extent of any such required disclosure.

9.3 Survival of Representations and Warranties. All agreements, representations and warranties contained herein shall survive the execution and delivery of this Agreement and the closing of the transactions contemplated hereby.

9.4 Expenses. At the Closing, the Company shall pay or reimburse the reasonable and documented fees and disbursements of New Meadows Venture Partners, LP's accountants and counsel (which shall include any time-allocated charges of internal counsel and accountants), and other deal-related expenses, not to exceed \$15,000 in the aggregate, in connection with the negotiation of this Agreement and the other agreements contemplated hereby and the closing of the transactions contemplated hereby.

9.5 Brokers. The Company and each Purchaser (i) represents and warrants to the other parties hereto that he, she or it has not retained a finder or broker in connection with the transactions contemplated by this Agreement, and (ii) will indemnify and save the other parties harmless from and against any and all claims, liabilities or obligations with respect to brokerage or finders' fees or commissions, or consulting fees in connection with the transactions contemplated by this Agreement asserted by any person on the basis of any statement or representation alleged to have been made by such indemnifying party.

9.6 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

9.7 Specific Performance. In addition to any and all other remedies that may be available at law in the event of any breach of this Agreement, each party shall be entitled to specific performance of the agreements and obligations of the other parties hereunder and to such other injunctive or other equitable relief as may be granted by a court of competent jurisdiction.

9.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York (without reference to the conflicts of law provisions thereof).

9.9 Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed delivered (i) two business days after being sent by registered or certified mail, return receipt requested, postage prepaid or (ii) one business day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, in each case to the intended recipient as set forth below:

If to the Company, at Sample Technologies Inc., 1234 Any Street, Any City, Any State, 00000, Attention: Chief Executive Officer, or at such other address or addresses as may have been furnished in writing by the Company to the other parties hereto; or

If to a Purchaser, at the address set forth on Exhibit A for such Purchaser, or at such other address or addresses as may have been furnished to the other parties hereto in writing by such Purchaser.

Any party may give any notice, request, consent or other communication under this Agreement using any other means (including, without limitation, personal delivery, messenger service, telecopy, first class mail or electronic mail), but no such notice, request, consent or other communication shall be deemed to have been duly given unless and until it is actually received by the party for whom it is intended. Any party may change the address to which notices, requests, consents or other communications hereunder are to be delivered by giving the other parties notice in the manner set forth in this Section.

9.10 Complete Agreement. This Agreement (including its Exhibits) and the Ancillary Agreements constitute the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

9.11 Amendments and Waivers. Except as otherwise expressly set forth in this Agreement, any term of this Agreement may be amended or terminated and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), with the written consent of the Company and the holders of at least 51% of the shares of Common Stock issued or issuable upon conversion of the Shares. Any amendment, termination or waiver effected in accordance with this Section 9.11 shall be binding upon each holder of any Shares (including shares of Common Stock into which such Shares have been converted) even if they do not execute such consent, each future holder of all such securities and the Company. No waivers of or exceptions to any term, condition or provision of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, condition or provision.

9.12 Pronouns. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

9.13 Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same document. This Agreement may be executed by facsimile signatures.

9.14 Section Headings. The section headings are for the convenience of the parties and in no way alter, modify, amend, limit, or restrict the contractual obligations of the parties.

10. Definitions. For purposes of this Agreement, each of the following defined terms is defined in the Section of this Agreement indicated below:

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IN WITNESS WHEREOF the due execution hereof by the respective duly authorized officers of the undersigned as of the date first written above.

VENTURE, LP



By: VENTURE ASSOCIATES, LLC,

as General Partner

By \_\_\_\_\_

Name:

Title:

XXX CORPORATION

By \_\_\_\_\_

Name:

Title:

SAMPLE TECHNOLOGIES, INC.

By \_\_\_\_\_

Name:

Title:

### EXHIBIT A

#### List of Purchasers

<u>Name and Address</u> <u>of Purchaser</u>	<u>No. of Shares of</u> <u>Series B</u> <u>Preferred</u>	<u>Aggregate</u> <u>Purchase Price</u>
Venture, LP [Address]	444,444	\$999,999
XXX Corporation [Address]	444,444	\$999,999

Attn:

[With a copy of any notice  
to:

[Name]

XXX Corporation

[Address]

## EXHIBIT F

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### Opinion of Counsel

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