

## VOTING TRUST AGREEMENT

**THIS VOTING TRUST AGREEMENT** (this “**Agreement**”) is made and entered into as of *[insert date]*, by and among *[insert name of portfolio company]*, a *[state]* *[type of entity]* (the “**Company**”), the shareholders of the Company set forth on Schedule A attached hereto, as it may be amended from time to time in accordance with this Agreement (the “**Shareholders**”), and any holders of Trust Tokens (as defined herein) who now or hereafter become parties hereto (together with the Shareholders, the “**Holders**”) and *[insert name of trustee]*, as trustee (the “**Trustee**”).

WHEREAS, the purpose of the formation of the Voting Trust is to allow the Shareholders to retain beneficial ownership of the Subject Shares (as defined below), while transferring their voting rights in the Company to the Trustee.

WHEREAS, as of the date each Shareholder becomes a party to this Agreement, each Shareholder is the legal and beneficial owner of *[common stock]*, par value of \$*[insert par value]* per share, of the Company (the “[**Common Stock**]” and each share of Common Stock, a “**Share**”);

WHEREAS, each Shareholder desires to transfer to the Trustee, and the Trustee desires to accept such transfer of, all of the Shares of Common Stock owned by such Shareholder for the purpose of conferring on the Trustee the right to vote thereon upon the terms and conditions set forth herein, while retaining beneficial ownership thereof;

WHEREAS, the parties hereto desire to establish a voting trust (within the meaning of Section 218(a) of the Delaware General Corporation Law) pursuant to this Agreement (the “**Voting Trust**”), with *[insert name of trustee]* serving as the initial Trustee in accordance with the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in this Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

### 1. **Deposit of Common Stock and Certificates.**

(a) Concurrently with the execution of this Agreement, each Shareholder shall transfer to the Trustee, as trustee, some or all of the Shares of Common Stock of the Company owned by such Shareholder[, and each Shareholder may, from time to time, transfer to the Trustee, as trustee, some or all additional Shares of Common Stock acquired by it, and some or all securities convertible into, exchangeable for, or representing a right to purchase Common Stock, immediately following the acquisition thereof,] (all such Shares and securities transferred to the Trustee, collectively, the “**Subject Shares**”).

(b) The assets of the Voting Trust will consist solely of the Subject Shares. The Trustee shall hold the Subject Shares and all rights related thereto as trustee solely for the use and benefit of the Shareholders in accordance with the provisions of this Agreement.

(c) Concurrently with the transfer of any Subject Shares, the Shareholders shall surrender any stock certificates, duly endorsed in blank or accompanied by proper instruments of transfer duly executed in blank, representing the Subject Shares to the Company, and the Company shall cancel such stock certificates, and issue to the Trustee one or more new stock certificates representing the Subject Shares (the “**Subject Shares Certificates**”). The stock ledger of the Company shall provide that the Subject Shares Certificates were issued pursuant to this Agreement. In addition, each Subject Share Certificate shall include a legend as follows:

The [common stock] represented by this certificate is subject to the provisions and restrictions on transfer set forth in a Voting Trust Agreement (the “Voting Trust Agreement”), by and among [*insert name of trustee*], as trustee, certain shareholders of the Company and the other parties thereto. The [common stock] represented by this certificate may only be transferred or assigned as expressly permitted by the Voting Trust Agreement.

## 2. **Issuance of Voting Trust Tokens.**

(a) Concurrently with the execution of this Agreement and the deposit by each Shareholder of the Subject Shares and the Subject Share Certificates, the Trustee, as trustee, will issue to each Shareholder, and will from time to time issue with respect to all Subject Shares hereafter deposited, voting trust tokens (“**Trust Tokens**”) to represent Subject Shares transferred and delivered to the Trustee hereunder at the exchange rate published by the Company. Such exchange rate may be updated on occasion to reflect cumulative stock splits, stock dividends, or other share adjustments.

Except as otherwise agreed to by the Company, the Trustee shall cause the Trust Tokens issued hereunder to only be transferred among other current Token Holders in accordance with this Agreement.

3. **Dividends or other Distributions on Account of Subject Shares.** In the event that Trustee shall receive dividends or other distributions (other than additional Shares of Common Stock) with respect to the Subject Shares, the Trustee shall promptly pay the amount that the Trustee receives to each Holder based on the Subject Shares represented by the Trust Tokens held by the Holder on the [dividend record date]; provided, however, that the Trustee may, by notice to the Company, instruct the Company to pay such dividends directly to the Holders entitled thereto]. If the Trustee shall receive any Shares of Common Stock as a dividend upon or in exchange for any of the Subject Shares, the Trustee shall hold such Shares in accordance with the terms of this Agreement and shall issue Trust Tokens representing such shares or fractional shares to the Holders based on the Subject Shares represented by the Trust Tokens held by the Holder on the [dividend record date]. If any dividend or distribution in respect of Shares of Common Stock held hereunder shall be paid other than in cash or Common Stock, the Trustee shall distribute such dividend, in kind, to the Holders based on the Subject Shares represented by the Trust Tokens held by the Holder on the [dividend record date]. [For the avoidance of doubt, the Trustee shall not be entitled to invest, reinvest, sell, distribute or

otherwise disburse any dividends or distributions received with respect to the Subject Shares in any other manner except as specifically set forth in this Section 3.]

4. **Voting of Subject Shares.**

(a) The Trustee shall attend, or otherwise cause all of the Subject Shares to be present at, all meetings of holders of Common Stock called by the board of directors of the Company, and vote, or cause all of the Subject Shares to be voted (in person or by proxy), in accordance with the provisions of this Section 4. the Trustee shall have the sole right to vote all of the Subject Shares in any manner in the Trustee's sole discretion, on any and all matters on which the holders of Shares of Common Stock are entitled to vote or consent[; provided, that the Trustee shall vote the Subject Shares as set forth in and in accordance with the terms of that certain Voting Agreement, dated [*insert date of Voting Agreement*], by and among the Company and its shareholders, on the matters set forth therein as if the Trustee was a shareholder party to such agreement]. The Trustee may with respect to the Subject Shares, act either at a meeting or by a writing or writings with or without a meeting, and may vote the Subject Shares in person or by such persons as the Trustee may select as proxy.

5. **Actions of Trustee.**

(a) The Trustee shall promptly transmit all communications that it may receive in respect of the Subject Shares to the Holders.

(b) The Trustee shall cause proper records to be kept of the assets of the Voting Trust, all receipts and disbursements of the Voting Trust, a list of Holders and their respective Trust Tokens, and other records necessary and appropriate for the administration of the Voting Trust.

(c) Except as set forth herein, the Trustee shall not be entitled to sell, assign, distribute or otherwise transfer the Subject Shares.

6. **Transfer of Trust Tokens.** Trust Tokens shall only be transferable by the Holders thereof only in record name on the Company's seeded blockchain protocol provided by the Trustee. The Trustee may at all times and for all purposes treat the Holder as recorded on [the seeded blockchain protocol], as the sole holder thereof. Upon the transfer of a Trust Token, the transferee shall be substituted for the transferor as the Holder and shall have the rights and be subject to the obligations of the transferor with respect to such Trust Token. Notwithstanding the foregoing, Trust Tokens may only be transferred: (a) in accordance with: the seeded blockchain protocol; (b) as permitted under the Securities Act of 1933 and other applicable federal or state securities or blue sky laws; and (c) to a transferee that has agreed to be bound by this Agreement pursuant to a writing reasonable acceptable to the Trustee.

7. **Holders of Trust Tokens Bound.** Every Holder, by the holding of a Trust Token, shall be deemed conclusively for all purposes to have assented to this Agreement and to all of its terms, conditions and provisions and shall be bound hereby with the same force and effect as if such holder had executed this Agreement.

8. **Removal of Trustee.** The Trustee may be removed by [the Company] with written notice upon any action or inaction of the Trustee which constitutes gross negligence or willful misconduct in the performance of its obligations hereunder. Should the Trustee resign or no longer be able to perform requisite duties, the Company may appoint a new Trustee.

9. **Withdrawal by Holders of Trust Tokens.** A Holder may withdraw some or all Tokens from the Voting Trust only with the express written consent of the Trustee. In such case, the Trustee will cause a new stock certificate to be issued in the name of the Holder for the appropriate number of shares and with restrictions as may be required by the Company. The Trustee further will cause the Company to adjust the stock certificate or stock certificates held by the Trust to be adjusted accordingly.

10. **Termination.**

(a) This Agreement and the Voting Trust created hereby shall terminate with respect to all of the Subject Shares upon the earliest to occur of:

(i) immediately prior to (A) a sale of all or substantially all of the assets of the Company; (B) a sale of a majority of the [Common Stock (or other voting stock of the Company)]; or (C) a merger, consolidation, recapitalization or reorganization of the Company with or into a third party that results in a change of the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Company, whether through the ownership of Common Stock, other voting securities of the Company, by contract or otherwise;

(ii) (A) the consummation of a underwritten public offering of the [common stock] of the Company pursuant to an effective registration statement under the Securities Act of 1933, as amended, or (B) the registration of the Subject Shares under the Securities Act of 1933, as amended; or

(iii) the written consent of the Trustee and the Company.

(b) Upon termination of this Agreement, the Holders shall be entitled to receive Shares of Common Stock for Trust Tokens then held by such holder in accordance with the exchange rate as then published by the Company. The Company shall issue new certificates to and in the name of each holder upon surrender of the Subject Shares Certificates registered in the name of the Trustee, and shall deliver such new certificates to the Trustee for distribution to the Holders pursuant to this Section 12(b). The Trustee, in exchange for the Trust Tokens then outstanding, shall deliver to the Holders such new certificates, and thereupon all liability of the Trustee for delivery of such certificates shall terminate.

(c) Upon the termination of this Agreement with respect to the Subject Shares, the Voting Trust shall cease to have any effect with respect to the Subject Shares, and the parties hereto shall have no further rights or obligations under this Agreement with respect to the Subject Shares.

11. **Trustee Acts as Trustee; Indemnification; Exculpation.**

(a) In accepting the Voting Trust created hereby, the Trustee acts solely as trustee hereunder and not in any individual capacity, and all persons having any claim against the Trustee by reason of the transactions contemplated hereby shall not have any recourse to the Trustee in its individual capacity, except in the case of gross negligence fraud or willful misconduct of the Trustee.

(b) The Trustee shall be entitled to assume the validity and enforceability of all documents provided to it, and reasonably be believed by it to be genuine and to be signed by the proper party or parties, without further inquiry.

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the instructions provided hereunder. The Trustee shall not be responsible with respect to, and makes no representation as to the validity or sufficiency of, any provision of this Agreement or for the due execution hereof by the other parties hereto.

(d) [The Company] shall be liable as primary obligor for, and shall indemnify the Trustee and its successors, assigns, [officers, directors, employees] and agents (the “Indemnified Parties”) from and against, any and all liabilities, obligations, losses, damages, taxes, claims, actions and suits, and any and all reasonable out of pocket costs, expenses and disbursements (including reasonable legal fees and expenses) of any kind and nature whatsoever (“Liabilities”) which may at any time be imposed on, incurred by, or asserted against the Trustee or any other Indemnified Party in any way relating to or arising out of this Agreement, the Subject Shares, the Trust Tokens, the administration of the Trust or the action or inaction of the Trustee or any other Indemnified Party hereunder, except only that the Company shall not be liable for or required to indemnify an Indemnified Party from and against Liabilities arising or resulting from such Indemnified Party’s gross negligence, fraud, or willful misconduct. The indemnities contained in this Section shall survive the resignation or termination of the Trustee, the termination of this Agreement and the termination of the Voting Trust.

12. **Compensation.** The Trustee shall be entitled to the compensation set forth in the [*name of agreement*], by and between Nth Round, Inc. and [the Company], dated as of [*insert date of agreement*].

13. **Nature of Voting Trust.** The Voting Trust is intended to be a common law trust and is not intended to be and shall not be deemed to be, and shall not be treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company, association or any other type of business entity. For purposes of this Agreement, the Holders’ relationship to the Trustee shall be solely that of beneficiaries of the Voting Trust created by this Agreement.

14. **Tax Treatment.** The Voting Trust shall either be treated as a grantor trust under subpart E, part I of subchapter J of the Internal Revenue Code of 1986, as amended, or shall be treated as merely a custodial arrangement that is not an entity recognized for U.S. federal

tax purposes, and the provisions of this Agreement shall be interpreted in a manner consistent with such treatment.

15. **Expenses.** All costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with the formation and operation of the Voting Trust, and the transactions contemplated by this Agreement, shall be paid by the Company. Each Shareholder shall be responsible for its own costs and expenses incurred in connection with the execution and negotiation of this Agreement.

16. **Severability.** If any term or provision of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

17. **Successors and Assigns; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns. This Agreement may not be assigned by any party hereto, and any such assignment in violation of this Agreement shall be null and void.

18. **No Third-party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto (and their respective heirs, executors, administrators, successors and assigns) and nothing herein, express or implied, is intended to or shall confer upon any other Person, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

19. **Amendment.** No provision of this Agreement may be amended or modified except by an instrument in writing executed by the Company and the holders of a majority of the Trust Tokens. Any such written amendment or modification will be binding upon the Company and each Holder.

20. **Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

21. **Governing Law; Jurisdiction.** All issues and questions concerning the application, construction, validity, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, without

giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction). The parties hereby agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, shall be brought in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware (or, if such courts lack subject-matter jurisdiction, in the Superior Court of the State of Delaware), so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware. Each of the parties hereby irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient form.

22. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**THE COMPANY:**

***[INSERT COMPANY NAME]***

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

Name:

Title:

**THE TRUSTEE:**

***[INSERT TRUSTEE NAME]***

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

Name:

Title:

**THE SHAREHOLDERS:**

*[if an entity:]*

***[INSERT SHAREHOLDER NAME]***

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

Name:

Title:

*[if an individual]*

\_\_\_\_\_  
*[insert shareholder name]*