

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

PURSUANT TO SECTION 13 OR 15(d)

OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): March 28, 2001

**PASW, INC.**

(Exact name of registrant as specified in its charter)

CALIFORNIA      333-75137      77-0390628

(State or other      (Commission      (IRS Employer  
jurisdiction of      file Number)      identification No.)  
incorporation)

2007 Simsbury Court, Thousand Oaks, CA      91360

Address of principal executive offices)      (Zip Code)

Registrant's telephone number, including area code: (805) 492-6623

**ITEM 5. OTHER EVENTS.**

On March 29, 2001, PASW, Inc. issued a press release, a copy of which is attached hereto as Exhibit 99, and is incorporated herein by reference.

**ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS. PAGE NO.**

(a) Not Applicable.

(b) Not Applicable.

(c) EXHIBITS. The following document is filed as an exhibit to this Report:

- 2.1 Combination Agreement among PASW, Inc., Glenn P. Russell and Simmons Energy Services Inc.
- 2.2 Voting Trust and Exchange Rights Agreement
- 2.3 Support Agreement
- 2.4 Share Capital Provisions to be Included in the Articles of Incorporation of [#2] Alberta Ltd.
- 3.1 Articles of Incorporation of PASW, Inc., as amended to date
- 99 Press release dated March 29, 2001

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized officer.

Date: March 29, 2001

PASW, INC.

By: /s/ William E. Sliney

William E. Sliney

Chairman, President and Chief Financial Officer

(Duly Authorized Officer and Principal

Financial and Accounting Officer)

# **COMBINATION AGREEMENT**

**among**

**PASW, INC.,**

**GLENN P. RUSSELL**

**and**

**SIMMONS ENERGY SERVICES INC.,**

**Dated effective as of March 29, 2001**

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## COMBINATION AGREEMENT

THIS COMBINATION AGREEMENT is entered into effective as of March 22, 2001 by PASW, Inc., a California corporation ("PASW"), Glenn P. Russell, an individual residing in California (the "**Majority Shareholder**") and Simmons Energy Services Inc., an Alberta corporation ("SES").

### RECITALS

A. The respective boards of directors of PASW and SES each deem it advisable and in the best interests of their respective corporations and stockholders to combine their respective businesses.

B. PASW is a company listed on the Nasdaq small cap market.

C. SES has not conducted any business operations except in connection with the Perforec Acquisition, its entering into of agreements to acquire the international operations of SGI and SDC and its entering into of agreements for the purchase of other assets, employment agreements, and agreements respecting proposed financings.

D. Each of Walter Dawson and Victor Redekop have agreed to acquire (immediately after the signing of this agreement) shares of Series C preferred stock of PASW in consideration for the assignment by them of

indebtedness owing to them by SES, which shares shall be converted to shares of PASW Common Stock immediately after the Amalgamation is effective, subject to the approval of PASW's Stockholders.

E. The parties intend that the Private Placement be conducted by PASW, with the proceeds to be loaned to SES by PASW, prior to the Effective Date and on such other terms as are satisfactory to SES.

F. Immediately prior to effecting the Amalgamation, SES will complete the Edeco Purchase Transaction, the SDOL Purchase Transaction and the Asset Purchase Transaction and PASW will distribute its assets, other than cash received by PASW upon the exercise of Warrants, to the holders of its then issued and outstanding shares.

G. The Majority Shareholder has agreed to provide representations and warranties respecting PASW to SES so as to induce SES to enter into this Agreement.

H. PASW and SES propose that PASW acquire SES and its operations by:

(1) SES and AcquireCo, which will be a wholly-owned subsidiary of HoldCo (which will be a wholly-owned subsidiary of PASW), amalgamating under the ABCA and continuing as the Amalgamated Corporation; and

(2) PASW issuing post-consolidated shares of PASW Common Stock to acquire a receivable related to the SES operations and to satisfy certain indebtedness of SES.

I. Upon the Amalgamation becoming effective, each common share of AcquireCo will become a common share in the capital of the Amalgamated Corporation and each common share of SES will become an exchangeable share of the Amalgamated Corporation.

**The parties agree as follows:**

## **ARTICLE 1** **INTERPRETATION**

### **1.1 Definitions**

In this Agreement and the recitals hereto, the following words and expressions have the following respective definitions:

"**ABCA**" means the *Business Corporations Act* (Alberta), as amended.

"**AcquireCo**" means a corporation to be incorporated under the laws of Alberta and a wholly-owned subsidiary of HoldCo.

"**Agreement**" means this Combination Agreement.

"**Amalgamated Corporation**" means the corporation resulting from the Amalgamation.

"**Amalgamation**" means the amalgamation of SES and AcquireCo.

"**Applicable Environmental Laws**" means any applicable Canadian or United States federal, provincial, state or local law, statute, ordinance, rule, regulation, order or notice requirement pertaining to (i) the condition or protection of air, groundwater, surface water, soil, or other environmental media; (ii) the environment, including natural resources or any activity which affects the environment or (iii) the regulation of any pollutants, contaminants, waste or other substances (whether or not hazardous or toxic).

"**Asset Purchase Transaction**" means the acquisition by SES of certain assets pursuant to an agreement dated the date of this Agreement between SDC and SES in consideration for the issuance by SES of SES Common Shares.

"**Closing**" means the completion of the transactions contemplated by this Agreement.

"**Closing Date**" has the meaning ascribed thereto in Section 8.2

"**Dawson Share Issuance**" means the issuance by PASW of 455,478 post-consolidated shares of PASW Common Stock at a deemed price of \$3.56 per share to Walter Dawson upon the conversion of the 455,478 Series C Shares to be acquired by Mr. Dawson.

"**Edeco Purchase Transaction**" means the acquisition by SES of all the issued and outstanding shares of Edeco Petroleum Services Limited pursuant to an agreement dated the date of this Agreement between SDC and SES in consideration for the issuance by SES of SES Common Shares.

**"Effective Date"** means the date shown on the articles of amalgamation of the Amalgamated Corporation.

**"Encumbrance"** means a lien, charge, mortgage, security interest, option, preferential purchase right or other right or interest of any other person.

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

**"Exchangeable Shares"** means the exchangeable shares to be issued by the Amalgamated Corporation pursuant to the Amalgamation.

**"Governmental Entity"** means any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign.

**"HoldCo"** means a corporation to be incorporated under the laws of Alberta and a wholly-owned subsidiary of PASW.

**"Indemnified Party"** has the meaning ascribed thereto in Section 7.2.

**"Indemnifying Party"** has the meaning ascribed thereto in Section 7.2.

**"ITA"** means the *Income Tax Act* (Canada), as amended.

**"Material Adverse Effect"** means, when used with respect to any party, any event, change or effect that is or would reasonably be expected to be materially adverse to the financial condition, operations, assets, liabilities, or business of such party and its subsidiaries, taken as a whole, provided that, a Material Adverse Effect shall not include any adverse effect resulting from changes in general economic conditions or conditions generally affecting the industries in which PASW or SES operate.

**"PASW Common Stock"** means the shares of common stock, \$0.001 par value, of PASW.

**"PASW Intellectual Property"** has the meaning ascribed thereto in Section 4.14.

**"PASW Option Plan"** means the incentive stock option plan of PASW.

**"PASW Preferred Stock"** means the Series A, Series B and Series C shares of preferred stock, \$0.01 par value, of PASW.

**"PASW Securities Reports"** means the forms, reports, annual reports and documents required to be filed by PASW with the SEC pursuant to relevant United States securities statutes, regulations, policies and rules.

**"PASW Stockholders Meeting"** means the meeting of stockholders of PASW to be held in connection with the transactions contemplated by this Agreement.

**"Perforec"** means Perforaciones Ecuatorianas S.A. PERFOREC, a company incorporated under the laws of Ecuador and a wholly-owned subsidiary of Hourservice S.A.

**"Perforec Acquisition"** means the acquisition by SES of all the issued and outstanding shares of Perforec.

**"Private Placement"** means the issue and sale, without the filing of a registration statement, by PASW of Series B Shares.

**"Proxy Statement"** means the management information circular and proxy statement in respect of the PASW Stockholders Meeting.

**"Receivable Acquisition"** means the acquisition by PASW of the SDOL Receivable pursuant to an agreement dated the date of this Agreement between SDC and PASW in consideration for the issuance by PASW of post-consolidated shares of PASW Common Stock.

**"Redekop Share Issuance"** means the issuance by PASW of 561,798 post-consolidated shares of PASW Common Stock at a deemed price of \$3.56 per share to Victor Redekop upon the conversion of the 561,798 Series C Shares to be acquired by Mr. Redekop.

**"Registration Statement"** means the registration statement to be filed with the SEC by PASW to register the PASW Common Stock to be issued from time to time after the Effective Date upon exchange of the Exchangeable Shares and upon conversion of the shares of the Series B and Series C Preferred Stock.

**"Related Transactions"** means the Asset Purchase Transaction, the Edeco Purchase Transaction, the SDOL Purchase Transaction, the Receivable Acquisition, the Dawson Share Issuance and the Redekop Share Issuance, collectively.

"SDC" means Simmons Drilling Corp., a corporation incorporated under the laws of Alberta.

"SDOL" means Simmons Drilling (Overseas) Limited, a company incorporated under the laws of Jersey.

"SDOL Purchase Transaction" means the acquisition by SES of all the issued and outstanding shares of SDOL pursuant to an agreement dated the date of this Agreement between SGI and SES in consideration for the issuance by SES of SES Common Shares.

"SDOL Receivable" means such amount as may be owing by SDOL to SDC as at the Effective Date on account of loan advances and inter-company charges.

"SEC" means the Securities and Exchange Commission of the United States.

"SEC Filings" means the filing with the SEC of such reports and information under the Exchange Act and the rules and regulations promulgated by the SEC thereunder as may be required in connection with this Agreement and the transactions contemplated hereby.

"Securities Act" means the Securities Act of 1933, as amended.

"Series B Shares" means the shares of Series B preferred stock, \$0.01 par value, of PASW.

"Series C Shares" means the shares of Series C preferred stock, \$0.01 par value, of PASW.

"SES Common Shares" means the common shares in the capital of SES.

"SES Intellectual Property" has the meaning ascribed thereto in Section 3.11.

"SES Option Plan" means the incentive stock option plan of SES.

"SES Preferred Shares" means the preferred shares in the capital of SES.

"SES Subsidiaries" means Hourservice S.A., a company incorporated under the laws of Ecuador, and Perforec.

"SGI" means Simmons Group Inc., a corporation incorporated under the laws of Alberta.

"Warrants" means the 1,134,100 issued and outstanding warrants to acquire shares of PASW Common Stock, each of which Warrants entitles the holder to acquire one share of PASW Common Stock at an exercise price of \$7.50 until August 1, 2001.

## 1.2 Rules of Interpretation

When a reference is made in this Agreement to Sections or Exhibits, such reference shall be to a Section or Exhibit to this Agreement unless otherwise indicated. The words "**include**," "**includes**" and "**including**" when used therein shall be deemed in each case to be followed by the words "**without limitation**." Any references in this Agreement to "**the date hereof**" refers to the date of execution of this Agreement. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

## 1.3 Currency

Unless otherwise specified, all references in this Agreement to "**dollars**" or "**\$**" shall mean United States dollars.

## 1.4 Exhibits

The following Exhibits attached hereto are incorporated herein by reference:

(a)  
Exhibit  
A —  
Share  
Capital  
and  
Other  
Provisions  
to be  
included  
in the  
Articles  
of  
Amalgamation



of the  
Amalgamated  
Corporation

(b) Exhibit B — Support Agreement

(c) Exhibit C — Voting and Exchange Trust Agreement.

## ARTICLE 2 THE AMALGAMATION AND RELATED TRANSACTIONS

### 2.1 Acquisition of SES

It is hereby acknowledged and agreed that the Amalgamation and the Related Transactions shall be consummated simultaneously or none of them shall be.

### 2.2 Amalgamation

Subject to the conditions contained in Article 6 hereof, the parties agree to amalgamate SES and AcquireCo on the Effective Date upon the terms set forth herein.

(a) *Name*. The name of the Amalgamated Corporation shall be as determined by SES.

(b) *Classes and Number of Shares Authorized*. The Amalgamated Corporation shall be authorized to issue an unlimited number of common shares and an unlimited number of Exchangeable Shares, having the terms and conditions substantially in the form set forth in Exhibit A.

(c) *Issued Shares*. At the Effective Date:

(i) each SES Common Share outstanding immediately prior to the Effective Date shall be exchanged for one issued and fully paid and non-assessable Exchangeable Share of the Amalgamated Corporation;

(ii) each SES Option outstanding immediately prior to the Effective Date will be exchanged for one PASW Option; and

(iii) each common share of AcquireCo outstanding immediately prior to the Effective Date shall be exchanged for one issued and fully paid and non-assessable common share of the Amalgamated Corporation.

(d) *Directors*. The Amalgamated Corporation shall have a minimum of three directors and a maximum of 15 directors and the first directors of the Amalgamated Corporation shall be the persons whose names and municipality of residence appear below:

Name	Municipality Residence	of
Walter Dawson	Calgary, Alberta	
Victor Redekop	Calgary, Alberta	
G. W. Douglas Paul	Calgary, Alberta	
Orville A. Pyrcz	Calgary, Alberta	

(e) *By-Laws*. The by-laws of the Amalgamated Corporation shall be the by-laws of AcquireCo.

(f) *Perforec*. PASW shall have assumed obligations of SES to issue SES Common Shares in satisfaction of indebtedness owed to the vendors under the Perforec Acquisition

### **2.3 Proxy Statement; Registration Statement**

(a) As promptly as practicable after execution of this Agreement, PASW and SES shall prepare and PASW shall file the Proxy Statement, together with any other documents required by the Securities Act or the Exchange Act in connection with the Amalgamation and the other transactions contemplated hereby. As promptly as practicable after the Proxy Statement is cleared by the SEC, PASW shall cause the Proxy Statement to be mailed PASW's securityholders entitled to vote. As promptly as practicable, PASW shall file the Registration Statement and PASW and SES shall use their best efforts to cause the Registration Statement to become effective immediately after the PASW Stockholders Meeting. If such Registration Statement is filed and becomes effective, PASW will use its best efforts to maintain the effectiveness of the Registration Statement for so long as any Exchangeable Shares remain outstanding or until such earlier time as PASW shall have received a written opinion of its outside counsel to the effect that the holders of Exchangeable Shares may exchange such shares for freely tradeable shares of PASW Common Stock without registration under the Securities Act.

(b) Each party shall promptly furnish to the other party all information concerning such party as may be reasonably required in connection with any action contemplated by this Section 2.3. The Proxy Statement and the Registration Statement shall comply in all material respects with all applicable requirements of law. PASW will notify SES promptly of the receipt of any comments from the SEC and of any request by the SEC for amendments or supplements to the Proxy Statement or the Registration Statement, or for additional information, and will supply SES with copies of all correspondence with the SEC with respect to the Proxy Statement or the Registration Statement. Whenever any event occurs which should be set forth in an amendment or supplement to the Proxy Statement or the Registration Statement, PASW or SES, as the case may be, shall promptly inform the other of such occurrence and cooperate in filing with the SEC, and/or mailing to securityholders entitled to vote of PASW, such amendment or supplement.

(c) PASW, AcquireCo and SES shall take any action required to be taken under any applicable provincial or state securities laws (including "blue sky" laws) in connection with the issuance of the Exchangeable Shares, PASW Common Stock and the Amalgamation; provided, however, that with respect to the blue sky and Canadian provincial qualifications, neither PASW nor SES shall be required to register or qualify as a foreign corporation or reporting issuer where any such entity is not now so registered or qualified or consent to service of legal process in any jurisdiction, except as to matters and transactions arising solely from the offer and sale of the PASW Common Stock or the issuance of the Exchangeable Shares.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SES**

SES hereby represents and warrants to, and agrees with, PASW that:

#### **3.1 Organization and Standing**

SES is a corporation duly incorporated and organized and validly existing under the laws of Alberta and has the requisite corporate power and authority to own its properties and conduct its business as now owned and conducted. Each of the SES Subsidiaries is an entity duly organized, validly existing and in good standing under the laws of Ecuador and has the requisite corporate power and authority to own its properties and conduct its business as now owned and conducted.

#### **3.2 Agreement Authorized and its Effect on Other Obligations**

(a) SES has all requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the Amalgamation and the other transactions contemplated by this Agreement. The execution and delivery of this Agreement by SES and the consummation by SES of the Amalgamation and the other transactions contemplated hereby have been unanimously approved by the board of directors of SES and have been duly authorized by all other necessary corporate action on the part of SES. This Agreement has been duly executed and delivered by SES and is a valid and binding obligation of SES, enforceable in accordance with its terms, except that such enforceability is subject to (i) bankruptcy, insolvency, reorganization or other similar laws affecting or relating to enforcement of creditors' rights

generally, (ii) general equitable principles, and (iii) the qualifications that the consummation of the Amalgamation is subject to approval of SES's securityholders.

(b) Neither the execution, delivery or performance of this Agreement or the Amalgamation by SES, nor the consummation of the transactions contemplated hereby or thereby by SES nor compliance with the provisions hereof or thereof by SES will: (i) conflict with, or result in any violations of, the articles or bylaws of SES or any equivalent document of any of the SES Subsidiaries; or (ii) result in any breach of or cause a default (with or without notice or lapse of time, or both) under; give rise to a right of termination, amendment, cancellation or acceleration of any obligation contained in, or the loss of any material benefit or the incurrence of any material cost under; or result in the creation of any Encumbrance upon any of the material properties or assets of SES or any of the SES Subsidiaries under; any term, condition or provision of any loan or credit agreement, note, bond, mortgage, indenture, lease or other agreement, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to SES or any of the SES Subsidiaries or their respective properties or assets, other than any such breaches, defaults, rights, losses, or Encumbrances which, individually or in the aggregate, would not have a Material Adverse Effect on SES.

### **3.3 Governmental and Third Party Consents**

(a) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required to be obtained by SES or any of the SES Subsidiaries in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby or thereby, except such notices and filings as may be necessary under the *Investment Canada Act* and under the *Competition Act* (Canada); unless the failure to obtain such consents, approvals, etc., would not prevent or delay the consummation of the Amalgamation or otherwise prevent SES from performing its obligations under this Agreement and would not reasonably be expected to have a Material Adverse Effect on SES.

(b) Other than as contemplated by Sections 3.3(a) or 3.19, no consents, assignments, waivers, authorizations or other certificates are necessary in connection with the transactions contemplated hereby to provide for the continuation in full force and effect of all of SES's material contracts or leases or for SES to consummate the transactions contemplated hereby, except when the failure to receive such consents or other certificates would not have a Material Adverse Effect on SES.

### **3.4 Capitalization**

The authorized capital of SES consists of an unlimited number of SES Common Shares and an unlimited number of SES Preferred Shares. As of the date of this agreement, two SES Common Shares and no SES Preferred Shares were issued and outstanding. As of the date of this agreement, an aggregate of 1,575,000 SES Common Shares were reserved for issuance pursuant to options granted under the SES Option Plan. All of the issued and outstanding SES Common Shares have been duly authorized and validly issued, are fully paid and non-assessable, were not issued in violation of the terms of any agreement or other understanding binding upon SES and were issued in compliance with all applicable charter documents of SES and all applicable federal, provincial and foreign securities laws, rules and regulations. SES has entered into agreements to issue an aggregate of 8,435,797 SES Common Shares at a deemed price of \$3.56 per share in connection with the Asset Purchase Transaction, the Edeco Purchase Transaction and the SDOL Purchase Transaction.

### **3.5 Liabilities**

Neither SES nor any SES Subsidiary has any material liabilities or obligations, either accrued, absolute, contingent or otherwise, or has any knowledge of any potential material liabilities or obligations, other than those incurred in the ordinary course of business since December 31, 2000.

### **3.6 Information Supplied**

None of the information supplied or to be supplied by SES for inclusion or incorporation by reference in the Proxy Statement or the Registration Statement will, at the time the Proxy Statement is mailed to the securityholders of PASW and at the time of the PASW

Shareholders Meeting or at the time the Registration Statement is declared effective, contain any untrue statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

### **3.7 Defaults**

Neither SES nor any SES Subsidiary is, or has received notice that it would be with the passage of time, in default or violation of any term, condition or provision of: (a) its articles or bylaws; (b) any judgment, decree or order applicable to it; or (c) any loan or credit agreement, note, bond, mortgage, indenture, contract, agreement, lease, license or other instrument to which SES or any SES Subsidiary is now a party or by which it or any of its properties or assets may be bound, except in the case of item (c) for defaults and violations which, individually or in the aggregate, would not have a Material Adverse Effect on SES.

### **3.8 Litigation; Investigations**

There is no claim, action, suit or proceeding pending, or to the knowledge of SES threatened against SES or any of the SES Subsidiaries, nor is there any judgment, decree, injunction, rule or order of any Governmental Entity or arbitrator outstanding against SES or any of the SES Subsidiaries. There is no investigation pending or, to the knowledge of SES, threatened, against SES or any of the SES Subsidiaries before any Governmental Entity.

### **3.9 Absence of Certain Changes and Events**

Since December 31, 2000, there has not been:

- (a) Any Material Adverse Effect on SES;
- (b) Any material damage, destruction, or loss to the business or properties of SES and the SES Subsidiaries, taken as a whole, not covered by insurance;
- (c) Any material labor dispute or charge of unfair labor practice (other than routine individual grievances), any activity or proceedings by a labor union or, to the knowledge of SES, by a representative thereof to organize any employees of any SES Subsidiary or any campaign being conducted to solicit authorization from employees to be represented by such labor union;
- (d) Any other event or condition known to SES particularly pertaining to and adversely affecting the operations, assets or business of SES or any of the SES Subsidiaries (other than events or conditions which are of a general or industry-wide nature and of general public knowledge) which would constitute a Material Adverse Effect on SES; and
- (e) Any material cancellation of orders which have not been completed and which have not been replaced by new orders.

### **3.10 Additional SES Information**

SES has furnished or made available to PASW true, complete and correct copies of all of the following documents:

- (a) All contracts (except those contracts between SES and any of the SES Subsidiaries) which involve, or may involve, aggregate payments by any party thereto of \$5 million or more, which payments or obligations are to be performed in whole or in part after the Effective Date;
- (b) All material option, bonus, incentive compensation, deferred compensation, indemnification and employment agreements (including change of control agreements), and profit-sharing, retirement, pension, welfare, group insurance, death benefit, or other fringe benefit plans, arrangements or trust agreements;
- (c) All material patents, trademarks, copyrights and other intellectual property rights owned, licensed or used and all applications therefor;
- (d) All material trade names and fictitious names used or held, whether and where such names are registered and where used;
- (e) Except for obligations between SES and any SES Subsidiary, all material long-term and short-term promissory notes, installment contracts, loan agreements, credit agreements, operating and finance leases, and any other material agreements relating thereto or with respect to collateral securing the same;

(f) All material indebtedness, liabilities and commitments of third parties (other than SES Subsidiaries) and as to which it is a guarantor, endorser, co-maker, surety or accommodation maker, or is contingently liable therefor (excluding liabilities as an endorser of checks and the like in the ordinary course of business) or has otherwise provided any form of financial assistance and all letters of credit in excess of \$1 million, whether stand-by or documentary, issued by any third party;

(g) All returns, reports or other information covering income, franchise, sales, use, property and other taxes imposed by Canada, or any provincial, state, local or foreign government or subdivision or agency thereof, filed since January 1, 1998;

(h) Summaries of all material insurance policies or bonds currently maintained, including those covering properties, buildings, machinery, equipment, fixtures, employees and operations, as well as a listing of any premiums, audit adjustments or retroactive adjustments due or pending on such policies or any predecessor policies; and

(i) Any collective bargaining agreements with any labor union or other representative of employees, including all amendments and supplements, and all material employment and consulting agreements.

### **3.11 Intellectual Property**

SES or the SES Subsidiaries own or possess licenses to use all patents, patent applications, trademarks and service marks (including registrations and applications therefor), trade names, copyrights and written know-how, trade secrets and all other similar proprietary data and the goodwill associated therewith (collectively, the "**SES Intellectual Property**") that are either material to the business of SES or any SES Subsidiary or that are necessary for the manufacture, use, license or sale of any services or products manufactured, used, licensed or sold by SES and the SES Subsidiaries. The SES Intellectual Property is owned or licensed by SES or the SES Subsidiaries free and clear of any Encumbrance other than such Encumbrances that would not have a Material Adverse Effect on SES. Except in the ordinary course of business, neither SES nor any of the SES Subsidiaries has granted to any other person any license to use any SES Intellectual Property. Neither SES nor any of the SES Subsidiaries has received any notice of infringement, misappropriation or conflict with, the intellectual property rights of others in connection with the use by SES and the SES Subsidiaries of the SES Intellectual Property that could reasonably be expected to result in a Material Adverse Effect on SES.

### **3.12 Title to Properties**

Except for goods and other property sold, used or otherwise disposed of since December 31, 2000 in the ordinary course of business for fair value, SES and the SES Subsidiaries have good and defensible title to all of their properties, interests in properties and assets, real and personal, reflected in SES's December 31, 2000 financial statements, free and clear of any Encumbrance, except: (a) Encumbrances reflected in the balance sheet of SES as of December 31, 2000; (b) liens for current taxes not yet due and payable and (c) such imperfections of title, easements and Encumbrances as would not have a Material Adverse Effect on SES. All leases pursuant to which SES or any SES Subsidiary leases (whether as lessee or lessor) any real or personal property are in good standing, valid, and effective; and there is not, under any such leases, any existing or prospective default or event of default or event which with notice or lapse of time, or both, would constitute a default by SES or any SES Subsidiary which, individually or in the aggregate, would have a Material Adverse Effect on SES and in respect to which SES or a SES Subsidiary has not taken adequate steps to prevent a default from occurring. The buildings and premises of SES and each of the SES Subsidiaries that are used in its business are in good operating condition and repair, subject only to ordinary wear and tear. All major items of operating equipment of SES and the SES Subsidiaries are in good operating condition and in a state of reasonable maintenance and repair, ordinary wear and tear excepted, and are free from any known defects except as may be repaired by routine maintenance and such minor defects as do not substantially interfere with the continued use thereof in the conduct of normal operations.

### **3.13 Environmental Matters**

(a) There are no environmental conditions or circumstances, such as the presence or release of any hazardous substance, on any property presently or, to the knowledge of SES, previously owned or leased or occupied or controlled by SES or any of the SES Subsidiaries that could reasonably be expected to result in a Material Adverse Effect on SES;

(b) SES and the SES Subsidiaries have in full force and effect all material environmental permits, licenses, approvals and other authorizations required to conduct their operations and are operating in material compliance thereunder;

(c) SES's and the SES Subsidiaries' operations and the use of their assets do not violate any Applicable Environmental Laws, except for violations which, either singly or in the aggregate, would not result in a Material Adverse Effect on SES;



(d) To the knowledge of SES, none of the operations or assets of SES or any SES Subsidiary has ever been conducted or used by SES or any SES Subsidiary in such a manner as to constitute a violation of any of the Applicable Environmental Laws, except for violations which, either singly or in the aggregate, would not result in a Material Adverse Effect on SES or have been rectified;

(e) No written notice has been served on SES or any SES Subsidiary from any entity, governmental agency or individual regarding any existing, pending or threatened investigation or inquiry related to alleged violations under any Applicable Environmental Laws, or regarding any claims for remedial obligations or contribution under any Applicable Environmental Laws, other than any of the foregoing which, either singly or in the aggregate, would not result in a Material Adverse Effect on SES; and

(f) SES does not know of any reason that would preclude it from renewing or obtaining a reissuance of the material permits, licenses or other authorizations required pursuant to any Applicable Environmental Laws to operate and use any of SES's or the SES Subsidiaries' assets for their current purposes and uses.

### **3.14 Compliance With Other Laws**

Neither SES nor any SES Subsidiary is in violation of or in default with respect to, or in alleged violation of or alleged default with respect to any other applicable law or any applicable rule or regulation, or any writ or decree of any court or any Governmental Entity or delinquent with respect to any report required to be filed with any Governmental Entity, except for violations, defaults and delinquencies which, either singly or in the aggregate, do not and are not expected to result in a Material Adverse Effect on SES.

### **3.15 Taxes**

Except with respect to failures which, in the aggregate, would not result in a Material Adverse Effect on SES, proper and accurate federal, provincial, state and local income, capital, withholding, value added, sales, use, franchise, gross revenue, turnover, excise, payroll, property, employment, customs duties and any and all other tax returns, reports, and estimates have been filed with appropriate governmental agencies, domestic and foreign, by SES and each of the SES Subsidiaries for each period for which any returns, reports, or estimates were due (taking into account any extensions of time to file before the date hereof); all taxes shown by such returns to be payable and any other taxes due and payable have been paid other than those being contested in good faith by SES or a SES Subsidiary; and the tax provision reflected in SES's financial statements is adequate, in accordance with Canadian or United States (if applicable) generally accepted accounting principles, to cover liabilities of SES and the SES Subsidiaries for all taxes, including any interest, penalties and additions to taxes of any character whatsoever applicable to SES and the SES Subsidiaries or their assets or businesses. Neither SES nor any SES Subsidiary has received any notice of reassessment from the Internal Revenue Service, Canada Customs and Revenue Agency, the Alberta Corporate Tax Administration or any other revenue or collection agency that would result in a Material Adverse Effect on SES. There are no tax liens on any assets of SES or the SES Subsidiaries except for taxes not yet currently due and those which could not reasonably be expected to result in a Material Adverse Effect on SES.

### **3.16 Brokers and Finders**

None of SES or any of the SES Subsidiaries nor any of their respective directors, officers or employees has employed any broker or finder or incurred any liability for any financial advisory fees, brokerage fees, commissions or similar payments in connection with the transactions contemplated by this Agreement.

### **3.17 Disclosure**

No representation or warranty made by SES in this Agreement, nor any document, written information, statement, financial statement, certificate or Exhibit prepared and furnished or to be prepared and furnished by SES or its representatives pursuant hereto or in connection with the transactions contemplated hereby, when taken together, contains or contained (as of the date made) any untrue statement of a material fact when made, or omits or omitted (as of the date made) to state a material fact necessary to make the statements or facts contained herein or therein not misleading, in any material way, in light of the circumstances under which they were made.

### **3.18 Restrictions on Business Activities**

There is no material agreement, judgment, injunction, order or court decree binding upon SES or any SES Subsidiary that has or could reasonably be expected to have the effect of prohibiting or materially impairing any current business practice of SES or any SES Subsidiary, any acquisition of property by SES or any SES Subsidiary, the conduct of any current business by SES or any SES Subsidiary or the transactions contemplated in this Agreement.

### **3.19 Books and Records**

The books, records and accounts of SES and the SES Subsidiaries (a) have been maintained in accordance with good business practices on a basis consistent with prior years, (b) are stated in reasonable detail and accurately and fairly reflect the transactions

and dispositions of the assets of SES and the SES Subsidiaries and (c) accurately and fairly reflect the basis for the SES financial statements. SES has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that: (a) transactions are executed in accordance with management's general or specific authorization; and (b) transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with Canadian generally accepted accounting principles or any other criteria applicable to such statements and (ii) to maintain accountability for assets.

#### **ARTICLE 4**

### **REPRESENTATIONS AND WARRANTIES OF PASW**

PASW and the Majority Shareholder, jointly and severally, represent and warrant to, and agree with, SES that:

#### **4.1 Organization and Standing**

PASW is a corporation duly incorporated and organized and validly existing under the laws of California and has the requisite corporate power and authority to own its properties and conduct its business as now owned and conducted. PASW does not own or control, directly or indirectly, shares of stock or units of ownership or beneficial interest in any body corporate, partnership, joint venture, association or other business entity.

#### **4.2 Agreement Authorized and its Effect on Other Obligations**

(a) PASW has all requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder and, subject to approval of PASW's stockholders as provided in this Agreement, to consummate the Amalgamation and the other transactions contemplated by this Agreement. The execution and delivery of this Agreement by PASW and, subject to approval of PASW's stockholders as provided in this Agreement, the consummation by PASW of the Amalgamation and the other transactions contemplated hereby have been unanimously approved by the board of directors of PASW and have been duly authorized by all other necessary corporate action on the part of PASW. This Agreement has been duly executed and delivered by PASW and is a valid and binding obligation of PASW, enforceable in accordance with its terms, except that such enforceability is subject to (i) bankruptcy, insolvency, reorganization or other similar laws affecting or relating to enforcement of creditors' rights generally, (ii) general equitable principles, and (iii) the qualifications that the issuance of shares of PASW Common Stock (as defined below) to be delivered from time to time in exchange for the Exchangeable Shares is subject to approval of PASW's stockholders as provided in this Agreement.

(b) Neither the execution, delivery or performance of this Agreement or the Amalgamation by PASW, nor the consummation of the transactions contemplated hereby or thereby by PASW nor compliance with the provisions hereof or thereof by PASW will: (i) conflict with, or result in any violations of the articles or by-laws of PASW; or (ii) result in any breach of or cause a default (with or without notice or lapse of time, or both) under; give rise to a right of termination, amendment, cancellation or acceleration of any obligation contained in, or the loss of any material benefit or incurrence of any material cost under; or result in the creation of any Encumbrance upon any of the material properties or assets of PASW under; any term, condition or provision of any loan or credit agreement, note, bond, mortgage, indenture, lease or other agreement, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to PASW or any of its properties or assets.

#### **4.3 Governmental and Third Party Consents**

(a) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, is required to be obtained by PASW in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby or thereby, except for: (i) the filing with the SEC and the mailing to stockholders of PASW of the Proxy Statement; (ii) the filing and effectiveness of the Registration Statement; (iii) the SEC Filings; (iv) the filing of the articles of amalgamation and other documents as required by the ABCA; (v) such filings, authorizations, orders and approvals as may be required under applicable federal, provincial or state securities laws and the rules of the Nasdaq; and (vi) such notices and filings as may be necessary under the *Investment Canada Act* and under the *Competition Act* (Canada).

(b) Other than as contemplated by Sections 4.3 (a) or 4.19, no consents, assignments, waivers, authorizations or other certificates are necessary in connection with the transactions contemplated hereby to provide for the

continuation in full force and effect of all of PASW's material contracts or leases or for PASW to consummate the transactions contemplated hereby.

#### **4.4 Capitalization**

(a) The authorized capital stock of PASW consists of 50,000,000 shares of PASW Common Stock and 10,000,000 shares of PASW Preferred Stock. As of the date of this Agreement, 4,993,000 shares of PASW Common Stock were issued and outstanding and no shares of PASW Preferred Stock were issued and outstanding. As of the date of this Agreement, an aggregate of 139,700 shares of PASW Common Stock were reserved for issuance pursuant to options granted under the PASW Option Plan and an aggregate of 1,134,100 shares of PASW Common Stock were reserved for issuance pursuant to the Warrants. Except as set forth in the immediately preceding sentence or as contemplated in this Agreement, there are no outstanding options, warrants, convertible securities, calls, rights, commitments agreements or understandings of any character obligating PASW to issue, deliver or sell or cause to be issued, delivered or sold, additional PASW Common Stock or PASW Preferred Stock or securities convertible or exchangeable into PASW Common Stock or PASW Preferred Stock. All of the issued and outstanding shares of PASW Common Stock have been duly authorized and validly issued, are fully paid and nonassessable, were not issued in violation of the terms of any agreement or other understanding binding upon PASW and were issued in compliance with all applicable charter documents of PASW and all applicable federal, state and foreign securities laws, rules and regulations. There are, and have been, no preemptive rights with respect to the issuance of the shares of PASW Common Stock or any other capital stock of PASW.

(b) Other than as set forth above, there are no outstanding subscriptions, options, warrants, convertible securities, calls, commitments, agreements or rights (contingent or otherwise) of any character to purchase or otherwise acquire from PASW any shares of, or any securities convertible into, the capital stock of PASW.

#### **4.5 Securities Reports and Financial Statements**

PASW has filed the PASW Securities Reports, all of which have complied in all material respects with all applicable requirements of such statutes, regulations, policies and rules. None of the PASW Securities Reports, at the time filed or as subsequently amended, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The financial statements of PASW contained in the PASW Securities Reports complied in all material respects with the then applicable accounting requirements and the published rules and regulations of the relevant United States securities statutes with respect thereto, were prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved (except as may have been indicated in the notes thereto or, in the case of unaudited statements, as permitted by applicable laws, rules or regulations) and fairly present (subject, in the case of the unaudited statements, to normal, year-end audit adjustments) the financial position of PASW as at the respective dates thereof and the consolidated results of their operations and cash flows for the respective periods then ended. There has been no change in PASW's accounting policies or the methods of making accounting estimates or changes in estimates that are material to such financial statements, except as described in the notes thereto.

#### **4.6 Liabilities**

PASW has no liabilities or obligations, either accrued, absolute, contingent or otherwise, and has no knowledge of any potential liabilities or obligations, other than those disclosed in the PASW Securities Reports or incurred in the ordinary course of business since September 30, 2000. The distribution of assets to stockholders proposed by PASW to occur prior to the Effective Date shall not give rise to any liability to any person by PASW.

#### **4.7 Information Supplied**

None of the information supplied or to be supplied by PASW for inclusion or incorporation by reference in the Proxy Statement or the Registration Statement will, at the time the Proxy Statement is mailed to the stockholders of PASW and at the time of the PASW Stockholders Meeting and at the time the Registration Statement is declared effective, contain any untrue statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading. The Proxy Statement will comply as to form in all material respects with the provisions of applicable United States securities laws and the rules and regulations promulgated thereunder.

#### **4.8 No Defaults**



PASW does not, nor has it received notice that it would be with the passage of time, in default or violation of any term, condition or provision of (a) its charter documents or bylaws; (b) any judgment, decree or order applicable to it; or (c) any loan or credit agreement, note, bond, mortgage, indenture, contract, agreement, lease, license or other instrument to which PASW is now a party or by which it or any of its properties or assets may be bound.

#### **4.9 Litigation; Investigations**

There is no claim, action, suit or proceeding pending, or to the knowledge of PASW threatened against PASW, nor is there any judgment, decree, injunction, rule or order of any Governmental Entity or arbitrator outstanding against PASW. There is no investigation pending or, to the knowledge of PASW, threatened, against PASW before any Governmental Entity.

#### **4.10 Absence of Certain Changes and Events**

Since September 30, 2000, there has not been:

- (a) Any Material Adverse Effect on PASW;
- (b) Any damage, destruction, or loss to the business or properties of PASW not covered by insurance;
- (c) Any declaration, setting aside or payment of any dividend or other distribution in respect of the capital stock of PASW, or any direct or indirect redemption, purchase or any other acquisition by PASW of any such stock;
- (d) Any change in the capital stock or in the number of shares or classes of PASW's authorized or outstanding capital stock as described in Section 4.4;
- (e) Any labor dispute or charge of unfair labor practice, any activity or proceedings by a labor union or, to the knowledge of PASW, by a representative thereof to organize any employees of PASW or any campaign being conducted to solicit authorization from employees to be represented by such labor union; and
- (f) Any other event or condition known to PASW particularly pertaining to and adversely affecting the operations, assets or business of PASW (other than events or conditions which are of a general or industry-wide nature and of general public knowledge).

#### **4.11 Additional PASW Information**

PASW has furnished or made available to SES true, complete and correct copies of all of the following documents:

- (a) All contracts which involve, or may involve, aggregate payments by any party thereto of \$10,000 or more, which payments or obligations are to be performed in whole or in part after the Effective Date;
- (b) All material option, bonus, incentive compensation, deferred compensation, indemnification and employment agreements (including change of control agreements), and profit-sharing, retirement, pension, welfare, group insurance, death benefit, or other fringe benefit plans, arrangements or trust agreements;
- (c) All material patents, trademarks, copyrights and other intellectual property rights owned, licensed or used and all applications therefor;
- (d) All material trade names and fictitious names used or held, whether and where such names are registered and where used;
- (e) All material long-term and short-term promissory notes, installment contracts, loan agreements, credit agreements, operating and finance leases, and any other material agreements relating thereto or with respect to collateral securing the same;
- (f) All material indebtedness, liabilities and commitments of third parties and as to which it is a guarantor, endorser, co-maker, surety or accommodation maker, or is contingently liable therefor (excluding liabilities as an endorser of checks and the like in the ordinary course of business) or has otherwise provided any form of financial assistance and all letters of credit in excess of \$10,000, whether stand-by or documentary, issued by any third party;
- (g) All returns, reports or other information covering income, franchise, sales, use, property and other taxes imposed by the United States, or any state, local or

foreign government or subdivision or agency thereof, filed since January 1, 1998;

(h) Summaries of all material insurance policies or bonds currently maintained, including those covering properties, buildings, machinery, equipment, fixtures, employees and operations, as well as a listing of any premiums, audit adjustments or retroactive adjustments due or pending on such policies or any predecessor policies; and

(i) Any collective bargaining agreements with any labor union or other representative of employees, including all amendments and supplements, and all material employment and consulting agreements.

#### **4.12 Certain Agreements**

Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will: (a) result in any payment (including severance, unemployment compensation, parachute payment, bonus or otherwise) becoming due to any director, employee or independent contractor of PASW; (b) materially increase any benefits otherwise payable to any director, employee or independent contractor of PASW; or (c) result in the acceleration of the time of payment or vesting of any such benefits.

#### **4.13 Employee Benefit Plans**

PASW has no employees and has no employee benefits plans covering active, former or retired employees of PASW.

#### **4.14 Intellectual Property**

PASW owns or possesses licenses to use all patents, patent applications, trademarks and service marks (including registrations and applications therefor), trade names, copyrights and written know-how, trade secrets and all other similar proprietary data and the goodwill associated therewith (collectively, the "**PASW Intellectual Property**") that are either material to the business of PASW or that are necessary for the manufacture, use, license or sale of any services or products manufactured, used, licensed or sold by PASW. The PASW Intellectual Property is owned or licensed by PASW free and clear of any Encumbrance. PASW has not granted to any other person any license to use any PASW Intellectual Property. PASW has not received any notice of infringement, misappropriation or conflict with, the intellectual property rights of others in connection with the use by PASW of the PASW Intellectual Property.

#### **4.15 Title to Properties**

Except for goods and other property sold, used or otherwise disposed of since September 30, 2000 in the ordinary course of business for fair value, PASW has good and defensible title to all of its properties, interests in properties and assets, real and personal, reflected in PASW's September 30, 2000 financial statements, free and clear of any Encumbrance, except: (a) Encumbrances reflected in the balance sheet of PASW as of September 30, 2000; and (b) liens for current taxes not yet due and payable. All leases pursuant to which PASW leases (whether as lessee or lessor) any real or personal property are in good standing, valid, and effective; and there is not, under any such leases, any existing or prospective default or event of default or event which with notice or lapse of time, or both, would constitute a default by PASW and in respect to which PASW has not taken adequate steps to prevent a default from occurring. The buildings and premises of PASW that are used in its business are in good operating condition and repair, subject only to ordinary wear and tear. All major items of operating equipment of PASW are in good operating condition and in a state of reasonable maintenance and repair, ordinary wear and tear excepted, and are free from any known defects except as may be repaired by routine maintenance and such minor defects as do not substantially interfere with the continued use thereof in the conduct of normal operations.

#### **4.16 Environmental Matters**

(a) There are no environmental conditions or circumstances, such as the presence or release of any hazardous substance, on any property presently or, to the knowledge of PASW, previously owned or leased or occupied or controlled by PASW;

(b) PASW has in full force and effect all material environmental permits, licenses, approvals and other authorizations required to conduct their operations and are operating in material compliance thereunder;

(c) PASW's operations and the use of its assets do not violate any Applicable Environmental Laws;

(d) To the knowledge of PASW, none of the operations or assets of PASW has ever been conducted or used by PASW in such a manner as to constitute a violation of any of the Applicable Environmental Laws;

(e) No written notice has been served on PASW from any entity, governmental agency or individual regarding any existing, pending or threatened investigation or inquiry related to alleged violations under any Applicable Environmental Laws, or regarding any claims for remedial obligations or contribution under any Applicable Environmental Laws; and

(f) PASW does not know of any reason that would preclude it from renewing or obtaining a reissuance of the material permits, licenses or other authorizations required pursuant to any Applicable Environmental Laws to operate and use any of PASW's assets for their current purposes and uses.

#### **4.17 Compliance With Other Laws**

PASW is not in violation of or in default with respect to, or in alleged violation of or alleged default with respect to any other applicable law or any applicable rule or regulation, or any writ or decree of any court or Governmental Entity or delinquent with respect to any report required to be filed with any Governmental Entity.

#### **4.18 Taxes**

Proper and accurate federal, provincial, state and local income, capital, withholding, value added, sales, use, franchise, gross revenue, turnover, excise, payroll, property, employment, customs duties and any and all other tax returns, reports, and estimates have been filed with appropriate governmental agencies, domestic and foreign, by PASW for each period for which any returns, reports, or estimates were due (taking into account any extensions of time to file before the date hereof); all taxes shown by such returns to be payable and any other taxes due and payable have been paid other than those being contested in good faith by PASW; and the tax provision reflected in PASW's financial statements is adequate, in accordance with United States generally accepted accounting principles, to cover liabilities of PASW for all taxes, including any interest, penalties and additions to taxes of any character whatsoever applicable to PASW and the Subsidiaries or their assets or businesses. PASW has not received any notice of reassessment from the Internal Revenue Service or any other revenue or collection agency. There are no tax liens on any assets of PASW. The distribution of assets to stockholders proposed by PASW to occur prior to the Effective Date shall not give rise to any liability for taxes payable by PASW.

#### **4.19 Vote Required**

At a stockholders meeting at which a quorum is present, the affirmative vote of the holders of a majority of the issued and outstanding shares of PASW Common Stock is necessary to approve the issuance of the shares of PASW Common Stock issuable upon exchange of the Exchangeable Shares being issued pursuant to the Amalgamation.

#### **4.20 Brokers and Finders**

None of PASW or any of its directors, officers or employees has employed any broker or finder or incurred any liability for any financial advisory fees, brokerage fees, commissions or similar payments in connection with the transactions contemplated by this Agreement.

#### **4.21 Disclosure**

No representation or warranty made by PASW in this Agreement, nor any document, written information, statement, financial statement, certificate or Exhibit prepared and furnished or to be prepared and furnished by PASW or its representatives pursuant hereto or in connection with the transactions contemplated hereby, when taken together, contains or contained (as of the date made) any untrue statement of a material fact when made, or omits or omitted (as of the date made) to state a material fact necessary to make the statements or facts contained herein or therein not misleading, in any material way, in light of the circumstances under which they were made.

#### **4.22 Restrictions on Business Activities**

There is no material agreement, judgment, injunction, order or court decree binding upon PASW that has or could reasonably be expected to have the effect of prohibiting or materially impairing any current business practice of PASW, any acquisition of property by PASW, the conduct of any current business by PASW or the transactions contemplated in this Agreement.

#### **4.23 Books and Records**

The books, records and accounts of PASW (a) have been maintained in accordance with good business practices on a basis consistent with prior years, (b) are stated in reasonable detail and accurately and fairly reflect the transactions and dispositions of the assets of PASW and (c) accurately and fairly reflect the basis for the PASW financial statements. PASW has devised and maintains a system of internal accounting controls sufficient to provide reasonable assurances that: (a) transactions are executed in accordance with management's general or specific authorization; and (b) transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with United States generally accepted accounting principles or any other criteria applicable to such statements and (ii) to maintain accountability for assets.

#### **4.24 AcquireCo and HoldCo**

Each of AcquireCo and HoldCo will be incorporated solely for the purpose of participating in the transactions contemplated herein, will carry on no other business, and, except as contemplated herein, will not have any liabilities or obligations, either accrued, absolute, contingent or otherwise as of the Effective Date.

## **ARTICLE 5**

### **OBLIGATIONS PENDING EFFECTIVE DATE**

#### **5.1 Agreements of PASW and SES**

PASW and SES agree to take the following actions after the date hereof:

(a) Each party will promptly execute and file or join in the execution and filing of any application or other document that may be necessary in order to obtain the authorization, approval or consent of any Governmental Entity which may be reasonably required, or which the other party may reasonably request, in connection with the consummation of the transactions contemplated by this Agreement. Each party will use its reasonable best efforts to promptly obtain such authorizations, approvals and consents. Without limiting the generality of the foregoing, as promptly as practicable after the execution of this Agreement, each party shall make such filings as are necessary under the *Investment Canada Act* and the *Competition Act* (Canada);

(b) Each party will allow the other and its agents reasonable access to the files, books, records, offices and officers of itself and its subsidiaries, including any and all information relating to such party's tax matters, contracts, leases, licenses and real, personal and intangible property and financial condition. Each party will cause its accountants to cooperate with the other in making available to the other party all financial information reasonably requested, including the right to examine all working papers pertaining to tax matters and financial statements prepared or audited by such accountants;

(c) PASW and SES shall cooperate in the preparation and prompt filing by PASW of the Proxy Statement and the Registration Statement with the SEC;

(d) Each of PASW and SES will promptly notify the other in writing (i) of any event occurring subsequent to the date of this Agreement which would render any representation and warranty of such party contained in this Agreement untrue or inaccurate in any material respect; (ii) of any event, change or effect having a Material Adverse Effect on such party; and (iii) of any breach by such party of any material covenant or agreement contained in this Agreement;

(e) During the term of this Agreement, each of PASW and SES will use its reasonable best efforts to satisfy or cause to be satisfied as soon as reasonably practicable all the conditions precedent that are set forth in Article 5 hereof, and each of PASW and SES will use its reasonable best efforts to cause the Amalgamation and the other transactions contemplated by this Agreement to be consummated as soon as reasonably practicable;

(f) Each of PASW and SES will use its reasonable best efforts (including, without limitation, investigations and consultations with its professional advisors) such that it and its affiliates will not take or agree to take any action that would prevent PASW from accounting for the business combination to be effected by the Amalgamation as a pooling of interests in accordance with the United States generally accepted accounting principles and applicable rules and regulations of the SEC and each of SES and PASW agrees to consult with the other and with their respective independent accountants concerning any potential transaction or other matter or action that might have such effect forthwith upon such potential transaction, matters or actions having been identified (after having made all its reasonable best efforts to make such identification); and

(g) Each of PASW and SES shall use its reasonable best efforts to conduct the Private Placement.

#### **5.2 Additional Agreements of SES**

SES agrees that, except as expressly contemplated by this Agreement or as otherwise agreed to in writing by PASW, from the date hereof to the Effective Date it will, and will cause each of the SES Subsidiaries to:

- (a) Other than as contemplated by this Agreement, operate its business only in the usual, regular and ordinary manner and, to the extent consistent with such operation, use all commercially reasonable efforts to preserve intact its present business organization, keep available the services of its present officers and employees, and preserve its relationships with customers, suppliers, distributors and others having business dealings with it;
- (b) Maintain all of its property and assets in customary repair, order, and condition, reasonable wear and use and damage by fire or unavoidable casualty excepted;
- (c) Maintain its books of account and records in the usual, regular and ordinary manner, in accordance with generally accepted accounting principles applied on a consistent basis;
- (d) Duly comply in all material respects with all laws applicable to it and to the conduct of its business;
- (e) Other than as contemplated by this Agreement, not amend its charter documents or bylaws or other organizational documents or merge or consolidate with or into any other corporation or change in any manner the rights of its capital stock or the character of its business; and
- (f) Not issue or sell (except upon the exercise of outstanding options pursuant to the SES Option Plan or as contemplated in this Agreement), or issue options or rights to subscribe to, or enter into any contract or commitment to issue or sell, any shares of its capital stock or subdivide or in any way reclassify any shares of its capital stock, or acquire, or agree to acquire, any shares of its capital stock.

### **5.3 Additional Agreements of PASW**

PASW agrees that, except as expressly contemplated by this Agreement or otherwise agreed to in writing by SES, from the date hereof to the Effective Date it will:

- (a) Other than as contemplated by this Agreement, operate its business only in the usual, regular and ordinary manner and, to the extent consistent with such operation, use all commercially reasonable efforts to preserve intact its present business organization;
- (b) Maintain all of its property and assets in customary repair, order, and condition, reasonable wear and use and damage by fire or unavoidable casualty excepted;
- (c) Maintain its books of account and records in the usual, regular and ordinary manner, in accordance with generally accepted accounting principles applied on a consistent basis;
- (d) Duly comply in all material respects with all laws applicable to it and to the conduct of its business;
- (e) Not: (i) enter into any contracts of employment; or (ii) amend any employee benefit plan or stock option plan, except as may be required for compliance with this Agreement or applicable law;
- (f) Not incur any borrowings;
- (g) Not enter into commitments of a capital expenditure nature or incur any contingent liability which would exceed \$10,000 individually or on a project basis;
- (h) Other than as contemplated by this Agreement, not sell, dispose of, or encumber, any property or assets, except for sales, dispositions or Encumbrances in the ordinary course of business consistent with prior practice;
- (i) Maintain insurance upon all its properties and with respect to the conduct of its business of such kinds and in such amounts as is customary in the type of business in which it is engaged, but not less than that presently carried by it, and maintain the directors' and officers' liability insurance presently carried by it;



(j) Other than as contemplated by this Agreement, not amend its charter documents or bylaws or other organizational documents or merge or consolidate with or into any other corporation or change in any manner the rights of its capital stock or the character of its business;

(k) Not issue or sell (except upon the exercise of outstanding options pursuant to the PASW Option Plan or pursuant to the Private Placement), or issue options or rights to subscribe to, or enter into any contract or commitment to issue or sell, any shares of its capital stock or subdivide or in any way reclassify any shares of its capital stock, or acquire, or agree to acquire, any shares of its capital stock;

(l) Other than as contemplated by this Agreement, not declare or pay any dividend on shares of its capital stock or make any other distribution of assets to the holders thereof;

(m) Deliver to SES, within 90 days after the fiscal year ended December 31, 2000, an audited consolidated balance sheet and related audited statements of income and changes for the fiscal year and the previous fiscal year. Deliver to SES, within 45 days after the end of each fiscal quarter of PASW beginning March 31, 2001, and through the Effective Date, unaudited consolidated balance sheets and related unaudited statements of income and changes in financial position as of the end of each fiscal quarter of PASW, and as of the corresponding fiscal quarter of the previous fiscal year. PASW hereby represents and warrants that such audited and unaudited consolidated financial statements shall: (i) be complete in all material respects except for the omission of notes and schedules contained in audited financial statements; (ii) present fairly in all material respects the financial condition of PASW as at the dates indicated and the results of operations for the respective periods indicated; (iii) shall have been prepared in accordance with U.S. generally accepted accounting principles applied on a consistent basis, except as noted therein and (iv) shall contain all adjustments which PASW considers necessary for a fair presentation of its results for each respective fiscal period;

(n) Refrain from taking any action which would be reasonably likely to prevent or materially delay the consummation of the Amalgamation and the other transactions contemplated by this Agreement; and

(o) Use its reasonable best efforts to cause the shares of PASW Common Stock to be issued from time to time after the Effective Date upon exchange of the Exchangeable Shares to be listed upon the Closing on the Nasdaq small cap market.

## **5.4 Public Announcements**

Neither PASW nor SES, nor any of their respective affiliates, shall issue or cause the publication of any press release or other public announcement with respect to this Agreement, the Amalgamation or the other transactions contemplated hereby without the prior notice to and the opportunity for review by the other party, except as may be required by law.

## **ARTICLE 6 CONDITIONS PRECEDENT TO OBLIGATIONS**

### **6.1 Conditions Precedent to Obligations of Each Party**

The obligations of each party to consummate and effect the transactions contemplated hereunder shall be subject to the satisfaction or waiver on or before the Effective Date of the following conditions:

(a) *Securityholder Approval.* The Amalgamation and the other transactions contemplated hereby shall have been approved and adopted by the PASW securityholders in accordance with applicable law and PASW's articles and bylaws. In addition, the matters referred to in Section 8.1 shall have been approved by the holders of shares of the PASW Common Stock in accordance with the rules of the Nasdaq, applicable law and PASW's Certificate of Incorporation and bylaws;

(b) *No Legal Action.* No temporary restraining order, preliminary injunction or permanent injunction or other order preventing the consummation of the Amalgamation shall have been issued by any Governmental Entity and remain in effect, nor shall any proceeding seeking any of the foregoing be pending. There shall be no order, decree or ruling by any governmental agency or threat thereof,

or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Amalgamation, which would prohibit or render illegal the transactions contemplated by this Agreement;

(c) *Commissions, etc.* All required orders shall have been obtained from the relevant United States securities regulatory authorities, and any comments or concerns expressed by such authorities shall have been resolved, in connection with transactions contemplated by this Agreement. PASW and SES shall each have filed all notices and information (if any) required under Part IX of the *Competition Act* (Canada) and the applicable waiting periods and any extensions thereof shall have expired or the parties shall have received an Advance Ruling Certificate pursuant to Section 102 of the *Competition Act* (Canada) setting out that the Director under such Act is satisfied he would not have sufficient grounds on which to apply for an order in respect of the Amalgamation. The Amalgamation shall have received the allowance or approval or deemed allowance or approval by the responsible Minister under the *Investment Canada Act* in respect of the Amalgamation, to the extent such allowance or approval is required, on terms and conditions satisfactory to the parties;

(d) *SEC Matters.* The Registration Statement shall have been declared effective under the Securities Act on or before the Effective Date, and at its effective date and on the Closing Date the Registration Statement shall not be the subject of any stop-order or proceedings seeking a stop-order, and the Proxy Statement shall, on the Closing Date, not be subject to any similar proceedings commenced or threatened by the SEC;

(e) *Consents of Certain Parties in Privity.* PASW and SES shall have received all written consents, assignments, waivers, authorizations or other certificates necessary to provide for the continuation in full force and effect of all their material contracts and leases and for them to consummate the transactions contemplated hereby, except when the failure to receive such consents or other certificates would not have a Material Adverse Effect on either PASW or SES; and

## 6.2 Conditions Precedent to Obligations of SES

The obligations of SES to consummate and effect the transactions contemplated hereunder shall be subject to the satisfaction or waiver on or before the Effective Date of the following conditions:

(a) *Representations and Warranties.* The representations and warranties of PASW contained in this Agreement shall be true and correct on the date hereof and shall also be true and correct on and as of the Effective Date, with the same force and effect as if made on and as of the Effective Date except, where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect on PASW;

(b) *Covenants.* PASW shall have performed and complied in all material respects with all covenants required by this Agreement to be performed or complied with by PASW on or before the Effective Date;

(c) *Certificate.* PASW shall have delivered to SES a certificate, dated the Effective Date and signed by its chief executive officer and its chief financial officer, to the effect set forth in Sections 6.2 (a) and (b);

(d) *Opinion of PASW Counsel.* SES shall have received opinions, dated as of the Effective Date, from Resch Polster Alpert & Berger LLP, counsel for PASW, in form and substance reasonably satisfactory to SES;

(e) *Private Placement.* PASW shall have conducted the Private Placement on terms satisfactory to SES.

(f) *Transfer of Shares.* The Russell Trust shall have entered into an agreement to sell 2,500,000 of the 3,000,000 shares of PASW Common Stock held by The Russell Trust to 912502 Alberta Ltd., which sale shall be completed concurrently with the Closing;

(g) *Lock-up Agreement.* The Russell Trust shall have entered into an agreement to vote the 3,000,000 shares of PASW Common Stock held by The Russell Trust in

favor of the matters set forth in Section 8.1 to be considered at the PASW Stockholders Meeting;

(h) *Releases*. SES shall have received general releases dated the Effective Date in favour of PASW from each of Glenn P. Russell, The Russell Trust and such other persons identified by SES and there shall be no tax liens or U.C.C. filings registered against PASW.

(i) *No Trading Restrictions*. The PASW Common Stock issued pursuant to the Receivable Acquisition, the Dawson Share Issuance and the Redekop Share Issuance shall be free of all trading restrictions; and

(j) *Listing Status*. SES shall have received such assurance as it considers necessary that PASW shall maintain its listing status on the Nasdaq small cap market and the PASW Common Stock issued pursuant to the Receivable Acquisition, the Dawson Share Issuance and the Redekop Share Issuance and the PASW Common Stock to be issued from time to time after the Effective Date upon exchange of the Exchangeable Shares shall have been approved for listing on the Nasdaq small cap market without onerous conditions and otherwise on terms satisfactory to SES.

### **6.3 Conditions Precedent to Obligations of PASW**

The obligations of PASW to consummate and effect the transactions contemplated hereunder shall be subject to the satisfaction or waiver on or before the Effective Date of the following conditions:

(a) *Representations and Warranties*. The representations and warranties of SES contained in this Agreement shall be true and correct on the date hereof and shall also be true and correct on and as of the Effective Date, with the same force and effect as if made on and as of the Effective Date except, where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect on SES;

(b) *Covenants*. SES shall have performed and complied in all material respects with all covenants required by this Agreement to be performed or complied with by SES on or before the Effective Date;

(c) *Certificate*. SES shall have delivered to PASW a certificate, dated the Effective Date and signed by its chief executive officer and its chief financial officer, to the effect set forth in Sections 6.3 (a) and (b); and

(d) *Opinion of SES Counsel*. PASW shall have received opinions, dated as of the Effective Date, from Macleod Dixon LLP, Canadian counsel for SES, in form and substance reasonably satisfactory to SES.

## **ARTICLE 7 INDEMNIFICATION**

### **7.1 Survival of Representations and Warranties**

Notwithstanding the completion of the transactions contemplated by this Agreement or any investigation made by or on behalf of any party, the representations and warranties of SES, PASW and the Majority Shareholder contained in articles 3 and 4 and the representations and warranties contained in any document or certificate given pursuant to this Agreement shall survive the Effective Date and continue in full force and effect for a period of two years. No claims with respect to the representations and warranties of the parties contained in this Agreement or in any document or certificate given pursuant to the provisions hereof shall be made unless notice in writing of such claim has been given by the party making the claim to the other party within two years of the Effective Date.

### **7.2 Indemnification**

Each party (the "**Indemnifying Party**") indemnifies and agrees to hold the other party (the "**Indemnified Party**") harmless from and against all claims, demands, liabilities, losses, damages, costs, expenses (including legal, expert and other such expenses) fines and penalties which the Indemnified Party may incur, suffer, sustain or become subject to, as a result of or arising out of any breach by the Indemnifying Party of any representation, warranty, covenant or agreement contained in this Agreement or in any agreement or other documentation delivered by the Indemnifying Party pursuant to the provisions hereof.

## **ARTICLE 8 ADDITIONAL AGREEMENTS**



PASW and SES each agree to take the following actions after the execution of this Agreement.

## 8.1 Meeting

PASW shall call a meeting of its securityholders entitled to vote to be held within 45 days after the SEC has indicated that it has no further comments on the Proxy Statement for the purpose of voting upon:

- (a) the issuance of such number of shares of PASW Common Stock as are necessary to consummate the Amalgamation including those issuable on the exchange of the Exchangeable Shares;
- (b) the amendment of the charter documents of PASW to authorize the issuance of the Voting Share contemplated in the Voting and Exchange Trust Agreement attached as Exhibit C;
- (c) the election of the directors of PASW, to hold office from and after the Effective Date until the next annual meeting of securityholders of PASW or until their successors are elected or appointed, in accordance with the provisions of Section 8.7;
- (d) a change of the name of PASW to such name as SES shall determine;
- (e) the consolidation of the shares of PASW Common Stock on a one-for-three basis;
- (f) the revision of the terms of the Warrants (reducing the exercise price to \$4.00 per share and extending the time during which the Warrants may be exercised);
- (g) a change in the domicile of PASW from California to Nevada;
- (h) any amendments required to the PASW Option Plan to permit the options granted under the SES Option Plan to be exchanged for options to acquire PASW Common Stock; and
- (i) such other matters of business as requested by SES.

and PASW shall, through its board of directors, recommend to its securityholders in the Proxy Statement approval of such matters. PASW may only change such recommendation in the event that the board of directors of PASW concludes, in good faith, after receiving the written advice of outside counsel, that such action is necessary for the board of directors to act in a manner consistent with its fiduciary duty.

## 8.2 The Closing

The Closing of the transactions contemplated by this Agreement will take place at the offices of Macleod Dixon LLP on a date (the "**Closing Date**") and at a time to be mutually agreed upon by the parties, which date shall be no later than the first business day after all conditions to Closing set forth herein shall have been satisfied or waived, unless another place, time and date is mutually selected by SES and PASW. Each of PASW and SES hereby agree to use their reasonable best efforts to cause their respective Canadian and United States legal counsel to render opinions, dated as of the Effective Date, in respect of such matters related to the transactions contemplated by this Agreement and the Amalgamation as may be reasonably requested by the other party. Concurrently with the Closing, the Amalgamation will be filed with the Registrar under the ABCA.

## 8.3 Ancillary Documents/Reservation of Shares

- (a) Provided all other conditions of this Agreement have been satisfied or waived and the agreements referred to in Section 8.3(b) have been executed and delivered, SES shall, on the Closing Date, file Articles of Amalgamation pursuant to Section 176 of the ABCA to give effect to the Amalgamation.
- (b) On the Closing Date:
  - (i) PASW and AcquireCo shall execute and deliver a Support Agreement containing substantially those terms and conditions set forth in Exhibit B, together with such other terms and conditions as may be agreed to by the parties hereto acting reasonably; and
  - (ii) PASW, AcquireCo and a Canadian trust company to be mutually agreeable to PASW and SES, acting reasonably, shall execute and deliver a Voting Trust and Exchange Rights Agreement containing substantially

those terms and conditions set forth in Exhibit C, together with such other terms and conditions as may be agreed to by the parties hereto acting reasonably, and PASW shall issue the Voting Share contemplated in such Agreement to such trust company in accordance with such agreement.

(c) On or before the Closing Date, PASW will reserve for issuance such number of shares of PASW Common Stock as shall be necessary to permit the exchange of SES Options for PASW Options and to permit the exchange of the Exchangeable Shares.

#### **8.4 PASW Board of Directors**

The Board of Directors of PASW shall be reconstituted as of the Effective Date so that there shall be five directors, one of whom shall be a nominee of PASW and four of whom shall be nominees of SES.

#### **8.5 Tax Elections**

Holders of SES Common Shares who are residents of Canada for the purposes of the ITA and who receive Exchangeable Shares pursuant to the Amalgamation shall be entitled to make an income tax election pursuant to subsection 85(1) or (2) of the ITA with respect to the transfer of their SES Common Shares to AcquireCo by providing two signed copies of the necessary election forms to AcquireCo within 90 days following the Effective Date, fully completed with the details of the number of SES Common Shares transferred and the applicable agreed amounts for the purposes of such elections. Thereafter, subject to the election forms complying with the provisions of the ITA, the forms will be signed by AcquireCo and returned to such holders for filing with the Canada Customs and Revenue Agency.

### **ARTICLE 9 MISCELLANEOUS**

#### **9.1 Notices**

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by recognized overnight courier, by facsimile (receipt confirmed) or mailed by certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to PASW or AcquireCo:

PASW, Inc.

3101 W. Coast Highway, Suite 100

Newport Beach, CA 92663

Attention: Mr. William E. Sliney, Chairman

Fax: (805) 492-6623

with a copy to:

Aaron Grunfeld, Esq.

Resch Polster Alpert & Berger LLP

10390 Santa Monica Boulevard, Fourth Floor

Los Angeles, CA 90025-5058

Fax: (310) 552-3209

(b) if to the Majority Shareholder:

Glenn P. Russell

5440 Fairview Place

Agoura Hills, CA 91301

Fax: (818) 889-5265

(c) if to SES:

Simmons Energy Services Inc.

700, 1207 - 11 Avenue S.W.

Calgary, Alberta T3C 0M5

Attention: Mr. Walter Dawson, Chairman

Fax: (403) 245-5156

with a copy to:

Marlene Stewart

Macleod Dixon LLP

3700, 400 Third Avenue S.W.

Calgary, Alberta T2P 4H2

Fax: (403) 264-5973

## **9.2 Severability**

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable in any jurisdiction, the remainder hereof, and the application of such provision to such person or circumstance in any other jurisdiction or to other persons or circumstances in any jurisdiction, shall not be affected thereby, and to this end the provisions of this Agreement shall be severable.

## **9.3 Counterparts**

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to each of the other parties, it being understood that all parties need not sign the same counterpart and that delivery may be effected by means of facsimile transmission.

## **9.4 Miscellaneous**

This Agreement, which includes the Exhibits hereto, and any other documents referred to herein or contemplated hereby (a) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; (b) are not intended to confer upon any other person any rights or remedies hereunder; and (c) shall not be assigned by operation of law or otherwise except as otherwise specifically provided.

## **9.5 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta (regardless of the laws that might otherwise govern under applicable principles of conflicts of law) as to all matters, including without limitation validity, construction, effect, performance and remedies.

## **9.6 Amendment and Waivers**

Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party to be bound thereby which writing expressly refers to this Agreement and the operation of the provisions of this Section 9.6. The waiver by a party of any breach hereof or default in the performance hereof will not be deemed to constitute a waiver of any other default or any succeeding breach or default. This Agreement may be amended by the parties hereto at any time before or after approval of the SES securityholders, or the PASW stockholders, but, after such approval, no amendment will be made which by applicable law requires the further approval of the SES securityholders or the PASW stockholders without obtaining such further approval.

## **9.7 Expenses**

Except as otherwise provided herein, each party will bear its respective expenses and legal fees incurred with respect to this Agreement and the transactions contemplated hereby.

## **9.8 Further Assurances**

Each of the parties hereto will from time to time execute and deliver all such further documents and instruments and do all such acts and things as the other parties may reasonably require to effectively carry out or better evidence or perfect the terms and provisions of this Agreement.

**Executed and delivered.**

**PASW, Inc.**

Per: Mr. William E. Sliney, Chairman

**Glenn P. Russell**

**SIMMONS ENERGY SERVICES INC.**

Per: Mr. Walter Dawson, Chairman

# VOTING TRUST AND EXCHANGE RIGHTS AGREEMENT

THIS AGREEMENT made as of the day of \_\_\_\_\_, 2001

AMONG:

PASW, INC., a corporation existing under the laws of the State of California, (hereinafter referred to as "PASW"),

- and -

[#2] Alberta Ltd., a corporation existing under the laws of the Province of Alberta, (hereinafter referred to as the "Corporation"),

- and -

those Shareholders of Corporation listed on the signature pages hereto (the "Shareholders"),

- and -

MONTREAL TRUST COMPANY OF CANADA, a trust company incorporated under the laws of Canada and authorized to carry on business in each of the Provinces of Canada (hereinafter referred to as the "Trustee"),

WHEREAS, pursuant to a combination agreement dated as of February \_\_, 2001, by and between PASW, Simmons Energy Services Inc. ("SES"), the Corporation and Glenn P. Russell (such agreement as it may be amended or restated is hereinafter referred to as the "Combination Agreement"), the parties agreed that on the Effective Date (as defined in the Combination Agreement), PASW, SES, the Shareholders and Corporation would execute and deliver a Voting Trust and Exchange Rights Agreement containing the terms and conditions set forth herein;

AND WHEREAS, pursuant to the Combination Agreement SES was amalgamated with the Corporation and each holder of SES Common Shares received, in exchange for each SES Common Share, one issued and outstanding Exchangeable Non-Voting Share of the Corporation (the "Exchangeable Shares");

AND WHEREAS, the Articles of Amalgamation of the Corporation sets forth the rights, privileges, restrictions and conditions (collectively the "Exchangeable Share Provisions") attaching to the Exchangeable Shares;

AND WHEREAS, PASW is to provide voting rights in PASW to each holder (other than PASW and its Permitted Subsidiaries) from time to time of Exchangeable Shares, such voting rights per Exchangeable Share to be equivalent to the voting rights per share of common stock, \$0.001 par value per share, of PASW (the "PASW Common Stock");

AND WHEREAS, PASW is to grant to and in favour of the holders (other than PASW and its Subsidiaries) from time to time of Exchangeable Shares the right to require PASW to purchase from each such holder all or any part of the Exchangeable Shares held by the holder;

AND WHEREAS, the parties desire to make appropriate provisions and to establish a procedure whereby voting rights in PASW shall be exercisable by holders (other than PASW and its Subsidiaries) from time to time of Exchangeable Shares by and through the Trustee, which will hold legal title to one share of Series B Special Voting Preferred Stock to which voting rights attach for the benefit of such holders and whereby the rights to require PASW to purchase Exchangeable Shares from the holders thereof (other than PASW and its Subsidiaries) shall be exercisable by such holders from time to time of Exchangeable Shares;

AND WHEREAS, these recitals and any statements of fact in this Agreement are made by PASW, the Shareholders and Corporation and not by the Trustee;

NOW THEREFORE in consideration of the respective covenants and agreements provided in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

### 1.1 DEFINITIONS

In this Agreement, the following terms shall have the following meanings:

"Agreement" means this Voting Trust and Exchange Rights Agreement.

"Automatic Exchange Rights" means the benefit of the obligation of PASW to effect the automatic exchange of shares of PASW Common Stock for Exchangeable Shares pursuant to section 4.10 hereof.

"**Board of Directors**" means the Board of Directors of the Corporation.

"**Business Day**" means a day other than a Saturday, Sunday or a statutory holiday in the City of Calgary, Alberta.

"**Canadian Dollar Equivalent**" has the meaning given to that term in the Exchangeable Share Provisions.

"**Current Market Price**" has the meaning given to that term in the Exchangeable Share Provisions.

"**Exchange Ratio**" has the meaning given to that term in the Exchangeable Share Provisions.

"**Exchange Right**" has the meaning given to that term in Section 4.1 hereof.

"**Exchangeable Share Provisions**" means the rights, privileges, restrictions and conditions **attaching** to the Exchangeable Shares.

"**Exchangeable Shares**" has the meaning given to that term in the recitals hereto.

"**Holder** Votes" has the meaning given to that term in Section 3.2 hereof

"**Holders**" means, initially, the Shareholders and thereafter the registered holders from time to time of Exchangeable Shares, other than PASW and its Subsidiaries.

"**Liquidation Call Right**" has the meaning given to that term in section 5.2 of the Exchangeable Share Provisions.

"**Liquidation** Event" has the meaning given to that term in subsection 4.10(a) hereof.

"**Liquidation Event Effective Date**" has the meaning given to that term in subsection 4.10(b) hereof.

"**List**" has the meaning given to that term in section 3.6 hereof.

"**Officer's Certificate**" means, with respect to PASW or Corporation, as the case may be, a certificate signed by any one of the Chairman of the Board, the Vice-Chairman of the Board, the President, any Vice-President or any other senior officer of PASW or Corporation, as the case may be.

"**PASW Common Stock**" has the meaning given to that term in the recitals hereto.

"**PASW Consent**" has the meaning given to that term in section 3.2 hereof.

"**PASW Meeting**" has the meaning given to that term in section 3.2 hereof.

"**Permitted Subsidiary**" means any Subsidiary of PASW except for the Corporation;

"**Redemption Call Right**" has the meaning given to that term in Section 7.4 of the Exchangeable Share Provisions.

"**Retracted Shares**" has the meaning given to that term in section 4.7 hereof.

"**Retraction Call Right**" has the meaning given to that term in section 6.1 of the Exchangeable Share Provisions.

"**Subsidiary**" has the meaning attributed thereto for the purposes of the ABCA and includes all indirect subsidiaries.

"**Support Agreement**" means that certain support agreement made as of date hereof between Corporation and PASW.

"**Trust**" means the trust created by this Agreement.

"**Trust Estate**" means the Voting Share, any other securities, and any money or other property which may be held by the Trustee from time to time pursuant to this Agreement.

"**Trustee**" means Montreal Trust Company of Canada and, subject to the provisions of Article 9 hereof, includes any successor trustee or permitted assigns.

"**Voting Rights**" mean the voting rights attached to the Voting Share.

"**Voting Share**" means the one share of Series B Special Voting Preferred Stock, issued by PASW and deposited with the Trustee, which entitles the holder of record to a number of votes at meetings of holders of PASW Common Stock equal to the number of shares of PASW Common Stock issuable upon exchange

of then outstanding Exchangeable Shares other than Exchangeable Shares held by PASW and its Subsidiaries.

## **1.2 INTERPRETATION NOT AFFECTED BY HEADINGS, ETC.**

The division of this Agreement into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## **1.3 NUMBER, GENDER, ETC.**

Words importing the singular number only shall include the plural and vice versa, Words importing the use of any gender shall include all genders.

## **1.4 DATE FOR ANY ACTION**

If any date on which any action is required to be taken under this Agreement is not a Business Day, such action shall be required to be taken on the next succeeding Business Day.

# **ARTICLE 2 VOTING SHARE**

## **2.1 ISSUE AND OWNERSHIP OF THE VOTING SHARE.**

PASW hereby issues to and deposits with the Trustee the Voting Share to be hereafter held of record by the Trustee as trustee for and on behalf of, and for the use and benefit of, the Holders and in accordance with the provisions of this Agreement. PASW hereby acknowledges receipt from the Trustee as trustee for and on behalf of the Holders of good and valuable consideration (and the adequacy thereof) for the transfer of the Voting Share to the Trustee. During the term of the Trust and subject to the terms and conditions of this Agreement, the Trustee shall possess and be vested with full legal ownership of the Voting Share and shall be entitled to exercise all of the rights and powers of an owner with respect to the Voting Share, provided that the Trustee shall:

(a) hold the Voting Share and the legal title thereto as trustee solely for the use and benefit of the Holders in accordance with the provisions of this Agreement, and

(b) except as specifically authorized by this Agreement, have no power or authority to sell, transfer, vote or otherwise deal in or with the Voting Share and the Voting Share shall not be used or disposed of by the Trustee for any purpose other than the purposes for which this Trust is created pursuant to this Agreement.

## **2.2 LEGENDED SHARE CERTIFICATES**

Corporation will cause each certificate representing Exchangeable Shares to bear an appropriate legend notifying the Holders of their right to instruct the Trustee with respect to the exercise of the Voting Rights with respect to the Exchangeable Shares held by a Holder.

## **2.3 SAFE KEEPING OF CERTIFICATE**

The certificate representing the Voting Share shall at all times be held in safe keeping by the Trustee or its agent.

# **ARTICLE 3 EXERCISE OF VOTING RIGHTS**

## **3.1 VOTING RIGHTS**

The Trustee, as the holder of record of the Voting Share, shall be entitled to all of the Voting Rights, including the right to consent to or to vote in person or by proxy the Voting Share, on any matter, question or proposition whatsoever that may properly come before the stockholders of PASW at a PASW Meeting or in connection with a PASW Consent (in each case, as hereinafter defined). The Voting Rights shall be and remain vested in and exercised by the Trustee. Subject to section 6.15 hereof, the Trustee shall exercise the Voting Rights only on the basis of instructions received pursuant to this Article 3 from Holders entitled to instruct the Trustee as to the voting thereof at the time at which PASW Consent is sought or PASW Meeting is held. To the extent that no instructions are received from a Holder with respect to the Voting Rights to which such Holder is entitled, the Trustee shall not exercise or permit the exercise of such Holder's Voting Rights.

## **3.2 NUMBER OF VOTES**

With respect to all meetings of stockholders of PASW at which holders of shares of PASW Common Stock are entitled to vote (a "PASW Meeting") and with respect to all written consents sought by PASW from its stockholders including the holders of shares of PASW Common Stock (a "PASW Consent"), each Holder shall be entitled to instruct the Trustee to cast and exercise, in the manner instructed, the votes comprised in the Voting Rights for each Exchangeable Share owned of record by such Holder on the record

date established by PASW or by applicable law for such PASW Meeting or PASW Consent, as the case may be (the "Holder Votes"), in respect of each matter, question or proposition to be voted on at such PASW Meeting or to be consented to in connection with such PASW Consent.

### **3.3 MAILINGS TO SHAREHOLDERS**

With respect to each PASW Meeting and PASW Consent, the Trustee will mail or cause to be mailed (or otherwise communicate in the same manner as PASW utilizes in communications to holders of PASW Common Stock, subject to the Trustee's ability to provide this method of communication and upon being advised in writing of such method) to each of the Holders named in the List on the same day as the initial mailing or notice (or other communication) with respect thereto is given by PASW to its stockholders:

- (a) a copy of such notice, together with any proxy or information statement and related materials to be provided to stockholders of PASW;
- (b) a statement that such Holder is entitled to instruct the Trustee as to the exercise of the Holder Votes with respect to such PASW Meeting or PASW Consent, as the case may be;
- (c) a statement as to the manner in which such instructions may be given to the Trustee, including an express indication that instructions may be given to the Trustee to give:
  - (i) a proxy to such Holder or his designee to exercise personally the Holder Votes; or
  - (ii) a proxy to a designated agent or other representative of the management of PASW to exercise such Holder Votes;
- (d) a statement that if no such instructions are received from the Holder, the Holder Votes to which such Holder is entitled will not be exercised;
- (e) a form of direction whereby the Holder may so direct and instruct the Trustee as contemplated herein; and
- (f) a statement of (i) the time and date by which such instructions must be received by the Trustee in order to be binding upon it, which in the case of a PASW Meeting shall not be earlier than the close of business on the second Business Day prior to such meeting, and (ii) the method for revoking or amending such instructions.

The materials referred to above are to be provided by PASW to the Trustee, but shall be subject to review and comment by the Trustee.

For the purpose of determining Holder Votes to which a Holder is entitled in respect of any such PASW Meeting or PASW Consent, the number of Exchangeable Shares owned of record by the Holder shall be determined at the close of business on the record date established by PASW or by applicable law for purposes of determining stockholders entitled to vote at such PASW Meeting or to give written consent in connection with such PASW Consent. PASW will notify the Trustee in writing of any decision of the Board of Directors of PASW with respect to the calling of any such PASW Meeting or the seeking of any such PASW Consent and shall provide all necessary information and materials to the Trustee in each case promptly and in any event in sufficient time to enable the Trustee to perform its obligation contemplated by this section 3.3.

### **3.4 COPIES OF STOCKHOLDER INFORMATION**

PASW will deliver to the Trustee at the same time as such materials are first sent to holders of PASW Common Stock, copies of all proxy materials, (including notices of PASW Meetings but excluding proxies to vote shares of PASW Common Stock), information statements, reports (including without limitation all interim and annual financial statements) and other written communications that are to be distributed from time to time to holders of PASW Common Stock in sufficient quantities so as to enable the Trustee to send those materials to each Holder. The Trustee will promptly mail or otherwise send to each Holder, at the expense of PASW, copies of all such materials (and all materials specifically directed to the Holders or to the Trustee for the benefit of the Holders by PASW) received by the Trustee from PASW.

### **3.5 OTHER MATERIALS**

Promptly after receipt by PASW or any stockholder of PASW of any material sent or given generally to the holders of PASW Common Stock by or on behalf of a third party, including without limitation dissident proxy and information circulars (and related information and material) and tender and exchange offer circulars (and related information and material), PASW shall use its reasonable commercial efforts to obtain and deliver to the Trustee copies thereof in sufficient quantities so as to enable the Trustee to forward such material (unless the same has been provided directly to Holders by such third party) to each Holder as soon as



possible thereafter. As soon as practicable after receipt thereof, the Trustee will mail or otherwise send to each Holder, at the expense of PASW, copies of all such materials received by the Trustee from PASW.

### **3.6 LIST OF PERSONS ENTITLED TO VOTE**

Corporation shall forthwith upon each request made at any time by the Trustee in writing, prepare or cause to be prepared a list (a "List") of the names and addresses of the Holders showing the number of Exchangeable Shares held of record by each such Holder, in each case at the close of business on the date specified by the Trustee in such request. Each such List shall be delivered to the Trustee promptly after receipt by Corporation of such request and in any event within sufficient time as to enable the Trustee to perform its obligations under this Agreement.

### **3.7 ENTITLEMENT TO DIRECT VOTES**

Any Holder named in a List prepared in connection with any PASW Meeting or any PASW Consent will be entitled (a) to instruct the Trustee in the manner described in section 3.3 hereof with respect to the exercise of the Holder Votes to which such Holder is entitled or (b) to attend such meeting and personally to exercise thereat (or to exercise with respect to any written consent), as the proxy of the Trustee, the Holder Votes to which such Holder is entitled except, in each case, to the extent that such Holder has transferred the ownership of any Exchangeable Shares in respect of which such Holder is entitled to Holder Votes after the close of business on the record date for such meeting or seeking of consent.

## **3.8 VOTING BY TRUSTEE, AND ATTENDANCE OF TRUSTEE**

### **REPRESENTATIVE, AT MEETING**

In connection with each PASW Meeting and PASW Consent, the Trustee shall exercise, either in person or by proxy, in accordance with the instructions received from a Holder pursuant to section 3.7 hereof, the Holder Votes as to which such Holder is entitled to direct the vote (or any lesser number thereof as may be set forth in the instructions); provided, however, that such written instructions are received by the Trustee from the Holder prior to the time and date fixed by it for receipt of such instructions in the notice given by the Trustee to the Holder pursuant to section 3.3 hereof.

### **3.9 TERMINATION OF VOTING RIGHTS**

All of the rights of a Holder with respect to the Holder Votes exercisable in respect of the Exchangeable Shares held by such Holder, including the right to instruct the Trustee as to the voting of or to vote personally such Holder Votes, shall be deemed to be surrendered by the Holder to PASW and such Holder Votes and the Voting Rights represented thereby shall cease immediately upon the delivery by such holder to Corporation of the certificates representing such Exchangeable Shares in connection with the exercise by the Holder of the Exchange Right or the occurrence of the automatic exchange of Exchangeable Shares for shares of PASW Common Stock, as specified in Article 4 hereof (unless in either case PASW shall not have delivered the requisite shares of PASW Common Stock issuable in exchange therefor to the Trustee for delivery to the Holders), or upon the redemption of Exchangeable Shares pursuant to Article 5 or Article 6 of the Exchangeable Share Provisions or upon the effective date of the liquidation, dissolution or winding-up of Corporation pursuant to Article 4 of the Exchangeable Share Provisions, or upon the purchase of Exchangeable Shares from the holder thereof by PASW pursuant to the exercise by PASW of the Retraction Call Right, the Redemption Call Right or the Liquidation Call Right or the exercise by the Holder of the exchange right under the Exchangeable Share Provisions.

## **ARTICLE 4 EXCHANGE RIGHT AND AUTOMATIC EXCHANGE**

### **4.1 GRANT AND OWNERSHIP OF THE EXCHANGE RIGHT**

PASW hereby grants to the Holders (a) the right (the "**Exchange Right**") to require PASW, either directly or indirectly through one of its Permitted Subsidiaries, to purchase from each or any Holder at any time and from time to time all or any part of the Exchangeable Shares held by such Holders (provided that if less than all of a Holder's Exchangeable Shares are to be exchanged, such Holder shall exchange not fewer than that number of Exchangeable Shares which would result in such Holder being entitled to receive 5,000 PASW Common Shares, based on an Exchange Ratio of one and subject to adjustments as provided in the Exchangeable Share Provisions) and (b) the Automatic Exchange Rights, all in accordance with the provisions of this Agreement. PASW hereby acknowledges receipt from the Holders of good and valuable consideration (and the adequacy thereof) for the grant of the Exchange Right and the Automatic Exchange Rights by PASW to the Holders.

### **4.2 LEGENDED SHARE CERTIFICATES**

Corporation will cause each certificate representing Exchangeable Shares to bear an appropriate legend notifying the Holders of:

(a) their right to exercise the Exchange Right in respect of the Exchangeable Shares held by a Holder; and

(b) the Automatic Exchange Rights.

### **4.3 GENERAL EXERCISE OF EXCHANGE RIGHT**

The Exchange Right shall be and remain vested in and exercised by each Holder in respect of the Exchangeable Shares held by such Holder.

#### 4.4 EXCHANGE CONSIDERATION

The exchange consideration (the "**Exchange Consideration**") to be delivered by PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) for each Exchangeable Share to be exchanged by PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) under the Exchange Right shall be an amount per share equal to (a) the Current Market Price of a share of PASW Common Stock on the last Business Day prior to the day of transfer of such Exchangeable Shares under the Exchange Right multiplied by the Exchange Ratio at that time plus (b) an additional amount equivalent to the full value of all dividends declared and unpaid on each such Exchangeable Share (provided that if the record date for any such declared and unpaid dividends occurs on or after the day of closing of such exchange, the Exchange Consideration shall not include such additional amount equivalent to the declared and unpaid dividends). In connection with each exercise of the Exchange Right, PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) will provide to the Trustee an Officer's Certificate setting forth the calculation of the Exchange Consideration for each Exchangeable Share. The Exchange Consideration for each such Exchangeable Share so exchanged may be satisfied only by PASW issuing and delivering or causing to be delivered (either directly or indirectly through one or more of its Permitted Subsidiaries) to the relevant Holder, the number of shares of PASW Common Stock equal to the Exchange Ratio at that time and a cheque for the balance, if any, of the Exchange Consideration without interest thereon, less any tax required to be deducted or withheld from the total Exchange Consideration by PASW.

#### 4.5 EXERCISE INSTRUCTIONS

Subject to the terms and conditions herein set forth, a Holder shall be entitled to exercise the Exchange Right with respect to all or any part of the Exchangeable Shares registered in the name of such Holder on the books of Corporation. To exercise the Exchange Right, the Holder shall deliver to Corporation, in person or by certified or registered mail, at its principal office in Calgary, Alberta or at such other places in Canada Corporation may from time to time designate by written notice to the Holders, the certificates representing the Exchangeable Shares which such Holder desires PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) to exchange, duly endorsed in blank, and accompanied by such other documents and instruments as may be required to effect a transfer of Exchangeable Shares under the *Companies Act* (Nova Scotia) and the Memorandum and Articles of Association of Corporation and such additional documents and instruments as Corporation may reasonably require together with (a) a duly completed form of notice of exercise of the Exchange Right, contained on the reverse of or attached to the Exchangeable Share certificates, stating (i) that the Holder thereby exercises the Exchange Right so as to require PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) to exchange the number of Exchangeable Shares specified therein, (ii) that such Holder has good title to and owns all such Exchangeable Shares to be acquired by PASW free and clear of all liens, claims and encumbrances and that such Holder is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada), (iii) the names in which the certificates representing PASW Common Stock issuable in connection with the exercise of the Exchange Right are to be issued and (iv) the names and addresses of the person to whom such new certificates should be delivered and (b) payment (or evidence satisfactory to Corporation and PASW of payment) of the taxes (if any) payable as contemplated by section 4.8 of this Agreement. If only a part of the Exchangeable Shares represented by any certificate or certificates delivered to PASW are to be exchanged by PASW under the Exchange Right, a new certificate for the balance of such Exchangeable Shares shall be issued to the holder at the expense of Corporation.

#### 4.6 DELIVERY OF EXCHANGE CONSIDERATION; EFFECT OF EXERCISE

Promptly after receipt by Corporation of the certificate representing the Exchangeable Shares which the Holder desires PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) to purchase under the Exchange Right (together with such documents and instruments of transfer and a duly completed form of notice of exercise of the Exchange Right (and payment of taxes, if any, or evidence thereof)), duly endorsed for transfer to PASW, Corporation shall notify PASW of its receipt of the same, which notice to PASW shall constitute exercise of the Exchange Right by the holder of such Exchangeable Shares, and PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) shall immediately thereafter deliver or cause to be delivered to the Holder of such Exchangeable Shares (or to such other persons, if any, properly designated by the Holder), the certificates for the number of shares of PASW Common Stock issuable in connection with the exercise of the Exchange Right, which shares shall be duly issued, fully paid and non-assessable and shall be free and clear of any lien, claim or encumbrance, and cheques for the balance, if any, of the total Exchange Consideration therefor without interest less any tax required to be deducted or withheld from the total Exchange Consideration by PASW, provided, however, that no such delivery shall be made unless and until the Holder requesting the same shall have paid (or provided evidence satisfactory to Corporation of the payment of) the taxes (if any) payable as contemplated by section 4.8 of this Agreement. Immediately upon the giving of notice by Corporation to PASW of the exercise of the Exchange Right, as provided in this section 4.6, the exchange shall be deemed to have occurred, and the Holder of such Exchangeable Shares shall be deemed to have transferred to PASW all of its right, title and interest in and to such Exchangeable Shares and shall cease to be a holder of such Exchangeable Shares and shall not be entitled to exercise any of the rights of a holder in respect thereof, other than the right to receive his proportionate part of the total Exchange Consideration therefor, unless the requisite number of shares of PASW Common Stock (together with a cheque for the balance, if any, of the total Exchange Consideration therefor without interest less any tax required to be deducted or withheld from the total Exchange Consideration by PASW) is not allotted, issued and delivered by PASW to such Holder (or to such other persons, if any, properly designated by such Holder), within five Business Days of the date of the exercise of the Exchange Right, in which case the rights of the Holder shall remain unaffected until such shares of PASW Common Stock are so allotted, issued and delivered by PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) and any such cheque is so delivered and paid.

Concurrently with such Holder ceasing to be a holder of Exchangeable Shares, the Holder shall be considered and deemed for all purposes to be the holder of the shares of PASW Common Stock delivered to it pursuant to the Exchange Right.

#### **4.7 EXERCISE OF EXCHANGE RIGHT SUBSEQUENT TO RETRACTION**

In the event that a Holder has exercised its rights under Article 6 of the Exchangeable Share Provisions to require Corporation to redeem any or all of the Exchangeable Shares held by the Holder (the "Retracted Shares") and is notified by Corporation pursuant to Section 6.4 of the Exchangeable Share Provisions that Corporation will not be permitted as a result of solvency requirements of applicable law to redeem all such Retracted Shares, provided that PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) shall not have exercised the Retraction Call Right with respect to the Retracted Shares and that the Holder has not revoked the retraction request delivered by the Holder to Corporation pursuant to Section 6.1 of the Exchangeable Share Provisions, the retraction request will constitute and will be deemed to constitute notice from the Holder of the exercise of the Exchange Right with respect to those Retracted Shares which Corporation is unable to redeem. In any such event, Corporation hereby agrees to immediately notify the Holder of such prohibition against Corporation redeeming all of the Retracted Shares.

#### **4.8 STAMP OR OTHER TRANSFER TAXES**

Upon any sale of Exchangeable Shares to PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) pursuant to the Exchange Right or the Automatic Exchange Rights, the share certificate or certificates representing PASW Common Stock to be delivered in connection with the payment of the total purchase price therefor shall be issued in the name of the Holder of the Exchangeable Shares so sold or in such names as such Holder may otherwise direct in writing without charge to the holder of the Exchangeable Shares so sold, provided, however, that such Holder (a) shall pay (and neither PASW nor Corporation shall be required to pay) any documentary, stamp, transfer or other similar taxes that may be payable in respect of any transfer involved in the issuance or delivery of such shares to a person other than such Holder or (b) shall have established to the satisfaction of PASW and Corporation that such taxes, if any, have been paid. PASW will cause each certificate representing such PASW Common Stock to bear the following legend:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED OR QUALIFIED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, (THE "SECURITIES ACT") OR ANY STATE SECURITIES LAW. NEITHER THESE SHARES NOR ANY PORTION THEREOF OR INTEREST THEREIN, MAY BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS (1) THE SAME ARE REGISTERED AND QUALIFIED IN ACCORDANCE WITH SAID ACT AND ANY APPLICABLE STATE SECURITIES LAW, (2) THE SHARES ARE SOLD IN COMPLIANCE WITH RULE 144 UNDER THE SECURITIES ACT, OR (3) IN THE OPINION OF COUSEL, REASONABLY SATISFACTORY TO PASW, INC., SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED. HEDGING TRANSACTIONS INVOLVING THESE SECURITIES MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT."

#### **4.9 RESERVATION OF SHARES OF PASW COMMON STOCK**

PASW hereby represents, warrants and covenants that it has reserved for issuance and will at all times keep available, free from pre-emptive and other rights, out of its authorized and unissued capital stock such number of shares of PASW Common Stock as are now and may hereafter be required to enable and permit Corporation to meet its obligations hereunder, under the Support Agreement, under the Exchangeable Share Provisions and under any other security or commitment pursuant to which PASW may now or hereafter be required to issue shares of PASW Common Stock. PASW covenants that it will supply its transfer agent with duly executed share certificates for the purpose of completing the exercise from time to time of the Exchange Right and the Automatic Exchange Rights.

#### **4.10 AUTOMATIC EXCHANGE ON LIQUIDATION OF PASW**

(a) Each of the following events shall give rise to the automatic exchange of the Exchangeable Shares as provided in this Section 4.10 (each, a "**Liquidation Event**"):

(i) in the event of any determination by the Board of Directors of PASW to institute voluntary liquidation, dissolution or winding-up proceedings with respect to PASW or to effect any other distribution of assets of PASW among its stockholders for the purpose of winding up its affairs; and

(ii) upon the earlier of (A) receipt by PASW of notice of and (B) PASW otherwise becoming aware of any threatened or instituted claim, suit, petition or other proceedings with respect to the involuntary liquidation, dissolution or winding up of PASW or to effect any other distribution of assets of PASW among its stockholders for the purpose of winding up its affairs.

PASW will give the Holders written notice of a Liquidation Event described in subsection 4.10(a)(i) at least 30 days prior to the proposed effective date of such liquidation, dissolution, winding-up or other distribution. Such notice shall include a brief description of the automatic exchange of Exchangeable Shares for shares of PASW Common Stock provided for in section 4.10(b) below.

(b) In order that the Holders will be able to participate on a *pro rata* basis with the holders of PASW Common Stock in the distribution of assets of PASW in connection with a Liquidation Event, on the fifth Business Day prior to the effective date (the "**Liquidation Event Effective Date**") of a Liquidation Event all of the then outstanding Exchangeable Shares shall be automatically exchanged for shares of PASW Common Stock. To effect such automatic exchange, PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) and the Holder shall exchange each Exchangeable Share outstanding on the fifth Business Day prior to the Liquidation Event Effective Date and held by Holders for an exercise price per share equal to (a) the Current Market Price of a share of PASW Common Stock on the fifth Business Day prior to the Liquidation Event Effective Date multiplied by the Exchange Ratio at that time, which shall be satisfied by PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) issuing to the Holder the number of shares of PASW Common Stock equal to the Exchange Ratio at that time plus (b) an additional amount equivalent to the full value of all dividends declared and unpaid on each such Exchangeable Share and all dividends declared on PASW Common Stock that have not been declared on such Exchangeable Shares in accordance with Section 3.1 of the Exchangeable Share Provisions (provided that if the record date for such declared and unpaid dividends occurs on or after the day of closing of such exchange, the Exchange Consideration shall not include such additional amounts equivalent to such declared and unpaid dividends) less (c) any tax required to be deducted or withheld from the total Exchange Consideration by PASW. In connection with such automatic exchange, PASW will provide to the Holder an Officer's Certificate setting forth the calculation of the Exchange Consideration for each Exchangeable Share.

(c) On the fifth Business Day prior to the Liquidation Event Effective Date, the closing of the automatic exchange of Exchangeable Shares for PASW Common Stock shall be deemed to have occurred, and each Holder of Exchangeable Shares shall be deemed to have transferred to PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) all of the Holder's right, title and interest in and to such Exchangeable Shares and shall cease to be a holder of such Exchangeable Shares and PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) shall issue to the Holder the shares of PASW Common Stock issuable upon the automatic exchange of Exchangeable Shares for PASW Common Stock and shall deliver to the Holder a cheque for the balance, if any, of the total exercise price for such Exchangeable Shares without interest less any tax required to be deducted or withheld from the total Exchange Consideration by PASW. Concurrently with such holder ceasing to be a holder of Exchangeable Shares, the Holder shall be considered and deemed for all purposes to be the holder of the shares of PASW Common Stock issued to it pursuant to the automatic exchange of Exchangeable Shares for PASW Common Stock and the certificates held by the Holder previously representing the Exchangeable Shares exchanged by the Holder with PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) pursuant to such automatic exchange shall thereafter be deemed to represent the shares of PASW Common Stock issued to the Holder by PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) pursuant to such automatic exchange. Upon the request of a Holder and the surrender by the Holder of Exchangeable Share certificates deemed to represent shares of PASW Common Stock, duly endorsed in blank and accompanied by such instruments of transfer as PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) may reasonably require, PASW (either directly or indirectly through one or more of its Permitted Subsidiaries) shall deliver or cause to be delivered to the Holder certificates representing the shares of PASW Common Stock of which the Holder is the holder.

## ARTICLE 5

### RESTRICTIONS ON ISSUE OF SERIES A SPECIAL VOTING PREFERRED STOCK

#### 5.1 ISSUE OF ADDITIONAL SHARES

During the term of this Agreement, PASW will not issue any shares of Series B Special Voting Preferred Stock in addition to the Voting Share.

## **ARTICLE 6 CONCERNING THE TRUSTEE**

### **6.1 POWERS AND DUTIES OF THE TRUSTEE**

The rights, powers and authorities of the Trustee under this Agreement, in its capacity as trustee of the Trust shall include:

- (a) receipt and deposit of the Voting Share from PASW as trustee for and on behalf of the Holders in accordance with the provisions of this agreement;
- (b) granting proxies and distributing materials to Holders as provided in this Agreement;
- (c) voting the Holder Votes in accordance with the provisions of this Agreement;
- (d) holding title to the Trust Estate;
- (e) investing any moneys forming, from time to time, a part of the Trust Estate as provided in this Agreement;
- (f) taking action at the direction of a Holder or Holders to enforce the obligations of PASW under this Agreement; and
- (g) taking such other actions and doing such other things as are specifically provided in this Agreement.

In the exercise of such rights, powers and authorities the Trustee shall have (and is granted) such incidental and additional rights, powers and authority not in conflict with any of the provisions of this Agreement as the Trustee, acting in good faith and in the reasonable exercise of its discretion, may deem necessary, appropriate or desirable to effect the purpose of the Trust. Any exercise of such discretionary rights, powers and authorities by the Trustee shall be final, conclusive and binding upon all persons. For greater certainty, the Trustee shall have only those duties as are set out specifically in this Agreement.

The Trustee in exercising its rights, powers, duties and authorities hereunder shall act honestly and in good faith with a view to the best interests of the Holders and shall exercise the care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

The Trustee shall not be bound to give any notice or do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall be specifically required to do so under the terms hereof, nor shall the Trustee be required to take any notice of, or to do or to take any act, action or proceeding as a result of any default or breach of any provision hereunder, unless and until notified in writing of such default or breach, which notices shall distinctly specify the default or breach desired to be brought to the attention of the Trustee and in the absence of such notice the Trustee may for all purposes of this Agreement conclusively assume that no default or breach has been made in the observance or performance of any of the representations, warranties, covenants, agreements or conditions contained herein.

### **6.2 NO CONFLICT OF INTEREST**

The Trustee represents to Corporation and PASW that at the date of execution and delivery of this Agreement there exists no material conflict of interest in the role of the Trustee as a fiduciary hereunder and the role of the Trustee in any other capacity. The Trustee shall, within 90 days after it becomes aware that such a material conflict of interest exists, either eliminate such material conflict of interest or resign in the manner and with the effect specified in Article 10 hereof. If, notwithstanding the foregoing provisions of this section 6.2, the Trustee has such a material conflict of interest, the validity and enforceability of this Agreement shall not be affected in any manner whatsoever by reason only of the existence of such material conflict of interest. If the Trustee contravenes the foregoing provisions of this section 6.2, any interested party may apply to the Court of Queen's Bench of Alberta for an order that the Trustee be replaced as trustee hereunder.

### **6.3 DEALINGS WITH TRANSFER AGENTS, REGISTRARS, ETC.**

Corporation and PASW irrevocably authorize the Trustee, from time to time, to:

- (a) consult, communicate and otherwise deal with the respective registrars and transfer agents, and with any such subsequent registrar or transfer agent, of the Exchangeable Shares and PASW Common Stock; and
- (b) requisition, from time to time, from any such registrar or transfer agent any information readily available from the records maintained by it which the Trustee may reasonably require for the discharge of its duties and responsibilities under this Agreement.

PASW irrevocably authorizes its registrar and transfer agent to comply with all such requests.

#### **6.4 BOOKS AND RECORDS**

The Trustee shall keep available for inspection by PASW and Corporation, at the Trustee's principal office in Calgary, Alberta, correct and complete books and records of account relating to the Trustee's actions under this Agreement, including without limitation all information relating to mailings and instructions to and from the Holders and all transactions pursuant to the Voting Rights for the term of this Agreement.

#### **6.5 INCOME TAX RETURNS AND REPORTS**

The Trustee shall, to the extent necessary, prepare and file on behalf of the Trust appropriate United States and Canadian income tax returns and any other returns or reports as may be acquired by applicable law. In connection therewith, the Trustee may obtain the advice and assistance of such experts as the Trustee may consider necessary or advisable. If requested by the Trustee, PASW and Corporation shall retain such experts for purposes of providing such advice and assistance.

#### **6.6 INDEMNIFICATION PRIOR TO CERTAIN ACTIONS BY TRUSTEE**

The Trustee shall exercise any or all of the rights, duties, powers or authorities vested in it by this Agreement at the request, order or direction of any Holder upon such Holder furnishing to the Trustee reasonable funding, security and indemnity against the costs, expenses and liabilities which may be incurred by the Trustee herein or thereby, provided that no Holder shall be obligated to furnish to the Trustee any such funding, security or indemnity in connection with the exercise by the Trustee of any of its rights, duties, powers and authorities with respect to the Voting Share pursuant to Article 3 hereof, subject to Section 6.15 hereof.

None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the exercise of any of its rights, powers, duties or authorities unless funded, given funds, security and indemnified as aforesaid.

#### **6.7 ACTIONS BY HOLDERS**

No Holder shall have the right to institute any action, suit or proceeding or to exercise any other remedy authorized by this Agreement for the purpose of enforcing any of its rights or for the execution of any trust or power hereunder unless the Holder has requested the Trustee to take or institute such action, suit or proceeding and furnished the Trustee with the funding, security and indemnity referred to in section 6.6 hereof and the Trustee shall have failed to act within a reasonable time thereafter. In such case, but not otherwise, the Holder shall be entitled to take proceedings in any court of competent jurisdiction such as the Trustee might have taken, it being understood and intended that no one or more Holders shall have any right in any manner whatsoever to affect, disturb or prejudice the rights hereby created by any such action, or to enforce any right hereunder or under the Voting Rights, except subject to the conditions and in the manner herein provided, and that all powers and trusts hereunder shall be exercised and all proceedings at law shall be instituted, had and maintained by the Trustee, except only as herein provided, and in any event for the equal benefit of all Holders.

#### **6.8 RELIANCE UPON DECLARATIONS**

The Trustee shall not be considered to be in contravention of any of its rights, powers, duties and authorities hereunder if, when required, it acts and relies in good faith upon lists, mailing labels, notices, statutory declarations, certificates, opinions, reports or other papers or documents furnished pursuant to the provisions hereof or required by the Trustee to be furnished to it in the exercise of its rights, powers, duties and authorities hereunder and such lists, mailing labels, notices, statutory declarations, certificates, opinions, reports or other papers or documents comply with the provisions of section 6.9 hereof, if applicable, and with any other applicable provisions of this Agreement.

#### **6.9 EVIDENCE AND AUTHORITY TO TRUSTEE**

Corporation or PASW or both shall furnish to the Trustee evidence of compliance with the conditions provided for in this Agreement relating to any action or step required or permitted to be taken by Corporation or PASW (or both) or the Trustee under this Agreement or as a result of any obligation imposed under this Agreement, including, without limitation, in respect of the Voting Rights and the taking of any other action to be taken by the Trustee at the request of or on the application of Corporation or PASW (or both) forthwith if and when:

- (a) such evidence is required by any other section of this Agreement to be furnished to the Trustee in accordance with the terms of this section 6.9; or
- (b) the Trustee, in the exercise of its rights, powers, duties and authorities under this Agreement, gives Corporation or PASW or both written notice requiring it to furnish such evidence in relation to any particular action or obligation specified in such notice.

Such evidence shall consist of an Officer's Certificate of Corporation or PASW or both, or a statutory declaration or a certificate made by persons entitled to sign an Officer's Certificate stating that any such condition has been complied with in accordance with the terms of this Agreement.

Whenever such evidence relates to a matter other than the Voting Rights and except as otherwise specifically provided herein, such evidence may consist of a report or opinion of any solicitor, auditor, accountant, appraiser, valuer, engineer or other expert or any other person whose qualifications give authority to a statement made by him, provided that if such report or opinion is furnished by a director, officer or employee of Corporation or PASW it shall be in the form of an Officer's Certificate or a statutory declaration.

Each statutory declaration, certificate, opinion or report furnished to the Trustee as evidence of compliance with a condition provided for in this Agreement shall include a statement by the person giving the evidence:

(c) declaring that he has read and understands the provisions of this Agreement relating to the condition in question;

(d) describing the nature and scope of the examination or investigation upon which he based the statutory declaration, certificate, statement or opinion; and

(e) declaring that he has made such examination or investigation as he believes is necessary to enable him to make the statements or give the opinions contained or expressed therein.

## **6.10 EXPERTS, ADVISERS AND AGENTS**

The Trustee may:

(a) in relation to these presents act and rely on the opinion or advice of or information obtained from or prepared by any solicitor, auditor, accountant, appraiser, valuer, engineer or other expert, whether retained by the Trustee or by Corporation or by PASW or otherwise, and may employ such assistants as may be necessary to the proper determination and discharge of its powers and duties and determination of its rights hereunder and may pay proper and reasonable compensation for all such legal and other advice or assistance as aforesaid; and

(b) employ such agents and other assistants as it may reasonably require for the proper determination and discharge of its powers and duties hereunder, and may pay reasonable remuneration for all services performed for it (and shall be entitled to receive reasonable remuneration for all services performed by it) in the discharge of the trusts hereof and compensation for all disbursements, costs and expenses made or incurred by it in the determination and discharge of its duties hereunder and in the management of the Trust.

## **6.11 INVESTMENT OF MONEYS HELD BY TRUSTEE**

Unless otherwise provided in this Agreement, any moneys held by or on behalf of the Trustee which under the terms of this Agreement may or ought to be invested or which may be on deposit with the Trustee or which may be in the hands of the Trustee may be invested and reinvested in the name or under the control of the Trustee in securities in which, under the laws of the Province of Alberta, trustees are authorized to invest trust moneys, provided that such securities are stated to mature within two years after their purchase by the Trustee, and the Trustee shall so invest such moneys on the written direction of Corporation. Pending the investment of all moneys as hereinbefore provided, such moneys may be deposited in the name of the Trustee in any chartered bank in Canada or, with the consent of Corporation, in the deposit department of the Trustee or any other loan or trust company authorized to accept deposits under the laws of Canada or any province thereof at the rate of interest then current on similar deposits.

## **6.12 TRUSTEE NOT REQUIRED TO GIVE SECURITY**

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts, rights, duties, powers and authorities of this Agreement or otherwise in respect of the premises.

## **6.13 TRUSTEE NOT BOUND TO ACT ON CORPORATION'S REQUEST**

Except as in this Agreement otherwise specifically provided, the Trustee shall not be bound to act in accordance with any direction or request of Corporation or PASW or of the directors thereof until a duly authenticated copy of the instrument or resolution containing such direction or request shall have been delivered to the Trustee, and the Trustee shall be empowered to act and rely upon any such copy purporting to be authenticated and believed by the Trustee to be genuine.

## **6.14 CONFLICTING CLAIMS**

If conflicting claims or demands are made or asserted with respect to any interest of any Holder in any Exchangeable Shares, including any disagreement between the heirs, representatives, successors or assigns succeeding to all or any part of the interest of any Holder in any Exchangeable Shares resulting in conflicting claims or demands being made in connection with such interest, then the Trustee shall be entitled, at its sole discretion, to refuse to recognize or to comply with any such claim or demand. In so refusing, the Trustee may elect not to exercise any Voting Rights subject to such conflicting claims or demands and, in so doing, the

Trustee shall not be or become liable to any person on account of such election or its failure or refusal to comply with any such conflicting claims or demands. The Trustee shall be entitled to continue to refrain from acting and to refuse to act until:

(a) the rights of all adverse claimants with respect to the Voting Rights subject to such conflicting claims or demands have been adjudicated by a final judgement of a court of competent jurisdiction; or

(b) all differences with respect to the Voting Rights subject to such conflicting claims or demands have been conclusively settled by a valid written agreement binding on all such adverse claimants, and the Trustee shall have been furnished with an executed copy of such agreement.

If the Trustee elects to recognize any claim or comply with any demand made by any such adverse claimant, it may in its discretion require such claimant to furnish such surety bond or other security satisfactory to the Trustee as it shall deem appropriate fully to indemnify it as between all conflicting claims or demands.

## **6.15 ACCEPTANCE OF TRUST**

The Trustee hereby accepts the Trust created and provided for by and in this Agreement and agrees to perform the same upon the terms and conditions herein set forth and to hold all rights, privileges and benefits conferred hereby and by law in trust for the various persons who shall from time to time be Holders, subject to all the terms and conditions herein set forth.

## **ARTICLE 7 COMPENSATION**

### **7.1 FEES AND EXPENSES OF THE TRUSTEE**

PASW and Corporation jointly and severally agree to pay to the Trustee from time to time remuneration for its services hereunder and will pay or reimburse the Trustee, upon its request, for all reasonable expenses and disbursements incurred or made by the Trustee in the administration of its services and duties created hereby (including the reasonable fees and disbursements of its counsel and all other advisors and assistants not regularly in its employ). Any amount due under this section and unpaid 30 days after request for such payment, will bear interest from the expiration of such 30 days at a rate per annum equal to the then current rate charged by the Trustee from time to time, payable on demand. All amounts so payable and the interest thereon will be payable out of any assets in the possession of the Trustee in priority to amounts owing to any and all other parties.

## **ARTICLE 8 INDEMNIFICATION AND LIMITATION OF LIABILITY**

### **8.1 INDEMNIFICATION OF THE TRUSTEE**

PASW and Corporation jointly and severally agree to indemnify and hold harmless the Trustee and each of its directors, officers, employees and agents appointed and acting in accordance with this Agreement (collectively, the "Indemnified Parties") against all claims, losses, damages, costs, penalties, fines and reasonable expenses (including reasonable expenses of the Trustee's legal counsel on a solicitor and his own client basis) which, without fraud, negligence, willful misconduct or bad faith on the part of an Indemnified Party, may be paid, incurred or suffered by the Indemnified Party by reason of or as a result of the Trustee's acceptance or administration of the written instructions delivered to the Trustee by PASW or Corporation pursuant hereto. In no case shall PASW or Corporation be liable under this indemnity for any claim against any of the Indemnified Parties unless PASW and Corporation shall be notified by the Trustee of the written assertion of a claim or of any action commenced against the Indemnified Parties, promptly after any of the Indemnified Parties shall have received any such written assertion of a claim or shall have been served with a summons or other first legal process giving information as to the nature and basis of the claim. Subject to (b), below, PASW and Corporation shall be entitled to participate at their own expense in the defense and, if PASW or Corporation so elect at any time after receipt of such notice, either of them may assume the defense of any suit brought to enforce any such claim. The Trustee shall have the right to employ separate counsel in any such suit and participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of the Trustee unless: (a) the employment of such counsel has been authorized by PASW or Corporation, such authorization not to be unreasonably withheld, or (b) the named parties to any such suit include both the Trustee and PASW or Corporation and the Trustee shall have been advised by counsel acceptable to PASW or Corporation that there may be one or more legal defenses available to the Trustee that are different from or in addition to those available to PASW or Corporation and that an actual or potential conflict of interest exists (in which case PASW and Corporation shall not have the right to assume the defense of such suit on behalf of the Trustee but shall be liable to pay the reasonable fees and expenses of counsel for the Trustee).

### **8.2 LIMITATION OF LIABILITY**

The Trustee shall not be held liable for any loss which may occur by reason of depreciation of the value of any part of the Trust Estate or any loss incurred on any investment of funds pursuant to this Agreement, except to the extent that such loss is attributable to the fraud, negligence, willful misconduct or bad faith on the part of the Trustee.

## **ARTICLE 9 CHANGE OF TRUSTEE**



## **9.1 RESIGNATION**

The Trustee, or any trustee hereafter appointed, may at any time resign by giving written notice of such resignation to PASW and Corporation specifying the date on which it desires to resign, provided that such notice shall never be given less than 60 days before such desired resignation date unless PASW and Corporation otherwise agree and provided further that such resignation shall not take effect until the date of the appointment of a successor trustee and the acceptance of such appointment by the successor trustee. Upon receiving such notice of resignation, PASW and Corporation shall promptly appoint a successor trustee by written instrument in duplicate, one copy of which shall be delivered to the resigning trustee and one copy to the successor trustee. Failing acceptance by a successor trustee, a successor trustee may be appointed by an order of the Court of Queen's Bench of Alberta upon application of one or more of the parties hereto.

## **9.2 REMOVAL**

The Trustee, or any trustee hereafter appointed, may be removed with or without cause, at any time on 60 days' prior notice by written instrument executed by the Holders of the majority of the Exchangeable Shares, in duplicate, one copy of which shall be delivered to the Trustee so removed and one copy to the successor trustee.

## **9.3 SUCCESSOR TRUSTEE**

Any successor trustee appointed as provided under this Agreement shall execute, acknowledge and deliver to PASW and Corporation and to its predecessor trustee an instrument accepting such appointment. Thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor under this Agreement, with like effect as if originally named as trustee in this Agreement. However, on the written request of PASW and Corporation or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of this Agreement, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon the request of any such successor trustee, PASW, Corporation and such predecessor trustee shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers.

## **9.4 NOTICE OF SUCCESSOR TRUSTEE**

Upon acceptance of appointment by a successor trustee as provided herein, PASW and Corporation shall cause to be mailed notice of the succession of such trustee hereunder to each Holder specified in a List. If PASW or Corporation shall fail to cause such notice to be mailed within 10 days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of PASW and Corporation.

# **ARTICLE 10 AMENDMENTS AND SUPPLEMENTAL AGREEMENTS**

## **10.1 AMENDMENTS, MODIFICATIONS, ETC.**

This Agreement may not be amended or modified except by an agreement in writing executed by Corporation, PASW and the Trustee and approved by the Holders in accordance Section 10.2 of the Exchangeable Share Provisions.

## **10.2 MINISTERIAL AMENDMENTS**

Notwithstanding the provisions of section 10.1 hereof, the parties to this Agreement may in writing, at any time and from time to time, without the approval of the Holders, amend or modify this Agreement for the purposes of:

(a) adding to the covenants of any or all of the parties hereto for the protection of the Holders hereunder;

(b) making such amendments or modifications not inconsistent with this Agreement as may be necessary or desirable with respect to matters or questions which, in the opinion of the Board of Directors of each of PASW and Corporation and in the opinion of the Trustee and its counsel, having in mind the best interests of the Holders as a whole, it may be expedient to make, provided that such boards of directors and the Trustee and its counsel shall be of the opinion that such amendments and modifications will not be prejudicial to the interests of the Holders as a whole; or

(c) making such changes or corrections which, in the advice of counsel to Corporation, PASW and the Trustee, are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error, provided that the Trustee and its counsel and the Board of Directors of each of Corporation and PASW shall be of the opinion that such changes or corrections will not be prejudicial to the interests of the Holders as a whole.

### **10.3 MEETING TO CONSIDER AMENDMENTS**

Corporation, at the request of PASW, shall call a meeting or meetings of the Holders for the purpose of considering any proposed amendment or modification requiring approval pursuant hereto. Any such meeting or meetings shall be called and held in accordance with the by-laws of Corporation, the Exchangeable Share Provisions and all applicable laws.

### **10.4 CHANGES IN CAPITAL OF PASW AND THE CORPORATION**

At all times after the occurrence of any event effected pursuant to section 2.6 or section 2.7 of the Support Agreement, as a result of which either PASW Common Stock or the Exchangeable Shares or both are in any way changed, this Agreement shall forth with be amended and modified as necessary in order that it shall apply with full force and effect, to all new securities into which PASW Common Stock or the Exchangeable Shares or both are to be changed and the parties hereto shall execute and deliver a supplemental Agreement giving effect to and evidencing such necessary amendments and modifications.

## **ARTICLE 11 TERMINATION**

### **11.1 TERM**

The Trust created by this Agreement shall continue until the earliest to occur of the following events:

- (a) no outstanding Exchangeable Shares are held by any Holder;
- (b) each of Corporation and PASW elects in writing to terminate the Trust and such termination is approved by the Holders of the Exchangeable Shares in accordance with Section 10.2 of the Exchangeable Share Provisions, and
- (c) 21 years after the death of the last survivor of the descendants of Her Majesty Queen Elizabeth II of the United Kingdom of Great Britain and Northern Ireland living on the date of the creation of the Trust.

### **11.2 SURVIVAL OF AGREEMENT**

This Agreement shall survive any termination of the Trust and shall continue until there are no Exchangeable Shares outstanding held by a Holder; provided, however, that the provisions of Articles 7 and 8 hereof shall survive any such termination of this Agreement.

## **ARTICLE 12 GENERAL**

### **12.1 SEVERABILITY**

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Agreement shall not in any way be affected or impaired thereby and the agreement shall be carried out as nearly as possible in accordance with its original terms and conditions.

### **12.2 INUREMENT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and to the benefit of all subsequent Holders.

### **12.3 NOTICES TO PARTIES, OTHER THAN HOLDERS**

- (a) All notices and other communications between the parties, other than the Holders, hereunder shall be in writing and shall be deemed to have been given if delivered personally or by confirmed telecopy to the parties at the following addresses (or at such other address for such party as shall be specified in like notice):

if to PASW at:

PASW, Inc.

with a copy to:

if to Corporation at:

with a copy to:

if to the Trustee at:

Montreal Trust Company of Canada

710, 530 – 8<sup>th</sup> Avenue S.W.

Calgary, Alberta T2P 3S8

Facsimile No.: (403) 267-6598

Attention: Manager Corporate Trust

Any notice or other communication given personally shall be deemed to have been given and received upon delivery thereof and if given by telecopy shall be deemed to have been given and received on the date of receipt thereof unless such day is not a Business Day in which case it shall be deemed to have been given and received upon the immediately following Business Day.

(b) Any and all notices to be given and any documents to be sent to any Holders may be given or sent to the address of such holder shown on the register of holders of Exchangeable Shares in any manner permitted by Memorandum and Articles of Association of Corporation from time to time in force and respect of notices to shareholders and shall be deemed to be received (if given or sent in such manner) at the time specified in such by-laws, the provisions of which by-laws shall apply, with such changes as the context may require, to notices or documents as aforesaid sent to such Holders.

#### 12.4 RISK OF PAYMENTS BY POST

Whenever payments are to be made or documents are to be sent to any Holder by PASW, the Trustee or Corporation, or by such Holder to the Trustee or to PASW or Corporation, the making of such payment or sending of such document sent through the post shall be at the risk of PASW, in the case of payments made or documents sent by PASW, the Trustee or Corporation, and the Holder, in the case of payments made or documents sent by the Holder.

#### 12.5 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

#### 12.6 JURISDICTION

This Agreement shall be construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

#### 12.7 ATTORNMENT

PASW agrees that any action or proceeding arising out of or relating to this Agreement may be instituted in the courts of Alberta, waives any objection which it may have now or hereafter to the venue of any such action or proceeding, irrevocably submits to the jurisdiction of the said courts in any such action or proceeding, agrees to be bound by any judgement of the said courts and agrees not to seek, and hereby waives, any review of the merits of any such judgement by the courts of any other jurisdiction and hereby appoints, Barristers and Solicitors, at their office in Calgary, Alberta as PASW's attorney for service of processes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

	By:	<b>PASW, INC.</b>
	Its:	
	By:	<b>[#2] ALBERTA LTD.</b>
	Its:	

		<b>MONTREAL TRUST COMPANY OF CANADA</b>
	By:	
	By:	

**SHAREHOLDERS**

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## SUPPORT AGREEMENT

THIS AGREEMENT made as of .

BETWEEN:

**PASW, INC.**, a corporation existing under the laws of the State of California, (hereinafter referred to as the "**Parent**")

- and -

**[#2] ALBERTA LTD.**, a corporation existing under the laws of the Province of Alberta, (hereinafter referred to as the "**the Corporation**")

WHEREAS, pursuant to a combination agreement dated as of February \_\_, 2001, by and between the Parent, Simmons Energy Services Inc. ("SES"), the Corporation and Glenn P. Russell (such agreement as it may be amended or restated is hereinafter referred to as the "Combination Agreement"), the parties agreed that on the Effective Date (as defined in the Combination Agreement), the Parent and the Corporation would execute and deliver a Support Agreement containing the terms and conditions set forth herein;

AND WHEREAS, pursuant to the Combination Agreement, SES was amalgamated with the Corporation and each holder of SES Common Shares received, in exchange for each SES Common Share, one issued and outstanding Exchangeable Non-Voting Share of the Corporation (the "Exchangeable Shares");

AND WHEREAS the articles of incorporation of the Corporation set forth the rights, privileges, restrictions and conditions (collectively the "Exchangeable Share Provisions") attaching to the Exchangeable Shares;

AND WHEREAS the parties hereto desire to make appropriate provision and to establish a procedure whereby the Parent shall take certain actions and make certain payments and deliveries necessary to ensure that the Corporation will be able to make certain payments and to deliver or cause to be delivered shares of the common stock, \$0.001 par value per share, of Parent ("PASW Common Shares") in satisfaction of the obligations of the Corporation under the Exchangeable Share Provisions with respect to the payment and satisfaction of dividends. Liquidation Consideration, Retraction Consideration, Exchange Right Consideration and Redemption Consideration, all in accordance with the Exchangeable Share Provisions;

NOW THEREFORE in consideration of the respective covenants and agreements provided in this agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

**1.1 Defined Terms.** Each term denoted herein by initial capital letters and not otherwise defined herein shall have the meaning ascribed thereto in the Exchangeable Share Provisions, unless the context requires otherwise.

**1.2 Interpretation not Affected by Heading, etc.** The division of this agreement into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this agreement.

**1.3 Number, Gender, etc.** Words importing the singular number only shall include the plural and vice versa. Words importing the use of any gender shall include all genders.

**1.4 Date for Any Action.** If any date on which any action is required to be taken under this agreement is not a Business Day, such action shall be required to be taken on the next succeeding Business Day.

### ARTICLE 2 COVENANTS OF THE PARENT AND CORPORATION

**2.1 Covenants of Parent Regarding Exchangeable Shares.** So long as any Exchangeable Shares are outstanding the Parent shall:

(a) not declare or pay any dividend (other than a stock dividend) on the PASW Common Shares unless (i) the Corporation will have sufficient assets, funds and other property available to enable the due declaration and the due and punctual payment in accordance with applicable law, of a dividend on the Exchangeable Shares determined in accordance with the Exchangeable Share Provisions and (ii) the Corporation shall simultaneously declare or pay, as the case may be, such dividend on the Exchangeable Shares;

(b) take all such actions and do all such things as are necessary or desirable to enable and permit the Corporation, in accordance with applicable law, to perform its obligations with respect to the satisfaction of the Liquidation Consideration in respect of each issued and outstanding Exchangeable Share upon the liquidation, dissolution or winding-up of the Corporation, including without limitation all such actions and all such things as are necessary or desirable to enable and permit the Corporation to cause to be delivered PASW Common Shares to the holders of Exchangeable Shares as required by the provisions of Article 5 of the Exchangeable Share Provisions;

(c) take all such actions and do all such things as are necessary or desirable to: (i) enable and permit the Corporation, in accordance with applicable law, to perform

its obligations with respect to the satisfaction of the Retraction Consideration and the Redemption Consideration, including without limitation all such actions and all such things as are necessary or desirable to enable and permit the Corporation to cause to be delivered PASW Common Shares to the holders of Exchangeable Shares, as required by the provisions of Article 6, Article 7 or Article 13 of the Exchangeable Share Provisions, as the case may be; and

(d) not exercise its vote as a shareholder, nor allow any direct or indirect subsidiary to exercise its own vote as a shareholder to initiate the voluntary liquidation, dissolution or winding-up of the Corporation nor take any action or omit to take any action that is designed to result in the liquidation, dissolution or winding-up of the Corporation.

**2.2 Provision of Funds.** The Parent shall provide the Corporation with sufficient funds as is necessary to enable the Corporation to pay or otherwise satisfy its obligations under the Exchangeable Share Provisions in respect of the applicable dividends, Liquidation Consideration, Retraction Consideration, Redemption Consideration or Exchange Right Consideration, in each case for the benefit of holders from time to time of the Exchangeable Shares.

**2.3 Reservation of PASW Common Shares.** The Parent hereby represents, warrants and covenants that it has reserved for issuance and shall at all times keep available, free from pre-emptive and other rights, out of its authorized and unissued capital stock such number of PASW Common Shares (or other securities into which the PASW Common Shares may be reclassified or changed as contemplated by Section 2.6 hereof) (a) as is equal to the sum of the number of Exchangeable Shares issued and outstanding from time to time multiplied by the Exchange Ratio and (b) as are now and may hereafter be required to enable and permit the Parent to meet its obligations hereunder, under the Voting Trust and Exchange Rights Agreement and under any other security or commitment pursuant to which the Parent may now or hereafter be required to issue PASW Common Shares.

**2.4 Notification of Certain Events.** In order to assist the Parent to comply with its obligations hereunder and under the Voting Trust and Exchange Rights Agreement, the Corporation shall give the Parent notice immediately upon the occurrence of each of the following events at the time set forth below:

(a) upon the earlier of (i) receipt by the Corporation of notice of, and (ii) the Corporation otherwise becoming aware of, any threatened or instituted claim, suit, petition or other proceedings with respect to the involuntary liquidation, dissolution or winding up of the Corporation or to effect any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs; and

(b) upon receipt by the Corporation of a Retraction Request or an Exchange Right Notice (each as defined in the Exchangeable Share Provisions).

**2.5 Delivery of PASW Common Shares.** In furtherance of its obligations under Sections 2.1(c) and 2.1(d) hereof, upon notice of any event which requires the Corporation to cause to be delivered PASW Common Shares to any holder of Exchangeable Shares, the Parent shall forthwith issue and deliver, or cause a direct or indirect Subsidiary to deliver, the requisite PASW Common Shares to or to the order of the former holder of the surrendered Exchangeable Shares, as the Corporation shall direct. All such PASW Common Shares shall be duly issued, fully paid and non-assessable, and shall be free and clear of any lien, claim, encumbrance, security interest or adverse claim. The Parent will cause each certificate representing such PASW Common Shares to bear the following legend:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED OR QUALIFIED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, (THE "SECURITIES ACT") OR ANY STATE SECURITIES LAW. NEITHER THESE SHARES NOR ANY PORTION THEREOF OR INTEREST THEREIN, MAY BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS (1) THE SAME ARE REGISTERED AND QUALIFIED IN ACCORDANCE WITH SAID ACT AND ANY APPLICABLE STATE SECURITIES LAW, (2) THE SHARES ARE SOLD IN COMPLIANCE WITH RULE 144 UNDER THE SECURITIES ACT, OR (3) IN THE OPINION OF COUSEL, REASONABLY SATISFACTORY TO PASW, INC., SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED. HEDGING TRANSACTIONS INVOLVING THESE SECURITIES MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT."

**2.6 Economic Equivalence.**

(a) The Parent shall not without the prior approval of the Corporation and the prior approval of the holders of the Exchangeable Shares given in accordance with Section 10.2 of the Exchangeable Share Provisions:

(i) issue or distribute rights, options or warrants to the holders of all or substantially all of the then outstanding PASW Common Shares entitling them to subscribe for or to purchase PASW Common Shares (or securities

exchangeable for or convertible into or carrying rights to acquire PASW Common Shares); or

(ii) issue or distribute to the holders of all or substantially all of the then outstanding PASW Common Shares (A) shares or securities of the Parent of any class other than PASW Common Shares (other than shares convertible into or exchangeable for or carrying rights to acquire PASW Common Shares ), (B) rights, options or warrants other than those referred to in Subsection 2.6(a) (i) above, (C) evidences of indebtedness of the Parent or (D) assets of the Parent;

unless (i) the Corporation is permitted under applicable law to issue or distribute the economic equivalent on a per share basis of such rights, options, securities, shares, evidences of indebtedness or other assets to holders of the Exchangeable Shares and (ii) the Corporation shall issue or distribute the economic equivalent on a per share basis of such rights, options, securities, shares, evidences of indebtedness or other assets simultaneously to holders of the Exchangeable Shares.

(b) The Parent shall not without the prior approval of the Corporation and the prior approval of the holders of the Exchangeable Shares given in accordance with Section 10.2 of the Exchangeable Share Provisions:

(i) subdivide, redivide or change the then outstanding PASW Common Shares into a greater number of PASW Common Shares; or

(ii) reduce, combine or consolidate or change the then outstanding PASW Common Shares into a lesser number of PASW Common Shares; or

(iii) reclassify or otherwise change the PASW Common Shares or effect an amalgamation, merger, reorganization or other transaction affecting the PASW Common Shares;

unless the same or an economically equivalent change is made to, or in the rights of the holders of, the Exchangeable Shares through adjustment of the Exchange Ratio or, for the purposes of Section 2.6(b)(iii), some other appropriate means.

(c) The Board of Directors of the Corporation shall determine, in good faith and in its sole discretion (with the assistance of such reputable and qualified independent financial advisors and/or other experts as the board may require), economic equivalence for the purposes of any event referred to in Subsection 2.6(a) or 2.6(b) above and each such determination shall be conclusive and binding on the Parent. In making each such determination, the following factors shall, without excluding other factors determined by the board to be relevant, be considered by the Board of Directors of the Corporation:

(i) in the case of the issuance or distribution of any rights, options or warrants to subscribe for or purchase PASW Common Shares (or securities exchangeable for or convertible into or carrying rights to acquire PASW Common Shares), the relationship between the exercise price of each such right, option or warrant and the current market value (as determined by the Board of Directors of the Corporation in the manner above contemplated) of a share of PASW Common Shares;

(ii) in the case of the issuance or distribution of any other form of property (including without limitation any shares or securities of the Parent of any class other than PASW Common Shares, any rights, options or warrants other than those referred to in Subsection 2.6(c)(i) above, any evidences of indebtedness of the Parent or any assets of the Parent), the relationship between the fair market value (as determined by the Board of



Directors of the Corporation in the manner above contemplated) of such property to be issued or distributed with respect to each outstanding share of PASW Common Shares and the current market value (as determined by the Board of Directors of the Corporation in the manner above contemplated) of a share of PASW Common Shares; and

(iii) in the case of any subdivision, redivision or change of the then outstanding PASW Common Shares into a greater number of PASW Common Shares or the reduction, combination or consolidation or change of the then outstanding PASW Common Shares into a lesser number of PASW Common Shares or any amalgamation, merger, reorganization or other transaction affecting the PASW Common Shares, the effect thereof upon the then outstanding PASW Common Shares.

For purposes of the foregoing determinations, the current market value of any security listed and traded on a securities exchange or quoted on an automated quotation system shall be the average of the closing sale prices of such security during a period of 20 consecutive trading days ending five trading days before the date of determination on the principal securities exchange or quotation system on which such securities are listed and traded or quoted and, notwithstanding the foregoing, the fair market value of any securities or other consideration shall be determined by the Board of Directors of the Parent if such Board has made such a determination (including any value set forth in a definitive transaction agreement) in connection with any arm's length transaction requiring an adjustment to the Exchangeable Shares hereunder.

**2.7 Tender Offers, Etc.** In the event that a tender offer, share exchange offer, issuer bid, take-over bid or similar transaction with respect to PASW Common Shares (an "Offer") is proposed by the Parent or is proposed to the Parent or its shareholders and is recommended by the Board of Directors of the Parent, or is otherwise effected or to be effected with the consent or approval of the Board of Directors of the Parent, the Parent shall use all commercially reasonable efforts in good faith to take all such actions and do all such things as are necessary or desirable to enable and permit holders of Exchangeable Shares to participate in such Offer to the same extent and on an economically equivalent basis as the holders of PASW Common Shares, without discrimination. Without limiting the generality of the foregoing, the Parent will use all commercially reasonable efforts in good faith to ensure that holders of Exchangeable Shares may participate in all such Offers without being required to retract Exchangeable Shares as against the Corporation (or, if so required, to ensure that any such retraction shall be effective only upon, and shall be conditional upon, the closing of the Offer and only to the extent necessary to tender or deposit to the Offer).

**2.8 Ownership of Outstanding Shares.** Without the prior approval of the Corporation and the prior approval of the holders of the Exchangeable Shares given in accordance with Section 10.2 of the Exchangeable Shares Provisions, the Parent, or any successor of the Parent by way of merger or consolidation, shall be and shall remain the direct or indirect beneficial owner of all issued and outstanding shares in the capital of the Corporation and all outstanding securities of the Corporation carrying or otherwise entitled to voting rights in any circumstances, in each case other than the Exchangeable Shares.

**2.9 Parent Not to Vote Exchangeable Shares.** The Parent shall appoint and shall cause to be appointed proxyholders with respect to all Exchangeable Shares held by the Parent and its direct or indirect Subsidiaries for the sole purpose of attending each meeting of holders of Exchangeable Shares in order to be counted as part of the quorum for each such meeting. The Parent shall not, and shall cause its direct or indirect Subsidiaries not to, exercise any voting rights which may be exercisable by holders of Exchangeable Shares from time to time pursuant to the Exchangeable Shares Provisions or pursuant to the provisions of the *Companies Act* (Nova Scotia) (or any successor or other corporate statute by which the Corporation may in the future be governed) with respect to any Exchangeable Shares held by it or by its direct or indirect Subsidiaries in respect of any matter considered at any meeting of holders of Exchangeable Shares.

**2.10 Due Performance.** On and after the Effective Date, the Parent shall duly and timely perform all of its obligations and cause its direct and indirect Subsidiaries to perform all of their obligations provided for in the Exchangeable Share Provisions, including any obligations that may arise upon the exercise of the Parent's rights under the Exchangeable Share Provisions.

### ARTICLE 3 GENERAL

**3.1 Term.** This agreement shall come into force and be effective as of the date hereof and shall terminate and be of no further force and effect at such time as no Exchangeable Shares (or securities or rights convertible into or exchangeable for or carrying rights to acquire Exchangeable Shares) are held by any party other than the Parent and any of its direct or indirect Subsidiaries.

**3.2 Changes in Capital of Parent and the Corporation.** Notwithstanding the provisions of Section 3.4 hereof, at all times after the occurrence of any event effected pursuant to Section 2.6 or 2.7 hereof, as a result of which either the PASW Common Shares or the Exchangeable Shares or both are in any way changed, this agreement shall forthwith be amended and modified as necessary in order that it shall apply with full force and effect to all new securities into which the PASW Common Shares or the Exchangeable Shares or both are so changed and the parties hereto shall execute and deliver an agreement in writing giving effect to and evidencing such necessary amendments and modifications.

**3.3 Severability.** If any provision of this agreement is held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this agreement shall not in any way be affected or impaired thereby and this agreement shall be carried out as nearly as possible in accordance with its original terms and conditions.

**3.4 Amendments, Modifications, Etc.** This agreement may not be amended or modified except by an agreement in writing executed by the Corporation and the Parent and approved by the holders of the Exchangeable Shares in accordance with Section 10.2 of the Exchangeable Shares Provisions.

**3.5 Permitted Amendments.** Notwithstanding the provisions of Section 3.4, the parties to this agreement may in writing, at any time and from time to time, without the approval of the holders of the Exchangeable Shares, amend or modify this agreement for the purposes of:

(a) adding to the covenants of either or both parties for the protection of the holders of the Exchangeable Shares;

(b) making such amendments or modifications not inconsistent with this agreement as may be necessary or desirable with respect to matters or questions which, in the opinion of the Board of Directors of each of the Corporation and the Parent, it may be expedient to make, provided that each such Board of Directors shall be of the opinion that such amendments or modifications will not be prejudicial to the interests of the holders of the Exchangeable Shares; or

(c) making such changes or corrections which, on the advice of counsel to the Corporation and the Parent, are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake of manifest error, provided that the Boards of Directors of each of the Corporation and the Parent shall be of the opinion that such changes or corrections will not be prejudicial to the interests of the holders of Exchangeable Shares.

**3.6 Meeting to Consider Amendments.** The the Corporation, at the request of the Parent, shall call a meeting or meetings of the holders of the Exchangeable Shares for the purpose of considering any proposed amendment or modification requiring approval pursuant to Section 3.4 hereof. Any such meeting or meetings shall be called and held in accordance with Memorandum and Articles of Association the Corporation the Exchangeable Shares Provisions and all applicable laws.

**3.7 Amendments Only in Writing.** No amendment to or modification or waiver of any of the provisions of this agreement otherwise permitted hereunder shall be effective unless made in writing and signed by both of the parties hereto.

**3.8 Successor and Assigns.** This agreement shall be for the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**3.9 Notices to Parties.** All notices and other communications between the parties shall be in writing and shall be deemed to have been given if delivered personally or by confirmed telecopy to the parties at the following addresses (or at such other address for either such party as shall be specified in like notice):

if to the Parent at:

PASW, Inc.

Facsimile No.:

Attention:

with a copy to:

if to the Corporation at:

Any notice or other communication given personally shall be deemed to have been given and received upon delivery thereof and if given by telecopy shall be deemed to have been given and received on the date of confirmed receipt thereof unless such day is not a Business Day in which case it shall be deemed to have been given and received upon the immediately following Business Day.

**3.10 Counterparts.** This agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

**3.11 Governing Law.** This agreement shall be construed and enforced in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

**3.12 Attornment.** The Parent agrees that any action or proceeding arising out of or relating to this agreement may be instituted in the courts of Alberta, waives any objection which it may have now or hereafter to the venue of any such action or proceeding, irrevocably submits to the jurisdiction of the said courts in any such action or proceeding, agrees to be bound by any judgment of the said courts and not to seek, and hereby waives, any review of the merits of any such judgment by the courts of any other jurisdiction and hereby appoints , Barristers and Solicitors, at their office in Calgary, Alberta as Parent's attorney for service of process.

**WITNESS WHEREOF**, the parties hereto have caused this agreement to be duly executed as of the date first above written.

**PASW, INC.**

By:

Its:

**[#2] ALBERTA LTD.**

By:

Its:

# SHARE CAPITAL PROVISIONS TO BE INCLUDED IN THE ARTICLES OF INCORPORATION OF [#2] ALBERTA LTD.

## PROVISIONS ATTACHING TO THE COMMON SHARES

The common shares (Common Shares) in the capital of the Corporation shall have attached thereto the following rights, privileges, restrictions and conditions:

### Dividends

Subject to the prior rights of the Exchangeable Shares and any other shares ranking prior to the Common Shares, holders of Common Shares have a right to receive dividends when declared by the Board of Directors out of property of the Corporation legally available therefor.

### Liquidation

Subject to the prior rights of the Exchangeable Shares and any other shares ranking prior to the Common Shares, the holders of Common Shares shall, upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or other distribution of the assets of the Corporation for the purpose of winding-up its affairs, be entitled to receive the remaining property and assets of the Corporation.

### Voting

The holders of the Common Shares shall be entitled to receive notice of and to attend all meetings of shareholders (other than separate meetings of other classes or series of shares), and shall be entitled to one vote for each Common Share held.

## PROVISIONS ATTACHING TO EXCHANGEABLE NON-VOTING SHARES

The Exchangeable Shares in the capital of the Corporation shall have the following rights, privileges, restrictions and conditions.

### ARTICLE 1 INTERPRETATION

1.1 For the purpose of these share provisions:

**ABCA** means the *Business Corporations Act* (Alberta), as amended from time to time.

**Board of Directors** means the Board of Directors of the Corporation.

**Business Day** means any day other than a Saturday, a Sunday or a day when banks are not open for the transaction of commercial business in Calgary, Alberta.

**Canadian Dollar Equivalent** means in respect of an amount expressed in foreign currency (the **Foreign Currency Amount**) at any date the product obtained by multiplying (a) the Foreign Currency Amount by (b) the noon spot exchange rate on such date for such foreign currency expressed in Canadian dollars as reported by the Bank of Canada or, in the event such spot exchange rate is not available, such exchange rate on such date for such foreign currency expressed in Canadian dollars as may be deemed by the Board of Directors to be appropriate for such purpose.

**Closing Documents** means the certificates representing the Exchangeable Shares to be exchanged for the Liquidation Consideration, the Retraction Consideration, the Redemption Consideration or the Exchange Right Consideration, as the case may be, together with such other documents and instruments as may be required to effect a transfer of such Exchangeable Shares under the ABCA and the by-laws of the Corporation and such additional documents and instruments as the Corporation may reasonably require.

**Common Shares** means the common shares in the capital of the Corporation.

**Corporation** means [#2] Alberta Ltd., a corporation incorporated under the laws of the Province of Alberta.

**Current Market Price** means, in respect of a PASW Common Share on any date, the Canadian Dollar Equivalent of the average closing sales prices of PASW Common Shares for the period of 20 consecutive trading days ending five trading days before such date on the Nasdaq National Market, or, if the PASW Common Shares are not then quoted on the Nasdaq National Market, on such other stock exchange or automated quotation system on which the PASW Common Shares are listed or quoted.

**Exchange Amount** means, in respect of an Exchangeable Share, at any particular time the product of the Current Market Price (on the last Business Day prior to the particular time) of a PASW Common Share

multiplied by the Exchange Ratio at that time.

**Exchange Ratio** means a number equal to the number of PASW Common Shares which the holder of an Exchangeable Share is entitled to receive under the terms of these share provisions. The initial Exchange Ratio shall be one, as adjusted from time to time, on an ongoing basis, pursuant to Sections 3.2 and 11.1 of these share provisions and Section 2.6 of the Support Agreement.

**Exchange Right Consideration** has the meaning given to that term in Section 13.1 of these share provisions.

**Exchange Right Date** has the meaning given to that term in Section 13.2 of these share provisions.

**Exchange Right Notice** has the meaning given to that term in Section 13.2 of these share provisions.

**Exchangeable Shares** means the Exchangeable Non-Voting Shares of the Corporation having the rights, privileges, restrictions and conditions as set forth in these share provisions.

**Liquidation Call Right** has the meaning given to that term in Section 5.2 of these share provisions.

**Liquidation Consideration** has the meaning given to that term in Section 5.1 of these share provisions.

**Liquidation Date** has the meaning given to that term in Section 5.1 of these share provisions.

**Liquidation Event** has the meaning given to that term in Section 5.1 of these share provisions.

**Outstanding Dividend Amount** means, in respect of an Exchangeable Share, an amount equivalent to the full value of all declared and unpaid dividends on such share on the applicable date, provided that, except in the case of a Liquidation Event, the Outstanding Dividend Amount shall not include the amount of any declared and unpaid dividends for which the record date with respect thereto has not occurred as of the applicable date.

**PASW** means PASW, Inc., together with any successor or assignee of its rights and obligations pertaining to the Exchangeable Shares, provided such assignee is a member of the PASW Group, and provided further that such rights and obligations shall not be assigned to the Corporation.

**PASW Control Transaction** means:

(a) any direct or indirect sale or exchange of PASW Common Shares or any merger, amalgamation or consolidation of PASW with another corporation or other entity whereby the stockholders of PASW immediately before such sale or exchange or such merger, amalgamation or consolidation do not retain a majority of the beneficial interest in the voting stock of PASW immediately after such sale or exchange or such merger, amalgamation or consolidation; or

(b) the sale, lease, exchange or transfer of all or substantially all of the assets of PASW to a transferee, other than where the stockholders of PASW immediately prior to such sale, lease, exchange or transfer own a majority of the beneficial interest in the voting stock of such transferee immediately after such sale, lease, exchange or transfer;

and includes any agreement, commitment or proposal with respect to a transaction described in (a) or (b).

**PASW Exchange Notice** has the meaning given to that term in Section 6.2 of these share provisions.

**PASW Common Shares** means the shares of common stock, \$0.001 par value per share, of PASW and any other securities into which such shares may be changed.

**PASW Dividend Declaration Date** means the date on which the Board of Directors of PASW declares any dividend on the PASW Common Shares.

**PASW Group** means PASW, Inc., together with its direct and indirect Subsidiaries.

**PASW Special Share** means the one share of Series A Special Voting Preferred Stock of PASW having voting rights at meetings of holders of PASW Common Shares equal to the number of shares of PASW Common Shares into which the Exchangeable Shares are exchangeable from time to time (other than Exchangeable Shares held by the PASW Group) to be transferred to, and voted by, the Trustee pursuant to the Voting Trust and Exchange Rights Agreement.

**Redemption Call Right** has the meaning given to that term in Section 7.4 of these share provisions.

**Redemption Consideration** has the meaning given to that term in Section 7.1 of these share provisions.

**Redemption Date** means the date for the redemption by the Corporation of Exchangeable Shares pursuant to Article 7 of these share provisions, which date shall be the date a PASW Control Transaction occurs if a majority of the Board of Directors determines, in good faith and in their sole discretion, that (i) it is not reasonably practicable to substantially replicate the terms and conditions of the Exchangeable Shares in connection with such PASW Control Transaction or that the redemption of all but not less than all of the outstanding Exchangeable Shares is necessary to enable the completion of such PASW Control Transaction in accordance with its terms or (ii) the consideration payable to the holders of PASW Common Shares in such PASW Control transaction is cash, then the Board of Directors may accelerate such redemption date to such date prior to the date a PASW Control Transaction occurs as they may determine, upon such number of days' prior written notice to the registered holders of the Exchangeable Shares as the Board of Directors may determine to be reasonably practicable in such circumstances, provided that PASW and the Board of Directors shall use all commercially reasonable efforts to ensure that any such redemption shall be effective only upon, and shall be conditional upon, the closing of the PASW Control Transaction.

**Retracted Shares** has the meaning given to that term in subsection 6.1(a) of these share provisions.

**Retraction Call Right** has the meaning given to that term in subsection 6.1(c) of these share provisions.

**Retraction Consideration** has the meaning given to that term in Section 6.1 of these share provisions.

**Retraction Date** has the meaning given to that term in subsection 6.1(b) of these share provisions.

**Retraction Request** has the meaning given to that term in Section 6.1 of these share provisions.

**Subsidiary** has the meaning attributed thereto for the purposes of the ABCA.

**Support Agreement** means the Support Agreement between PASW and the Corporation, made as of .

**Voting Trust and Exchange Rights Agreement** means the Voting Trust and Exchange Rights Agreement between the Corporation, PASW and the initial Trustee appointed thereunder, made as of .

## **ARTICLE 2 RANKING OF EXCHANGEABLE SHARES**

2.1 The Exchangeable Shares shall be entitled to a preference over the Common Shares and any other shares ranking junior to the Exchangeable Shares, with respect to the right to receive any dividend declared by the Corporation and remaining property of the Corporation in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs.

## **ARTICLE 3 DIVIDENDS**

3.1 A holder of an Exchangeable Share shall be entitled to receive and the Board of Directors shall, subject to Section 3.2 and applicable laws, not later than three Business Days after each PASW Dividend Declaration Date, declare a dividend on each Exchangeable Share (a) in the case of a cash dividend declared on the PASW Common Shares, in an amount in cash for each Exchangeable Share equal to the Canadian Dollar Equivalent on the PASW Dividend Declaration Date of the product of the cash dividend declared on each PASW Common Share multiplied by the Exchange Ratio at that time or (b) in the case of a dividend declared on the PASW Common Shares in property, other than cash or PASW Common Shares, in such type and amount of property for each Exchangeable Share as is the same as or economically equivalent to (as determined by the Board of Directors as contemplated by Section 2.6 of the Support Agreement) the product of the economic equivalent of the type and amount of property declared as a dividend on each PASW Common Share, multiplied by the Exchange Ratio at that time. Such dividends shall be paid out of money, assets or property of the Corporation properly applicable to the payment of dividends and shall be net of any required withholding taxes.

3.2 In the event that PASW issues or distributes PASW Common Shares (or securities exchangeable for or convertible into or carrying rights to acquire PASW Common Shares) to the holders of all or substantially all of the then outstanding PASW Common Shares by way of stock dividend or other distribution, a holder of an Exchangeable Share shall not be entitled to receive such dividend or distribution, but the Exchange Ratio shall be adjusted such that the holder of an Exchangeable Share shall, immediately after the distribution of such dividend or distribution, be entitled to receive upon the exchange of such Exchangeable Share the same percentage interest in the Common Stock of PASW as such holder would have been entitled to receive upon an exchange of such Exchangeable Shares immediately before such dividend or distribution.

3.3 Cheques of the Corporation payable at par at any branch of the bankers of the Corporation shall be issued in respect of any cash dividends contemplated by subsection 3.1(a) hereof and the sending of such a cheque to each holder of an Exchangeable Share shall satisfy the cash dividend represented thereby unless the cheque is not paid on presentation. Such other type and amount of property in respect of any dividends contemplated by subsection 3.1(b) hereof shall be issued, distributed or transferred by the

Corporation in such manner as it shall determine and the issuance, distribution or transfer thereof by the Corporation to each holder of an Exchangeable Share shall satisfy the dividend represented thereby. No holder of an Exchangeable Share shall be entitled to recover by action or other legal process against the Corporation any dividend that is represented by a cheque that has not been duly presented to the Corporation's bankers for payment of that otherwise remains unclaimed for a period of six years from the date on which such dividend was payable.

3.4 The record date for the determination of the holders of Exchangeable Shares entitled to receive payment of, and the payment date for, any dividend declared on the Exchangeable Shares under Section 3.1 hereof shall be the same dates as the record date and payment date, respectively, for the corresponding dividend declared on the PASW Common Shares.

3.5 If on any payment date for any dividends declared on the Exchangeable Shares under Section 3.1 hereof the dividends are not paid in full on all of the Exchangeable Shares then outstanding, any such dividends that remain unpaid shall be paid on a subsequent date or dates determined by the Board of Directors on which the Corporation shall have sufficient moneys, assets or property properly applicable to the payment of such dividends.

#### **ARTICLE 4 CERTAIN RESTRICTIONS**

4.1 So long as any of the Exchangeable Shares are outstanding, the Corporation shall not at any time without the approval of the holders of the Exchangeable Shares given as specified in Section 10.2 of these share provisions:

(a) pay any dividends on the Common Shares, or any other shares ranking junior to the Exchangeable Shares, other than stock dividends payable in Common Shares or any such other shares ranking junior to the Exchangeable Shares, as the case may be;

(b) redeem or purchase or make any capital distribution in respect of Common Shares or any other shares ranking junior to the Exchangeable Shares;

(c) redeem or purchase or make any capital distribution in respect of any other shares of the Corporation ranking equally with the Exchangeable Shares with respect to the right to receive any dividends, or to receive the remaining property of the Corporation on liquidation, dissolution or winding up; or

(d) issue any Exchangeable Shares or any other shares of the Corporation ranking equally with, or superior to, the Exchangeable Shares other than as contemplated by the Support Agreement.

The restrictions in subsections 4.1 (a), 4.1(b) and 4.1(c) above shall not apply if all dividends on the outstanding Exchangeable Shares corresponding to dividends declared to date on the PASW Common Shares shall have been declared on the Exchangeable Shares and paid in full.

#### **ARTICLE 5 DISTRIBUTION ON LIQUIDATION**

5.1 In the event of the liquidation, dissolution or winding-up of the Corporation or any other distribution of property of the Corporation among its shareholders for the purpose of a winding up of its affairs (a **Liquidation Event**), a holder of Exchangeable Shares shall be entitled, subject to applicable law, to receive from such property of the Corporation in respect of each Exchangeable Share held by such holder on the effective date (the **Liquidation Date**) of such Liquidation Event, before any distribution of any part of the assets of the Corporation among the holders of the Common Shares or any other shares ranking junior to the Exchangeable Shares, an amount per share equal to the Exchange Amount on the Liquidation Date, which shall be satisfied by the Corporation causing to be delivered to such holder the number of PASW Common Shares per Exchangeable Share equal to the Exchange Ratio at that time, plus an amount per share equal to Outstanding Dividend Amount on the Liquidation Date (collectively the **Liquidation Consideration**).

5.2 On or before the Liquidation Date, and subject to the exercise by PASW of the Liquidation Call Right, the Corporation shall cause to be delivered to the holders of the Exchangeable Shares the Liquidation Consideration for each such Exchangeable Share against presentation and surrender of the Closing Documents pursuant to the provisions of Article 8. In the event of a Liquidation Event, PASW shall have the overriding right (the **Liquidation Call Right**) to exchange with all but not less than all of the holders (other than members of the PASW Group) of Exchangeable Shares on the Liquidation Date all but not less than all of the Exchangeable Shares held by each such holder for an exchange consideration per share equal to the Liquidation Consideration.

5.3 To exercise the Liquidation Call Right, PASW must notify the Corporation of PASW's intention to exercise such right at least 30 days before the Liquidation Date in the case of a voluntary Liquidation Event and at least five Business Days before the Liquidation Date in the case of an involuntary Liquidation Event. The Corporation will notify the holders of Exchangeable Shares as to whether or not PASW has exercised the Liquidation Call Right forthwith after the expiry of the date by which the same may be exercised by PASW. If PASW exercises the Liquidation Call Right, on the Liquidation Date PASW will acquire and the holders will transfer to PASW all of the Exchangeable Shares then outstanding for consideration per share equal to the Liquidation



Consideration for each such Exchangeable Share against presentation and surrender of the Closing Documents pursuant to the provisions of Article 8.

## ARTICLE 6 RETRACTION OF EXCHANGEABLE SHARES BY HOLDER

6.1 A holder of Exchangeable Shares shall be entitled at any time, subject to the exercise by PASW of the Retraction Call Right and otherwise upon compliance with the provisions of this Article 6, to require the Corporation to redeem any or all of the Exchangeable Shares registered in the name of such holder for an amount per share equal to the Exchange Amount on the Retraction Date, which shall be satisfied by the Corporation causing to be delivered to each holder of Exchangeable Shares a number of PASW Common Shares per Exchangeable Share equal to the Exchange Ratio at that time plus an amount per share equal to Outstanding Dividend Amount on the Retraction Date (collectively the **Retraction Consideration**).

To effect the redemption, the holder shall deliver to the Corporation (with a copy to PASW) the Closing Documents together with a duly executed statement (the **Retraction Request**) in the form of Attachment A hereto or in such other form as may be acceptable to the Corporation:

- (a) specifying that the holder desires to have all or any number specified therein of the Exchangeable Shares represented by the applicable certificate or certificates (the **Retracted Shares**) redeemed by the Corporation;
- (b) stating the Business Day on which the holder desires to have the Corporation redeem the Retracted Shares (the **Retraction Date**), provided that the Retraction Date shall be not less than five Business Days after the date on which the Retraction Request is received by each of the Corporation and PASW; and
- (c) acknowledging, subject to the holder revoking the Retraction Request in the manner specified in Section 6.6, the overriding right (the **Retraction Call Right**) of PASW to exchange with the holder all but not less than all the Retracted Shares held by the holder for an exchange price per share equal to the Retraction Consideration per share on the terms and conditions set out in Section 6.2 below.

6.2 Upon receipt by the Corporation of a Retraction Request, the Corporation shall immediately notify PASW thereof. In order to exercise the Retraction Call Right, PASW must notify the Corporation in writing of its determination to do so (the **PASW Exchange Notice**) within two Business Days of notification to PASW by the Corporation of the receipt by the Corporation of the Retraction Request. If PASW does not so notify the Corporation within such two Business Day period, the Corporation will notify the holder as soon as possible thereafter that PASW will not exercise the Retraction Call Right. If PASW delivers the PASW Exchange Notice within such two Business Day period, and provided that the Retraction Request is not revoked by the holder in the manner specified in Section 6.6, the Retraction Request shall thereupon be considered only to be an offer by the holder to exchange the Retracted Shares to PASW in accordance with the Retraction Call Right. In such event, the Corporation shall not redeem the Retracted Shares and PASW shall acquire from such holder and such holder shall transfer to PASW on the Retraction Date the Retracted Shares for exchange consideration per share equal to the Retraction Consideration for each such Exchangeable Share against presentation and surrender of Closing Documents pursuant to the provisions of Article 8. If requested by the holder in the Retraction Request, the exchange shall be conditional upon the effectiveness of a resale registration statement under the U.S. Securities Act of 1933, as amended, respecting the PASW Common Shares that are the subject of the Retraction Consideration, in which case the Retraction Date shall be deemed to be the date of the effectiveness of such resale registration statement and the redemption shall be deemed to occur immediately prior to the effectiveness of such resale registration statement.

6.3 If PASW does not deliver a PASW Exchange Notice within such two Business Day period, and provided that the Retraction Request is not revoked by the holder in the manner specified in Section 6.6, the Corporation shall cause to be delivered to the holders of the Exchangeable Shares to be redeemed the Retraction Consideration for each such Exchangeable Share against presentation and surrender of the Closing Documents at the registered office of the Corporation.

6.4 Notwithstanding any other provision of this Article 6, the Corporation shall not be obligated to redeem Retracted Shares specified by a holder in a Retraction Request to the extent that such redemption of Retracted Shares would be contrary to solvency requirements or other provisions of applicable law. If the Corporation believes that on any Retraction Date it would not be permitted by any of such provisions to redeem the Retracted Shares tendered for redemption on such date, and provided that PASW shall not have exercised the Retraction Call Right with respect to the Retracted Shares, the Corporation shall only be obligated to redeem Retracted Shares specified by a holder in a Retraction Request to the extent of the maximum number that may be so redeemed (rounded down to a whole number of shares) as would not be contrary to such provisions and shall notify the holder at least two Business Days prior to the Retraction Date as to the number of Retracted Shares which will not be redeemed by the Corporation. In any case in which the redemption by the Corporation of Retracted Shares would be contrary to solvency requirements or other provisions of applicable law, the Corporation shall redeem Retracted Shares in accordance with these share provisions on a pro rata basis and shall issue to each holder of Retracted Shares a new certificate, at the expense of the Corporation, representing the Retracted Shares not redeemed by the Corporation.

6.5 Provided that the Retraction Request is not revoked by the holder in the manner specified in Section 6.6, the holder of any such Retracted Shares not redeemed by the Corporation pursuant to Section 6.2 of these share provisions as a result of solvency requirements of applicable law shall be deemed by giving the Retraction Request to require PASW to purchase such Retracted

Shares from such holder on the Retraction Date or as soon as practicable thereafter on delivery by PASW to such holder of the Retraction Consideration for each Retracted Share, all as more specifically provided in the Voting Trust and Exchange Rights Agreement.

6.6 A holder of Retracted Shares may, by notice in writing given by the holder to the Corporation before the close of business on the Business Day immediately preceding the Retraction Date, withdraw its Retraction Request in which event such Retraction Request shall be null and void and, for greater certainty, the revocable offer constituted by the Retraction Request to exchange the Retracted Shares to PASW shall be deemed to have been revoked.

## ARTICLE 7 REDEMPTION OF EXCHANGEABLE SHARES BY THE CORPORATION

7.1 Subject to applicable law, and if PASW does not exercise the Redemption Call Right, the Corporation shall on the Redemption Date redeem the whole of the then outstanding Exchangeable Shares for an amount per share equal to the Exchange Amount on the Redemption Date, which shall be satisfied by the Corporation causing to be delivered to each holder of Exchangeable Shares a number of PASW Common Shares per Exchangeable Share equal to the Exchange Ratio at that time plus an amount per share equal to the Outstanding Dividend Amount on the Redemption Date (collectively the **Redemption Consideration**).

7.2 In any case of a redemption of Exchangeable Shares under this Article 7, the Corporation shall, at least 15 Business Days before the Redemption Date (or such other period of time determined in respect of a Redemption Date established in connection with a PASW Control Transaction), send or cause to be sent to each holder of Exchangeable Shares a notice in writing of the redemption by the Corporation or the purchase by PASW under the Redemption Call Right, as the case may be, of the Exchangeable Shares held by such holder. In the case of a Redemption Date established in connection with a PASW Control Transaction, the written notice of redemption shall be sent on or before the Redemption Date, on as many days prior written notice as may be determined by the Board of Directors to be reasonably practicable in the circumstances. In any case, such notice shall set out the formula for determining the Redemption Consideration, the Redemption Date and, if applicable, particulars of the Redemption Call Right.

7.3 On or after the Redemption Date and subject to the exercise by PASW of the Redemption Call Right, the Corporation shall cause to be delivered to the holders of the Exchangeable Shares to be redeemed the Redemption Consideration for each such Exchangeable Share against presentation and surrender of the Closing Documents at the registered office of the Corporation.

7.4 PASW shall have the overriding right (the **Redemption Call Right**), notwithstanding the proposed redemption of the Exchangeable Shares by the Corporation pursuant to Article 7 of these share provisions, to exchange with all but not less than all of the holders (other than a member of the PASW Group) of Exchangeable Shares on the Redemption Date all but not less than all of the Exchangeable Shares held by each such holder for exchange consideration per share equal to the Redemption Consideration. In the event of the exercise of the Redemption Call Right by PASW, each holder shall be obligated to exchange all the Exchangeable Shares held by the holder with PASW on the Redemption Date upon delivery by PASW to the holder of the Redemption Consideration for each such share.

7.5 To exercise the Redemption Call Right, PASW must notify the Corporation of PASW's intention to exercise such right at least five Business Days before the Redemption Date (except in respect of a Redemption Date established in connection with a PASW Control Transaction, in which case PASW shall so notify the Corporation with as much prior notice as is determined by the Board of Directors to be reasonably practicable in the circumstances). The Corporation will notify the holders of Exchangeable Shares as to whether or not PASW has exercised the Redemption Call Right forthwith after the expiration of the date by which the same may be exercised by PASW. If PASW exercises the Redemption Call Right, on the Redemption Date, PASW will acquire and the holders will transfer to PASW all of the Exchangeable Shares then outstanding for an amount per share equal to the Redemption Consideration for each such Exchangeable Share against presentation and surrender of the Closing Documents pursuant to the provisions of Article 8.

## ARTICLE 8 CLOSING PROCEDURES

8.1 In this Article 8:

(a) With respect to any acquisition by the Corporation of Exchangeable Shares pursuant to Sections 5.1, 6.1 or 7.2 (a **Holder Put**), **Put Consideration** means Liquidation Consideration, Retraction Consideration or Redemption Consideration, as applicable, and **Put Date** means Liquidation Date, Retraction Date or Redemption Date, as applicable.

(b) With respect to any exchange by PASW of PASW Common Shares for Exchangeable Shares pursuant to Sections 5.2, 6.2, 7.4 or 13.1 (a **PASW Exchange**), **Exchange Consideration** means Liquidation Consideration, Retraction Consideration, Redemption Consideration or Exchange Right Consideration, as applicable, and **Exchange Date** means Liquidation Date, Retraction Date, Redemption Date or Exchange Right Date as applicable.

8.2 For purposes of completing an exchange of the Exchangeable Shares pursuant to a Holder Put, the Corporation shall cause to be delivered to the holders of Exchangeable Shares subject to the Holder Put, the Put Consideration against presentation and surrender of the Closing Documents. Satisfaction by the Corporation of the aggregate Put Consideration shall be made by delivery to each holder, at the address of the holder recorded in the securities register of the Corporation or by holding for pick up by the holder at the registered office of the Corporation, certificates representing PASW Common Shares constituting the Exchange Amount (which shares shall be duly issued as fully paid and non-assessable and shall be free and clear of any lien, claim, encumbrance, security interest or adverse claim) and a cheque of the Corporation payable at par at any branch of the bankers of the Corporation totalling any Outstanding Dividend Amount, and any adjustment in lieu of fractional shares pursuant to Section 8.4 (less any tax required to be deducted and withheld from the total Put Consideration by the Corporation without interest). On and after the Put Date, the holders of the Exchangeable Shares shall cease to be holders of such Exchangeable Shares and shall not be entitled to exercise any of the rights of holders in respect thereof, other than the right to receive their proportionate part of the total Put Consideration, unless delivery of the total Put Consideration for such Exchangeable Shares shall not be made upon presentation and surrender of share certificates in accordance with the foregoing provisions, in which case the rights of the holders shall remain unaffected until the total Put Consideration has been paid in the manner hereinbefore provided.

The Corporation shall have the right at any time on or after the Put Date to deposit or cause to be deposited the total Put Consideration in respect of the Exchangeable Shares represented by certificates that have not at the Put Date been surrendered by the holders thereof in a custodial account with any chartered bank or trust company in Canada. The rights of the holders of such Exchangeable Shares after such deposit shall be limited to receiving their proportionate part of the total Put Consideration (less any tax required to be deducted and withheld therefrom) without interest for such Exchangeable Shares, against presentation and surrender of the said certificates held by them respectively in accordance with the foregoing provisions and shall be considered and deemed for all purposes to be holders of the PASW Common Shares.

8.3 For the purposes of completing an exchange of the Exchangeable Shares pursuant to the PASW Exchange, PASW shall cause to be delivered to the holders of the Exchangeable Shares subject to the PASW Exchange the Exchange Consideration against presentation and surrender of the Closing Documents. Satisfaction by PASW of the aggregate Exchange Consideration for such Exchangeable Shares shall be made by delivery to each holder, at the address of the holder recorded in the securities register of the Corporation or by holding for pick up by the holder at the registered office of PASW, certificates representing PASW Common Shares constituting the Exchange Amount (which shares shall be duly issued as fully paid and non-assessable and shall be free and clear of any lien, claim, encumbrance, security interest or adverse claim) and a cheque of PASW payable at par at any branch of the bankers of PASW totalling any Outstanding Dividend Amount and any adjustment in lieu of fractional shares pursuant to Section 8.4 (less any tax required to be deducted and withheld from the total Exchange Consideration by PASW without interest). On and after the Exchange Date, the holders of the Exchangeable Shares shall cease to be holders of such Exchangeable Shares and shall not be entitled to exercise any of the rights of holders in respect thereof, other than the right to receive their proportionate part of the total Exchange Consideration, unless PASW does not complete the PASW Exchange in the manner described above, in which case the holders of the Exchangeable Shares will be entitled to receive from the Corporation and the Corporation shall pay therefor the Put Consideration in the manner set forth in Section 8.2.

PASW shall have the right at any time on or after the Exchange Date to deposit or cause to be deposited the total Exchange Consideration in respect of the Exchangeable Shares represented by certificates that have not at the Exchange Date been surrendered by the holders thereof in a custodial account with any chartered bank or trust company in Canada. The rights of the holders of such Exchangeable Shares after such deposit shall be limited to receiving their proportionate part of the total Exchange Consideration (less any tax required to be deducted and withheld therefrom) without interest for such Exchangeable Shares, against presentation and surrender of the said certificates held by them respectively in accordance with the foregoing provisions, shall thereafter be considered and deemed for all purposes to be holders of PASW Common Shares.

8.4 In the event that an issuance or delivery of PASW Common Shares to a holder of Exchangeable Shares pursuant to these share provisions results in such holder being entitled to a fraction of a PASW Common Share, no such fractional share shall be issued or delivered, as the case may be, but, in lieu thereof, such holder shall be entitled to receive and shall be paid by the Corporation or PASW, as the case may be, an amount equal to the product of the fraction of PASW Common Share that such holder would have otherwise been entitled to receive multiplied by the Current Market Price of a PASW Common Share at the time of delivery of the PASW Common Shares.

## **ARTICLE 9 VOTING RIGHTS**

9.1 Except as required by applicable law and the provisions hereof, the holders of the Exchangeable Shares shall not be entitled as such to receive notice of or to attend any meeting of the shareholders of the Corporation or to vote at any such meeting.

9.2 Pursuant to the terms of the Voting Trust and Exchange Rights Agreement, the holders of the Exchangeable Shares shall be entitled to receive notice of any meeting of the shareholders of PASW and, through the Trustee appointed thereunder, to vote at any such meeting.

## **ARTICLE 10 AMENDMENT AND APPROVAL**

10.1 The rights, privileges, restrictions and conditions attaching to the Exchangeable Shares may be added to, changed or removed but only with the approval of the holders of the Exchangeable Shares given as hereinafter specified.

10.2 Any approval given by the holders of the Exchangeable Shares to add to, change or remove any right, privilege, restriction or condition attaching to the Exchangeable Shares or any other matter requiring the approval or consent of the holders of the Exchangeable Shares shall be deemed to have been sufficiently given if it shall have been given in accordance with applicable law subject to a minimum requirement that such approval be evidenced by resolution passed by not less than two-thirds of the votes cast (other than votes cast in respect of Exchangeable Shares beneficially owned by the PASW Group) on such resolution at a meeting of holders of Exchangeable Shares at which the holders of at least 50% of the outstanding Exchangeable Shares at that time are present or represented by proxy (other than Exchangeable Shares beneficially owned by the PASW Group).

## **ARTICLE 11**

### **RECIPROCAL CHANGES, ETC. IN RESPECT OF PASW COMMON SHARES**

11.1 For the benefit of each holder of Exchangeable Shares, the Corporation will enforce its rights under the Support Agreement to ensure that PASW will not, without the prior approval of the Corporation and the prior approval of the holders of the Exchangeable Shares given in accordance with Section 10.2 of these share provisions:

(i) issue or distribute rights, options or warrants to the holders of all or substantially all of the then outstanding PASW Common Shares entitling them to subscribe for or to purchase PASW Common Shares (or securities exchangeable for or convertible into or carrying rights to acquire PASW Common Shares); or

(ii) issue or distribute to the holders of all or substantially all of the then outstanding PASW Common Shares (A) shares or securities of PASW of any class other than PASW Common Shares (other than shares convertible into or exchangeable for or carrying rights to acquire PASW Common Shares), (B) rights, options or warrants other than those referred to in Section 11.1(a) (i) above, (C) evidences of indebtedness of PASW or (D) assets of PASW;

unless the economic equivalent on a per share basis of such rights, options, securities, shares, evidences of indebtedness or other assets is issued or distributed simultaneously to holders of the Exchangeable Shares.

(a) For the further benefit of each holder of Exchangeable Shares, the Corporation will enforce its rights under the Support Agreement to ensure that PASW will not, without the prior approval of the Corporation and the prior approval of the holders of the Exchangeable Shares given in accordance with Section 10.2 of these share provisions:

(i) subdivide, redivide or change the then outstanding PASW Common Shares into a greater number of PASW Common Shares; or

(ii) reduce, combine or consolidate or change the then outstanding PASW Common Shares into a lesser number of PASW Common Shares; or

(iii) reclassify or otherwise change the PASW Common Shares or effect an amalgamation, merger, reorganization or other transaction affecting the PASW Common Shares.

unless the same or an economically equivalent change shall simultaneously be made to, or in the rights of the holders of, the Exchangeable Shares through an adjustment to the Exchange Ratio or, for the purposes of Section 11.1(b)(iii), some other appropriate means.

The Support Agreement further provides, in part, that the aforesaid provisions of the Support Agreement shall not be changed without the approval of the holders of the Exchangeable Shares given in accordance with Section 10 of these share provisions.

## **ARTICLE 12**

### **ACTIONS BY THE CORPORATION UNDER SUPPORT AGREEMENT**

12.1 The Corporation will take all such actions and do all such things as shall be necessary or advisable to perform and comply with and to ensure performance and compliance by PASW with all provisions of the Support Agreement in accordance with the terms thereof including, without limitation, taking all such actions and doing all such things as shall be necessary or advisable to

enforce to the fullest extent possible for the direct benefit of the Corporation all rights and benefits in favour of the Corporation under or pursuant to such agreement.

12.2 The Corporation shall not propose, agree to or otherwise give effect to any amendment to, or waiver or forgiveness of its rights or obligations under, the Support Agreement without the approval of the holders of the Exchangeable Shares given in accordance with Section 10.2 of these share provisions other than such amendments, waivers and/or forgiveness as may be necessary or advisable for the purposes of:

(a) adding to the covenants of the other party or parties to such agreement for the protection of the Corporation or the holders of Exchangeable Shares; or

(b) making such provisions or modifications not inconsistent with such agreement as may be necessary or desirable with respect to matters or questions arising thereunder which, in the opinion of the Board of Directors, it may be expedient to make, provided that the Board of Directors shall be of the opinion, after consultation with counsel, that such provisions and modifications will not be prejudicial to the interests of the holders of the Exchangeable Shares; or

(c) making such changes in or corrections to such agreement which, on the advice of counsel to the Corporation, are required for the purpose of curing or correcting any ambiguity or defect or inconsistent provision or clerical omission or mistake or manifest error contained therein, provided that the Board of Directors shall be of the opinion, after consultation with counsel, that such changes or corrections will not be prejudicial to the interests of the holders of the Exchangeable Shares.

### ARTICLE 13 EXCHANGE RIGHT

13.1 Each holder of Exchangeable Shares shall have the right at any time or from time to time to require PASW to purchase from such holder at any time all or any part of the Exchangeable Shares (provided that if less than all of a holder's Exchangeable Shares are to be exchanged, such holder shall exchange not fewer than that number of Exchangeable Shares which would result in such holder being entitled to receive 5,000 PASW Common Shares, based on an Exchange Ratio of one and subject to adjustments as provided herein) held by such holder (the **Exchange Right**) in consideration for an amount per share equal to the Exchange Amount on the Exchange Right Date, which amount shall be satisfied by PASW delivering to each holder of Exchangeable Shares a number of PASW Common Shares per Exchangeable Share equal to the Exchange Ratio at that time plus an amount per share equal to the Outstanding Dividend Amount on the Exchange Right Date (collectively, the **Exchange Right Consideration**).

13.2 To exercise the Exchange Right, a holder shall deliver to the Corporation (with a copy to PASW) the Closing Documents together with a duly executed statement (an **Exchange Right Notice**) in the form of Attachment B hereto or in such other form as may be acceptable to the Corporation and PASW:

(a) specifying that the holder desires to have the Corporation cause the purchase by PASW pursuant to the Exchange Right of all or any number specified therein of the Exchangeable Shares (subject to the minimum number of Exchangeable Shares described in Section 13.1); and

(b) specifying the Business Day on which the holder desires to have PASW purchase the shares (the **Exchange Right Date**), provided that the Exchange Right Date shall be not less than five Business Days after the date on which the Exchange Right Notice is received by each of the Corporation and PASW and further provided that, if requested by the holder in the Exchange Right Notice, the purchase by PASW shall be conditional upon the effectiveness of a resale registration statement under the U.S. Securities Act of 1933, as amended, respecting the PASW Common Shares that are the subject of the Exchange Consideration, and there being no suspension of sale pursuant to such registration statement as a result of a notice issued by PASW pursuant to section 3 or section 4 of the Registration Rights Agreement dated August 5, 1999 among PASW and the shareholders of the Corporation.

### ARTICLE 14 LEGEND

14.1 The certificates evidencing the Exchangeable Shares shall contain or have affixed thereto a legend, in form and on terms approved by the Board of Directors, with respect to the Support Agreement, the Sections of these share provisions relating to the Liquidation Call Right, the Retraction Call Right, the Redemption Call Right and the Exchange Right, and the Voting Trust and Exchange Rights Agreement (including the provisions with respect to the voting rights, exchange right and automatic exchange thereunder).

**ARTICLE 15  
MISCELLANEOUS**

15.1 Any notice, request or other communication to be given to the Corporation by a holder of Exchangeable Shares shall be in writing and shall be valid and effective if given by mail (postage prepaid) or by telecopy or by delivery to the registered office of the Corporation and all addressed to the attention of the President and to PASW by telecopy or by delivery to PASW, , Fax No. , Attention: . Any such notice, request or other communication, if given by mail, telecopy or delivery, shall only be deemed to have been given and received upon actual receipt thereof by the Corporation or PASW.

15.2 Any presentation and surrender by a holder of Exchangeable Shares to the Corporation of certificates representing Exchangeable Shares in connection with the liquidation, dissolution or winding up of the Corporation or the retraction or redemption of Exchangeable Shares shall be made by registered mail (postage prepaid) or by delivery to the registered office of the Corporation, in each case addressed to the attention of the President of the Corporation. Any such presentation and surrender of certificates shall only be deemed to have been made and to be effective upon actual receipt thereof by the Corporation. Any such presentation and surrender of certificates made by registered mail shall be at the sole risk of the holder mailing the same.

15.3 Any notice, request or other communication to be given to a holder of Exchangeable Shares by or on behalf of the Corporation shall be in writing and shall be valid and effective if given by mail (postage prepaid) or by delivery to the address of the holder recorded in the securities register of the Corporation or, in the event of the address of any such holder not being so recorded, then at the last known address of such holder. Any such notice, request or other communication, if given by mail, shall be deemed to have been given and received on the fifth Business Day following the date of mailing and, if given by delivery, shall be deemed to have been given and received on the date of delivery. Accidental failure or omission to give any notice, request or other communication to one or more holders of Exchangeable Shares shall not invalidate or otherwise alter or affect any action or proceeding to be taken by the Corporation pursuant thereto.

15.4 All Exchangeable Shares acquired by the Corporation upon the redemption or retraction thereof shall be cancelled.

15.5

**ATTACHMENT A TO EXCHANGEABLE SHARE PROVISIONS**

**NOTICE OF RETRACTION**

To [#2] Alberta Ltd. (the Corporation) and PASW, Inc. (PASW) (and any PASW Group assignee)

This notice is given pursuant to Article 6 of the provisions (the Share Provisions) attaching to the share(s) represented by this certificate and all capitalized words and expressions used in this notice which are defined in the Share Provisions have the meanings ascribed to such words and expressions in such Share Provisions.

The undersigned hereby notifies the Corporation that, subject to the Retraction Call Right referred to below the undersigned desires to have the Corporation redeem in accordance with Article 6 of the Share Provisions:

all share(s) represented by this certificate; or

share(s) only (subject to the minimum specified in Section 6.1 of the Share Provisions).

The undersigned hereby notifies the Corporation that the Retraction Date shall be:

[specify date not earlier than five Business Days following the date of notice];

or

the effective date of the resale registration statement pursuant to Section 6.1 of the Share Provisions.

The undersigned acknowledges the Retraction Call Right of PASW to exchange with the undersigned all but not less than all the Retracted Shares held by the undersigned and that this notice shall be deemed to be a revocable offer by the undersigned to transfer the Retracted Shares to PASW in accordance with the Retraction Call Right on the Retraction Date for the Retraction Consideration and on the other terms and conditions set out in Section 6.3 of the Share Provisions. If PASW determines not to exercise the Retraction Call Right, the Corporation will notify the undersigned of such fact as soon as possible. This notice of retraction, and offer to sell the Retracted Shares to PASW, may be revoked and withdrawn by the undersigned by notice in writing given to the Corporation at any time before the close of business on the Business Day immediately preceding the Retraction Date.

The undersigned acknowledges that if, as a result of solvency provisions of applicable law, the Corporation is unable to redeem all Retracted Shares and PASW determines not exercise the Retraction Call Right, the undersigned will be deemed to have exercised the Exchange Right (as defined in the Voting Trust and Exchange Rights Agreement) so as to require PASW to exchange shares of PASW Common Stock for the unredeemed Retracted Shares.

The undersigned hereby represents and warrants to the Corporation and PASW that the undersigned has good title to, and owns, the share(s) represented by this certificate to be acquired by the Corporation or PASW, as the case may be, free and clear of all liens, claims and encumbrances and is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

Dated this day of , [year].

(Signature of Shareholder)

Please check box if the securities and any cheque(s) resulting from the retraction or purchase of the Retracted Shares are to be held for pick-up by the shareholder at the registered office of the Corporation in Calgary, failing which the securities and any cheque(s) will be mailed to the last address of the shareholder as it appears on the register.

NOTE: This panel must be completed and this certificate, together with such additional documents as the Corporation may require, must be deposited with the Corporation at its registered office in Calgary. The securities and any cheque(s) resulting from the retraction or exchange of the Retracted Shares will be issued and registered in, and made payable to, respectively, the name of the shareholder as it appears on the register of the Corporation and the securities and cheque(s) resulting from such retraction or exchange will be delivered to such shareholder as indicated above, unless the form appearing immediately below is duly completed.

Date:

Name of person in whose name securities

or cheque(s) are to be registered, issued

or delivered (please print)

Street Address or P.O. Box Signature of Shareholder

City, Province

NOTE: If the notice of retraction is for less than all of the share(s) represented by this certificate, a certificate representing the remaining shares of the Corporation will be issued and registered in the name of the shareholder as it appears on the register of the Corporation, unless the Share Transfer Power on the share certificate is duly completed in respect of such shares.

## **ATTACHMENT B TO EXCHANGEABLE SHARE PROVISIONS**

### **NOTICE OF EXERCISE OF EXCHANGE RIGHTS**

To: [#2] Alberta Ltd. (the Corporation), PASW, Inc. (PASW) (and any PASW Group assignee)

This notice is given pursuant to Section 13.2 of the provisions (the Share Provisions) attaching to the share(s) represented by this certificate and all capitalized words and expressions used in this notice which are defined in the Share Provisions have the meanings ascribed to such words and expressions in such Share Provisions.

In accordance with, and subject to, the Share Provisions, the undersigned hereby requests the Corporation to effect the purchase by PASW pursuant to the Exchange Right so as to require PASW to purchase from the undersigned:

all share(s) represented by this certificate; or

share(s) only (subject to the minimum specified in Section 13.1 of the Share Provisions)..

The undersigned hereby notifies the Corporation that the Exchange Right Date shall be:

[specify a date not earlier than five Business Days following the date of notice];

or

the effective date of the resale registration statement pursuant to Section 13.2 of the Share Provisions.

In the event that the Exchange Right under the Share Provisions is not duly effected, the undersigned also hereby exercises the exchange right in the Voting Trust and Exchange Rights Agreement in order to duly effect said purchase.

The undersigned hereby represents and warrants to PASW that the undersigned has good title to, and owns, the share(s) represented by this certificate to be acquired by PASW free and clear of all liens, claims and encumbrances and is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

Dated this day of , [year].

(Signature of Shareholder)

Please check box if the securities and any cheque(s) resulting from the exercise of the Exchange Rights are to be held for pick-up by the shareholder at the registered office of the Corporation in Calgary, failing which the securities and any cheque(s) will be mailed to the last address of the shareholder as it appears on the register.

NOTE: This panel must be completed and this certificate, together with such additional documents as the Corporation may require, must be deposited with the Corporation at its registered office in Calgary. The securities and any cheque(s) resulting from the exercise of the Exchange Right will be issued and registered in, and made payable to, respectively, the name of the shareholder as it appears on the register of the Corporation and the securities and cheque(s) resulting from such retraction or exchange will be delivered to such shareholder as indicated above, unless the form appearing immediately below is duly completed.

Date:

Name of person in whose name securities

or cheque(s) are to be registered, issued

or delivered (please print)

Street Address or P.O. Box Signature of Shareholder

City, Province

NOTE: If the Notice of Exercise of Exchange Rights is for less than all of the share(s) represented by this certificate, a certificate representing the remaining shares of the Corporation will be issued and registered in the name of the shareholder as it appears on the register of the Corporation, unless the Share Transfer Power on the share certificate is duly completed in respect of such shares.



**CERTIFICATE OF INCORPORATION**

**OF**

**PASW, INC.**

**ARTICLE I**

The name of the corporation is PASW, Inc.

**ARTICLE II**

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business, or the practice of a profession permitted to be incorporated by the California Corporations Code.

**ARTICLE III**

This corporation is authorized to issue two classes of shares of stock to be designated respectively as "Common Shares" and "Preferred Shares." The number of authorized Common Shares shall be 50,000,000, and the par value of each such share shall be \$0.001. The number of authorized Preferred Shares is 10,000,000, and the par value of each such share shall be \$0.01. The Preferred Shares shall be issuable from time to time in one or more series, the number of shares in such series and the designation of such series to be issued shall be determined from time to time by the board of directors of this corporation. Of the 10,000,000 shares of Preferred Stock authorized to be issued by the corporation, (i) 5,000,000 shares are hereby designated "Series A Convertible Preferred Stock," (ii) one share is hereby designated "Series B Special Voting Preferred Stock," and (iii) 1,017,275 shares are hereby designated "Series C Convertible Preferred Stock." The rights, preferences, privileges and restrictions granted to and imposed upon the Series A Convertible Preferred Stock, the Series B Special Voting Preferred Stock, the Series C Convertible Preferred Stock, and the Common Stock are set forth below

1. DEFINITIONS. For purposes of this Article III, the following definitions apply:

1.1 "BOARD" shall mean the Board of Directors of the Company.

1.2 "COMPANY" shall mean this corporation.

1.3 "COMMON STOCK" shall mean the Common Stock, \$0.001 par value, of the Company.

1.4 "COMMON STOCK DIVIDEND" shall mean a stock dividend declared and paid on the Common Stock that is payable in shares of Common Stock.

1.5 "ORIGINAL ISSUE DATE" shall mean the date on which the first share of Series B Preferred Stock is issued by the Company.

1.6 "ORIGINAL ISSUE PRICE" shall mean \$4.00 per share for the Series A Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like, with respect to the Series A Preferred Stock), \$0.01 per share for the Series B Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like, with respect to the Series B Preferred Stock), and \$3.56 per share for the Series C Preferred Stock (as adjusted for any stock splits, stock dividends, recapitalizations or the like, with respect to the Series C Preferred Stock).

1.7 "PERMITTED REPURCHASES" shall mean the repurchase by the Company of shares of Common Stock held by employees, officers, directors, consultants, independent contractors, advisors, or other persons performing services for the Company or a subsidiary (if in transactions that are primarily for non-financing purposes) that are subject to restricted stock purchase agreements or stock option exercise agreements under which the Company has the option to repurchase such shares: (i) at cost, upon the occurrence of certain events, such as the termination of employment or services; or (ii) at any price pursuant to the Company's exercise of a right of first refusal to repurchase such shares.

1.8 "PREFERRED STOCK" shall mean the Series A Convertible Preferred Stock, the Series B Special Voting Preferred Stock and the Series C Convertible Preferred Stock.

1.9 "SERIES A PREFERRED STOCK" shall mean the Series A Convertible Preferred Stock, \$0.001 par value, of the Company.

1.10 "SERIES B PREFERRED STOCK" shall mean the Series B Special Voting Preferred Stock, \$0.001 par value, of the Company.

1.11 "SERIES C PREFERRED STOCK" shall mean the Series C Preferred Stock, \$0.001 par value, of the Company.

1.12 "SUBSIDIARY" shall mean any corporation of which at least fifty percent (50%) of the outstanding voting stock is at the time owned directly or indirectly by the Company or by one or more of such subsidiary corporations.

## 2. DIVIDEND RIGHTS.

2.1 Dividend Preference. In each calendar year, the holders of the then outstanding Preferred Stock shall be entitled to receive, when, as and if declared by the Board, out of any funds and assets of the Company legally available therefor, noncumulative dividends at the annual Dividend Rate for each series of Preferred Stock, prior and in preference to the payment of any dividends on the Common Stock in such calendar year (other than a Common Stock Dividend). No dividends (other than a Common Stock Dividend) shall be paid with respect to the Common Stock during any calendar year unless dividends in the total amount of the annual Dividend Rate for the Preferred Stock shall have first been paid or declared and set apart for payment to the holders of the Preferred Stock, during that calendar year; provided, however, that this restriction shall not apply to Permitted Repurchases. Payments of any dividends to the holders of Preferred Stock shall be paid pro rata, on an equal priority, pari passu basis according to their respective Dividend Rate as set forth herein. Dividends on the Preferred Stock shall not be mandatory or cumulative, and no rights or interest shall accrue to the holders of the Preferred Stock by reason of the fact that the Company shall fail to declare or pay dividends on the Preferred Stock in the amount of the annual Dividend Rate or in any other amount in any calendar year or any fiscal year of the Company, whether or not the earnings of the Company in any calendar year or fiscal year were sufficient to pay such dividends in whole or in part.

2.2 Participation Rights. If, after dividends in the full preferential amount specified in this Section 2 for the Preferred Stock have been paid or declared and set apart in any calendar year of the Company, the Board shall declare additional dividends out of funds legally available therefor in that calendar year, then such additional dividends shall be declared pro rata on the Common Stock and the Preferred Stock on a pari passu basis according to the number of shares of Common Stock held by such holders, where each holder of shares of Preferred Stock is to be treated for this purpose as holding the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Preferred Stock held by such holder pursuant to Section 5.

2.3 Non-Cash Dividends. Whenever a dividend provided for in this Section 2 shall be payable in property other than cash, the value of such dividend shall be deemed to be the fair market value of such property as determined in good faith by the Board.

## 3. LIQUIDATION RIGHTS.

In the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the funds and assets that may be legally distributed to the Company's stockholders (the "AVAILABLE FUNDS AND ASSETS") shall be distributed to stockholders in the following manner:

3.1 Liquidation Preferences. The holders of each share of Preferred Stock then outstanding shall be entitled to be paid, out of the Available Funds and Assets, and prior and in preference to any payment or distribution (or any setting apart of any payment or distribution) of any Available Funds and Assets on any shares of Common Stock, an amount per share equal to the Original Issue Price for each series of Preferred Stock plus all declared but unpaid dividends thereon. If upon any liquidation, dissolution or winding up of the Company, the Available Funds and Assets shall be insufficient to permit the payment to holders of the Preferred Stock of their full preferential amount described in this subsection, then the entire Available Funds and Assets shall be distributed among the holders of the then outstanding Preferred Stock pro rata, on an equal priority, pari passu basis, according to their respective liquidation preferences as set forth herein.

3.2 Remaining Assets. If there are any Available Funds and Assets remaining after the payment or distribution (or the setting aside for payment or distribution) to the holders of the Preferred Stock of their full preferential amounts described above in this Section 3, then all such remaining Available Funds and Assets shall be distributed among the holders of the then outstanding Common Stock pro rata according to the number of shares of Common Stock held by each holder thereof.

3.3 Merger or Sale of Assets. A (i) reorganization, consolidation or merger (or similar transaction or series of transactions) of the Company with or into any other corporation or corporations in which the holders of the Company's outstanding shares immediately before such transaction or series of transactions do not, immediately after such transaction or series of transactions, retain stock representing a majority of the voting power of the surviving corporation (or its parent corporation if the surviving corporation is wholly owned by the parent corporation) of such transaction or series of transactions; or (ii) a sale of all or

substantially all of the assets of the Company, shall each be deemed to be a liquidation, dissolution or winding up of the Company as those terms are used in this Section 3.

3.4 Non-Cash Consideration. If any assets of the Company distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Company are other than cash, then the value of such assets shall be their fair market value as determined by the Board, except that any securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Company shall be valued as follows:

(a) The method of valuation of securities not subject to investment letter or other similar restrictions on free marketability shall be as follows:

(i) if the securities are then traded on a national securities exchange or the Nasdaq National Market (or a similar national quotation system), then the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the 30-day period ending three (3) days prior to the distribution; and

(ii) if actively traded over-the-counter, then the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three (3) days prior to the distribution; and

(iii) if there is no active public market, then the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Company.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability shall be to make an appropriate discount from the market value determined as above in subparagraphs (a)(i), (ii) or (iii) of this subsection to reflect the approximate fair market value thereof, as determined in good faith by the Board.

3.5 Notice and Waiver. The Company shall give each holder of record of Preferred Stock written notice of an impending liquidation, dissolution or winding up of the Company not later than ten (10) days prior to the stockholders' meeting, if any, called to approve such transaction, or twenty (20) days prior to the closing of such transaction, whichever is earlier. The notice shall describe the nature of the impending transaction. The transaction shall in no event take place sooner than twenty (20) days after the Company has given the notice provided for herein. Notwithstanding the foregoing provisions of this subsection 3.5, the periods and provisions specified herein may be shortened or waived upon the written consent of the holders of Preferred Stock that are entitled to such notice rights and that represent at least a majority of the voting power of all then outstanding shares of Preferred Stock.

#### 4. VOTING RIGHTS.

4.1 Common Stock. Each holder of shares of Common Stock shall be entitled to one (1) vote for each share thereof held.

4.2 Preferred Stock. Each holder of shares of Preferred Stock shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which such shares of Preferred Stock could be converted, or with respect to the Series B Preferred Stock an amount equal to that provided by the VOTING TRUST AND EXCHANGE RIGHTS AGREEMENT, pursuant to the provisions of Section 5 below at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, the date such vote is taken or any written consent of stockholders is solicited.

4.3 General. Subject to the foregoing provisions of this Section 4, each holder of Preferred Stock shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Company (as in effect at the time in question) and applicable law, and shall be entitled to vote, together with the holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote, except as may be otherwise provided by applicable law. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

4.4 Board Size. The authorized number of directors of the Company's Board shall be five (5). The Company shall not alter the authorized number of directors in its Certificate of Incorporation, Bylaws or otherwise, without first obtaining the written consent, or affirmative vote at a meeting, of the holders of at least a majority of the then outstanding shares of Preferred Stock, consenting or voting (as the case may be) separately as a class.

4.5 Board of Directors Election and Removal.

(a) Election. So long as at least 2,000,000 shares of Series A Preferred Stock are outstanding (such number of shares being subject to proportional adjustment to reflect combinations or subdivisions of such Series A

Preferred Stock or dividends declared in shares of such stock), (i) the holders of the Preferred Stock, voting together as a separate class, shall be entitled to elect two (2) directors of the Company; (ii) the holders of the Common Stock, voting as a separate class, shall be entitled to elect two (2) directors of the Company; and (iii) the holders of the Preferred Stock and the Common Stock, voting together as a single class shall be entitled to elect the remaining directors of the Company.

(b) Quorum; Required Vote.

(i) Quorum. At any meeting held for the purpose of electing directors, the presence in person or by proxy (A) of the holders of a majority of the shares of the Preferred Stock or Common Stock then outstanding, respectively, shall constitute a quorum of the Preferred Stock or Common Stock, as the case may be, for the election of directors to be elected solely by the holders of the Preferred Stock or Common Stock, respectively, and (B) of holders of Preferred Stock and Common Stock representing a majority of each of the voting power of all the then-outstanding shares (1) of Preferred Stock and (2) of Common Stock shall constitute a quorum for the election of the directors to be elected jointly by the holders of the Preferred Stock and the Common Stock.

(ii) Required Vote. With respect to the election of any director or directors by the holders of the outstanding shares of a specified series, class or classes of stock given the right to elect such director or directors pursuant to subsection 4.5(a) above ("SPECIFIED STOCK"), that candidate or those candidates (as applicable) shall be elected who either: (i) in the case of any such vote conducted at a meeting of the holders of such Specified Stock, receive the highest number of affirmative votes of the outstanding shares of such Specified Stock, up to the number of directors to be elected by such Specified Stock; or (ii) in the case of any such vote taken by written consent without a meeting, are elected by the written consent of the holders of a majority of the outstanding shares of such Specified Stock entitled to vote.

(c) Vacancy. If there shall be any vacancy in the office of a director elected by the holders of any Specified Stock pursuant to subsection 4.5(a), then a successor to hold office for the unexpired term of such director may be elected by either: (i) the remaining director or directors (if any) in office that were so elected by the holders of such Specified Stock, by the affirmative vote of a majority of such directors (or by the sole remaining director elected by the holders of such Specified Stock if there be but one), or if such vacancy is not filled by such directors (ii) the required vote of holders of the shares of such Specified Stock specified in subsection 4.5(b)(ii) above that are entitled to elect such director under subsection 4.5(a).

(d) Removal. Subject to Section 141(k) of the Delaware General Corporation Law, any director who shall have been elected to the Board by the holders of any Specified Stock pursuant to subsection 4.5(a) or by any director or directors elected by holders of any Specified Stock as provided in subsection 4.5(c), may be removed during his or her term of office, either with or without cause, by, and only by, the affirmative vote of shares representing a majority of the voting power of all the outstanding shares of such Specified Stock entitled to vote, given either at a meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders without a meeting, and any vacancy created by such removal may be filled only in the manner provided in subsection 4.5(c).

(e) Procedures. Any meeting of the holders of any Specified Stock, and any action taken by the holders of any Specified Stock by written consent without a meeting, in order to elect or remove a director under this subsection 4.5, shall be held in accordance with the procedures and provisions of the Company's Bylaws, the California General Corporation law and applicable law regarding stockholder meetings and stockholder actions by written consent, as such are then in effect (including but not limited to procedures and provisions for determining the record date for shares entitled to vote).

(f) Termination. Notwithstanding anything in this subsection 4.5 to the contrary, the provisions of this subsection 4.5 shall cease to be of any further force or effect upon the earlier to occur of: (i) the first date on which the total number of outstanding shares of Series A Preferred Stock is less than 2,000,000 shares (such number of shares being subject to proportional adjustment to reflect combination or subdivisions of such Series A Preferred Stock or dividends declared in shares of such stock); or (ii) upon the merger or consolidation of the Company with or into any other corporation or corporations if such consolidation or merger is approved by the stockholders of the Company in compliance with applicable law and the Certificate of Incorporation and Bylaws of the Company in which the holders of the Company's outstanding shares immediately before such consolidation or merger do not, immediately after such consolidation or merger, retain stock representing a majority of the voting power of the surviving corporation (or its parent corporation if the surviving corporation is wholly owned by the parent corporation); or (iii) a sale of all or substantially all of the Company's assets.

5. CONVERSION RIGHTS. The outstanding shares of Preferred Stock shall be convertible into Common Stock as follows:

5.1 Optional Conversion.

(a) At the option of the holder thereof, each share of Preferred Stock shall be convertible, at any time or from time to time prior to the close of business on the business day before any date fixed for redemption of such share, into fully paid and nonassessable shares of Common Stock as provided herein.

(b) Each holder of Preferred Stock who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Preferred Stock or Common Stock, and shall give written notice to the Company at such office that such holder elects to convert the same and shall state therein the number of shares of Preferred Stock being converted. Thereupon the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of Preferred Stock to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date. If a conversion election under this subsection 5.1 is made in connection with an underwritten offering of the Company's securities pursuant to the Securities Act of 1933, as amended, (which underwritten offering does not cause an automatic conversion pursuant to subsection 5.2 to take place) the conversion may, at the option of the holder tendering shares of Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of the Company's securities pursuant to such offering, in which event the holders making such elections who are entitled to receive Common Stock upon conversion of their Preferred Stock shall not be deemed to have converted such shares of Preferred Stock until immediately prior to the closing of such sale of the Company's securities in the offering.

## 5.2 Automatic Conversion.

(a) Each share of Series A and Series C Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, as provided herein: (i) concurrently with the effective date of a registration statement filed under the Securities Act of 1933, as amended, covering the shares of Common Stock issuable upon conversion.; or (ii) upon the Company's receipt of the written consent of the holders of not less than a majority of the then outstanding shares of Series A and Series C Preferred Stock to the conversion of all then outstanding Preferred Stock under this Section 5.

(b) Upon the occurrence of any event specified in subparagraph 5.2(a) (i) or (ii) above, the outstanding shares of Preferred Stock shall be converted into Common Stock automatically without the need for any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock, the holders of Preferred Stock shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred.

5.3 Conversion Price. Each share of Preferred Stock shall be convertible in accordance with subsection 5.1 or subsection 5.2 above into the number of shares of Common Stock which results from dividing the Original Issue Price for such series of Preferred Stock by the conversion price for such series of Preferred Stock that is in effect at the time of conversion (the "CONVERSION PRICE"). The initial Conversion Price for the Series A Preferred Stock shall be the Original Issue Price for the Series A Preferred Stock and the initial Conversion Price for the Series C Preferred Stock shall be the Original Issue Price for the Series C Preferred Stock. The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as provided below.

5.4 Adjustment Upon Common Stock Event. Upon the happening of a Common Stock Event (as hereinafter defined) at any time after the Original Issue Date, the Conversion Price of the Series A Preferred Stock and the Conversion Price of the Series C Preferred Stock shall, simultaneously with the happening of such Common Stock Event, be adjusted by multiplying the Conversion Price of such series of Preferred Stock in effect immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event, and the product so obtained shall thereafter be the Conversion Price for such series of Preferred Stock. The Conversion Price for a series of Preferred Stock shall be readjusted in the same manner upon the happening of each

subsequent Common Stock Event. As used herein, the term "COMMON STOCK EVENT" shall mean, at any time or from time to time after the Original Issue Date, (i) the issue by the Company of additional shares of Common Stock as a dividend or other distribution on outstanding Common Stock, (ii) a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock, or (iii) a combination of the outstanding shares of Common Stock into a smaller number of shares of Common Stock.

5.5 Adjustments for Other Dividends and Distributions. If at any time or from time to time after the Original Issue Date the Company pays a dividend or makes another distribution to the holders of the Common Stock payable in securities of the Company other than shares of Common Stock, then in each such event provision shall be made so that the holders of the Series A Preferred Stock and Series C Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities of the Company which they would have received had their Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date of such event (or such record date, as applicable) to and including the conversion date, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 5 with respect to the rights of the holders of the Preferred Stock or with respect to such other securities by their terms.

5.6 Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Original Issue Date the Common Stock issuable upon the conversion of the Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than by a Common Stock Event or a stock dividend, reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 5), then in any such event each holder of Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the number of shares of Common Stock into which such shares of Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

5.7 Reorganizations, Mergers and Consolidations. If at any time or from time to time after the Original Issue Date there is a capital reorganization of the Company (other than a recapitalization, subdivision, combination, reclassification or exchange of shares provided for elsewhere in this Section 5) or a merger or consolidation of the Company with or into another corporation (except an event which is governed under subsection 3.3), then, as a part of such reorganization, merger or consolidation, provision shall be made so that the holders of the Preferred Stock thereafter shall be entitled to receive, upon conversion of the Preferred Stock, the number of shares of stock or other securities or property of the Company, or of such successor corporation resulting from such reorganization, merger or consolidation, to which a holder of Common Stock deliverable upon conversion would have been entitled on such reorganization, merger or consolidation. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of the Preferred Stock after the reorganization, merger or consolidation to the end that the provisions of this Section 5 (including adjustment of the Conversion Price then in effect and number of shares issuable upon conversion of each series of Preferred Stock) shall be applicable after that event and be as nearly equivalent to the provisions hereof as may be practicable. This subsection 5.7 shall similarly apply to successive reorganizations, mergers and consolidations.

5.8 Sale of Shares Below Conversion Price.

(a) Adjustment Formula. If at any time or from time to time after the Original Issue Date the Company issues or sells, or is deemed by the provisions of this subsection 5.8 to have issued or sold, Additional Shares of Common Stock (as hereinafter defined), otherwise than in connection with a Common Stock Event as provided in subsection 5.4, a dividend or distribution as provided in subsection 5.5 or a recapitalization, reclassification or other change as provided in subsection 5.6, or a reorganization, merger or consolidation as provided in subsection 5.7, for an Effective Price (as hereinafter defined) that is less than the Conversion Price for the Series A Preferred Stock or Series C Preferred Stock, as the case may be, in effect immediately prior to such issue or sale (or deemed issue or sale), then, and in each such case, the Conversion Price for such series of Preferred Stock shall be reduced, as of the close of business on the date of such issue or sale, to the price obtained by multiplying such Conversion Price by a fraction:

(i) The numerator of which shall be the sum of (A) the number of Common Stock Equivalents Outstanding (as hereinafter defined) immediately prior to such issue or sale of Additional Shares of Common Stock plus (B) the quotient obtained by dividing the Aggregate Consideration Received (as hereinafter defined) by the Company for the total number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold) by the Conversion Price for such series of Preferred Stock in effect immediately prior to such issue or sale; and

(ii) The denominator of which shall be the sum of (A) the number of Common Stock Equivalents Outstanding immediately prior to such issue or sale plus (B) the number of Additional Shares of Common Stock so issued or sold (or deemed so issued and sold).

(b) Certain Definitions. For the purpose of making any adjustment required under this subsection 5.8:

(i) "ADDITIONAL SHARES OF COMMON STOCK" shall mean all shares of Common Stock issued by the Company, whether or not subsequently reacquired or retired by the Company, other than: (A) shares of Common Stock issued or issuable upon conversion of Preferred Stock; (B) shares of Common Stock (or options, warrants or other rights therefor) issued or issuable to employees, officers, or directors of, or contractors, consultants or advisers to, the Company or any Subsidiary (if in transactions with primarily non-financing purposes) pursuant to stock purchase or stock option plans, stock bonuses or awards, warrants, contracts or other arrangements that are approved by the Board; and (C) shares of Common Stock or Preferred Stock (or options, warrants or other rights therefor) issued or issuable to parties providing the Company with equipment leases, real property leases, loans, credit lines, guaranties of indebtedness, cash price reductions or similar transactions (provided such issuances are pursuant to transactions with primarily non-equity financing purposes).

(ii) The "AGGREGATE CONSIDERATION RECEIVED" by the Company for any issue or sale (or deemed issue or sale) of securities shall (A) to the extent it consists of cash, be computed at the gross amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company; (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board; and (C) if Additional Shares of Common Stock, Convertible Securities or Rights or Options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights or Options.

(iii) "COMMON STOCK EQUIVALENTS OUTSTANDING" shall mean the number of shares of Common Stock that is equal to the sum of (A) all shares of Common Stock of the Company that are outstanding at the time in question, plus (B) all shares of Common Stock of the Company issuable upon conversion of all shares of Preferred Stock or other Convertible Securities that are outstanding at the time in question, plus (C) all shares of Common Stock of the Company that are issuable upon the exercise of Rights or Options (excluding any shares of Common Stock excluded from the definition of "Additional Shares of Common Stock" pursuant to subsection 5.8(b)(i)(B), after the Original Issue Date) that are outstanding at the time in question assuming the full conversion or exchange into Common Stock of all such Rights or Options that are Rights or Options to purchase or acquire Convertible Securities into or for Common Stock.

(iv) "CONVERTIBLE SECURITIES" shall mean stock or other securities convertible into or exchangeable for shares of Common Stock.

(v) The "EFFECTIVE PRICE" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold, by the Company under this subsection 5.8, into the Aggregate Consideration Received, or deemed to have been received, by the Company under this subsection 5.8, for the issue of such Additional Shares of Common Stock; and

(vi) "RIGHTS OR OPTIONS" shall mean warrants, options or other rights to purchase or acquire shares of Common Stock or Convertible Securities.

(c) Deemed Issuances. For the purpose of making any adjustment to the Conversion Price of the Series A Preferred Stock or Series C Preferred Stock required under this subsection 5.8, if the Company issues or sells any Rights or Options or Convertible Securities and if the Effective Price of the shares of Common Stock issuable upon exercise of such Rights or Options and/or the conversion or exchange of Convertible Securities (computed without reference to any additional or similar protective or antidilution clauses) is less than the Conversion Price then in effect for a series of Preferred Stock, then the Company shall be deemed to have issued, at the time of the issuance of such Rights, Options or Convertible Securities, that number of Additional Shares of Common Stock (as defined above) that is equal to the maximum number of shares of Common Stock issuable upon exercise or conversion of such Rights, Options or Convertible Securities upon their issuance and to have received, as the Aggregate Consideration Received for the issuance of such shares, an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such Rights or Options or Convertible Securities, plus, in the case of such Rights or Options, the minimum amounts of consideration, if any, payable to the Company upon the exercise in full of such Rights or Options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or

obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof; provided that:

(i) if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, then the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses;

(ii) if the minimum amount of consideration payable to the Company upon the exercise of Rights or Options or the conversion or exchange of Convertible Securities is reduced over time or upon the occurrence or non-occurrence of specified events other than by reason of antidilution or similar protective adjustments, then the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; and

(iii) if the minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of Convertible Securities is subsequently increased, then the Effective Price shall again be recalculated using the increased minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities.

No further adjustment of the Conversion Price, adjusted upon the issuance of such Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such Rights or Options or the conversion or exchange of any such Convertible Securities. If any such Rights or Options or the conversion rights represented by any such Convertible Securities shall expire without having been fully exercised, then the Conversion Price as adjusted upon the issuance of such Rights or Options or Convertible Securities shall be readjusted to the Conversion Price which would have been in effect had an adjustment been made on the basis that the only shares of Common Stock so issued were the shares of Common Stock, if any, that were actually issued or sold on the exercise of such Rights or Options or rights of conversion or exchange of such Convertible Securities, and such shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such Rights or Options, whether or not exercised, plus the consideration received for issuing or selling all such Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Preferred Stock.

5.9 Certificate of Adjustment. In each case of an adjustment or readjustment of the Conversion Price for a series of Preferred Stock, the Company, at its expense, shall cause its Chief Financial Officer to compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of the Preferred Stock at the holder's address as shown in the Company's books.

5.10 Fractional Shares. No fractional shares of Common Stock shall be issued upon any conversion of Preferred Stock. In lieu of any fractional share to which the holder would otherwise be entitled, the Company shall pay the holder cash equal to the product of such fraction multiplied by the Common Stock's fair market value as determined in good faith by the Board as of the date of conversion.

5.11 Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

5.12 Notices. Any notice required by the provisions of this Section 5 to be given to the holders of shares of the Preferred Stock shall be deemed given upon the earlier of actual receipt or deposit in the United States mail, by certified or registered mail, return receipt requested, postage prepaid, addressed to each holder of record at the address of such holder appearing on the books of the Company.

5.13 No Impairment. The Company shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Preferred Stock against impairment.

## 6. RESTRICTIONS AND LIMITATIONS.



6.1 Class Protective Provisions. So long as any shares of Preferred Stock remain outstanding, the Company shall not, without the approval, by vote or written consent, of the holders of a majority of the Preferred Stock then outstanding, voting as a single class:

- (1) amend its Certificate of Incorporation or Bylaws in any manner that would alter, change or affect any of the rights, preferences, privileges or restrictions of the Preferred Stock;
- (2) authorize any other equity security, including any other security convertible into or exercisable for any equity security having rights or preferences senior to or on a parity with the Preferred Stock as to dividend rights, liquidation preferences, redemption or voting;
- (3) merge or consolidate with or into any corporation or effect any transaction or series of related transactions if such merger, consolidation or transaction or series of transactions would result in the stockholders of the Company immediately prior to such merger, consolidation or transaction or series of transactions holding less than a majority of the voting power of the stock of the surviving corporation (or its parent corporation if the surviving corporation is wholly owned by the parent corporation) immediately after such merger, consolidation or transaction or series of transactions;
- (4) sell all or substantially all the Company's assets in a single transaction or series of related transactions;
- (5) liquidate or dissolve; or
- (6) declare or pay any dividends (other than dividends payable solely in shares of its own Common Stock) on or declare or make any other distribution, purchase, redemption or acquisition (other than Permitted Repurchases), directly or indirectly, on account of any shares of Preferred Stock or Common Stock now or hereafter outstanding.

6.2 Series Protective Provisions. So long as any shares of Series A Preferred Stock or Series C Preferred Stock remain outstanding, as the case may be, the Company shall not, without the approval, by vote or written consent, of the holders of a majority of the Series A Preferred Stock then outstanding and/or the Series C Preferred Stock then outstanding, as applicable, each voting as a separate class, take any of the following actions to the extent it effects such series of Preferred Stock:

- (1) with respect to the holders of Series A Preferred Stock, authorize additional shares of Series A Preferred Stock, and with respect to the holders of Series Preferred Stock, authorize additional shares of Series Preferred Stock;
- (2) reclassify any outstanding shares of securities of the Company into shares having rights, preferences or privileges senior to or on a parity with such series of Preferred Stock;
- (3) authorize any other equity security, including any other security convertible into or exercisable for any equity security having rights or preferences senior to such series of Preferred Stock as to dividend rights or liquidation preferences.

## 7. MISCELLANEOUS

7.1 No Reissuance of Preferred Stock. No share or shares of Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Company shall be authorized to issue.

7.2 Consent to Certain Transactions. Each holder of shares of Preferred Stock shall, by virtue of its acceptance of a stock certificate evidencing Preferred Stock, be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code, to all Permitted Repurchases.

## ARTICLE IV

In furtherance of and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws of this corporation, subject to the right of the stockholders entitled to vote with respect thereto, in accordance with the provisions of such Bylaws, to alter and repeal the Bylaws adopted or amended by the Board of Directors. Notwithstanding any other provisions of law, this Amended and Restated Certificate of Incorporation or the Bylaws, each as amended, and notwithstanding the fact that a lesser percentage may be specified by law, this Amended and Restated Certificate of Incorporation or the Bylaws, the affirmative vote of the holders of at least sixty six and two-thirds percent (66 2/3%) of the outstanding voting stock then entitled to vote at an election of directors, voting together as a single class, shall be required to alter, change, amend, repeal or adopt any provision inconsistent with this Article IV.

## ARTICLE V

To the fullest extent permitted by law, no director of the corporation shall be personally liable to the corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. Without limiting the effect of the preceding sentence, if the California General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the California General Corporation Law, as so amended. No amendment to or repeal of this provision, nor the adoption of any provision of this First Amended and Restated Certificate of Incorporation inconsistent with this Article V, shall apply to or have any effect on the liability or alleged liability of any director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

## PASW, INC.

**Thousand Oaks, Ca.** - March 29, 2001 – PASW, Inc. (NASDAQ: PASW) today announced that the Company, Glenn P. Russell and Simmons Energy Services Inc. ("Simmons") have entered into a definitive combination agreement for the previously announced reverse take over of the Company by Simmons.

Under the terms of the combination agreement, the acquisition will be accomplished in two stages, with the first stage being the issuance of 1,017,276 shares of Series C Preferred Shares of PASW to Walter Dawson and Victor Redekop, who are principals in Simmons. Mr. Dawson and Mr. Redekop will pay for the Series C Preferred Shares by assigning to PASW their rights to approximately \$3.6 million owed to them individually by Simmons. Consummation of this first stage of the combination is expected in the near future, subject to certain regulatory approvals and other conditions. Simultaneous with consummation of this first stage of the transaction, both Mr. Dawson and Mr. Redekop are expected to join the Board of Directors of PASW, which will then have five members.

The second stage of the combination includes the reverse-split of PASW shares on a one for four share basis, the issuance of 10,687,502 shares of PASW Common Stock to the stockholders of Simmons, the conversion of the 1,017,276 shares of PASW Series C Preferred Stock issued in the first stage into an equal number of shares of Common Stock, and the transfer of the Simmons assets to PASW. Consummation of the second stage of the combination is subject to a number of terms and conditions, including approval by the shareholders of PASW and the continued listing of PASW Common Stock on the NASDAQ SmallCap Market.

Shareholders of PASW will be asked to vote on and approve this transaction at a meeting that is expected to be held in June. Glenn Russell, a major shareholder, has entered into an agreement to vote his shares, representing approximately 66% of the voting common stock of PASW, in favor of the transaction. PASW shareholders will be asked to approve, among other things, the reverse-split of PASW shares on a one for four share basis, the issuance of 10,687,502 common shares for the acquisition of Simmons and the conversion of 1,017,276 shares of Series C Preferred Shares into a equal number of common shares.

Mr. Dawson, Chairman of Simmons, brings a wealth of experience to the Company. Mr. Dawson was the founder and Executive Chairman of Bonus Resources Services Corp. ([www.bonusgroup.com](http://www.bonusgroup.com)) until his resignation as a director earlier this year. After Mr. Dawson purchased control in 1993, Bonus entered the well servicing business through several acquisitions of independent service rig operators and is now a leader in the Canadian workover and drilling market with 245 rigs in Canada and Australia and annual revenues of Cdn. \$233 million. Mr. Dawson also founded and served 19 years as President, Chief Executive Officer, and Director of Computalog Ltd., a wireline logging and perforating company which he started in 1972. Mr. Dawson expanded Computalog internationally and developed a research and development team that developed new state-of-the-art downhole equipment. Computalog became a public company in 1980 and was purchased by Precision Drilling for \$200 million in 1999.

The Board of Directors also announced the repricing of the Company's registered warrants (NASDAQ: PASWW). The exercise price of the warrants has been reduced from \$7.50 to \$4.00 per share provided that they are exercised on or before June 15, 2001. In addition to receiving one share of common stock, the warrant holders will receive a new warrant to purchase additional shares of common stock. For each two new warrants the holders will be able to purchase one share of common stock for \$5.00 per share for a twelve-month period.

The Board of Directors also announced that it is seeking to raise up to a \$16 million through a private placement of 4,000,000 units at \$4.00 each. Each unit will consist of one share of Series A convertible preferred stock and one warrant. For each two warrants the holder will be able to purchase one share of common stock for \$5.00 per share for a twelve-month period. Each share of Series A convertible preferred stock will automatically convert to common stock upon the effectiveness of a registration statement to be filed with the Securities and Exchange Commission within 90 days of the closing of the private placement. The proceeds of the private placement are intended to be used for the acquisition of a drilling, workover and trucking company in Venezuela and the purchase of additional drilling and workover rigs. There can be no assurance that the private placement can be consummated.

Walter Dawson, Chairman of Simmons stated that "while the past three years have been very difficult for oilfield services, the return of oil and gas prices to near record levels have resulted in a significant increase in drilling and workover activity. We believe that in the future oil producers will be more cautious in preventing the recurrence of events that led to the fall in oil and gas prices in the late 1990's and that oilfield services can look forward to a period of steady growth."

Mr. Dawson continued "the North American and international drilling and workover business has experienced increased demand over the last 12 months. With experienced personnel in place, our initial fleet of 35 drilling and service rigs and additional acquisitions planned, we believe Simmons is well positioned to take advantage of this increased demand."

**About Simmons:** Simmons Energy Services provides drilling, workover and maintenance equipment to international companies involved in exploration and development of oil and gas reserves. Simmons currently has an operating base in Ecuador, and has agreements to acquire all of the international workover and drilling rigs and equipment, related personnel and contracts of Simmons Group Inc, along with all of the issued and outstanding shares of Simmons Drilling (Overseas) Limited, and Edeco Petroleum Services Limited. Operations will be conducted from offices in Indonesia, South America, North America, England, Eastern Europe and the Middle East. The completion of these acquisitions is a condition to the combination agreement and will provide

Simmons with 19 drilling rigs and 16 workover rigs, over 700 employees and a base of operations that has been in the oilfield service business for almost 40 years.

Simmons services an international customer base of major oil companies and large independent producers. The various types of rigs operated by Simmons perform a variety of services, including drilling, workovers or well servicing. In addition to drilling and workover services, Simmons offers a range of additional services to the oil, gas and industrial sectors in the United Kingdom and in selected overseas markets through its Edeco subsidiary.

Drilling: Simmons operates under contract, to drill an oil or gas well to a customer's specifications. The contracts are generally on a day work, footage or turnkey basis. The majority of Simmons's drilling is done for wells up to 15,000 ft. in depth with rigs of up to 1200 horse power.

Workover and Servicing: Upon completion of drilling a successful well, a service rig is used to complete the well for production. Along with the completion of a well, a workover rig is used to do remedial work for the life of a well and may be deployed to a site several times for maintenance or equipment changes. Workover rigs and equipment are also used to re-enter old wellbores where production has been bypassed or where horizontal drilling needs to be performed to reach production.

Maintenance: Simmons operates equipment specialized in valve maintenance and inspection services which are used on offshore or high wellbore pressure environment. Maintenance increases as equipment ages and Simmons's services can often enhance the useful life of this expensive product.

Guidance: On a pro forma basis, Simmons achieved revenue and earnings before interest, income tax depreciation and amortization expense ("EBITDA") of \$27 million and \$2.8 million respectively in 2000. Utilizing our current base of 19 drilling rigs and 16 workover rigs and assuming steady oil and gas prices and strong oilfield service demand we believe that Simmons has the potential to realize revenues of up to \$48.5 million and \$54.6 million and EBITDA of up to \$9.6 million and \$11.3 million for the years ending December 31, 2001 and 2002, respectively.

If we are able to complete our private placement, the additional funds will be used to acquire a drilling and workover company in Venezuela and add additional rigs to our existing operating base, providing Simmons with the potential to realize revenues of up to \$65 million and \$87 million and EBITDA of up to \$14 million and \$20 million for the years ending December 31, 2001 and 2002, respectively. The expected results for 2001 assume that the proceeds from the private placement will be available by May 31, 2001. Any significant delay in the expected proceeds from the private placement would reduce the revenue and EBITDA expectations for 2001. There can be no assurance that the private placement can be consummated. There will be approximately 20 million shares outstanding on a fully diluted basis after the one for four reverse split and the reverse acquisition of Simmons, assuming the completion of the private placement and the exercise of outstanding warrants.

Statements in this news release that relate to matters that are not historical facts are "forward-looking statements" within the meaning of Section 27A of the Securities Exchange Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Future events and actual results may differ materially from the results set forth in or implied in the forward-looking statements. Factors that might cause such a difference include:

- fluctuations in worldwide prices of oil and natural gas and demand for oil and natural gas;
- fluctuations in levels of oil and gas exploration and development activities;
- fluctuations in the demand for contract drilling and workover services;
- the existence of competitors, technological changes and developments in the industry;
- the existence of operating risks and hazards inherent in the contract drilling and workover industries, such as blowouts, oil spills, fires, adverse weather, natural disasters, injury to third parties, oil spills and other environmental damages;
- the existence of regulatory uncertainties;
- the risks associated with international operations, including the possibility of political instability in any of the countries in which we do business, expropriation, nationalization, war, trade protection measures and economic currency exchange losses;
- possible insufficient liquidity to meet the Company's expansion plans;
- the possibility of unexpected liabilities arising out of the Company's non-Simmons legacy operations; and
- general economic conditions.

Simmons business depends, to a large degree, on the level of spending by oil and gas companies for exploration, development and production activities. Therefore, a sustained increase or decrease in the price of oil or natural gas, which could have a material impact on exploration, development and production activities, could also materially affect our financial condition, results of operations and cash flow.

The Company undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events, or otherwise.

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