



## **FENDERCARE MARINE STANDARD OFFSHORE SERVICES TERMS (SOST)**

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### **1. OFFSHORE SERVICES**

1.1 Any James Fisher and Sons PLC subsidiary group company (for the avoidance of doubt excluding James Fisher and Sons PLC itself as a contracting entity) as is identified by its full company name and registered office address in each relevant Proposal (“Fendercare”), may contract with a Client under these SOST to provide offshore services (“Offshore Services”), as set out in its proposal (“Proposal”) to its client (“Client”), on and subject to the terms and conditions in the Proposal and these terms and conditions (“SOST”). Fendercare and the Client shall be referred to herein collectively as the “Parties” and individually as a “Party”. In the event of a conflict or discrepancy (“Conflict”) between any term(s) of a Proposal and any provision(s) of the SOST, the term(s) of the Proposal shall prevail. Subject to Clause 15.1, the agreed terms of a Contract may not be amended otherwise than by the prior written agreement of the Parties.

### **2. PRICE AND PAYMENT**

2.1. The price to be paid by the Client to Fendercare under the Contract (the “Contract Price”) is subject to the price and quantities of fuel to be used for the Offshore Services. In the event that the price and/or amount of fuel used for the Offshore Services (according to On and Off Hire Bunker Survey Reports) fluctuate(s) from the price and/or amount of fuel set out in the Proposal, the Contract Price shall be adjusted accordingly.

Fendercare shall not be responsible for any taxes outside England arising out of or in connection with any Offshore Services. The Contract Price and all sums due to Fendercare shall be net of all taxes, levies duties and fees that may be imposed by any authority/country outside England, including but not limited to any retention or withholding of tax.

2.2. Fendercare shall submit invoices at such stages of the Offshore Services as may be mutually agreed upon. Unless otherwise agreed in writing by the Parties, all sums shall be due and paid within 30 days from the date of invoice. Timely payment by the Client shall be a condition of the Contract and Client shall pay interest on any unpaid amount at 1% per month until date of full payment. No set off or deduction shall be allowed from any sum due to Fendercare.

2.3. The Contract Price is based on Fendercare being accorded a period of at least four (4) months for engineering, planning, procurement, fabrication and other preparation activities of the Offshore Services from date of contract award to scheduled departure date of Fendercare’s marine spread (“Mobilisation Date”) to the offshore area of operation (“Offshore Worksite”). In the event of insufficient preparation time, the Contract Price may be adjusted accordingly.

### **3. TECHNICAL INFORMATION**

3.1 Client shall be responsible for the timely provision, correctness, sufficiency and completeness of information and data, including but not limited to seabed and subsoil information and data, meteorological and oceanographic data, site scan information and all analysis (“Technical Information”) required for Fendercare to prepare, implement, execute and complete the Offshore Services in a proper and timely manner.

3.2 In the event that the Client has failed to provide all the Technical Information required by Fendercare at the time of submission of the Proposal, Fendercare may base its Proposal on typical details of similar offshore services or similar projects within the region in which the Offshore Services are to be performed. Fendercare shall have no liability in the event that the information and data provided by Client is incomplete or inaccurate.

3.3 If Fendercare incurs delay and/or additional costs as a result of any incorrect, incomplete, or inadequate Technical Information, Client shall be fully responsible for any additional costs and expenses and shall authorize corresponding variations to the Offshore Services including that of Project Schedule and/or the Contract Price.

### **4. CLIENT SUPPLIED EQUIPMENT**



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- 4.1 Unless otherwise agreed by the Parties in writing, Client shall provide to Fendercare any and all equipment that it may be required to provide under the Proposal (“Client Supplied Equipment”) upon the following terms:
- 4.1.1 All Client Supplied Equipment shall be delivered to Fendercare within such period to be mutually agreed between the Parties before the Mobilisation Date. Unless otherwise agreed in writing, the period shall be as stated in Article 7.3.
- 4.1.2 Fendercare shall not be responsible for any storage, insurance, delivery or inspection (other than visual) of Client Supplied Equipment nor for any other specific requirements for storage and/or maintenance of Client Supplied Equipment. Fendercare shall not be liable for any defects in any of the Client Supplied Equipment.
- 4.1.3 The Client Supplied Equipment shall be operational, ready and fit for use for Fendercare’s execution of Offshore Services without any interference with the Project Schedule.

### **5. AVAILABILITY AND WEATHER DOWNTIME**

- 5.1. Fendercare’s provision of Offshore Services shall be subject to:
- 5.1.1. the availability of the necessary materials, equipment and marine spread, where applicable;
- 5.1.2. there being no weather downtime nor adverse sea conditions that would prevent the safe execution of the Offshore Services at the Offshore Worksite. In event of weather downtime, the Client shall pay Fendercare the applicable stand-by rates for the corresponding period of weather downtime and the Project Schedule shall be extended by such period of weather downtime.

### **6. FENDERCARE’S AND CLIENT’S OBLIGATIONS**

- 6.1 Fendercare shall execute the Offshore Services with reasonable care and diligence and with the skill to be reasonably expected of a reputable contractor with experience in the Offshore Services covered by the Contract. Materials, Deliverables (as defined in clause 6.2) and equipment or parts thereof provided by Fendercare shall be of satisfactory quality. The provisions of this clause 6.1 are in lieu of all warranties express, implied, statutory or otherwise. Fendercare expressly excludes from this Contract any implied warranties of fitness for a particular purpose. The provisions of this clause 6.1 shall be the sole and exclusive remedy available to Client for defects or faults of any kind in the goods and or services (including, without limitation, as to design, materials and workmanship) and any losses arising therefrom, regardless of cause (including, but not limited to, negligence). All terms and conditions implied by statute, common law or otherwise are excluded.
- 6.2 Where Fendercare is required to produce any engineering study, engineering report, documents and the like as identified in the Proposal to be provided by Fendercare (“Deliverables”) for the proper carrying out of the Offshore Services, Fendercare shall submit such Deliverables to Client as may be requested, for review and, if required by Fendercare, for comment by Client. However, Fendercare shall only be required to furnish general arrangement drawings and outline specifications in relation to the Offshore Services.

Deliverables to be submitted by Fendercare to Client shall be clearly marked or stamped with one of the following indications:

“FOR APPROVAL”: These are drawings and documents that require the approval of the Client.

"FOR REFERENCE": These are all drawings and documents other than those required for approval which are produced by the Fendercare in connection with the Offshore Services. These are for technical information only.

Client shall carry-out the review of any such Deliverables requiring Client’s approval within ten (10) calendar days from the date of their submission (“the Review Cycle”). In the event of Client’s failure to comply with the Review Cycle, then the price and/or the Project Schedule shall be adjusted as to indemnify Fendercare from the effects thereof. All such Deliverables requiring Client’s approval will be deemed approved at the expiry of the Review Cycle.



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- 6.3 Unless otherwise agreed in writing, Fendercare's point of mobilisation and demobilisation of crew, equipment and marine spread shall be at a port or marine base in England.
- 6.4 Client shall obtain, at its cost and in advance of the Mobilisation Date, all clearances and/or approvals required for direct entry and unrestricted access of Fendercare, its required marine spread and all equipment required to the Offshore Worksite without any port inward or outward clearance.
- 6.5 Client shall provide full and unimpeded access of the Offshore Worksite to Fendercare to enable Fendercare to carry out the Offshore Services according to the agreed Project Schedule and without any interference or delay, such interference or delay including but not limited to unavailability of the necessary clearances and/or approvals and hindrance by simultaneous or other third party operations at the Offshore Worksite. In the event that access to the Offshore Worksite is denied, impeded or delayed for any reason beyond Fendercare's responsibility or control, Client shall authorize corresponding variations to the Project Schedule and/or the Contract Price.
- 6.6 Client shall be fully responsible for all import duties, taxes and clearance charges relating to the importation of the Client Supplied Equipment to the Offshore Worksite.

## **7 SCHEDULE**

- 7.1 Fendercare shall provide to the Client a detailed work plan of the Offshore Services, taking into account Client's proposed delivery date of Client Supplied Equipment and Mobilisation Date. When approved by Client, this work plan shall become the agreed project schedule for the Offshore Services (the "Project Schedule").
- 7.2 Fendercare shall update the Project Schedule to take into account any variations or other permitted changes to the Project Schedule and submit updated Project Schedules for approval by Client. There should be only one approved Project Schedule at any particular time.
- 7.3 Unless otherwise agreed between the Parties in writing, Client shall provide Fendercare with the following estimated and firm notices of delivery of Client Supplied Equipment:
- 7.3.1 Notice of 30 day window upon signing of Contract;
- 7.3.2 Notice of 15 day window within the 30 day window specified under Article 7.3.1 and no less than 60 days before the first day of the 30 day window for the Mobilisation Date specified under Article 7.4.1
- 7.3.3 Notice of the actual delivery date within the 15 day window specified under Article 7.3.2 and no less than 30 days before the actual Mobilisation Date specified under Article 7.4.3.
- 7.4 Unless otherwise agreed between the Parties in writing, Client shall provide Fendercare with the following estimated and firm notices of the Mobilisation Date:
- 7.4.1 Notice of 30 day window upon signing of Contract;
- 7.4.2 Notice of 15 day window no less than 60 days before the first day of the 30 day window specified under Article 7.4.1; and
- 7.4.3 Notice of the actual Mobilisation Date no less than 30 days before the Mobilisation Date.

## **8 VARIATIONS**

- 8.1 Where circumstances require, the Parties may mutually agree to vary the Offshore Services with corresponding variations to the Contract Price and/or Project Schedule. The Parties shall mutually agree on how the Offshore Services may be varied by either Party and how the prices shall be determined for such variations.



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### 9 SUSPENSION & FORCE MAJEURE

- 9.1 In the event that the Offshore Services are suspended for any reason whatsoever other than Fendercare's default, the Client shall pay Fendercare the applicable stand-by rates in the Proposal for each day that Fendercare remains on stand-by at the Offshore Worksite, and the Project Schedule shall be extended accordingly. In the event that the aggregate period of suspension in relation to the Contract exceeds or is anticipated to exceed 14 days, Fendercare shall have the right to demobilise its materials, equipment and marine spread in order to perform any other existing contractual commitments (including to other third parties). In such a case, Client and Fendercare shall discuss a mutually acceptable remobilisation schedule, taking Fendercare's other commitments and the Client's schedule requirements into consideration. Any and all costs incurred in connection with such demobilisation and/or remobilisation shall be for the Client's account. Upon cessation of any period of suspension, Fendercare shall provide an updated Project Schedule which shall be extended on account of any delay caused by such period of suspension.
- 9.2 If any force majeure event occurs which prevents or hinders Fendercare's performance of the Offshore Services, the Project Schedule shall be extended accordingly. Both parties shall, without delay, exercise reasonable efforts to agree on a mutually acceptable course of action to minimise any effects of such force majeure event. For each day that Fendercare remains on stand-by at the Offshore Worksite due to any force majeure event, Fendercare shall be entitled to payment at the relevant stand-by rate in the Proposal. In the event that the aggregate delay to the Project Schedule caused by one or more force majeure event(s) exceeds 14 days, Fendercare shall have the right to demobilise its materials, equipment and marine spread in order to perform any other existing contractual commitments (including to third parties). In such a case, Client and Fendercare shall discuss a mutually acceptable remobilisation schedule, taking Fendercare's other commitments and the Client's schedule requirements into consideration. Any and all costs incurred in connection with such demobilisation and/or remobilisation shall be for the Client's account. Upon cessation of any force majeure event, Fendercare shall provide an updated Project Schedule which shall be extended on account of any delay caused by such force majeure event.

### 10 TERMINATION

- 10.1 For termination for convenience by Client, Fendercare shall be paid for all Offshore Services performed up to the date of termination, mobilisation and demobilisation fees, the costs/expenses resulting from termination (including termination cost of vessel charter party and subcontracts) and a cancellation fee of 25% of the Contract Price
- 10.2 In the event of any material breach by a Party of any term or condition of the Contract, the other Party may terminate the Contract if, following written notice by Party of the other Party's breach, such breach is not remedied within a reasonable period. In such event, Fendercare shall be paid for all Offshore Services completed and expenses incurred up to the date of termination.
- 10.3 In the event of an application or order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either Party (other than for the purpose of reconstruction or amalgamation) or if a receiver is applied for and/or appointed or if either Party suspends payment or ceases to carry on business, the other Party may terminate the Contract by written notice. In such event, Fendercare shall be paid for all Offshore Services completed and expenses incurred up to the date of termination.

### 11 INDEMNITIES & LIABILITIES

- 11.1 "Fendercare Group" shall mean Fendercare, its subcontractors (of any tier), its and their affiliates, its and their respective directors, officers and employees (including agency personnel) excluding any member of Client Group. "Client Group" shall mean the Client, its co-venturers, its client(s) (of any tier), its and their respective affiliates and its and their respective directors, officers and employees (including agency personnel) excluding any member of Fendercare Group. "Group" shall mean the Fendercare Group or the Client Group as the context requires.

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- 11.2 Each Party shall be responsible for all loss of or damage to the property of (whether owned, hired or leased or otherwise) any member of its Group, and for personal injury, death or disease of any member of its Group and shall indemnify, protect, defend and hold harmless the other Party Group accordingly irrespective of cause or circumstance and even if caused by the negligence of any member of the other Party Group.
- 11.3 Subject to Article 11.7, each Party shall be responsible for and shall indemnify, defend and hold harmless the other Party Group against any loss, damage, death, disease or injury caused to any third party by the negligence of a member of its Group.
- 11.4 Each Party shall be responsible for and shall indemnify, defend and hold harmless the other Party's Group against all loss, damage, claims and liabilities whatsoever arising out of actual or threatened pollution and contamination emanating from its own Group's facilities, marine spread or equipment.
- 11.5 Neither Party shall be liable to the other Party's Group for any Consequential Loss whatsoever arising out of or in connection with the performance or non-performance of the Offshore Services, and each Party shall protect, defend and indemnify the other Party from and against all such claims from any member of its Group. "Consequential Loss" shall include but shall not be limited to loss and/or deferral of production, loss of product, loss of use, business interruption, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect and whether or not foreseeable at the date of the Contract.
- 11.6 Each Party shall be responsible for and shall indemnify, defend and hold harmless the other Party's Group against any loss, claim, costs or expenses in connection with the raising, removal or destruction of any wreck or debris arising from or relating to its own Group's property irrespective of cause or circumstance, even if caused by negligence of any member of the other Party's Group.
- 11.7 Client shall be responsible for and shall indemnify, defend and hold harmless the Fendercare Group against any loss of or damage to any permanent third party oil and gas production facilities and pipelines within a 500 metre radius of any working barge or vessel which is at the time directly engaged in the Offshore Services but not while such working barge or vessel is in transit to and from the area where the Permanent Work is to be constructed or installed and all Consequential Loss (as defined in Article 11.5) arising therefrom; even if such loss or damage is caused by the negligence of any member of the Fendercare Group.
- 11.8 Notwithstanding the foregoing Fendercare Group shall not be liable for any advice or recommendations given by Fendercare Group, regardless of cause or fault (and whether or not caused or contributed to by the negligence or strict liability of Fendercare Group).
- 11.9 Fendercare and Client shall hold each other harmless for all fines and penalties incurred by them in connection with the Contract.
- 11.10 Notwithstanding any provision(s) elsewhere in this Contract:
- (a) including without limit clause 11.2, and only to the fullest extent permitted by law, Fendercare Group's total aggregate liability under and/or in connection with this Contract, whatsoever and howsoever arising from all and any loss, claim, fines, penalties, costs or expenses (including without limit legal and other professional costs and expenses) and irrespective of any negligence of whatsoever nature or extent, breach of contract (including under any indemnity), tort, strict liability or otherwise at law arising from any cause of action, shall be limited to 10% of the total Contract Price ("FC Limitation of Liability");
- (b) In excess of FC Limitation of Liability, Client shall defend, indemnify and hold harmless the Fendercare Group against all and any loss, claim, fines, penalties, costs or expenses (including without limit legal and other professional costs and expenses) whatsoever and howsoever arising irrespective of cause or circumstance and even if caused by the negligence, breach of contract (including under any indemnity), tort, strict liability or otherwise at law arising from any cause of action of any member of the Fendercare Group arising out of or in connection with the performance or non-performance of the Contract.
- 11.11 Clauses 11.10(a) and (b) shall survive the expiration of the rental period or the termination of the Contract.

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### **12 INSURANCE**

- 12.1 Client shall maintain adequate and comprehensive insurance policies (at least equivalent to the cover provided under a typical Construction All Risks policy) to cover its project, property (including property at the Offshore Worksite, in transit and, where relevant, at Fendercare's worksite), the Offshore Services and the Client Group. Such policies shall include Fendercare Group as co-assured and shall also include appropriate waivers of subrogation rights against Fendercare Group.

### **13. LAW & DISPUTE RESOLUTION**

The Contract shall be governed by the laws of England. Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in London in accordance with the rules of the London Court of International Arbitration for the time being in force. The number of arbitrators shall be one (1). The decision of the arbitrator shall be final and without appeal to the courts provided always that either party may seek to enforce an arbitral award through the courts.

### **14. NO CHANGE IN LAW**

In the event of any change(s) in any applicable laws, rules and regulations including but not limited to tax laws or regulations, which results in an increase in the cost of performance of the Offshore Services and/or delay to the Project Schedule, Fendercare shall be entitled to variations to the Contract Price and/or the Project Schedule corresponding to the increase in cost and/or delay resulting from such changes.

### **15. GENERAL**

- 15.1 Fendercare reserves the right to impose additional terms to address specific issues for the Offshore Services that had not been made known or available to Fendercare prior to a Proposal.

Title to and copyright in all things created by Fendercare under or arising out of the Offshore Services shall vest in Fendercare. Neither Party, or client (of any tier) of either Party, shall have the right of use, other than for the purposes of the Offshore Services, of any patent, copyright, proprietary right or confidential know how, trademark or process ("the IP") provided by the other Party and the intellectual property rights shall remain with the Party providing such IP. Each Party shall hold the other Party harmless for any IP infringement liability that the other Party causes. It is hereby agreed that Fendercare grants the Client a non-exclusive, royalty-free, irrevocable and transferable license to use the IP for the Offshore Services only .

- 15.2 Both parties shall maintain confidentiality in all information related to the Contract, except where it is necessary to disclose such information to subcontractors, professionals, consultants, insurers and employees, who shall be bound to maintain confidentiality of such information.
- 15.3 The Contracts rights of Third Parties Act 1999 shall not apply to the Contract.
- 15.4 The remedies provided for in a Proposal and this SOST are the sole and exclusive remedies provided to Client by Fendercare and Client hereby waives all other rights and remedies available at law.
- 15.5 Except as otherwise stated herein, no waiver of any right under the Contract will serve as a waiver of the same right at any future date.
- 15.6 The Client shall not assign, transfer or otherwise deal with the Contract without the prior written consent of Fendercare.

### **16. ENTIRE AGREEMENT**

- 16.1 The SOST constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements,

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promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 16.2 Client agrees that it shall have no remedies against Fendercare, its holding company, subsidiary and affiliated companies, their officers, employees, agents (including the Operators), its subcontractor(s) (of any tier) and or any other person in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the SOST. Client agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the SOST.