



## DEPOSITARY AGREEMENT

January 6, 2012

Equity Financial Trust Company  
200 University Avenue, Suite 400  
Toronto, Ontario M5H 4H1

Attention: Manager, Corporate Trust Department

Dear Sirs/Mesdames:

Seaway Energy Services Inc. (the “**Corporation**”) has entered into a support agreement with Jerry J. Budziak, David Burroughs and Elias Foscolos dated January 6, 2012 (the “**Support Agreement**”) pursuant to which the Corporation will carry out, inter alia, a Redemption of certain of its Shares. A copy of the Support Agreement is attached hereto as Schedule “A”. By this letter the Corporation wishes to confirm the terms of the appointment of Equity Financial Trust Company (“**You**” or “**Equity**”) as depositary for the Shares in connection with the Redemption.

Terms used herein (including these recitals hereto) have the meaning ascribed to them in the Support Agreement.

### **1. Appointment**

The Corporation hereby appoints You to act as depositary in connection with the terms and conditions thereof and of this Agreement. You hereby accept such appointment.

### **2. Letters of Transmittal**

2.1 The Letter of Transmittal to be utilized in connection with the submission of Shares to the depositary pursuant to the Redemption is in the form of Schedule “B” hereto, or as such may be amended with your consent, such consent not to be unreasonably withheld. The Letters of Transmittal will be mailed to holders of Shares on or about January 9, 2012. As depositary in connection with the Redemption, You will receive Letters of Transmittal and related documents including certificates representing Shares from Minority Shareholders of the Corporation. You agree to:

- (a) hold all Letters of Transmittal and any accompanying certificates representing Shares deposited with You pursuant to the Redemption until implementation of the Redemption in accordance with the terms of the Support Agreement; and
- (b) ascertain that all Letters of Transmittal are duly completed in accordance with the terms thereof, with signatures guaranteed in accordance with the instructions thereon, and are accompanied by the certificate or certificates for the Shares and all other documents that may be required in connection therewith.

- 2.2 All Letters of Transmittal deposited with You pursuant to the Redemption must be accompanied by the certificates representing the Shares to which they relate. You will be entitled to treat as issued and outstanding the Shares represented by any certificate for Shares deposited with You pursuant to the Redemption if the name on such certificate conforms to the name of a registered holder of Shares as it appears on the register of Shares maintained by You as the transfer agent and registrar for the Shares.
- 2.3 You will supply a declaration of loss and indemnity bond in the form normally utilized by the Corporation for such purpose (or such other form as the Corporation may approve) to any holder of Shares inquiring as to the procedures to be followed to obtain a replacement certificate for certificates for Shares lost or destroyed and instruct such holder as to the procedures to be followed to properly complete and deposit such documents.
- 2.4 All Letters of Transmittal shall be dated and time stamped by You when received in duly completed form (together with all other required documentation including certificates for the Shares).

### **3. Improper Deposits**

- 3.1 If You have any doubt whether any Letters of Transmittal and accompanying certificates representing Shares have been properly deposited under the Redemption, You will seek the advice of our counsel, Davis LLP, as to the acceptability of the deposit. You will reject any such deposit if, in the opinion of our counsel, the deposit has been made improperly and You will take the necessary corrective action as specified in this Section 3.
- 3.2 If the name of a member of the Investment Industry Regulatory Organization of Canada or a recognized Canadian stock exchange is indicated on a Letter of Transmittal for a deposit which has been judged improper, You will make reasonable efforts to contact such member with a view to obtaining a proper deposit.
- 3.3 If a Letter of Transmittal or other required document has been improperly completed or signed, or the certificates representing the Shares accompanying a Letter of Transmittal are not in proper form for transfer, or some other irregularity in connection with a deposit exists, You will make reasonable efforts to contact such Shareholder to cause such irregularity to be corrected.
- 3.4 If reasonable efforts to correct an improperly completed Letter of Transmittal or other required documentation prove to be unsuccessful, You will, as soon as reasonably practicable, return to the depositing Shareholder the Letter of Transmittal, any certificates representing the Shares, as the case may be, and any other required documentation which is the subject of such improper deposit together with a statement as to the reasons why the deposit was rejected and the steps to correct such deposit.
- 3.5 Notwithstanding the foregoing Sections, the Corporation shall have full discretion to determine whether any Letter of Transmittal and any accompanying certificates

representing Shares are complete and proper and the Corporation has the absolute right to determine whether to accept or reject any or all Letters of Transmittal not in proper form.

**4. Determination of Entitlement of Securityholders**

- 4.1 If the Redemption is to proceed, as soon as practicable following the Effective Date, the Corporation will deposit with You, as depository, cash, in the form of immediately available funds, in an amount equal to the aggregate consideration to be paid to the Minority Shareholders in accordance with the provisions of Section 4.2 below and the Support Agreement. All cash deposited and delivered to You under this Section 4.1 shall be held by You as depository and released to Shareholders only in accordance with the provisions of Section 5.1 hereof.
- 4.2 If the Redemption is implemented, each Minority Shareholder shall be entitled to receive, for each Share, subject to Section 5.1 hereof, consideration comprised of CDN \$0.040 for each Share held.

**5. Delivery of Cash**

- 5.1 Following the later of the deposit of the cash with You pursuant to Section 4.1 hereof and the date a Shareholder surrenders to You a duly completed Letter of Transmittal and the certificates representing the Shares as the case may be, together with such other additional documents and instruments as provided for in the Letter of Transmittal duly executed and completed as Equity may reasonably require, as soon as reasonably practicable after the Effective Date, You shall:
- (a) forward or cause to be forwarded by first class mail (postage prepaid) to the holder at the address specified in the Letter of Transmittal; or
  - (b) if requested by the holder in the Letter of Transmittal, make available at your offices for pick-up by the holder; or
  - (c) if the Letter of Transmittal neither specifies an address nor contains a request as described in (b), forward or cause to be forwarded by first class mail (postage prepaid) to the holder at the address of such holder as shown on the securities registers of the Corporation as at the Effective Date;

a cheque representing the cash payment which such Shareholder has the right to receive in accordance with the Redemption, and the certificate so surrendered shall forthwith be cancelled.

- 5.2 Under no circumstances will interest accrue or be paid by the Corporation or Equity to persons depositing Shares on the consideration to which they are entitled to receive for such Shares pursuant to the Redemption, regardless of any delay in making such payment.
- 5.3 Until such time as a Shareholder complies with the provisions of Section 5.1, the cash payment to which such holder is entitled shall, subject to Section 5.4 hereof, be delivered

or paid to You to be held in trust for such holder for delivery to the holder, without interest and net of all applicable withholdings and other taxes, if any, upon delivery of the Letter of Transmittal in accordance with Section 5.1.

- 5.4 Notwithstanding the foregoing, in accordance with the Amendment Resolution, subject to any applicable escheat laws, any certificates representing Shares not duly surrendered on or prior to the third anniversary of the Effective Date shall cease to represent a claim or interest of any kind or nature, including a claim for dividends or other distributions, against the Corporation by a former holder. On such date, upon written request of the Corporation You shall return to the Corporation all cash held by You at such time in respect of such former holders.
- 5.5 Notwithstanding the foregoing, if the Corporation determines that delivery by mail may be delayed, You will make arrangements for Shareholders to take delivery of such cash to which they are entitled at your offices at which the Letter of Transmittal related thereto was deposited until the Corporation determines that delivery by mail will no longer be delayed.
- 5.6 If the Corporation gives You written notice that the Plan of Arrangement will not be completed, You will arrange, as soon as practicable after receipt of such written notice, for the return to holders of all Letters of Transmittal and any certificates for Shares deposited with You in accordance with the instructions set out in Section 5.1 hereof.
- 5.7 You are authorized to convert the cash payment for Shares into U.S. dollars at the exchange rate available to You on the date that the funds are converted if the holder of the Shares so elects to have their funds paid in U.S. dollars by completing the Currency of Payment Box in the Letter of Transmittal. You are further authorized to forward the funds to a holder of tendered shares via wire transfer, at the holder's expense, instead of by cheque if the holder of such shares instructs You that they wish to receive a wire transfer.

## **6. Notices**

All notices and other communications hereunder shall be in writing and shall be deemed given when delivered personally, telecopied (which is confirmed) or dispatched (postage prepaid) to a nationally recognized overnight courier service with overnight delivery instructions, in each case addressed to the particular party at:

- (a) In the case of the Corporation:

Seaway Energy Services Inc.  
Suite 1250, 700 - 4<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3J4

Attention: Jerry Budziak  
Facsimile No.: (403) 235 - 4486

(b) In the case of You:

Equity Financial Trust Company  
200 University Avenue, 4th Floor  
Toronto, Ontario M5H 4H1

Attention: Corporate Trust Services  
Facsimile No.: (416) 361-0470

or at such other address of which any party may, from time to time, advise the other parties by notice in writing given in accordance with the foregoing.

## 7. Fees

The Corporation covenants to pay your fees and expenses (including without limitation postage, courier, long distance calls, applicable taxes, mailing insurance, photocopying, fees and expenses of your legal counsel, agents and other experts You retain) in accordance with the Schedule of Fees previously executed by the Corporation, in connection with your duties hereunder.

## 8. Offices

You agree to maintain your principal office in the city set out in the Letters of Transmittal to which Letters of Transmittal and related documents may be sent or delivered.

## 9. Indemnity

9.1 Without limitation, the Corporation agrees to defend, indemnify and hold You and your successors and assigns, harmless and each of your respective directors, officers, employees and agents (the “**Indemnified Parties**”) against and from any demands, claims, assessments, proceedings, suits, actions, costs, judgments, penalties, interest, liabilities, losses, damages, debts, expenses and disbursements (including expert consultant and legal fees and disbursements on a substantial indemnity, or solicitor and client, basis) (collectively, the “**Claims**”) that the Indemnified Parties, or any of them, may suffer or incur or that may be asserted against them, or any of them, in consequence of, arising from or in any way relating to this Agreement (as the same may be amended, modified or supplemented from time to time) of your duties hereunder or any other services that You may provide to the Corporation in connection with or in any way relating to this Agreement or your duties hereunder, except that no individual Indemnified Party shall be entitled to indemnification in the event such Indemnified Party is found to have acted in bad faith, engaged in willful misconduct or been grossly negligent. For greater certainty, the Corporation agrees to indemnify and save harmless the Indemnified Parties against and from any present and future taxes (other than income taxes), duties, assessments or other charges imposed or levied on behalf of any governmental authority having the power to tax in connection with your duties hereunder. In addition, the Corporation agrees to reimburse, indemnify and save harmless the Indemnified Parties for, against and from all legal fees and disbursements (on a substantial indemnity, or solicitor and client, basis) incurred by an Indemnified Party if the Corporation

commences an action, or cross claim or counterclaim, against the Indemnified Party and the Indemnified Party is successful in defending such claim.

- 9.2 You shall not be liable for any error in judgment, for any act done or step taken or omitted by You in good faith, for any mistake of fact or law or for anything which You may do or refrain from doing in connection herewith except arising out of your bad faith, willful misconduct or gross negligence.
- 9.3 In the event Equity is in breach of this Agreement or its duties hereunder or any agreement or duties relating to any other services that Equity may provide to the Corporation in connection with or in any way relating to this Agreement or Equity's duties hereunder, Equity shall be liable for claims or damages only to an aggregate maximum amount equal to the amount of fees paid by the Corporation to Equity hereunder in the twelve months preceding the last of the events giving rise to such claims or damages, except to the extent that Equity has acted in bad faith, engaged in willful misconduct or been grossly negligent. In no event shall Equity be liable for indirect, consequential, special loss or damage of any kind whatsoever (including but not limited to lost profits), even if Equity has been advised of such loss or damage and regardless of the form of its action.
- 9.4 Notwithstanding any other provision in this Agreement, this indemnity shall survive the termination of this Agreement or your removal or resignation in connection with any and all of your duties and obligations under this Agreement.

## **10. Taxes**

- 10.1 The Corporation shall be solely responsible for all tax processing relating to or arising from the duties or actions contemplated by this agreement, including evaluation, reporting, remittance, filing, and issuance of tax slips, summaries and reports, except as is specifically delegated to You pursuant to this agreement or as may be agreed subsequently, as confirmed in writing by the parties.
- 10.2 You shall process only such tax matters as have been specifically delegated to You pursuant to this agreement or as may be agreed subsequently, and, in so doing, You do not undertake to carry out any inquiry, evaluation, reporting, remittance, filing or issuance of tax slips, summaries and reports necessarily incidental thereto, which shall remain the sole responsibility of the Corporation. You shall be entitled to rely upon and assume, without further inquiry or verification, the accuracy and completeness of any tax processing information, documentation or instructions received by You, directly or indirectly, from or on behalf of the Corporation. It is agreed that any such direction must be supplied to You prior to processing any deposits of the Share.
- 10.3 You are directed to prepare and issue T5008 tax slips and to file the related summaries with the Canada Revenue Agency on a timely basis.

## **11. Termination**

This Agreement will automatically terminate upon all cash consideration for the Shares being distributed in accordance with the provisions hereof.

## **12. General**

12.1 In acting as depositary, You:

- (a) shall have no duties or obligations other than those set forth herein;
- (b) shall not be obliged to take any legal action which might in your judgement involve any expense or liability unless You shall have been furnished with reasonable funding and indemnity;
- (c) may rely and shall be protected in acting upon the written instructions of the Corporation.
- (d) may consult counsel satisfactory to You (including our counsel) and the advice or opinion of such counsel shall be full and complete authorization or protection in respect of any action taken by You thereunder, in good faith, in accordance with the advice or opinion of such counsel.
- (e) shall be fully protected in acting and relying on any document, certificate, statement, instrument, opinion, report or notice, believed by You to be genuine and to have been signed, sent by or on behalf of the proper party or parties or delivered to You pursuant to this agreement, as to its due execution, validity and effectiveness and as to the truth and accuracy of any information contained therein;
- (f) may employ or retain such counsel, accountants, or other experts or advisers as You may reasonably require for the purpose of discharging your duties hereunder and may pay reasonable remuneration for all services so performed by any of them and shall not be responsible for any misconduct on the part of any of them. You may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant or other expert or advisor, whether retained or employed by the Corporation or by You, in relation to any matter arising under this agreement.
- (g) may resign your appointment as depositary hereunder and be discharged from all further duties and liabilities hereunder by giving to the Corporation not less than 45 days prior notice in writing or such other shorter period as the parties may agree to in writing.

12.2 This Agreement shall not be assigned by either of the parties hereto without the prior written consent of the other; provided, however that this Agreement may be assigned by the Corporation to an Affiliate.

- 12.3 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 12.4 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 12.5 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the parties hereto adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that either party hereto providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed.
- 12.6 Time shall be of the essence of this Agreement.

Kindly indicate your acceptance of the terms of this letter by signing and returning to us the duplicate hereof, in which case this letter will form an agreement between us.

**SEAWAY ENERGY SERVICES INC.**

Per: (signed) Jerry J. Budziak  
Authorized Signatory

Accepted and agreed to as of the 6th day of  
January, 2012

**EQUITY FINANCIAL TRUST COMPANY**

Per: (signed) Shelley Martin  
Authorized Signatory

Per: (signed) Derrice Richards  
Authorized Signatory



**SCHEDULE A  
SUPPORT AGREEMENT**



**SCHEDULE B**  
**LETTER OF TRANSMITTAL**

Davis:10393322.1