Sample Voting Trust

Voting Trust

THIS AGREEMENT made as of the _____ day of [], 200[].

A M O N G:

[Insert: Investor 1],

[Insert: Investor 2],

[Insert: Investor 3],

and

so on to include all the shareholders of the Series A Preferred investment round

(hereinafter collectively referred to as the "Shareholders")

- and -

[Insert: Nominee for Voting Trustee],

(hereinafter referred to as the "Voting Trustee")

WHEREAS the Shareholders are the registered and beneficial owners of [Insert: total number of shares of the investors group] Series A Preferred Shares and in the capital of [Insert: Full Legal Name of the Company] (the "Company"), a company formed under the laws of the Province of Ontario;

AND WHEREAS the Shareholders have agreed to appoint the Voting Trustee as the Shareholders' voting trustee on the terms and conditions hereinafter contained;

NOW THEREFORE in consideration of the foregoing and mutual covenants and agreements contained herein, the parties agree as follows:

1. **Appointment of the Voting Trustee**: The Shareholders hereby appoint the Voting Trustee in respect of all of the Shares which are at any time and from time to time owned by the Shareholders or acquired by them in the future.

2. **Acknowledgement by Shareholders**: Each Security holder does hereby acknowledge to and with the Voting Trustee that such Security holder now has full

right, power and authority to execute, deliver and perform this agreement and for greater certainty and without limitation, that such Security holder has not previously entered into any agreement or arrangement, oral or written, with respect to the voting of the Shares.

3. **Exercise of Voting Rights**: Until the termination of this Agreement in accordance with the provisions hereof, the Voting Trustee shall, in respect of the Shares, exclusively possess and be entitled, in person, by proxy or by attorney, in its sole discretion to exercise all the rights of voting appertaining to the Shares and all rights in connection with the initiation, taking part in and consenting to any action as shareholders of the Company. In furtherance of the foregoing, the Shareholders shall from time to time and at all times during the term of this Agreement do whatever may be requested by the Voting Trustee, including the execution and delivery of appropriate instruments of proxy, to enable or facilitate the exercise of any and all such rights by or on behalf of the Voting Trustee.

4. **Applicability of Agreement**: The Shareholders agree that the provisions of this Agreement relating to the deposit of proxies with respect to the voting rights attaching to the Shares shall apply mutatis mutandis to:

    - any shares or securities of the Company into which such Shares may be converted, changed, reclassified, re-divided, re-designated, subdivided or consolidated;

    - any shares or securities which are received by the Shareholders as a stock dividend or distribution payable in shares or securities of the Company which entitle the holder thereof to vote at any meeting of the shareholders of the Company; and

    - any shares or securities of the Company or of any successor or continuing company to the Company which may be received by the Shareholders on a reorganization, amalgamation, consolidation or merger, statutory or otherwise.

5. **Right to Receive Dividends and Distributions**: Save as herein specifically provided, each of the Shareholders shall be entitled to receive any and all dividends and distributions on and in respect of the Shares to which they would otherwise be entitled.

6. **Acceptance by the Voting Trustee**: The Voting Trustee hereby accepts its appointment as voting trustee.

7. **Term of Agreement**: The term of this Agreement shall be in effect until the execution of an agreement in writing by the Voting Trustee and the Shareholders terminating this Agreement.

8. **Protection of the Voting Trustee**: By way of supplement to the provisions of law or of any statute for the time being in effect relating to trustees, it is agreed that:

    - the Voting Trustee shall not incur any liability or responsibility by reason of any error of law or mistake or any matter or thing done or omitted to be done under or in relation to this Agreement except for its wilful and wrongful neglect or default; and

    - the Voting Trustee may, in relation to this Agreement, act on the opinion or advice of or opinion obtained from any lawyer, broker or other expert and shall not be responsible for any loss occasioned by so acting, and shall incur no liability or responsibility for deciding in good faith not to act upon any such opinion or advice.

9. **Acts of the Voting Trustee, the Trustees and General Limitation of Liability**:

For greater certainty, where any reference is made herein to an act to be performed or which may not be performed by the Voting Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed or which may not be performed by the trustees of the Voting Trustee (the "Trustees") on behalf of the Voting Trustee or by some other person duly authorized to do so by the Trustees or pursuant to the provisions hereof, and where reference is made herein to actions, rights or obligations of the Trustees, such reference shall be construed and applied for all purposes to refer to actions, rights or obligations of the Trustees in their capacity as Trustees, and not in their other capacities, unless the context otherwise requires.

The parties hereto acknowledge that the Trustees are entering into this Agreement solely in their capacity as trustees, on behalf of the Voting Trustee. The Trustees shall not be subject to any personal liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Voting Trustee arising out of anything done or permitted or omitted to be done in respect of the execution of the duties of the office of Trustee for or in respect to the affairs of the Voting Trustee. No property or assets of the Trustees, owned in their personal capacity or otherwise, will be subject to any levy, execution or other enforcement procedure with regard to any of the Voting Trustee's obligations hereunder or under any other related agreements. No recourse may be had or taken, directly or indirectly, against the Trustees in their personal capacity or against any incorporator shareholder, director, officer, employee or agent of the Trustees or any successor of the Trustees. The Voting Trustee shall be solely liable therefore and resort shall be had solely to the assets of the Voting Trustee for payment or performance thereof.

10. **Amendment**: This agreement may not be amended except by instrument in writing executed by all the parties hereto.

11. **Governing Law**: This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario.

12. **Assignment & Successors**: This Agreement shall [not] be assignable by the parties hereto and shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, legal personal representative, successors [and assigns] and upon any trustee or receiver in bankruptcy or upon any other trustee or appointee or their successors or assigns upon whom shall devolve by operation of law or otherwise, any interest or claim in and to the property of or the interest herein of any party.

13. **Counterparts**: This agreement may be executed in one or more counterparts by original or telefacsimile signature, each of which when executed shall be deemed to be an original and such counterparts shall together constitute one and the same instrument.

14. **Entire Agreement**: This agreement sets forth the entire agreement and understanding of the parties to this agreement with respect to the subject matter hereof.

Signatures: