



# CLEAN NIGERIA ASSOCIATES LIMITED/GTE

## Contract for Provision of Oil Spill Response Services (Third Party/Non-Members Agreement)

### SPECIAL CONDITIONS OF CONTRACT

1. Date:	2 Project Number:
3. Hirer / Place of business for all notices <i>CI 17</i> (full style, address and fax) Clean Nigeria Associates Limited/Gte Arcon Shed 1 Nigerian Ports Authority Port Harcourt Rivers State, Nigeria  Tel + 234 (0) 81 43028445  (Hereinafter referred to as CNA)	4. Client / Place of business for all notices <i>CI 1, CI 17</i> (full style, address and fax)   Tel: Fax:  (Hereinafter referred to as "the Client")
5. CNA Invoice Address Clean Nigeria Associates Limited/Gte Arcon Shed 1 Nigerian Ports Authority Port Harcourt  Tel: + 234 (0) 81 43028445	6. Client's Invoice Address   Tel: Fax:
7. Commencement Date <i>CI 2</i>	8. Estimated Termination Date <i>CI 2, CI 4</i>  (Subject to the Terms and Conditions)
9. Period of Hire Category in days <i>CI 2, CI 4</i>  (also denote in use, standby or as attached Schedule)	10. Reason for Hire
11. Area of Operation	12. Nominated Nigeria Port/Location <i>CI 8</i>
13. Destination Nigerian Port / Location <i>CI 8</i>	14. Clients' Agent
15. Equipment Insurance cover by client  (YES, NO as applicable)	16. Import bond placed by client  (YES, NO, NOT REQUIRED as applicable)
17. Equipment Freight by CNA required  (YES, NO as applicable)	18. Estimated Freight Cost <i>CI 9</i>  US DOLLARS & NIGERIA NAIRA
19. Equipment rehabilitation likely to be required? <i>CI 9</i>  (YES, NO as applicable)	20. Estimated Rehabilitation Costs <i>CI 9</i>  (insert if known or TBA)
21. Personnel required <i>CI 5</i>  Managers Supervisors Technicians Responders	22. Unit Personnel Hire rate per day or part thereof <i>CI 5</i>



## 1 Terms and Conditions

2 WHEREBY IT IS A G R E E D as follows: -

### 3 Definitions

4 Clause 1. In this Agreement unless the context otherwise requires:

5 (i) An "Affiliate" of any company means any company  
6 which is owned by, which owns, or is under common ownership with, that  
7 company. For this purpose "ownership" may be direct or indirect; direct  
8 ownership being through holding fifty per cent or more of the shares  
9 carrying rights to vote at a general meeting of the company (or its  
10 equivalent) or holding ordinary shares carrying a majority of votes at a  
11 general meeting (or its equivalent) of the company and indirect ownership  
12 being through a series of companies each being directly owned by one or  
13 (by aggregate shareholdings) more of the previous companies in the  
14 series. Any Affiliate which shall at any time cease to own, be owned by,  
15 or be under common ownership with the company concerned as  
16 aforesaid shall cease at such time to be an Affiliate of that company

17 (ii) "Client's Affiliate" means any Affiliate of the Client

18 (iii) "the Base" means the CNA Bases at Onne, Warri,  
19 Brass, Eket, Kaduna & Atlas Cove/Mosimi or at such other convenient  
20 location or locations in Nigeria as may be notified by CNA to the Client

21 (iv) "Contractors" means any company or companies  
22 for the time being engaged by CNA to operate or to provide services in  
23 support of response activities undertaken by CNA

### 24 Period

25 Cl 2. This Agreement shall be deemed to have come into force on  
26 the agreed Commencement Date (Box 7), and shall, subject to the  
27 provisions for earlier termination herein contained, terminate on the  
28 agreed Termination Date (Box 8) but may be renewed by agreement  
29 between the parties hereto.

### 30 Rights of the Client

31 Cl 3. (A) In consideration of the payments to be made  
32 hereunder and the other undertakings herein entered into, the Client shall  
33 be entitled, in accordance with the terms hereof to hire such of that  
34 equipment listed in the Schedule hereto and the services of such number  
35 of employees of the Contractors or of an Affiliate of the Contractors as  
36 shall be hereafter agreed in writing between the parties hereto.

37 (B) At no extra cost to the fees and charges provided  
38 for in this Agreement CNA shall advise, as far as it considers it to be  
39 practicable, on the clean-up operation in question.

### 40 Charges

41 Cl 4. The Client shall pay to CNA in respect of each item of  
42 equipment hired a fee calculated at the rate which is stipulated in the  
43 Schedule hereto under the heading, "CNA Equipment Use Hire Rates Per  
44 Day in US Dollars", in respect of any period commencing from the day the  
45 said equipment lives CNA base up to the day of return( both days  
46 inclusive). Such rates are per day and for the purposes of this Clause a  
47 'day' shall mean a period of twenty-four hours from the time that notice is  
48 received that the Client requires the equipment for its use, and any  
49 subsequent period of twenty-four hours.

50  
51 Cl 5. In respect of personnel supplied hereunder the Client shall  
52 pay to the CNA Overtime Allowances. CNA shall have absolute discretion  
53 in determining the personnel which CNA shall provide under this  
54 Agreement. CNA expressly reserves the right at its sole discretion to at  
55 any time (including during a response) substitute the personnel provided  
56 under this Agreement. Such rates are per day or for part of a day (hours)  
57 and for the purposes of this Clause a 'day' shall mean a continuous  
58 period of 8 hours from the commencement of the working day.

59 Cl 6. CNA shall be entitled at any time and from time to time to vary  
60 any of the rates specified in the said Schedule by not less than 30 days  
61 notice in writing to the Client.

### 62 Control of Operations and Equipment

63 Cl 7. (A) The responsibility for the control of all matters at  
64 the location of the clean-up operation shall be that of the Client  
65 PROVIDED THAT CNA or any of its employees or those of Contractors,  
66 or of an Affiliate of the Contractors working at the clean-up may decline  
67 to carry out any instruction and take any action it or they see fit in any  
68 situation where the safety of personnel may be at risk and as to whether  
69 any such situation exists shall be at the sole discretion of CNA and the  
70 forementioned employees who are present at the clean-up operations

71 (B) During the period of hire of any equipment  
72 hereunder the Client shall

73 (i) take all reasonable steps necessary on its part to  
74 protect and preserve such equipment in good working order

75 (ii) keep CNA fully informed of the location of the  
76 equipment and of any malfunctioning thereof or loss of or damage thereto

77 (iii) not part with possession of the equipment without  
78 the prior consent of CNA

79 (iv) permit CNA or the Contractors or the employees  
80 or agents of either of them such access to such equipment as they may  
81 reasonably request

82 (v) take all such steps as may be necessary to keep  
83 such equipment free from all liens, charges and encumbrances, and to  
84 prevent such equipment becoming the property of any person other than  
85 CNA or the Contractors

86 (vi) not make or allow to be made any modification or  
87 alteration to any of such equipment otherwise than by personnel provided  
88 by CNA hereunder or with the prior consent of CNA or the Contractors;  
89 and

90 (vii) be responsible for complying with and obtaining  
91 any necessary permissions under any laws for the time being applying in  
92 any country in which such equipment may be during the period of hire and  
93 relating to the operation of such equipment or the work of personnel  
94 provided under this Agreement and for dealing with any customs  
95 formalities entry permits or other matters in connection with use or return  
96 of such equipment hereunder and the personnel provided hereunder.

### 97 Transport

98 Cl 8. The Client shall nominate a Nigerian port or other location at  
99 which the equipment shall be delivered to the Client. Unless otherwise  
100 agreed with CNA, transportation from the nominated port or location to  
101 the site of operations and all travel arrangements for personnel shall be  
102 the responsibility of the Client, but the Client shall consult with CNA and  
103 keep CNA fully informed of all such arrangements.

### 104 Expenses

105 Cl 9. In addition to the other charges provided for in this  
106 Agreement, the Client shall, upon receipt of proper invoices, make  
107 payment to CNA in respect of-

108 (i) all transport and travel made as a consequence of  
109 the hire of equipment and personnel made available hereunder including  
110 the costs of transportation to the nominated port or location and any other  
111 costs incurred by CNA

112 (ii) reasonable accommodation and living expenses  
113 incurred by CNA if accommodation is not provided by client in respect of  
114 the personnel made available hereunder;

115 (iii) the cost of cleaning and rehabilitating equipment  
116 hired hereunder. For this purpose, materials and services will be charged  
117 at cost and work at man/hour rates to be specified for personnel from time  
118 to time by CNA.

### 119 Liability and Indemnities

120 Cl 10. The parties hereto recognise and acknowledge that many  
121 varying factors affect the success or otherwise of an oil spill clean-up  
122 operation and the performance of the equipment involved and that  
123 success in any event can be relative and accordingly agree that any  
124 condition warranty or representations as to merchantable quality or fitness  
125 for purpose of any equipment to be found at the CNA Bases or as to the  
126 effect of any advice given is inappropriate NOW THEREFORE:

127 (i) All representations conditions and warranties in  
128 respect of the equipment which is in the subject of this Agreement relating  
129 to its quality, fitness for purpose, merchantability or otherwise whether  
130 implied by statute or by common law or otherwise are hereby excluded;

131 (ii) Any advice offered is to be construed as a  
132 statement of opinion only and not as a representation of any kind as to  
133 the effects of following such advice;

134 (iii) CNA shall exercise reasonable skill, care and  
135 diligence in the discharge of its obligations under or arising out of the  
136 performance of this Agreement but in respect of any loss or damage of  
137 whatsoever nature or howsoever caused which in any way arises out of or  
138 is connected with the performance or non-performance by or on behalf of  
139 CNA of such obligations or the equipment or staff supplied hereunder

140 (a) the liability of CNA, its Affiliates, and its or their  
141 employees or agents (whether in contract or in tort) shall be limited to any  
142 case of negligence or wilful misconduct on their part and shall then not  
143 exceed the amount of daily fees paid under this Agreement for the item or  
144 items of equipment or personnel concerned to the exclusion of all other  
145 liability;

146 (b) the Client agrees that it shall take no proceedings  
147 against any such Affiliate, employee, shareholder or agent of CNA or any  
148 employee or agent of any of them, but shall look solely to CNA under the  
149 provisions of (a) above;

150 (iv) The Client shall, during and after the period of this  
151 Agreement, keep CNA, its Affiliates and its and their employees and  
152 agents indemnified against any claim, demand, action or proceeding  
153 arising out of or in any way connected with the performance or non-  
154 performance (whether negligent or otherwise, and howsoever a head of  
155 damage may be formulated and including any claim, demand, action or  
156 proceeding in respect of the equipment supplied) by or on behalf of CNA  
157 of its obligations under or arising out of the performance of this  
158 Agreement, brought or instituted against CNA or its Affiliates or its or their  
159 employees or agents by any third party (including any claims from the  
160 Contractors)

161 (v) For the purposes of this Clause:

162 (a) CNA shall be deemed to be acting as agent for  
163 and on behalf of its Affiliates, and its employees and agents and the  
164 benefit of the provisions of this Clause 11 shall extend to all such  
165 Affiliates, employees and agents of CNA.

166 (b) The Client shall during and after the period of this  
167 Agreement keep CNA and its employees and agents indemnified against  
168 all claims, demands, actions or proceedings by or on behalf of all the  
169 Client's Affiliates its and their employees and agents, arising from any  
170 matter related to this Agreement to the extent that such claim, demand,

171 action or proceeding could not, by virtue of this Clause 11 be brought by  
172 the Client.

173 (c) The term "agent" or "agents" where used in sub-  
174 clauses (iii) (iv) and (v) of this Clause shall include where appropriate the  
175 employees of the agent or agents referred to.

#### 176 **Loss or Damage**

177 Cl 11. The Client shall indemnify and re-imburse CNA in respect of  
178 any loss or damage to the equipment supplied hereunder (other than  
179 normal wear and tear) and shall maintain a policy or policies of insurance  
180 in such amount as may be approved by CNA in respect of any loss of or  
181 damage to the equipment which is the subject of this Agreement from the  
182 time of delivery of such equipment to the nominated Nigerian port or  
183 location until the return of such equipment to the CNA Bases at the end  
184 of the period of hire. At the request of CNA, at any time the Client will  
185 furnish CNA with such evidence of such insurance cover as CNA may  
186 request.

#### 187 **Return of Equipment**

188 Cl 12. (A) The Client shall be responsible for the return of the  
189 equipment which is the subject of this Agreement to the originating CNA  
190 Base at the end of the period of hire. The period of hire includes the time  
191 from which the equipment leaves the Centre until the equipment is  
192 returned to the Centre.

193 (B) Notwithstanding any of the other provisions  
194 hereof, in the event that any equipment which is the subject of this  
195 Agreement, is not returned to the CNA Base or is lost or damaged other  
196 than by normal wear and tear until such time as the equipment in question  
197 is returned or has been replaced by substitute equipment as the case  
198 may be, the Client shall pay to CNA in respect thereof the fees calculated  
199 at the rate set out in the Schedule hereto and the period of hire shall be  
200 deemed to continue for such purpose.

#### 201 **Payment of Fees and other charges**

202 Cl 13. (A) Payments to be made hereunder shall be made by  
203 the Client within 30 days of the date of receipt of the invoice and without  
204 prejudice to CNA's other rights, payments outstanding after that period  
205 shall bear interest until payment at 3 per cent above the Central Bank of  
206 Nigeria base rate current from time to time during the period in question.

207 (B) The Client shall indemnify and keep indemnified  
208 CNA against all forms of taxation or fiscal imposts of whatsoever nature  
209 levied upon CNA in any jurisdiction other than Nigeria arising out of or in  
210 connection with CNA's performance of this Agreement, including, without  
211 limitation, taxation or other withholdings any customs or import or export  
212 duties.

#### 213 **Termination or Suspension**

214 Cl 14. (A) Notwithstanding anything to the contrary express  
215 or implied elsewhere herein, CNA (without prejudice to its other rights)  
216 may at its sole discretion either terminate this Agreement forthwith or  
217 forthwith suspend the provision of services under this Agreement until  
218 further notice on notifying the Client either orally (confirming such  
219 notification in writing) or by notice in writing in the event that: -

220 (i) a liquidator (other than for the purpose of  
221 amalgamation or reconstruction), trustee in bankruptcy, receiver or  
222 receiver and manager is appointed in respect of the assets and/or  
223 undertaking of the Client or any Client's Affiliate, or the Client or any  
224 Client's Affiliate enters into an arrangement or composition with its  
225 creditors, or any similar appointment, arrangement or composition is  
226 made under any applicable law, or if CNA has reason to anticipate any  
227 such appointment, arrangement or composition (but with respect to any  
228 Client's Affiliate, only where the occurrence of any of the foregoing events  
229 would or might adversely affect the performance by the Client of any of its  
230 obligations or responsibilities hereunder); or

231 (ii) the Client or any Client's Affiliate fails to make any  
232 payment due to CNA under this Agreement punctually by the due date or  
233 commits any breach of this Agreement and fails to make such payment or  
234 remedy such breach within 30 days of being advised by CNA that such  
235 payment is due and has not been made or such breach has been  
236 committed

237 (iii) the facilities, equipment or operating staff at the  
238 CNA Bases cease to be available to CNA for reasons beyond the  
239 reasonable control of CNA

240 (B) Notwithstanding anything to the contrary express  
241 or implied in this Agreement, the Client may either terminate or suspend  
242 this Agreement forthwith until further notice on notifying CNA either orally  
243 (with confirmation in writing) or by notice in writing of such requirement.

244 (C) In the event that this Agreement shall have been  
245 terminated or the provision of services hereunder suspended by CNA  
246 pursuant to paragraphs (A)(i), (ii) or B above, the Client shall reimburse  
247 CNA all direct costs and expenses incurred as a consequence of such  
248 termination or suspension

249 (D) Upon any termination or expiry of this Agreement  
250 the Client shall immediately return to CNA all equipment and operating  
251 staff provided to the Client under this Agreement and all provisions of this  
252 Agreement relating to such equipment and staff shall be deemed to  
253 remain in force until the Client shall have fully performed all its obligations  
254 hereunder in respect of such equipment or staff. The provisions of  
255 Clauses 10 and 11 shall survive any termination or expiry of this  
256 Agreement.

#### 257 **Assignment and Delegation**

258 Cl 15. (A) Neither party shall transfer or assign its rights or  
259 obligations under this Agreement without the prior written consent of the  
260 other party.

261 (B) Notwithstanding (A) above, CNA shall be free to  
262 arrange for all or any of its obligations hereunder to be performed in  
263 whole or in part by Contractors or any Affiliate of such Contractors

#### 264 **Force Majeure**

265 Cl 16. No failure or omission by either party to carry out or observe  
266 any of the terms or conditions of this Agreement shall, except in relation  
267 to obligations to make payments hereunder, give rise to any claim against  
268 the party in question or be deemed a breach of this Agreement if such  
269 failure or omission arises from any cause reasonably beyond the control  
270 of that party.

#### 271 **Notices**

272 Cl 17. Any communications by either party to the other shall, unless  
273 otherwise provided herein, be sufficiently made if sent by courier, or  
274 facsimile transmission to the place of business address previously  
275 specified, unless otherwise specified by not less than 15 days' notice in  
276 writing by the party in question.

277 Cl 18. Any notices given to the Client shall be deemed served on all  
278 Client's Affiliates and CNA shall be entitled to rely on all notices,  
279 consents, requests and the like given to or by the Client or any Client's  
280 Affiliate as binding on the Client and all other Client's Affiliates.

281 Cl 19. Notwithstanding the above provisions, communications which  
282 relate to emergency response only shall be sufficiently made if made by  
283 telephone or by telefax or e – mail and if the former are confirmed by  
284 telefax or e – mail provided that they are so made by nominated persons  
285 the identity of whom shall be for prior written agreement between the  
286 parties hereto and made to telephone and telefax numbers/ e – mail  
287 addresses to be similarly agreed in writing.

#### 288 **Waiver**

289 CL 20. No waiver by either party of any provision of this Agreement  
290 shall be binding unless made expressly and expressly confirmed in  
291 writing. Further, any such waiver shall relate only to such matter, non-  
292 compliance or breach as it expressly relates to and shall not apply to any  
293 subsequent or other matter, non-compliance or breach.

#### 294 **Law**

295 Cl 21. The construction, validity and performance of this Agreement  
296 shall be governed by Nigerian Law, and the parties hereto agree with  
297 regard thereto to submit to the exclusive jurisdiction of the Nigerian  
298 courts.

#### 299 **Value Added Tax**

300 Cl 22. Any Value Added Tax or any other taxes chargeable on any  
301 payments made under this Agreement shall be added to the relevant  
302 sums due under this Agreement.

#### 303 **Severability**

304 Cl 23. The invalidity or unenforceability of any provisions of this  
305 Agreement shall not affect the validity or enforceability of the remainder.

306 Document Issue Date: June 17th, 2011