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Deed of Release & Discharge

Shenzhen Energy Transport Co. Ltd

The Commonwealth of Australia

Australian Maritime Safety Authority

Handwritten initials

Your Ref: Michael Fisher:102890

Your Ref:

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Date

September 2016

Parties

Owners

Shenzhen Energy Transport Co. Ltd
25/F Times Financial Centre, No. 4001 Shennan Blvd,
FUTIAN DISTRICT, SHENZHEN, CHINA

Commonwealth

The Commonwealth of Australia
c/o Great Barrier Reef Marine Park Authority
2-68 Flinders Street
TOWNSVILLE QLD 4810

AMSA

Australian Maritime Safety Authority
8 Northbourne Avenue
BRADDON ACT 2612

Background

- A. On 3 April 2010 the vessel "Shen Neng 1" (IMO No. 9040871) (the "Vessel") ran aground on Douglas Shoal, off the coast of Queensland, and subsequently discharged oil, and traversed areas of the Shoal causing damage, before being re-floated on 12 April 2010. The vessel was then moved to various locations off the Queensland coast, lightened, and towed away to China. (collectively, the "Incident")
- B. The Commonwealth alleges that as a consequence of the Incident the Commonwealth has suffered loss and damage and is entitled to damages or to have Owners undertake remediation of Douglas Shoal (collectively, the "Commonwealth's claim").
- C. The Commonwealth commenced Federal Court proceeding QUD178 of 2013 concerning the Commonwealth's claim (the "Commonwealth's proceeding").
- D. AMSA gave discovery in the Commonwealth's proceeding as a consequence of being served with a non-party discovery notice by Owners. AMSA claims from Owners its losses, costs and expenses of giving such discovery ("AMSA's costs claim").
- E. AMSA alleges that as a consequence of the Incident there was, and there was the threat of, pollution, and a discharge or disposal in contravention of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cwlth). AMSA alleges that as a consequence, AMSA took action in preventing or mitigating or in attempting to prevent or mitigate pollution damage, as a consequence of which it suffered loss and damage and incurred costs and expenses, itself or by way of reimbursement of other entities and agencies.

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- F. AMSA commenced Federal Court proceeding QUD699 of 2016 concerning AMSA's recovery claim ("AMSA's proceeding").
- G. The parties have agreed to settle the Commonwealth's claim and AMSA's costs claim and AMSA's proceeding ~~claim~~ without any admission of liability on the terms set out in this document (**Deed**) *R MS*

Operative Provisions

1. Definitions

In this document:

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in Queensland.

Claim includes but is not limited to any exercise of statutory power, action, charge, cost, demand, request, suit, proceeding, liability, claim for legal costs, or debt, on any basis whatsoever (including but without limitation, statutory) arising out of or relating to the Incident;

Releasees means

- (i) Owners;
- (ii) the Vessel (however named);
- (iii) TOSCO KEYMAX International Ship Management Co. Ltd
- (iv) charterers, operators, and managers of the Vessel;
- (v) the master, officers and crew of the Vessel;
- (vi) all employees, agents, contractors, sub-contractors, and assigns of Owners;
- (vii) any persons who would be responsible or vicariously liable for the act, omission, neglect or default of the persons or entities previously mentioned in this definition; and
- (viii) all insurers interested in the Vessel, and or interested in the liabilities of any of the persons or entities previously mentioned in this definition.

2. Settlement

2.1 The Commonwealth

Owners shall pay to the Commonwealth in full and final settlement of the Commonwealth's claim:

- (a) \$35,000,000 (thirty five million dollars) within 28 days of receipt by Owners of a fully executed copy of this Deed;

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- (b) The Commonwealth's costs of the Commonwealth's proceeding, in an amount to be agreed or taxed, within 28 days of the amount to be paid being determined by agreement or taxation including reserved costs.

2.2 AMSA

Owners shall pay to AMSA in full and final settlement of AMSA's costs claim and AMSA's proceeding, including as to legal costs, \$4,300,000 (four million three hundred thousand dollars) within 28 days of receipt by Owners of a fully executed copy of this Deed.

2.3 Payments

For the avoidance of doubt, each of the payments the subject of clauses 2.1 and 2.2 of this Deed is to be made without any deduction, reduction, set-off or adjustment of any kind, including any deduction, reduction, set-off or adjustment arising from the exercise of rights that Owners or its insurer has or may have under the *Limitation of Liability for Maritime Claims Act 1989*.

3. Discontinuance

3.1 The Commonwealth

Upon receipt of the payment specified in clause 2.1(a), the Commonwealth will prepare a notice of discontinuance of the Commonwealth's proceeding in the form annexed to this Deed. The Commonwealth shall sign the notice, and tender it to Owners who shall sign the notice indicating their consent, and the Commonwealth shall file same forthwith.

3.2 AMSA

Upon fulfilment of clause 2.2 AMSA will prepare a notice of discontinuance of AMSA's proceeding in the form required by rule 26.12(2)(b) of the Federal Court Rules 2011 on the basis there is no order as to costs. AMSA shall sign the notice, and tender it to Owners who shall sign the notice indicating their consent, and AMSA shall file same forthwith.

4. Release and Indemnity

4.1 The Commonwealth

- (a) Upon receipt of the payment specified in clause 2.1(a), the Commonwealth releases and forever discharges the Releasees from all Claims whatsoever which, but for the execution of this Deed, the Commonwealth had, has or in the future may have against the Releasees in respect of, in any way connected with, or arising out of the circumstances of, the Incident.

4.2 AMSA

- (a) Upon fulfilment of clause 2.2, AMSA releases and forever discharges the Releasees from all Claims whatsoever which, but for the execution of this Deed, AMSA had, has or in the future may have against the Releasees in respect of, in any way connected with, or arising out of the circumstances of, the Incident, or AMSA's costs claim, or AMSA's proceeding.

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- (b) AMSA agrees to indemnify and keep indemnified the Releasees from and against all Claims whatsoever which may now or in the future be made against the Releasees in respect of, in any way connected with, or arising out of AMSA's proceeding limited to an amount of \$4,300,000 (four million three hundred thousand dollars).

5. Default

- 5.1 In the event of default by Owners of its obligations under clause 2.1(a), Owners give by this Deed their irrevocable consent to (a) the Commonwealth obtaining leave to amend its claim in the Commonwealth's proceeding to include a claim for Owners' breach of its obligations under this Deed; (b) to the entry of judgment in the Commonwealth's proceeding against Owners in the terms specified in clause 2.1; and (c) to the production of this Deed to the Court as conclusive evidence of all necessary consent to give effect to the Deed, including the consent specified in (a) and (b) above.
- 5.2 In the event of default by Owners of its obligations under clause 2.2, Owners give by this Deed their irrevocable consent to (a) AMSA obtaining leave to amend its claim in AMSA's proceeding to include a claim for Owners' breach of its obligations under this Deed; (b) to the entry of judgment in AMSA's proceeding against Owners in the terms specified in clause 2.2; and (c) to the production of this Deed to the Court as conclusive evidence of all necessary consent to give effect to the Deed, including the consent specified in (a) and (b) above.

6. Miscellaneous

6.1 Interpretation

In this document unless stated otherwise or the context indicates otherwise:

- (a) reference to a document, including this document, includes:
- (i) all its schedules, annexures and attachments; and
 - (ii) reference to that document as amended, novated, or replaced from time to time;
- (b) reference to a party includes the party's personal representatives, trustees, receivers, administrators, successors and permitted assigns;
- (c) reference to a person includes a body corporate, a trust, a partnership, natural person, a government, a government authority or agency, a local authority and a local authority agency;
- (d) reference to:
- (i) a clause includes all of its subclauses;
 - (ii) a gender includes all genders; and
 - (iii) the singular includes the plural and the plural includes the singular;
- (e) reference to a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:

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- (i) that Statutory Provision as amended or re-enacted from time to time;
- (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
- (iii) a law of the Commonwealth or a State, or Territory, of Australia is to be interpreted in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State or Territory legislation;
 - (f) reference to "law" includes:
 - (i) Commonwealth, State and Territory statutes and regulations;
 - (ii) local authority by-laws and regulations; and
 - (iii) common law and equity;
 - (g) "consent" means prior written consent;
 - (h) reference to money, "\$", "AUD" or "dollars" is to Australian dollars, unless otherwise stated;
 - (i) reference to writing includes typewriting, printing, lithography, photography and any other method of representing or reproducing words, figures or symbols in a permanent or visible form whether in hard copy or electronic form
 - (j) reference to "includes", "including", "for example", "such as" and similar expressions are not words of limitation;
 - (k) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
 - (l) headings and the table of contents are for convenience only and do not form part of this document or affect its interpretation;
 - (m) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or the inclusion of that provision in this document; and
 - (n) one clause does not limit the effect of another, unless expressly stated otherwise.

6.2 Time

- (a) In this document a time for the performance of an obligation is a reference to the time in the place where the obligation is to be performed.
- (b) If this document provides that an act must be done on, or by, a specified day which is not a Business Day, that provision will be interpreted as if it requires that thing to be done instead on, or by, the next Business Day.
- (c) If a period of time is specified and dates from a given day, or the day of an act or event, the period of time must be calculated excluding that day.

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6.3 Parties

- (a) If a party consists of more than one person, this document binds each of them separately and any two or more of them jointly.
- (b) An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.

6.4 Further steps

Each party must promptly at its own cost do all things reasonably necessary or that the other party reasonably requests (including obtaining consents and approving or signing documents) to give full effect to this document and the transactions contemplated by it.

6.5 Effect of invalidity

- (a) If any provision of this document is held invalid, unenforceable, illegal or void, for any reason, such provision will be deemed deleted. The remainder of the document will remain in full force and effect.
- (b) If any provision of this document is held invalid, unenforceable, illegal or void, for any reason in one jurisdiction, but not in another jurisdiction, such provision which will be deemed deleted only in the jurisdiction in which it is invalid, unenforceable, illegal or void. The remainder of the document will remain in full force and effect.

6.6 Entire understanding

This document:

- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this document; and
- (b) supersedes any prior representation, agreement or understanding (whether written or verbal) on anything connected with that subject matter.

6.7 No reliance on other statements or conduct

Each party acknowledges that it has not entered into this document in reliance on, or as a result of any representation, promise, statement, conduct or inducement to it by or on behalf of any other party other than as expressly set out in this document.

6.8 Variation

An amendment or variation to this document is not effective unless it is in writing and signed by the parties or their solicitors.

6.9 Counterparts

- (a) This document may be executed in any number of counterparts.
- (b) Each counterpart is an original but the signed counterparts together are one and the same document.

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- (c) This document is binding on the parties on the exchange of signed counterparts.
- (d) A copy of a signed counterpart sent by facsimile machine or other electronic means including email must be treated as an original counterpart.

6.10 Governing law and jurisdiction

- (a) The laws of Queensland govern this document.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

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Executed as a Deed:

EXECUTED by Shenzhen Energy Transport)
Co. Ltd by its duly authorised representative:)
)

_____	_____
Witness	
_____	_____
Name	Name
_____	_____
Dated	Dated

EXECUTED by Commonwealth of Australia)
acting through the Great Barrier Marine Park)
Authority by its duly authorised representative)

_____	_____
Witness	Authorised Representative
<u>LAJLA KARINE SIDHU</u>	<u>RUSSELL EVAN REICHEL</u>
Name	Name of Authorised Representative (BLOCK LETTERS)
<u>19 September 2016</u>	<u>19th September 2016</u>
Dated	Dated

EXECUTED by the Australian Maritime Safety)
Authority by its duly authorised representative)
)

_____	_____
Witness	Authorised Representative
_____	_____
Name	Name of Authorised Representative (BLOCK LETTERS)
_____	_____
Dated	Dated

Deed of Release & Discharge

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Form 48
Rule 26.12(1)

Annexure

NOTICE OF DISCONTINUANCE

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: QUEENSLAND
DIVISION: GENERAL**

NO QUD 178 OF 2013

COMMONWEALTH OF AUSTRALIA

Applicant

SHENZHEN ENERGY TRANSPORT CO LTD

Respondent

The applicant discontinues the whole of the proceeding.

The discontinuance is by consent on the following terms:

1. The respondent pay the applicant's costs of the proceeding including any reserved costs.

Date: 2016

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 Jane Lye
 AGS lawyer
 for and on behalf of the Australian Government Solicitor
 Lawyer for the Respondent

Date:

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 Michael Fisher
 Solicitor
 Thynne Macartney
 Lawyer for the Respondent

Deed of Release & Discharge