

# LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(Approved and Published by the Council of Lloyd's)

## NO CURE - NO PAY

<p>1. Name of the salvage Contractors:</p> <p>(referred to in this agreement as "the Contractors")</p>	<p>2. Property to be salvaged: The vessel: her cargo freight bunkers stores and any other property thereon but excluding the personal effects or baggage of passengers master or crew (referred to in this agreement as "the property")</p>
<p>3. Agreed place of safety:</p>	<p>4. Agreed currency of any arbitral award and security (if other than United States dollars)</p>
<p>5. Date of this agreement</p>	<p>6. Place of agreement</p>
<p>7. Is the Scopic Clause incorporated into this agreement? State alternative : Yes/No</p>	
<p>8. Person signing for and on behalf of the Contractors</p> <p>Signature:</p>	<p>9. Captain or other person signing for and on behalf of the property</p> <p>Signature:</p>

**A Contractors' basic obligation:** The Contractors identified in Box 1 hereby agree to use their best endeavours to salve the property specified in Box 2 and to take the property to the place stated in Box 3 or to such other place as may hereafter be agreed. If no place is inserted in Box 3 and in the absence of any subsequent agreement as to the place where the property is to be taken the Contractors shall take the property to a place of safety.

**B Environmental protection:** While performing the salvage services the Contractors shall also use their best endeavours to prevent or minimise damage to the environment.

**C Scopic Clause:** Unless the word "No" in Box 7 has been deleted this agreement shall be deemed to have been made on the basis that the Scopic Clause is not incorporated and forms no part of this agreement. If the word "No" is deleted in Box 7 this shall not of itself be construed as a notice invoking the Scopic Clause within the meaning of sub-clause 2 thereof.

**D Effect of other remedies:** Subject to the provisions of the International Convention on Salvage 1989 as

incorporated into English law ("the Convention") relating to special compensation and to the Scopic Clause if incorporated the Contractors services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay" and any salvage remuneration to which the Contractors become entitled shall not be diminished by reason of the exception to the principle of "no cure - no pay" in the form of special compensation or remuneration payable to the Contractors under a Scopic Clause.

- E Prior services:** Any salvage services rendered by the Contractors to the property before and up to the date of this agreement shall be deemed to be covered by this agreement.
- F Duties of property owners:** Each of the owners of the property shall cooperate fully with the Contractors. In particular:
- (i) the Contractors may make reasonable use of the vessel's machinery gear and equipment free of expense provided that the Contractors shall not unnecessarily damage abandon or sacrifice any property on board;
  - (ii) the Contractors shall be entitled to all such information as they may reasonably require relating to the vessel or the remainder of the property provided such information is relevant to the performance of the services and is capable of being provided without undue difficulty or delay;
  - (iii) the owners of the property shall co-operate fully with the Contractors in obtaining entry to the place of safety stated in Box 3 or agreed or determined in accordance with Clause A.
- G Rights of termination:** When there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with Convention Articles 12 and/or 13 either the owners of the vessel or the Contractors shall be entitled to terminate the services hereunder by giving reasonable prior written notice to the other.
- H Deemed performance:** The Contractors' services shall be deemed to have been performed when the property is in a safe condition in the place of safety stated in Box 3 or agreed or determined in accordance with clause A. For the purpose of this provision the property shall be regarded as being in safe condition ~~notwithstanding even though~~ that ~~the~~ property (or part thereof) is damaged or in need of maintenance ~~if provided that~~ (i) the Contractors are not obliged to remain in attendance to satisfy the requirements of any port or ~~harbour~~ harbour authority, governmental agency or similar authority and (ii) the continuation of skilled salvage services from the Contractors or other salvors is no longer necessary to avoid the property becoming lost or significantly further damaged or delayed.
- I Arbitration and the LSSA LSA Clauses:** The Contractors' remuneration and/or special compensation shall be determined by arbitration in London in the manner prescribed by Lloyd's ~~Standard~~ Salvage and Arbitration Clauses ("the LSSA Clauses") and Lloyd's Procedural Rules LSAC) in force at the date of this agreement. The provisions of the said ~~LSSA Clauses and Lloyd's Procedural Rules~~ LSAC are deemed to be incorporated in this agreement and form an integral part hereof. Any other difference arising out of this agreement or the operations hereunder shall be referred to arbitration in the same way.
- J Governing law:** This agreement and any arbitration hereunder shall be governed by English law.
- K Scope of authority:** The Master or other person signing this agreement on behalf of the property identified in Box 2 enters into this agreement as agent for the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.
- L Inducements prohibited:** No person signing this agreement or any party on whose behalf it is signed shall at any time or in any manner whatsoever offer provide make give or promise to provide or demand or take any form of inducement for entering into this agreement.

#### IMPORTANT NOTICES

- 1 Salvage security.** As soon as possible the owners of the vessel should notify the owners of other property on board that this agreement has been made. If the Contractors are successful the owners of such property should note that it will become necessary to provide the Contractors with salvage security promptly in accordance with Clause 4 of the ~~LSSA Clauses~~ LSAC referred to in Clause I. The provision of General Average security does not relieve the salvaged interests of their separate obligation to provide salvage security to the Contractors.
- 2 Incorporated provisions.** Copies of the applicable Scopic Clause, ~~the LSSA Clauses~~ and ~~Lloyd's Procedural Rules~~ LSAC in force at the date of this agreement may be obtained from (i) the Contractors or (ii) the Salvage Arbitration Branch at Lloyd's, One Lime Street, London EC3M 7HA.
- 3 Awards.** The Council of Lloyd's is entitled to make available the Award, Appeal Award and Reasons on [www.lloydsagency.com](http://www.lloydsagency.com) (the website) subject to the conditions set out in Clause ~~42~~ 13 of the ~~LSSA Clauses~~ LSAC.
- 4 Notification to Lloyd's.** The Contractors shall within 14 days of their engagement to render services under this ~~agreement~~ Agreement notify the Council of Lloyd's of their engagement and forward the signed agreement or a true copy thereof to the Council as soon as possible. A copy of any other agreement that amends or varies the provisions or terms of this Agreement must also be provided to the Council as soon as possible. The Council will not charge for such notification.

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Fax No. +44(0)20 7327 6827

E-mail: [lloyds-salvage@lloyds.com](mailto:lloyds-salvage@lloyds.com)

~~[www.lloydsagency.com](http://www.lloydsagency.com)~~ [www.lloyds.com/agency](http://www.lloyds.com/agency)

# LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(Approved and Published by the Council of Lloyd's)

## LLOYD'S ~~STANDARD~~ SALVAGE AND ARBITRATION CLAUSES 2020

### 1 Introduction

1.1 These clauses ("the ~~LSSA Clauses~~ LSAC") or any revision thereof which may be published with the approval of the Council of Lloyd's are incorporated into and form an integral part of every contract for the performance of salvage services undertaken on the terms of Lloyd's Standard Form of Salvage Agreement as published by the Council of Lloyd's and known as LOF ~~2011 (or its predecessor LOF 2000)~~ 2020 ("LOF 2020" or "the Agreement" which ~~expression includes the LSSA clauses and Lloyd's Procedural Rules referred to in Clause 6~~ expressions include the LSAC).

1.2 All notices communications and other documents required to be sent to the Council of Lloyd's should be sent to:

Salvage Arbitration Branch  
Lloyd's  
One Lime Street  
London EC3M 7HA

Tel: +44 (0) 20 7327 5408/5407  
Fax: +44 (0) 20 7327 6827  
E-mail: lloyds-salvage@lloyds.com

1.3 Details of the fees currently payable for an Arbitrator's services, together with applicable booking and cancellation charges, may be found at [www.lloyds.com/agency](http://www.lloyds.com/agency) or will be provided on application to Lloyd's Salvage Arbitration Branch at the address set out in Clause 1.2 above.

1.4 Particular attention should be paid to the **Fixed Cost Arbitration Procedure (FCAP)** provisions which are set out in clause 15.

### 2 Overriding Objective

In construing the Agreement or on the making of any arbitral order or award regard shall be had to the overriding purposes of the Agreement namely:

- 2.1 ~~a~~to seek to promote safety of life at sea and the preservation of property at sea and during the salvage operations to prevent or minimise damage to the environment;
- 2.2 ~~b~~to ensure that its provisions are operated in good faith and that it is read and understood to operate in a reasonably businesslike manner;
- 2.3 ~~e~~to encourage cooperation between the parties and with relevant authorities;
- 2.4 ~~e~~to ensure that the reasonable expectations of salvors and owners of salvaged property are met and
- 2.5 ~~e~~to ensure that it leads to a fair and efficient disposal of disputes between the parties whether amicably, by mediation or by arbitration within a reasonable time and at a reasonable cost.

### 3 Definitions

In the Agreement and these clauses and unless there is an express provision to the contrary:

3.1 Where these clauses import the masculine gender they shall include the feminine gender.

3.2 ~~3.1~~ "Award" includes an interim or provisional Award and "Appeal Award" means any Award including any interim or provisional Award made by the Appeal Arbitrator appointed under clause ~~10.2~~ 11.2.

3.3 ~~3.2~~ "personal effects or baggage" as referred to in Box 2 of the Agreement means those which the passenger, Master and crew member have in their cabin or are otherwise in their possession, custody or control and shall include any private motor vehicle accompanying a passenger and any personal effects or baggage in or on such vehicle.

- 3.4 ~~3.3~~ "Convention" means the International Convention on Salvage 1989 as enacted by section 224, Schedule II of the Merchant Shipping Act 1995 (and any amendment of either) and any term or expression in the Convention has the same meaning when used in the Agreement.
- 3.5 ~~3.4~~ "Council" means the Council of Lloyd's
- 3.6 ~~3.5~~ "days" means calendar days
- 3.7 ~~3.6~~ "Owners" means the owners of the property referred to in box 2 of the Agreement
- 3.8 ~~3.7~~ "owners of the vessel" includes the demise or bareboat charterers of that vessel.
- 3.9 ~~3.8~~ "special compensation" refers to the compensation payable to salvors under Article 14 of the Convention.
- 3.10 ~~3.9~~ "Scopic Clause" refers to the agreement made between (1) members of the International Salvage Union (2) the International Group of P&I Clubs and (3) certain property underwriters which first became effective on 1st August 1999 and includes any replacement or revision thereof. All references to the Scopic Clause in the Agreement shall be deemed to refer to the version of the Scopic Clause current at the date the Agreement is made.

#### 4 Provisions as to Security, Maritime Lien and Right to Arrest

- 4.1 The Contractors shall immediately after the termination of the services or sooner notify the Council and where practicable the Owners of the amount for which they demand salvage security (inclusive of costs expenses and interest) from each of the respective Owners.
- 4.2 Where a claim is made or may be made for special compensation the owners of the vessel shall on the demand of the Contractors whenever made provide security for the Contractors' claim for special compensation provided always that such demand is made within 2 years of the date of termination of the services.
- 4.3 The security referred to in clauses 4.1. and 4.2. above shall be demanded and provided in the currency specified in Box 4 or in United States Dollars if no such alternative currency has been agreed.
- 4.4 The amount of any such security shall be reasonable in the light of the knowledge available to the Contractors at the time when the demand is made and any further facts which come to the Contractors' attention before security is provided. The arbitrator appointed under clause 5 hereof may, at any stage of the proceedings, order that the amount of security be reduced or increased as the case may be.
- 4.5 Unless otherwise agreed such security shall be provided (i) to the Council (ii) in a form approved by the Council and ~~(iii)~~ (iii) by ~~persons~~ person firms or corporations ~~either acceptable to the Council or acceptable to the Contractors or resident in the United Kingdom and acceptable to the Council.~~ either acceptable to the Council or acceptable to the Contractors. The Council shall not be responsible for the sufficiency (whether in amount or otherwise) of any security which shall be provided nor the default or insolvency of any person firm or corporation providing the same.
- 4.6 The owners of the vessel including their servants and agents shall use their best endeavours to ensure that none of the property salvaged is released until security has been provided in respect of that property in accordance with clause 4.5.
- 4.7 Until security has been provided as aforesaid the Contractors shall have a maritime lien on the property salvaged for their remuneration.
- 4.8 Until security has been provided the property salvaged shall not without the consent in writing of the Contractors (which shall not be unreasonably withheld) be removed from the place to which it has been taken by the Contractors under clause A. Where such consent is given by the Contractors on condition that they are provided with temporary security pending completion of the voyage the Contractors' maritime lien on the property salvaged shall remain in force to the extent necessary to enable the Contractors to compel the provision of security in accordance with clause 4.5.
- 4.9 The Contractors shall not arrest or detain the property salvaged unless:
- (i) security is not provided within 21 days after the date of the termination of the services or
  - (ii) they have reason to believe that the removal of the property salvaged is contemplated contrary to clause 4.8. or
  - (iii) any attempt is made to remove the property salvaged contrary to clause 4.8.

#### 5 Appointment of Arbitrators

- 5.1 Whether or not security has been provided (and always subject to Clause ~~6-6 and 10.8~~ 5.3 below) the Council shall appoint an arbitrator ("the Arbitrator") upon receipt of a written request provided that any party requesting such appointment shall if required by the Council undertake to the Council's reasonable satisfaction to pay the reasonable fees and expenses of the Council and those of the Arbitrator and the Appeal Arbitrator.
- 5.2 The Arbitrator, the Appeal Arbitrator and the Council may charge reasonable fees and expenses for their services whether the arbitration proceeds to a hearing or not and all such fees and expenses shall be treated as part of the costs of the arbitration.
- 5.3 The Arbitrator, or the Appeal Arbitrator as the case may be, shall be entitled to satisfactory security for his reasonable fees and expenses, whether such fees and expenses have been incurred already or are reasonably anticipated.

6 **Arbitrator's Powers**~~6 Arbitration Procedure and Arbitrators Powers~~

6.1 All references in this clause to the Arbitrator shall include the Appeal Arbitrator where the circumstances so permit.

6.2 In addition to all powers conferred by the Arbitration Act 1996 (or any amendment thereof) the Arbitrator shall have power:

- (i) to admit such oral or documentary evidence or information as he may think fit;
- (ii) to conduct the arbitration in such a manner in all respects as he may think fit subject to the LSAC 2020 Clauses;
- (iii) to make such orders as to costs, fees and expenses including those of the Council charges under clause 5.2 as may be fair and just;
- (iv) to direct that the recoverable costs of the arbitration or of any part of the proceedings shall be limited to a specified amount;
- (v) ~~6.1~~to make any orders required to ensure that the arbitration shall be conducted in accordance with the Procedural Rules approved by the Council ("Lloyd's Procedural Rules") in force at the date of the LOF agreement is conducted in a fair and efficient manner consistent with the aim to minimise delay and expense and to arrange such meetings and determine all applications made by the parties as may be necessary for that purpose;
- (vi) to conduct all such meetings by means of a conference telephone call if the parties agree;
- (vii) on his own initiative or on the application of a party to correct any award (whether interim provisional or final) or to make an additional award in order to rectify any mistake error or omission provided that (i) any such correction is made within 28 days of the date of publication of the relevant award by the Council (ii) any additional award is made within 56 days of the said date of publication or, in either case, such longer period as the Arbitrator may in his discretion allow;
- (viii) ~~6.2~~The arbitration shall take place in London unless (i) all represented parties agree to some other place for the whole or part of the arbitration and (ii) any such agreement is approved by the Arbitrator on such terms as to the payment of the Arbitrator's travel and accommodation expenses as he may see fit to impose. ~~to terminate the Agreement on application under clause 19, where he considers it fair and just to do so, having in mind the interests of all the interested parties.~~

6.3 The Arbitrator shall have power in his absolute discretion to include in the amount awarded to the Contractors the whole or part of any expenses reasonably incurred by the Contractors in:

- (i) ascertaining demanding and obtaining the amount of security reasonably required in accordance with clause 4.5;
- (ii) enforcing and/or protecting by insurance or otherwise or taking reasonable steps to enforce and/or protect their lien;
- (iii) securing the payment of the fees and expenses of the Council, the Arbitrator and the Appeal Arbitrator.

6.4 The Arbitrator shall have power to make but shall not be bound to make a consent award between such parties as so consent with or without full arbitral reasons.

6.5 The Arbitrator shall have power to make a provisional or interim partial award or awards including payments on account on such terms as may be fair and just.

6.6 ~~The Arbitrator shall be entitled to satisfactory security for his reasonable fees and expenses, whether such fees and expenses have been incurred already or are reasonably anticipated. If it be proved that a inducement has been offered to the Contractors in relation to the Agreement or at any stage thereafter, the Arbitrator shall have power to take account of such a fact, up to and including depriving the Contractors of their Award or part thereof, as he thinks fit.~~

6.7 The Arbitrator shall have the power to order one or more of the parties to provide ~~such~~ security as referred to in clause 5.3 in a sum or sums and in a form to be determined by the Arbitrator. The said power may be exercised from time to time as the Arbitrator considers appropriate.

~~6.7 Awards in respect of salvage remuneration or special compensation (including payments on account) shall be made in the currency specified in Box 4 or in United States dollars if no such alternative currency has been agreed.~~

6.8 In addition, the Appeal Arbitrator shall have power to:

- (i) admit the evidence or information which was before the Arbitrator together with the Arbitrator's Notes and Reasons for his Award, any transcript of evidence and such additional evidence or information as he may think fit;
- (ii) confirm increase or reduce the sum(s) awarded by the Arbitrator and to make such order as to the payment of interest on such sum(s) as he may think fit;
- (iii) confirm revoke or vary any order and/or declaratory award made by the Arbitrator;
- (iv) ~~6.8~~The Arbitrator's Award shall (subject to appeal as provided in clause 10) be final and binding on all the parties concerned whether they were represented at the arbitration or not and shall be published by the Council in London. award interest on any fees and expenses charged under clause 5.2 from the

expiration of 28 days after the date of publication by the Council of the Appeal Arbitrator's Award until the date payment is received by the Council both dates inclusive.

## 7 Representation of Parties

- 7.1 Any party to the Agreement who wishes to be heard or to adduce evidence shall appoint an agent or representative ordinarily resident in the United Kingdom to receive correspondence and notices for and on behalf of that party and shall give written notice of such appointment to the Council.
- 7.2 Service on such agent or representative by letter, e-mail or facsimile shall be deemed to be good service on the party which has appointed that agent or representative.
- 7.3 Any party who fails to appoint an agent or representative as aforesaid shall be deemed to have renounced his right to be heard or adduce evidence.
- 7.4 Where an Owner of salvaged cargo has not appointed an agent or representative on his behalf to receive correspondence and notices but security has been put up on behalf of the Owner of salvaged cargo, service of correspondence and notices upon the party or parties who have provided such security shall be deemed to constitute proper notification to such Owner of salvaged cargo.

## 8 Arbitration Procedure

- 8.1 The arbitration shall be conducted in accordance with these clauses.
- 8.2 The arbitration shall take place in London unless (i) all represented parties agree to some other place for the whole or part of the arbitration and (ii) any such agreement is approved by the Arbitrator on such terms as to the payment of the Arbitrator's travel and accommodation expenses as he may see fit to impose.

### 8.3 Preliminary Meeting

- (i) Within 6 weeks of being appointed or so soon thereafter as may be reasonable in the circumstances, the Arbitrator shall convene a preliminary meeting with the parties for the purpose of giving directions as to the manner in which the arbitration is to be conducted.
- (ii) The Arbitrator may dispense with the requirement for a preliminary meeting if the represented parties agree a consent order for directions which the Arbitrator is willing to approve. For the purposes of obtaining such approval, the Arbitrator must be provided by the contractors or their representatives with a brief summary of the case in the form of a check list, any other party providing such comments as they deem appropriate so that the Arbitrator is placed in a position to decide whether to approve the consent order.
- (iii) In determining the manner in which the arbitration is to be conducted, the Arbitrator shall have regards to:
- (a) the interests of unrepresented parties;
  - (b) whether some form of shortened and/or simplified procedure is appropriate including whether the arbitration may be conducted on documents only with concise written submissions;
  - (c) the Overriding Objective set out in clause 2.

### 8.4 Order for Directions

Unless there are special reasons, the initial order for directions shall include:

- (i) a date for disclosure of documents including witness statements (see clause 8.5);
- (ii) a date for proof of values;
- (iii) a date by which any party must identify any issue(s) in the case which are likely to necessitate the service of pleadings;
- (iv) a date for a progress meeting or additional progress meetings unless all represented parties with reasonable notice agree that the same is unnecessary;
- (v) unless agreed by all represented parties to be premature, a date for the hearing and estimates for the time likely to be required by the Arbitrator to read evidence in advance and for the length of the hearing;
- (vi) any other matters deemed by the Arbitrator or any party to be appropriate to be included in the initial order.

### 8.5 Disclosure of Documents

Unless otherwise agreed or ordered, disclosure shall be limited to the following classes of document:

- (i) logs and any other contemporaneous records (including all electronic data and notebooks) maintained by the Respondents' personnel and personnel employed by the Contractors (including any subcontractors) and their respective surveyors or consultants in attendance during all or part of the salvage services;
- (ii) working charts, photographs, video or film records;
- (iii) contemporaneous reports including telexes, facsimiles messages or prints of e-mail messages;
- (iv) survey reports;

- (v) documents relevant to the proof of:
  - (a) out of pocket expenses
  - (b) salvaged values
  - (c) the particulars and values of all relevant salvaging tugs or other craft and equipment
  - (d) statements of witnesses of fact or other privileged documents on which the party wishes to rely.

#### **8.6 Expert Evidence**

- (i) No expert evidence shall be adduced in the arbitration without the Arbitrator's permission.
- (ii) The Arbitrator shall not give such permission unless satisfied that expert evidence is reasonably necessary for the proper determination of an issue arising in the arbitration.
- (iii) No party shall be given permission to adduce evidence from more than one expert in each field requiring expert evidence save in exceptional circumstances.
- (iv) Any application for permission to adduce expert evidence must be made at the latest within 14 days after disclosure of relevant documents has been effected.

#### **8.7 Mediation**

The Arbitrator shall ensure that in all cases the represented parties are informed of the benefit which might be derived from the use of mediation.

#### **8.8 Hearing of the Arbitration**

- (i) In fixing or agreeing to a date for the hearing of an arbitration, the Arbitrator shall not unless agreed by all represented parties fix or accept a date unless the Arbitrator can allow time to read the principal evidence, hear the arbitration and produce the award to the Council for publication in not more than 1 month from conclusion of the hearing.
- (ii) The date fixed for the hearing shall be maintained unless application to alter the date is made to the Arbitrator within 14 days of the completion of discovery or unless the Arbitrator in the exercise of his discretion determines at a later time that an adjournment is necessary or desirable in the interests of justice or fairness.
- (iii) Unless all parties represented in the arbitration agree otherwise the Arbitrator shall relinquish his appointment if a hearing date cannot be agreed, fixed or maintained in accordance with sub-clause 8.8(i) and/or 8.8(ii) above due to the Arbitrator's commitments. In the event the Council shall appoint in his stead another arbitrator who is able to meet the requirements of this sub-clause.

8.9 Awards in respect of salvage remuneration or special compensation (including payments on account) shall be made in the currency specified in Box 4 or in United States dollars if no such alternative currency has been agreed.

8.10 The Arbitrator's Award shall (subject to appeal as provided in clause 11) be final and binding on all the parties concerned whether they were represented at the arbitration or not and shall be published by the Council in London.

### **9 Interest**

9.1 ~~8.4~~ Unless the Arbitrator in his discretion otherwise decides the Contractors shall be entitled to interest on any sums awarded in respect of salvage remuneration or special compensation (after taking into consideration any sums already paid to the Contractors on account) from the date of termination of the services until the date on which the Award is published by the Council and at a rate to be determined by the Arbitrator.

9.2 ~~8.2~~ In ordinary circumstances the Contractors' interest entitlement shall be limited to simple interest but the Arbitrator may exercise his statutory power to make an award of compound interest if the Contractors have been deprived of their salvage remuneration or special compensation for an excessive period as a result of the Owners' gross misconduct or in other exceptional circumstances.

9.3 ~~8.3~~ If the sum(s) awarded to the Contractors (including the fees and expenses referred to in clause 5.2) are not paid to the Contractors or to the Council by the payment date specified in clause ~~4.4~~ 12.1 the Contractors shall be entitled to additional interest on such outstanding sums from the payment date until the date payment is received by the Contractors or the Council both dates inclusive and at a rate which the Arbitrator shall in his absolute discretion determine in his Award.

### **10 Currency Correction**

In considering what sums of money have been expended by the Contractors in rendering the services and/or in fixing the amount of the Award and/or Appeal Award the Arbitrator or Appeal Arbitrator shall to such an extent and insofar as it may be fair and just in all the circumstances give effect to the consequences of any change or changes in the relevant rates of exchange which may have occurred between the date of termination of the services and the date on which the Award or Appeal Award is made.

## 11 ~~10~~ Appeals and Cross Appeals

- 11.1 ~~40.1~~ Any party may appeal from an Award by giving written Notice of Appeal to the Council provided such notice is received by the Council no later than 21 days after the date on which the Award was published by the Council.
- 11.2 ~~40.2~~ On receipt of a Notice of Appeal the Council shall refer the appeal to the hearing and determination of an appeal arbitrator of its choice ("the Appeal Arbitrator").
- 11.3 ~~40.3~~ Any party who has not already given Notice of Appeal under clause ~~40.4~~ 11.1 may give a Notice of Cross Appeal to the Council within 21 days of that party having been notified that the Council has received Notice of Appeal from another party.
- 11.4 ~~40.4~~ Notice of Appeal or Cross Appeal shall be given to the Council by letter, e-mail or facsimile.
- 11.5 ~~40.5~~ If any Notice of Appeal or Notice of Cross Appeal is withdrawn prior to the hearing of the appeal arbitration, that appeal arbitration shall nevertheless proceed for the purpose of determining any matters which remain outstanding.

~~40.6 The Appeal Arbitrator shall conduct the appeal arbitration in accordance with Lloyd's Procedural Rules so far as applicable to an appeal.~~

- 11.6 ~~40.7 In addition to the powers conferred on the Arbitrator by English law and the Agreement, the Appeal Arbitrator shall have power to:~~
- ~~(i) admit the evidence or information which was before the Arbitrator together with the Arbitrator's Notes and Reasons for his Award, any transcript of evidence and such additional evidence or information as he may think fit;~~
  - ~~(ii) confirm increase or reduce the sum(s) awarded by the Arbitrator and to make such order as to the payment of interest on such sum(s) as he may think fit;~~
  - ~~(iii) confirm revoke or vary any order and/or declaratory award made by the Arbitrator;~~
  - ~~(iv) award interest on any fees and expenses charged under clause 40.8 from the expiration of 28 days after the date of publication by the Council of the Appeal Arbitrator's Award until the date payment is received by the Council both dates inclusive.~~
- ~~40.8 The Appeal Arbitrator shall be entitled to satisfactory security for his reasonable fees and expenses, whether such fees and expenses have been incurred already or are reasonably anticipated. The Appeal Arbitrator shall have the power to order one or more of the parties to provide such security in a sum or sums and in a form to be determined by the Appeal Arbitrator. The said power may be exercised from time to time as the Appeal Arbitrator considers appropriate.~~ all cases grounds of appeal or cross appeal will be given to the Arbitrator within 21 days of the Notice of Appeal or Cross Appeal unless an extension of time is agreed.

- 11.7 Any respondent to an appeal who intends to contend that the award of the Arbitrator should be affirmed on grounds other than those relied upon by the Arbitrator shall give notice to that effect specifying the grounds of his contention within 14 days of receipt of the grounds of appeal mentioned in 11.6 above unless an extension of time is agreed.

- 11.8 ~~40.9~~ The Appeal Arbitrator's Award shall be published by the Council in London.

## 12 ~~11~~ Provisions as to Payment

- 12.1 ~~41.1~~ When publishing the Award the Council shall call upon the party or parties concerned to pay all sums due from them which are quantified in the Award (including the fees and expenses referred to in clause 5.2) not later than 28 days after the date of publication of the Award ("the payment date").
- 12.2 ~~41.2~~ If the sums referred to in clause ~~41.1~~ 12.1 (or any part thereof) are not paid within 56 days after the date of publication of the Award (or such longer period as the Contractors may allow) and provided the Council has not received Notice of Appeal or Notice of Cross Appeal the Council shall realise or enforce the security given to the Council under clause 4.5 by or on behalf of the defaulting party or parties subject to the Contractors' providing the Council with any indemnity the Council may require in respect of the costs the Council may incur in that regard.
- 12.3 ~~41.3~~ In the event of an appeal and upon publication by the Council of the Appeal Award the Council shall call upon the party or parties concerned to pay the sum(s) awarded. In the event of non-payment and subject to the Contractors providing the Council with any costs indemnity required as referred to in clause ~~41.2~~ 12.2 the Council shall realise or enforce the security given to the Council under clause 4.5 by or on behalf of the defaulting party.
- 12.4 ~~41.4~~ If any sum(s) shall become payable to the Contractors in respect of salvage remuneration or special compensation (including interest and/or costs) as the result of an agreement made between the Contractors and the Owners or any of them, the Council shall, if called upon to do so and subject to the Contractors providing to the Council any costs indemnity required as referred to in clause ~~41.2~~ 12.2 realise or enforce the security given to the Council under clause 4.5 by or on behalf of that party.
- 12.5 ~~41.5~~ Where (i) no security has been provided to the Council in accordance with clause 4.5 or (ii) no Award is made by the Arbitrator or the Appeal Arbitrator (as the case may be) because the parties have been able to settle all matters in issue between them by agreement the Contractors shall be responsible for payment of the fees and expenses referred to in clause 5.2. Payment of such fees and expenses shall be made to the Council within 28 days of the Contractors or their representatives receiving the Council's invoice failing which the Council shall be entitled to interest on any sum outstanding at UK Base Rate prevailing on the date of the invoice plus 2% per annum until payment is received by the Council.
- 12.6 ~~41.6~~ If an Award or Appeal Award directs the Contractors to pay any sum to any other party or parties including the whole or any part of the costs of the arbitration and/or appeal arbitration the Council may deduct from sums received by the Council on behalf of the Contractors the amount(s) so payable by the Contractors unless the Contractors provide the Council with satisfactory security to meet their liability.



12.7 ~~41.7~~ Save as aforesaid every sum received by the Council pursuant to this clause shall be paid by the Council to the Contractors or their representatives whose receipt shall be a good discharge for it.

12.8 ~~41.8~~ Without prejudice to the provisions of clause 4.5 the liability of the Council shall be limited to the amount of security provided to it.

### 13 ~~42~~ Awards

13.1 ~~42.1~~ The Council will ordinarily make available the Award or Appeal Award and Reasons on ~~www.lloydsagency.com~~ [www.lloyds.com/agency](http://www.lloyds.com/agency) (the website) except where the Arbitrator or Appeal Arbitrator has ordered, in response to representations by any party to the Award or Appeal Award, that there is a good reason for deferring or withholding them. Any party may [apply to](#) make such representations to the Arbitrator provided a written notice of its intention to do so is received by the Council no later than 21 days after the date on which the Award or Appeal Award was published by the Council ~~and the representations themselves are submitted in writing to the Arbitrator or Appeal Arbitrator within 21 days of the date of the notice of intention.~~

13.2 ~~42.2~~ Subject to any order of the Arbitrator or Appeal Arbitrator, the Award, or Appeal Award, and Reasons will be made available on the website as soon as practicable after expiry of the 21 day period referred to in clause ~~42.1~~ [13.1](#).

13.3 ~~42.3~~ In the event of an appeal being entered against an Award, the Award and Reasons shall not be made available on the website until either the Appeal Arbitrator has issued his Appeal Award or the Notice of Appeal is withdrawn subject always to any order being made in accordance with clause ~~42.4~~ 13.1.

## 14 Special Cargo Provisions

~~These Special Provisions shall apply to salvaged cargo insofar as it consists of laden containers.~~

~~13 The parties agree that any correspondence or notices in respect of salvaged cargo which is not the subject of representation in accordance with Clause 7 of these Rules may be sent to the party or parties who have provided salvage security in respect of that property and that this shall be deemed to constitute proper notification to the owners of such property.~~

### 14.1 Where:

- (i) ~~14 Subject to the express approval of the Arbitrator, where an A settlement agreement is has or agreements have been reached between the Contractors and the owners of salvaged cargo comprising some Owners of salvaged cargo, and~~
- (ii) ~~Those Owners of salvaged cargo are at the time of settlement with Contractors represented in accordance with clause 7 of these clauses, and~~
- (iii) ~~The total value of the cargo(es) owned by those Owners comprises at least 75% by value of the salvaged cargo represented in accordance with Clause clause 7 of these Rules, the same agreement shall be binding on the owners of all salvaged clauses.~~

~~The Arbitrator shall have the power at any time to call for (unless privileged) and take into account the terms of any such settlement agreement(s) and to give to it or them such weight as seems to him to be appropriate when assessing the salvage award against the Owners of all unrepresented cargo who were have not represented settled at the time of the said approval agreement.~~

14.2 ~~15 Subject to the express approval of the Arbitrator, any salvaged cargo Where the cost of proceeding against a contributing cargo interest is likely to be disproportionate to its liability for salvage, the Arbitrator may at any stage of the proceedings order and direct that all such contributing cargo interests with a total salvaged value below an agreed figure may of their interests (which may be estimated or actual) below a figure to be decided by the Arbitrator shall be omitted from the salvaged fund and excused from liability for salvage where the cost of including such cargo in the process is likely to be disproportionate to its liability for salvage.~~

## 15 Fixed Cost Arbitration Procedure (FCAP)

15.1 In assessing cases which are suitable for this procedure the arbitrators will have regard to the Overriding Objective in clause 2; further:

- (i) The Arbitrator will take into account the recommendation made by the Lloyd's Salvage Group that cases where the security demand is less than US\$2,000,000 will usually be appropriate for the FCAP.
- (ii) FCAP will not be ordered in cases where the Arbitrator considers that an oral hearing is needed or appropriate: such cases would include but not be limited to those involving allegations of bad faith, criticism of salvors, complex factual issues and complex expert issues.
- (iii) FCAP may be ordered in cases where the security demand considerably exceeds US\$2,000,000 where it appears to the Arbitrator that the factual issues are likely to be straightforward and that it is unlikely that the salvaged property was in any immediate physical danger.
- (iv) The expression 'security demand' shall mean the amount of security demanded by the Contractors in accordance with clause 4, provided always that any party may apply to the Arbitrator within 28 days of the making of that security demand to review that amount solely for the purposes of the operation of these Guidelines. It follows that an application under this clause may be made even though no application is made under clause 4.4.
- (v) In all cases, any party which wishes to contend that FCAP should apply should notify the other parties to that effect as soon as possible after the making of the security demand, irrespective of whether or not an Arbitrator has been appointed.

- 15.2 (i) Pursuant to the powers provided by clause 8.3 (iii) above the Arbitrator will, in every case, invite the parties to advise him or her at the earliest opportunity whether the case is suitable for determination by FCAP.
- (ii) Thereafter, the Arbitrator may order that the case be determined by the FCAP or by such other procedure as may be appropriate or may adjourn determination of the question of the mode of procedure to a later date.
- (iii) Where the Arbitrator has ordered that the case be determined other than by the FCAP and it subsequently becomes apparent that the case is suitable for FCAP, the Arbitrator may revoke the previous order and order that the case be determined by FCAP.
- (iv) Where the Arbitrator has ordered that the case shall be determined by FCAP and it subsequently becomes apparent that the case is not suitable for that procedure, the Arbitrator may revoke the previous order and order the case to be determined by such other procedure as may be appropriate.

15.3 At the earliest opportunity the Arbitrator will invite the parties to consider the extent of disclosure required or whether the case or any aspect of it can be determined upon an agreed statement of the facts. Unless otherwise ordered each party will disclose to the other party or parties, on or before the date ordered by the Arbitrator the following documents.

- (i) All documents upon which they seek to rely relevant to the salvage services, the dangers, alternative assistance, values and any other relevant matter, whether contemporaneous or acquired after termination of the services, and
- (ii) Any privileged documents and witness statements which that party intends to invite the Arbitrator to take into consideration, by providing copies thereof.

15.4 Where FCAP is ordered the following procedure should normally be followed,

- (i) By the date fixed by the Arbitrator, the parties will prepare a joint bundle, not exceeding 100 pages (excluding any necessary Schedules of Values), comprising the documents, statements and any agreed statement of facts which they wish the Arbitrator to take into consideration and will provide the same to the Arbitrator.
- (ii) Pursuant to the timetable fixed by the Arbitrator,
  - (a) The Contractors will provide submissions not exceeding 4,000 words to the Arbitrator. The said submissions will include the Contractors' case on all relevant matters, including interest, currency adjustment and costs.
  - (b) The Respondents will provide to the Arbitrator submissions not exceeding 4,000 words. The said submissions will include the Respondent's case on all relevant matters, including interest, currency adjustment and costs, and
  - (c) The Contractors will provide to the Arbitrator submissions in reply not exceeding 4,000 words alternatively a letter stating that they do not intend to provide submissions in reply.
- (iii) Where there is more than one Respondent they will cooperate with each other to the fullest possible extent with a view to avoiding duplication of submissions.
- (iv) Within 3 weeks from the date of receipt of the Contractors' submissions in reply or notice that they do not intend to reply, the Arbitrator will send the Award and Reasons to the Salvage Arbitration Branch of Lloyd's.

15.5 As to costs,

- (i) References to First Instance Fixed Costs, Fixed Charges, Fixed Costs on Appeal and the like are to Schedules of such costs published from time to time by the Salvage Arbitration Branch of Lloyd's.
- (ii) The Arbitrator's fee for FCAP will be the Fixed Charge as published by the Salvage Arbitration Branch of Lloyd's from time to time.
- (iii) The Arbitrator will be entitled to charge a fee for work not within the scope of FCAP and to include the same in the award.
- (iv) The Salvage Arbitration Branch of Lloyd's charge for administering FCAP shall be its Fixed Charge, as published by it from time to time and will include the cost of publishing the award. The Salvage Arbitration Branch of Lloyd's will be entitled to charge for work not within the scope of its Fixed Charge.
- (v) The Arbitrator shall have power to order any party to pay the costs of any other party. A party in whose favour an order for costs is made shall not be entitled to a sum exceeding the Fixed Costs in respect of its costs (excluding the Arbitrator's Fixed Cost and the Fixed Charge of the Salvage Arbitration Branch and any other costs not within the scope of the First Instance Fixed Costs) of FCAP.
- (vi) For the avoidance of doubt, reasonable disbursements, and the costs of obtaining security or enforcing any lien are not within the scope of the First Instance Fixed Costs and Fixed Costs on Appeal.
- (vii) The fee of any Arbitrator will include the cost of making the order for directions which includes the order that FCAP will apply.

15.6 Where an Appeal is brought pursuant clause 11 the Appeal shall be heard on documents and submissions alone. It is expected that the following procedure will apply.

- (i) Within 14 days after service of the notice of Appeal stating the grounds of the Appeal, the appellants shall provide the Appeal Arbitrator with a bundle consisting of,
  - (a) The documents provided to the Arbitrator pursuant to the Fixed Cost Procedure, and

(b) The submissions of the parties at first instance, including the Contractors' reply (if any)

and shall provide the Appeal Arbitrator with their submissions on Appeal not exceeding 4,000 words. The submissions on Appeal shall include the appellants' case on interest, currency adjustment and costs.

(ii) Within 14 days thereafter the Respondents shall provide to the Appeal Arbitrator their submissions, not exceeding 4,000 words. The submissions on Appeal will include the Respondents' case on interest, currency adjustment and costs.

(iii) Within 10 days thereafter, the appellants shall provide to the Appeal Arbitrator their submissions in reply not exceeding 4,000 words, alternatively a letter stating that they do not intend to provide submissions in reply.

(iv) Where there is more than one Respondent they will cooperate with each other to the fullest possible extent with a view to avoiding duplication of submissions on Appeal.

(v) Within 3 weeks from the date of receipt of the appellants' submissions in reply on Appeal, alternatively notice that they do not intend to reply, the Appeal Arbitrator will send the Appeal award and reasons to the Salvage Arbitration Branch of Lloyd's.

(vi) The Appeal Arbitrator's fee for FCAP will be the Fixed Charge on Appeal as published by the Salvage Arbitration Branch of Lloyd's from time to time.

(vii) The Appeal Arbitrator shall be entitled to charge a fee for work not within the scope of FCAP and to include the same in the award.

(viii) The Salvage Arbitration Branch of Lloyd's charge for administering FCAP on Appeal shall be its Fixed Charge on Appeal as published by it from time to time and will include the cost of publishing the award.

(ix) The Appeal Arbitrator shall have power to order any party to pay the costs of any other party. A party in whose favour an order for costs is made shall not be entitled to a sum exceeding the Fixed Cost in respect of its costs (excluding the Fixed Charge of the Appeal Arbitrator and the Fixed Charge of the Salvage Arbitration Branch of Lloyd's and any other costs not within the scope of the Fixed Costs on Appeal) of FCAP on Appeal.

15.7 Under FCAP the Arbitrator's reasons and the Appeal Arbitrator's reasons on Appeal will be less detailed.

#### 15.8 Documents

(i) All documents shall be readily legible.

(ii) Where a party's disclosable documents include documents in a foreign language or illegible manuscript a typed translation or transcript (as appropriate) shall be provided by that party at the time when disclosure is made.

(iii) All submissions and notices shall be typed.

(iv) Any bundle of documents shall be clearly paginated.

(v) Any document or notice required to be provided to a party or to the (Appeal) Arbitrator shall also be provided to every other relevant party.

#### **General Provisions**

16 **Lloyd's documents:** Any Award notice authority order or other document signed by the Chairman of Lloyd's or any person authorised by the Council for the purpose shall be deemed to have been duly made or given by the Council and shall have the same force and effect in all respects as if it had been signed by every member of the Council.

#### 17 **Contractors' personnel and subcontractors**

17.1 The Contractors may claim salvage on behalf of their employees and any other servants or agents who participate in the services and shall upon request provide the Owners with a reasonably satisfactory indemnity against all claims by or liabilities to such employees, servants or agents.

17.2 The Contractors may engage the services of subcontractors for the purpose of fulfilling their obligations under clauses A and B of the Agreement but the Contractors shall nevertheless remain liable to the Owners for the due performance of those obligations.

17.3 In the event that subcontractors are engaged as aforesaid the Contractors may claim salvage on behalf of the subcontractors including their employees servants or agents and shall, if called upon so to do provide the Owners with a reasonably satisfactory indemnity against all claims by or liabilities to such subcontractors their employees servants or agents.

## **18 Disputes under Scopic Clause**

Any dispute arising out of the Scopic Clause (including as to its incorporation or invocation) or the operations thereunder shall be referred for determination to the Arbitrator appointed under clause 5 hereof whose Award shall be final and binding subject to ~~appeal as provided in clause 10 hereof~~ Appeal as provided in clause 11 thereof.

## **19 Contractor's Special Right to Terminate**

19.1 In the event that the Owner validly terminates SCOPIC in accordance with SCOPIC clause 9(i) but the Contractors are unable to invoke the termination provisions under SCOPIC clause 4(ii) then the Contractors shall have the right to apply to the Arbitrator for an order that: -

(i) they are no longer bound by the terms and conditions of the Agreement and,

(ii) that the Agreement be deemed terminated without prejudice to:-

(a) the Contractors' right to recover SCOPIC up to the date of termination thereof, including any demobilization payments as may be due and,

(b) the Contractors' rights to recover under Article 13 of the convention.

19.2 Such application to be made within a reasonable time from the date of termination of SCOPIC.

## **20 ~~19~~Lloyd's Publications**

Any guidance published by or on behalf of the Council relating to matters such as the Convention the workings and implementation of the Agreement is for information only and forms no part of the Agreement.

## **SCHEDULE OF FIXED COSTS**

### **1. First Instance Fixed Costs**

(1)	Arbitrator	£4,500.00
(2)	Salvage Arbitration Branch of Lloyd's	£1,000.00
(3)	Party and party costs (excluding the costs referred to in 1 and 2 above) not exceeding	£15,000.00

### **2. Fixed Costs on Appeal**

(4)	Appeal Arbitrator	£3,000.00
(5)	Salvage Arbitration Branch of Lloyd's	£500.00
(6)	Party and party costs (excluding the costs referred to in 4 and 5 above) not exceeding	£1,500.00

3. The costs referred to in (1) and (2) above shall be due and payable as to one third on the date on which the First Instance Arbitrator makes the interlocutory order that the case is to be determined by the Fixed Costs Procedure, as to one third on the date by which the First Instance Arbitrator has ordered that mutual disclosure shall take place and one third on the date on which the First Instance Arbitrator's award is published.
4. The costs referred to in (4) and (5) above shall be due and payable as to one half on the date on which the Appeal Arbitrator is appointed and as to one half on the date on which the Appeal Arbitrator's award is published.