



SCOPIC - Who does what

Reviewing the optional Special Compensation P&I Clause of Lloyd's Open Form salvage agreement and comparing the duties and responsibilities of the parties involved.

Shipping 'At A Glance' Guide: 8

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IMPORTANT NOTE

Lloyd's Open Form salvage agreement ("LOF") and the Special Compensation P&I Clause of LOF ("SCOPIC") are revised from time to time. This guide is based on LOF and SCOPIC 2000.



Whilst care has been taken in the preparation of this guide, the matters referred to herein are subject to change and no liability or responsibility is accepted by anyone for any errors or omissions, which may exist in it. The contents of this booklet are descriptive only and should not be used as a substitute for legal advice.

Introduction and Overview

The original concept of Lloyd's Open Form was, procedurally, brilliant but simple. The ship's master and the Salvage Master could agree Lloyd's Open Form either verbally or by signing the form itself. The ship's master then knew that help was at hand and he could not be criticised for making an agreement that everyone in the maritime world saw as fair and reasonable. The Salvage Master could go ahead and do his job knowing that his work would be fairly rewarded according to the services he performed and the value of the property saved. More importantly, there was no excuse to delay agreeing Lloyd's Open Form and the salvors, often in very heroic and difficult circumstances, could get on with their real job of saving life and property. As a by-product, by preventing a drama from turning into a crisis, they often prevented damage to the environment. The salvage award was generally paid by the property underwriters who were content to pay the salvors rather than pay their assured a total loss claim. Everyone was, if not happy, at least comfortable with Lloyd's Open Form. The disasters that occurred where ships' masters or owners refused or delayed agreement to Lloyd's Open Form highlighted the benefits of the Lloyd's Open Form system and acted as an encouragement for others to embrace it.

Then politics reared its head. Oil pollution in coastal waters became a big issue. Governments around the world could have responded by putting their hands into their pockets and working with the salvage industry to provide worldwide salvage and anti-pollution facilities. Instead, they adopted the "not in my back yard" syndrome and gave themselves the powers to refuse the entry of stricken vessels into their ports and coastal waters or to order salvors to tow a casualty to the open sea and sink it there. Salvors were therefore exposed to a risk that, even after saving property (as well as life and preventing damage to the environment), they could not only lose their salvage award, but also incur further expenses.

Lloyd's Open Form 1980 was the first attempt to compensate salvors whose efforts to save a laden oil tanker were interfered with by governments or who did not succeed in saving property of sufficient value. However, the compensation was limited to their "reasonably incurred expenses" plus an increment of up to 15%, but only in the event of and to the extent that the expenses plus increment were greater than the usual "no cure, no pay" award.

With increasing coastal state intervention in salvage incidents, there were greater risks that salvors would be forced by government agencies and their contractual obligations under LOF to perform extensive anti-pollution work in circumstances where there was little likelihood of obtaining a substantial salvage award.

The next step was to incorporate Article 14 of the 1989 Salvage Convention into Lloyd's Open Form. It took the House of Lords several months to define Article 14 and in due course it made special compensation available to salvors where the vessel and/or the cargo being salvaged threatened damage to the environment in coastal waters. Special compensation under Article 14 was only payable where the special compensation itself exceeded the usual "no cure, no pay" salvage award. In addition to the salvors' expenses (excluding any element of profit), there was an uplift available of up to 30% or 100% for exceptional circumstances.

However, Article 14's special compensation satisfied no one. At a time when the number of LOF salvages was falling globally and with less economic incentive to invest in dedicated salvage tugs, or keep them on station, salvors felt that the rewards under Article 14 were insufficient to make it worthwhile participating in some operations. The P&I clubs, who were effectively being asked to pay the difference between the conventional "no cure, no pay" award and Article 14 special compensation, were unhappy about footing the bill for something in which they were not directly involved or over which they had no control. Under the revised Lloyd's Open Form the "no cure, no pay" award took into account the salvors' efforts to reduce damage to the environment for which property underwriters had to pay, even though it had no direct bearing on the property at risk. The maritime community and environmentalists were concerned that salvors might, as is their right, refuse to become engaged in salvage operations where there is little prospect of saving anything of value, but which would involve them in lengthy anti-pollution measures for little reward and the possibility of claims against them for any environmental damage that ensued. To make matters worse, the process of deciding an Article 14 special compensation award was much more costly, complex and time-consuming than the traditional "no cure, no pay" system.

The proposed answer to some of these ills is SCOPIC, or the Special Compensation P&I Clause. Where SCOPIC is added (by agreement between the salvor and the ship - it is not compulsory) to the Lloyd's Open Form and invoked, it replaces the mechanism for calculating Article 14 special compensation. Even where SCOPIC is added (by deleting 'no' on box 7 of LOF 2000) it has no effect until specifically invoked by the salvor. It should be noted that SCOPIC can be invoked if there is no threat to the environment, for example to remove a wreck. SCOPIC introduces more players into the system and increases the roles of those already involved.

One way to understand how SCOPIC works is to examine the roles of those concerned.

The Ship's Master

The master's main role in the proceedings will be his decision that his vessel requires salvage services and the type of services required. Lloyd's Open Form might be agreed by the master himself or by representatives of the shipowner ashore. Article 5.2 of the ISM Code emphasises that the master has the over-riding authority and the responsibility to make decisions with respect to safety and pollution prevention. Under Article 8 of the Code, the company must have procedures in place to deal with emergencies. Therefore, some masters may find guidance in their vessel's Safety Management System on when to agree Lloyd's Open Form and whether to include SCOPIC.

Under Article 6 of the 1989 Salvage Convention, the master has authority to conclude a salvage contract on behalf of the shipowners and the shipowners and the master have authority to conclude a salvage contract on behalf of the owners of property on board, e.g. cargo and bunkers.

If SCOPIC is brought into play during a salvage, the salvor's remuneration will reflect the work done by the salvor, for example, by assessing the number and power of tugs used and the services provided on a fixed tariff basis (see APPENDIX A). Therefore, the ship's master will, if he is still on the scene, need to keep a good record of events. The master's role in recording events will be particularly important if the shipowner does not appoint a Shipowners' Casualty Representative (SCR). However, it should be noted that SCRs will not generally provide evidence or opinion in connection with the Article 13 award arbitration and the onus remains on the master to keep good records.

There is no requirement for SCOPIC to be included in the Lloyd's Open Form when agreed since it can be included at a later stage. However, masters may be confronted by salvors insisting that SCOPIC is included and ships' masters will need to know how to deal with this request, whether they take the decision themselves or refer it to someone ashore.

The Shipowner

The first matter for the shipowner to consider is whether his P&I insurer will cover SCOPIC payments and be prepared to provide the required security.

The owner must take account of SCOPIC in his Safety Management System and emergency procedures. There should be a clear statement as to which persons have the authority and responsibility for agreeing SCOPIC in addition to the Lloyd's Open Form.

Under LOF 2000, the shipowner has certain duties such as to cooperate with the salvor, to provide information and allow reasonable use of the vessel's equipment. The duties are unaffected by SCOPIC.

Once it is agreed to include SCOPIC in the Lloyd's Open Form, it is invoked by the salvors giving written notice to the shipowner. The shipowner then has two working days to provide the salvor with a bank guarantee or P&I club letter for US\$3 million to cover special compensation provisions and associated interest and costs. Once SCOPIC security is provided, it is likely to be the P&I club that responds and takes decisions on the shipowner's behalf. Since in most cases it will be the club which provides the SCOPIC security and pays special compensation, the shipowner will need to keep the club closely informed. The owner may find the club taking the lead and being actively involved.

The amount of the guarantee can be reduced or increased depending on the salvors' reasonable assessment of the special compensation. The shipowner can ask for the amount of the security to be decreased.

If no guarantee is provided, the salvor can give notice to the owner and withdraw from SCOPIC so that Article 14 decides any special compensation, i.e. as if SCOPIC was never invoked.

A SCOPIC payment, to the extent that it exceeds the "no cure no pay" award, is not recoverable in general average.

The shipowner (in effect, his P&I club) may appoint a SCR from an agreed panel of salvage and pollution experts.

One month after the termination of services, the owner's club may be required to make a payment on account depending on the assessment for special compensation, the prospects for a "no cure, no pay" salvage award and the amount of "no cure, no pay" security demanded from ship and cargo.

The shipowner or the salvor may terminate the entire Lloyd's Open Form services if there are no reasonable prospects for saving valuable property. Reasonable notice must be given, but not less than five clear days if SCOPIC has been invoked. SCOPIC expenses incurred up to then are still payable.

Charterers

SCOPIC does not change the liabilities of charterers. They only remain liable for their portion of the “no cure, no pay” award if they own bunkers on board the vessel. They do not have the right to have representatives present during the salvage - although there is nothing to prevent the Salvage Master from agreeing to this - and they have no right to influence the operation. This may be exasperating for a high profile charterer - such as an oil major - whose name is associated with the casualty and who may face liabilities themselves in some jurisdictions but who have no influence over the outcome.

H&M Underwriters, Cargo Underwriters and Cargo Owners

H&M underwriters will have the right to have one observer present, known as the Special Hull Representative, and to receive copies of the Salvage Master’s reports. Cargo owners and cargo underwriters can, between them, appoint one Special Cargo Representative. Property owners/underwriters will also be able to appoint surveyors to report on physical damage or causation of the casualty, but not in respect of the salvage operation. Underwriters will still generally secure and pick up the tab for the “no cure, no pay” element of the salvage award so that in many cases the underwriters will be the principal payers. They may well feel uneasy that the P&I club, through the SCR, can influence the salvage services for which underwriters are paying, especially if there is a real or perceived choice between reducing pollution costs and saving property. But SCOPIC may be an improvement in this respect since the clause only comes into play if the salvor genuinely thinks that special compensation is payable, whereas under the Article 14 regime there is the same likelihood of tensions arising even when it is far from clear that special compensation is payable.

Underwriters should bear in mind that SCRs often refuse to give evidence or opinion for the Article 13 arbitration and they should consider appointing Special Representatives or surveyors even when an SCR is present.

The Owner's P&I Club

Although the International Group of P&I Clubs were involved in developing SCOPIC, clubs are not bound by the SCOPIC clause. A code of practice has been agreed between the International Group of P&I Clubs and the International Salvage Union but does not have any legal effect. The code of practice mainly relates to security to cover claims for special compensation. The main points of the code are:-

- ◆ The clubs confirm that, although they expect to provide security for SCOPIC, it is not automatic.
- ◆ The clubs can refuse to provide security where the club rules have been breached in circumstances so as to allow the club to deny cover.
- ◆ The clubs will not refuse to give security solely because the salvor cannot obtain security in any other way.
- ◆ The club will advise the salvor within two working days of the SCOPIC clause being invoked whether or not they will provide security.
- ◆ The salvor will accept security for special compensation by way of a P&I club letter and will not insist on the provision of security at Lloyd's.
- ◆ The club will consider providing security to a port authority to permit a ship to enter a port of refuge.

Therefore, where the member is covered, it will generally be the club that provides security, makes payment on account to the salvor and, finally, pays the special compensation award to the extent that this exceeds the "no cure, no pay" award.

We have experience of P&I insurers outside of the International Group using SCOPIC.

One aspect which might cause intense argument is the question of P&I club coverage. If the club follows the guidelines, then it only has two days in which to decide whether or not to provide the security. This might be at a time before they have had a chance to investigate the causes of the casualty. According to the spirit of SCOPIC, the club will make a quick decision one way or the other. However, where the cause of the casualty is not immediately apparent or the club does not

have good relations with the owner or perhaps if the potential claims are large, it will be tempting for the club to investigate the cause of the casualty before deciding whether or not to provide security. Of course, the bulk of coverage issues will depend on whether or not the member paid his calls/premiums which should be easy for the club to assess.

Problems may arise in circumstances where the club, at the end of the two days, is still undecided as to whether or not the member is covered. This could be the case where there is a doubt as to whether the club would have a defence under the 1906 Marine Insurance Act: for example, if they suspected that the casualty occurred because of unseaworthiness to which the owner was privy or that the casualty occurred because of a deliberate or criminal act. The club will then have to make a choice between (a) providing the security (and perhaps losing the opportunity to avoid a claim which, under other circumstances, they might be perfectly entitled to avoid), or (b) the risk of not providing the security and not obtaining pollution prevention services for the ship and then facing massive pollution claims. However, in our experience of SCOPIC so far (12 matters at the time of writing), coverage issues have not arisen.

Although it is the shipowner's option to appoint a SCR, in most cases the SCR will be appointed by and report to the P&I club.

The Shipowner's Casualty Representative (SCR)

The SCR is appointed by the shipowner, or by the shipowners' P&I club, to attend the salvage operation. He will be picked from a pool of salvage experts (see page 27 for the current list of SCRs) agreed upon by the SCR Committee. The SCR's role is to use his best endeavours to assist in the salvage of the vessel and minimise damage to the environment. Although the Salvage Master remains in overall charge of the operation, he must consider the views of the SCR and satisfy his requirements if reasonable. The Salvage Master will present his plan to the SCR who should formally approve the plan if satisfied or, if he disapproves, advise the Salvage Master in writing. If the SCR approves of the Salvage Master's daily reports, he should endorse the reports or prepare a dissenting report setting out his objections.

The SCR should prepare a daily cost schedule and then a final report at the end of the services.

His prime role is to consider whether any equipment, personnel or procedures being used are unnecessary and, if so, to give written notice to the Salvage Master. Any payments on account for special compensation are made on the basis of the SCR's views as to the appropriate equipment or procedure.

Once the shipowner appoints an SCR, the salvor may refuse access to any other surveyors/experts, in respect of the salvage services, appointed on behalf of the owner.

There is a code of understanding between the International Group of P&I Clubs and London Property Underwriters to share the SCR's fees unless 50% of the SCR's fees and disbursements exceed the salvaged value of the property less the Article 13 award, in which case the fees are borne by the club alone.

The SCR Committee

The committee will comprise three representatives each from the International Group of P&I Clubs, the International Salvage Union, the International Chamber of Shipping and the International Union of Marine Insurance. Its role is to select and review members of the SCR panel and to review the SCOPIC tariff rates. Committee members propose a panel member and the proposal is accepted unless at least four committee members vote against the inclusion of a proposed panel member.

The Special Representatives (SRs)

The Hull and Cargo Special Representatives will have access to the salvage operation, but as observers only. They will receive information from the SCR but, if no SCR is appointed, from the Salvage Master direct. The SR cannot be a practising lawyer.

The Salvage Master

The Salvage Master remains in overall command of the salvage operation (subject, perhaps, to intervention by the coastal state) and must use his best endeavours to save property and reduce damage to the environment. He must, however, give careful consideration to the views of the SCR and endeavour to satisfy the SCR's reasonable requirements. He must present and discuss his salvage plan with the SCR as well as making daily reports, which should be discussed with the SCR. The Salvage Master and SCR should make their reports available to all parties to the contract.

A final salvage report is prepared at the end of the services.

The Salvor

Even if the salvor is a member of the ISU, SCOPIC is not automatically included in Lloyd's Open Form unless it is specifically agreed. Even if SCOPIC is agreed, it has no effect until invoked by the salvor. There need not be a threat of damage to the environment for SCOPIC to be invoked. Services performed by the salvor before the shipowner receives notice do not count towards special compensation. Only those that follow. However, SCOPIC includes a provision to restrain the salvor from invoking SCOPIC without good cause. If SCOPIC is invoked and it is finally found that the special compensation amount does not exceed the ordinary "no cure, no pay" award (so that no special compensation is in fact payable), the salvage award will be reduced by 25% of the difference. Therefore, the salvor will have to consider carefully whether or not to invoke SCOPIC.

Although SCOPIC was negotiated by the ISU, we have experience of non-ISU salvors using SCOPIC.

At the end of the services, the salvor must reduce the security level to a reasonable amount if his reasonable assessment of the special compensation due is less than US\$3 million. He can also ask for it to be raised if it is not sufficient.

The salvor can withdraw from the agreement if the shipowner does not provide a guarantee within two working days of notice and revert to the normal Lloyd's Open Form. The salvor will also have the right to terminate the entire agreement if the overall cost of providing the salvage services less any special compensation payment is greater than the value of the property saved. In other words, if the salvor finds that it is not in his economic interest to continue, he can pull out of the whole salvage agreement. Of course, this will be subject to any restraints placed on the salvor by local authorities.

The Arbitrator

The arbitrator's main function is to determine the "no cure, no pay" award and special compensation, but special compensation is only payable to the extent that it exceeds the "no cure, no pay" award. The arbitrator must base the special compensation on a tariff rate for the equipment and personnel reasonably employed by the salvor, the reasonable use of the salvor's tugs according to tariff rates based on their horsepower and other expenses reasonably incurred such as fuel, lube oil and the hiring of men and equipment. However, where third party personnel and equipment are hired, the special compensation is still based on the tariff rates except in the case of hiring from non-ISU members.

The bases for determining the special compensation are the daily and final reports prepared by the Salvage Master and SCR. These will show the personnel and equipment being used for the operation with the type of work being done and the number of days engaged. Equipment in use attracts the full daily tariff rate, but equipment reasonably mobilised but not used attracts only 50% of the rate.

For portable salvage equipment, there is a limit of the total charged for each item of 1.5 times its retail price. Compensation is also available for equipment lost or destroyed during the services and consumables are treated as out-of-pocket expenses. If salvage equipment malfunctions, the daily rate is only payable for the time it is functioning and in use.

There is an automatic uplift of 25%.

The arbitrator may also be called upon to decide what level of security is reasonable. No doubt the principal arguments put to arbitrators will concern whether or not it was reasonable for the salvor to have used the level of equipment and personnel both in terms of cost and in terms of effectiveness. It appears that the vast majority, if not all, of SCOPIC cases are settled without the need for a hearing.

Simplified Example of SCOPIC Calculation

SCOPIC Special Compensation

Item	Cost per day US\$	Item Cost US\$
Two 7,000 BHP tugs for 10 days rated FiFi 1.0 (of which 2 days fire fighting)	1.5 per BHP Plus 1,000 when fire fighting	214,000
Salvage Master for 10 days	1,500	15,000
Diving Supervisor for 5 days	1,000	5,000
4 Divers for 5 days	750	15,000
150 kw Generator for 10 days (mobilised but not used)	200 (@50%)	1,000
4" electrical submersible pump (used for 2 days but then breaks down and is no longer used)	150	300
Two 4 ton Air Bags (Retail Price US\$ 250 each) Mobilised and Used for 20 days	40 (n.b. limit of 1.5 times retail price for portable equipment)	750
Two 15-ton winches and wire mobilised but not used. Agreed not reasonable to mobilise	Nil	Nil
Consumables Welding Rods Fuel and lubes Fire Fighting Foam	Charged at cost	750 11,000 2,000
Plus many other items!		
Total		2,000,000
Add 25% uplift		2,500,000
Interest accrues at US\$ prime rate plus 1% from termination of services until final payment		Say 100,000
Total with interest		2,600,000

Article 13 “No Cure, No Pay” Award²

Based on a Total Salvaged Fund of US\$ 1,500,000

Ship and Bunkers Salvaged Value	US\$500,000 (1/3 of fund)
Cargo Salvaged Value	US\$1,000,000 (2/3 of fund)
Article 13 Award assessed at	US\$700,000
Add, say, US\$50,000 for interest and apply currency adjustment factor	US\$50,000
Total for Article 13	US\$750,000
Ship Interests (probably Hull and Machinery Underwriters ²) pay	US\$250,000
Cargo Interests (probably Cargo Underwriters ²)	US\$500,000

SCOPIC Payment³

Total	US\$ 2,600,000
Less total Article 13 Award	US\$ 750,000
Balance Payable by Ship Interests ¹	US\$ 1,850,000

(Probably the P&I Club²)

NB. Whilst the Article 13 award may be subject to a currency adjustment factor, the SCOPIC compensation is not and is always calculated in United States Dollars.

- 1 Costs are in addition. Salvors' costs are apportioned between Article 13 (payable by ship and cargo in the same proportion as values) and SCOPIC (payable by the ship/its P&I Club).
- 2 Subject to the applicable deductible and policy terms. There are also terms for timing of payment of the SCOPIC remuneration.
- 3 There are also terms for timing of payment of the SCOPIC remuneration.

SCOPIC CLAUSE

1. General

This SCOPIC clause is supplementary to any Lloyd's Form Salvage Agreement "No Cure, No Pay" ("Main Agreement") which incorporates the provisions of Article 14 of the International Convention on Salvage 1989 ("Article 14"). The definitions in the Main Agreement are incorporated into this SCOPIC clause. If the SCOPIC clause is inconsistent with any provisions of the Main Agreement or inconsistent with the law applicable hereto, the SCOPIC clause, once invoked under sub-clause 2 hereof, shall override such other provisions to the extent necessary to give business efficacy to the agreement. Subject to the provisions of Clause 4 hereof, the method of assessing Special Compensation under Convention Article 14(1) to 14(4) inclusive shall be submitted by the method of assessment set out hereinafter. If this SCOPIC clause has been incorporated into the Main Agreement the Contractor may make no claim pursuant to Article 14 except in the circumstances described in sub-clause 4 hereof. For the purposes of liens and time limits the services hereunder will be treated in the same manner as salvage.

2. Invoking the SCOPIC Clause

The Contractor shall have the option to invoke by written notice to the owners of the vessel the SCOPIC clause set out hereafter at any time of his choosing regardless of the circumstances and, in particular, regardless of whether or not there is a "threat of damage to the environment". The assessment of SCOPIC remuneration shall commence from the time the written notice is given to the owners of the vessel and services rendered before the said written notice shall not be remunerated under this SCOPIC clause at all but in accordance with Convention Article 13 as incorporated into the Main Agreement ("Article 13").

3. Security for SCOPIC Remuneration

- (i) The owners of the vessel shall provide to the Contractor within 2 working days (excluding Saturdays and Sundays and holidays usually observed at Lloyd's) after receiving written notice from the contractor invoking the SCOPIC clause, a bank guarantee or P&I Club

letter (hereinafter called “the Initial Security”) in a form reasonably satisfactory to the Contractor providing security for his claim for SCOPIC remuneration in the sum of US\$3 million, inclusive of interest and costs.

- (ii) If, at any time after the provision of the Initial Security the owners of the vessel reasonably assess the SCOPIC remuneration plus interest and costs due hereunder to be less than the security in place, the owners of the vessel shall be entitled to require the Contractor to reduce the security to a reasonable sum and the Contractor shall be obliged to do so once a reasonable sum has been agreed.
- (iii) If at any time after the provision of the Initial Security the Contractor reasonably assesses the SCOPIC remuneration plus interest and costs due hereunder to be greater than the security in place, the Contractor shall be entitled to require the owners of the vessel to increase the security to a reasonable sum and the owners of the vessel shall be obliged to do so once a reasonable sum has been agreed.
- (iv) In the absence of agreement, any dispute concerning the proposed Guarantor, the form of the security or the amount of any reduction or increase in the security in place shall be resolved by the Arbitrator.

4. Withdrawal

If the owners of the vessel do not provide the Initial Security within the said 2 working days, the Contractor, at his option, and on giving notice to the owners of the vessel, shall be entitled to withdraw from all the provisions of the SCOPIC clause and revert to his rights under the Main Agreement including Article 14 which shall apply as if the SCOPIC clause had not existed. PROVIDED THAT this right of withdrawal may only be exercised if, at the time of giving the said notice of withdrawal, the owners of the vessel have still not provided the Initial Security or any alternative security which the owners of the vessel and the Contractor may agree will be sufficient.

5. Tariff Rates

- (i) SCOPIC remuneration shall mean the total of the tariff rates of personnel; tugs and other craft; portable salvage equipment; out of pocket expenses; and bonus due.

- (ii) SCOPIC remuneration in respect of all personnel; tugs and other craft; and portable salvage equipment shall be assessed on a time and materials basis in accordance with the Tariff set out in Appendix “A”. This tariff will apply until reviewed and amended by the SCR Committee in accordance with Appendix B(1)(b). The tariff rates which will be used to calculate SCOPIC remuneration are those in force at the time the salvage services take place.

- (iii) “Out of pocket” expenses shall mean all those monies reasonably paid by or for and on behalf of the Contractor to any third party and in particular includes the hire of men, tugs, other craft and equipment used and other expenses reasonably necessary for the operation. They will be agreed at cost, PROVIDED THAT:
 - (a) If the expenses relate to the hire of men, tugs, other craft and equipment from another ISU member or their affiliate(s), the amount due will be calculated on the tariff rates set out in Appendix “A” regardless of the actual cost.

 - (b) If men, tugs, other craft and equipment are hired from any party who is not an ISU member and the hire rate is greater than the tariff rates referred to in Appendix “A” the actual cost will be allowed in full, subject to the Shipowner’s Casualty Representative (“SCR”) being satisfied that, in the particular circumstances of the case, it was reasonable for the Contractor to hire such items at that cost. If an SCR is not appointed or if there is a dispute, then the Arbitrator shall decide whether the expense was reasonable in all the circumstances.

- (iv) In addition to the rates set out above and any out of pocket expenses, the Contractor shall be entitled to a standard bonus of 25% of those rates except that if the out of pocket expenses described in sub-paragraph 5(iii)(b) exceed the applicable tariff rates in Appendix “A” the Contractor shall be entitled to a bonus such that he shall receive in total:
 - (a) The actual cost of such men, tugs, other craft and equipment plus 10% of the tariff rate, or

 - (b) The tariff rate for such men, tugs, other craft and equipment plus 25% of the tariff rate whichever is the greater.

6. Article 13 Award

- (i) The salvage services under the Main Agreement shall continue to be assessed in accordance with Article 13, even if the Contractor has invoked the SCOPIC clause. SCOPIC remuneration as assessed under sub-clause 5 above will be payable only by the owners of the vessel and only to the extent that it exceeds the total Article 13 Award (or, if none, any potential Article 13 Award) payable by all salvaged interests (including cargo, bunkers, lubricating oil and stores) after currency adjustment but before interest and costs even if the Article 13 Award or any part of it is not recovered.
- (ii) In the event of the Article 13 Award or settlement being in a currency other than United States dollars it shall, for the purposes of the SCOPIC clause, be exchanged at the rate of exchange prevailing at the termination of the services under the Main Agreement.
- (iii) The salvage award under Article 13 shall not be diminished by reason of the exception to the principle of “No Cure, No Pay” in the form of SCOPIC remuneration.

7. Discount

If the SCOPIC clause is invoked under sub-clause 2 hereof and the Article 13 Award or settlement (after currency adjustment but before interest and costs) under the Main Agreement is greater than the assessed SCOPIC remuneration then, notwithstanding the actual date on which the SCOPIC remuneration provisions were invoked, the said Article 13 Award or settlement shall be discounted by 25% of the difference between the said Article 13 Award or settlement and the amount of SCOPIC remuneration that would have been assessed had the SCOPIC remuneration provisions been invoked on the first day of the services.

8. Payment of SCOPIC Remuneration

- (i) The date for payment of any SCOPIC remuneration which may be due hereunder will vary according to the circumstances.
 - (a) If there is no potential salvage award within the meaning of Article 13 as incorporated into the Main Agreement then, subject to Appendix B(5)(c)(iv), the undisputed amount of SCOPIC remuneration due hereunder will be paid by the owners of the vessel within

1 month of the presentation of the claim. Interest on sums due will accrue from the date of termination of the services until the date of payment at US prime rate plus 1%.

(b) If there is a claim for an Article 13 salvage award as well as a claim for SCOPIC remuneration, subject to Appendix B(5)(c)(iv), 75% of the amount by which the assessed SCOPIC remuneration exceeds the total Article 13 security demanded from ship and cargo will be paid by the owners of the vessel within 1 month and any undisputed balance paid when the Article 13 salvage award has been assessed and falls due. Interest will accrue from the date of termination of the services until the date of payment at the US prime rate plus 1%.

(ii) The Contractor hereby agrees to give an indemnity in a form acceptable to the owners of the vessel in respect of any overpayment in the event that the SCOPIC remuneration due ultimately proves to be less than the sum paid on account.

9. Termination

(i) The Contractor shall be entitled to terminate the services under this SCOPIC clause and the Main Agreement by written notice to owners of the vessel with a copy to the SCR (if any) and any Special Representative appointed if the total cost of his services to date and the services that will be needed to fulfil his obligations hereunder to the property (calculated by means of the tariff rate but before the bonus conferred by sub-clause 5(iii) hereof) will exceed the sum of:-

(a) The value of the property capable of being salvaged; and

(b) All sums to which he will be entitled as SCOPIC remuneration.

(ii) The owners of the vessel may at any time terminate the obligation to pay SCOPIC remuneration after the SCOPIC clause has been invoked under sub-clause 2 hereof provided that the Contractor shall be entitled to at least 5 clear days' notice of such termination. In the event of such termination the assessment of SCOPIC remuneration shall take into account all monies due under the tariff rates set out in Appendix A hereof including time for demobilisation to the extent that such time did reasonably exceed the 5 days' notice of termination.

- (iii) The termination provisions contained in sub-clause 9(i) and 9(ii) above shall only apply if the Contractor is not restrained from demobilising his equipment by Government, Local or Port Authorities or any other officially recognised body having jurisdiction over the area where the services are being rendered.

10. Duties of Contractor

The duties and liabilities of the Contractor shall remain the same as under the Main Agreement, namely to use his best endeavours to save the vessel and property thereon and in so doing to prevent or minimise damage to the environment.

11. Shipowner's Casualty Representative ("SCR")

Once this SCOPIC clause has been invoked in accordance with sub-clause 2 hereof the owners of the vessel may at their sole option appoint an SCR to attend the salvage operation in accordance with the terms and conditions set out in Appendix B.

12. Special Representatives

At any time after the SCOPIC clause has been invoked the Hull and Machinery underwriter (or, if more than one, the lead underwriter) and one owner or underwriter of all or part of any cargo on board the vessel may each appoint one special representative (hereinafter called respectively the "Special Hull Representative" and the "Special Cargo Representative" and collectively called the "Special Representatives") at the sole expense of the appointor to attend the casualty to observe and report upon the salvage operation on the terms and conditions set out in Appendix C hereof. Such Special Representatives shall be technical men and not practising lawyers.

13. Pollution Prevention

The assessment of SCOPIC remuneration shall include the prevention of pollution as well as the removal of pollution in the immediate vicinity of the vessel insofar as this is necessary for the proper execution of the salvage but not otherwise.

14. General Average

SCOPIC remuneration shall not be a General Average expense to the extent that it exceeds the Article 13 Award; any liability to pay such SCOPIC remuneration shall be that of the shipowner alone and no claim whether direct, indirect, by way of indemnity or recourse or otherwise relating to SCOPIC remuneration in excess of the Article 13 Award shall be made in General Average or under the vessel's Hull and Machinery Policy by the owners of the vessel.

Any dispute arising out of this SCOPIC clause or the operations thereunder shall be referred to arbitration as provided for under the Main Agreement.

APPENDIX A (SCOPIC)

1. Personnel

- (a) The daily tariff rate, or pro rata for part thereof, for personnel reasonably engaged on the contract, including any necessary time in proceeding to and returning from the casualty, shall be as follows:

Office administration, including communications	US\$1,000
Salvage Master	US\$1,500
Naval Architect or Salvage Officer/Engineer	US\$1,250
Assistant Salvage Officer/Engineer	US\$1,000
Diving Supervisor	US\$1,000
Diver	US\$ 750
Salvage Foreman	US\$ 750
Riggers, Fitters, Equipment Operators	US\$ 600
Specialist Advisors – Fire Fighters, Chemicals, Pollution Control	US\$1,000

- (b) The crews of tugs, and other craft, normally aboard that tug or craft for the purpose of its customary work are included in the tariff rate for that tug or craft but when because of the nature and/or location of the services to be rendered, it is a legal requirement for an additional crew member or members to be aboard the tug or craft, the cost of such additional crew will be paid.
- (c) The rates for any personnel not set out above shall be agreed with the SCR or, failing agreement, be determined by the Arbitrator.
- (d) For the avoidance of doubt, personnel are “reasonably engaged on the contract” within the meaning of Appendix A sub-clause 1(a) hereof if, in addition to working, they are eating, sleeping or otherwise resting on site or travelling to or from the site; personnel who fall ill or are injured while reasonably engaged on the contract shall be charged for at the appropriate daily tariff rate until they are demobilised but only if it was reasonable to mobilise them in the first place.
- (e) SCOPIC remuneration shall cease to accrue in respect of personnel who die on site from the date of death.

2. Tugs and Other Craft

(a)

- (i) Tugs, which shall include salvage tugs, harbour tugs, anchor handling tugs, coastal/ocean towing tugs, off-shore support craft, and any other work boat in excess of 500 b.h.p., shall be charged at the following rates, exclusive of fuel or lubricating oil, for each day, or pro rata for part thereof, that they are reasonably engaged in the services, including proceeding towards the casualty from the tugs' location when SCOPIC is invoked or when the tugs are mobilised (whichever is the later) and from the tugs' position when their involvement in the services terminates to a reasonable location having due regard to their employment immediately prior to their involvement in the services and standing by on the basis of their certificated b.h.p.:

For each b.h.p. up to 5,000 b.h.p.	US\$ 2.00
For each b.h.p. between 5,001 & 10,000 b.h.p.	US\$ 1.50
For each b.h.p. between 10,001 & 20,000 b.h.p.	US\$ 1.00
For each b.h.p. over 20,000 b.h.p.	US\$ 0.50

- (ii) Any tug which has aboard certified fire fighting equipment shall, in addition to the above rates, be paid:

US\$500 per day, or pro rata for part thereof, if equipped with Fi Fi 0.5
 US\$1,000 per day, or pro rata for part thereof, if equipped with Fi Fi 1.0

for that period in which the tug is engaged in fire fighting necessitating the use of the certified fire fighting equipment.

- (iii) Any tug which is certified as "Ice Class" shall, in addition to the above, be paid US\$1,000 per day, or pro rata for part thereof, when forcing or breaking ice during the course of services including proceeding to and returning from the casualty.
- (iv) For the purposes of paragraph 2(a)(i) hereof tugs shall be remunerated for any reasonable delay or deviation for the purposes of taking on board essential salvage equipment, provisions or personnel which the Contractor reasonably anticipates he shall require in rendering the services which would not normally be found on vessels of the tugs size and type.

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- (b) Any launch or work boat of less than 500 b.h.p. shall, exclusive of fuel and lubricating oil, be charged at a rate of US\$3.00 for each b.h.p.
 - (c) Any other craft, not falling within the above definitions, shall be charged out at a market rate for that craft, exclusive of fuel and lubricating oil, such rate to be agreed with the SCR or, failing agreement, determined by the Arbitrator.
 - (d) All fuel and lubricating oil consumed during the services shall be paid at cost of replacement and shall be treated as an out of pocket expense.
 - (e) For the avoidance of doubt, the above rates shall not include any portable salvage equipment normally aboard the tug or craft and such equipment shall be treated in the same manner as portable salvage equipment and the Contractors shall be remunerated in respect thereof in accordance with Appendix A paragraphs 3 and 4 (i) and (ii) hereof.
 - (f) SCOPIC remuneration shall cease to accrue in respect of tugs and other craft which become a commercial total loss from the date they stop being engaged in the services plus a reasonable period for demobilisation (if appropriate) PROVIDED that such SCOPIC remuneration in respect of demobilisation shall only be payable if the commercial total loss arises whilst engaged in the services and through no fault of the Contractors, their servants, agents or sub-contractors.

3. Portable Salvage Equipment

- (a) The daily tariff, or pro rata for part thereof, for all portable salvage equipment reasonably engaged during the services, including any time necessary for mobilisation and demobilisation, shall be as follows:

Generators	Rate US\$.	Welding & Cutting Equipment	Rate US\$.
Up to 50 Kw	60	Bolt Gun	300
51 to 100 kW	125	Gas Detector	100
101 to 300 kW	200	Hot Tap Machine, including supporting equipment	1000
Over 301 kW	350	Oxy-acetylene Surface Cutting Gear	25
		Underwater Cutting Gear	50
Portable Inert Gas Systems		Underwater Welding Kit	50
1,000m ₃ /hour	1,200	250 Amp Welder	150
1,500m ₃ /hour	1,400	400 Amp Welder	200
		Pollution Control Equipment	
Compressors		Oil Boom, 24", per 10 metres	30
High Pressure	100	Oil Boom, 36", per 10 metres	100
185 Cfm	150	Oil Boom, 48", per 10 metres	195
600 Cfm	250		
1200 Cfm	400	Lighting Systems	
Air Manifold	10	Lighting String, per 50 feet	25
Blower; 1,500m ₃ /min.	850	Light Tower	50
		Underwater Lighting System, 1,000 watts	75
Pumping Equipment			
<u>Air</u>		Winches	
2"	75	Up to 20 tons, including 50 metres of wire	200
<u>Diesel</u>			
2"	50	Storage Equipment	
4"	90	10' Container	25
6"	120	20' Container	40
<u>Electrical Submersible</u>			
2"	50	Miscellaneous Equipment	
4"	150	Air Bags, less than 5 tons lift	40
6"	500	5 to 15 tons lift	200
<u>Hydraulic</u>		Air Lift 4"	100
6"	600	6"	200
8"	1,000	8"	300
		Air Tugger, up to 3 tons	75
Hoses		Ballast/Fuel Oil Storage Bins, 50,000 litres	100
<u>Air Hose</u>		Chain Saw	20
"	per 30m or 100 feet	20	250
2"	per 30m or 100 feet	40	25
<u>Layflat</u>		Damage Stability Computer and Software	20
2"	per 6m or 20 feet	Echo Sounder, portable	20
4"	per 6m or 20 feet	Extension Ladder	20
6"	per 6m or 20 feet	Hydraulic Jack, up to 100 tons	75
<u>Rigid</u>		Hydraulic Powerpack	75
2"	per 6m or 20 feet	Pressure washer,	water 250
4"	per 6m or 20 feet	steam	450
6"	per 6m or 20 feet	heavy	400
8"	per 6m or 20 feet	light	200
		Drill	50
Fenders		Splitter	400
<u>Yokohama</u>			
1.00m. x 2.00m.	75	Rigging Package,	
2.50m. x 5.50m.	150	Rock,	
3.50m. x 6.50m.	250	Steel Saw	20
		Tirfors, up to 5 tonnes	10
		Thermal Imaging Camera	250
		Tool Package, per set	175
		Ventilation Package	20

	Rate US\$.		Rate US\$.
<u>Low Pressure Inflatable</u>			
3 metres	70	VHF Radio	10
6 metres	70	Z Boat, including outboard up to 14 feet	200
9 metres	150	over 14 feet	350
12 metres	250		
16 metres	250	Protective Clothing	
Shackles		Breathing Gear.	50
Up to 50 tonnes	10	Hazardous Environment Suit	100
51 to 100 tonnes	20		
101 to 200 tonnes	30	Diving Equipment	
Over 200 tonnes	50	Decompression Chamber,	
Distribution Boards		2 man, including compressor	500
Up to 50 kW	60	4 man, including compressor	700
51 to 100 kW	125	Hot Water Diving Assembly	250
101 to 300 kW	200	Underwater Magnets	20
Over 301 kW	350	Underwater Drill	20
		Shallow Water Dive Spread	225

- (b) Any portable salvage equipment engaged but not set out above shall be charged at a rate to be agreed with the SCR or, failing agreement, determined by the Arbitrator.
- (c) The total charge (before bonus) for each item of portable salvage equipment, owned by the Contractor, shall not exceed the manufacturer's recommended retail price on the last day of the services multiplied by 1.5.
- (d) Compensation for any portable salvage equipment lost or destroyed during the services shall be paid provided that the total of such compensation and the daily tariff rate (before bonus) in respect of that item do not exceed the actual cost of replacing the item at the Contractors' base with the most similar equivalent new item multiplied by 1.5.
- (e) All consumables such as welding rods, boiler suits, small ropes etc. shall be charged at cost and shall be treated as an out of pocket expense.
- (f) The Contractor shall be entitled to remuneration at a stand-by rate of 50% of the full tariff rate plus bonus for any portable salvage equipment reasonably mobilised but not used during the salvage operation provided
 - (i) It has been mobilised with the prior agreement of the owner of the vessel or its mobilisation was reasonable in the circumstances of the casualty, or
 - (ii) It comprises portable salvage equipment normally aboard the tug or craft that would have been reasonably mobilised had it not already been aboard the tug or craft.

- (g) SCOPIC remuneration shall cease to accrue in respect of portable salvage equipment which becomes a commercial total loss from the date it ceases to be useable plus a reasonable period for demobilisation (if appropriate) PROVIDED that such SCOPIC remuneration in respect of demobilisation shall only be payable if the commercial total loss arises while it is engaged in the services and through no fault of the Contractors, their servants, agents or sub-contractors.

4. Downtime

If a tug or piece of portable salvage equipment breaks down or is damaged without fault on the part of the Contractor, his servants, agents or sub-contractors and as a direct result of performing the services it should be paid for during the repair while on site at the stand-by rate of 50% of the tariff rate plus uplift pursuant to sub-clause 5(iv) of the SCOPIC clause.

If a tug or piece of portable salvage equipment breaks down or otherwise becomes inoperable without fault on the part of the Contractor, his servants, agents or sub-contractors and as a direct result of performing the services and cannot be repaired on site then:

- (a) If it is not used thereafter but remains on site then no SCOPIC remuneration is payable in respect of that tug or piece of portable salvage equipment from the time of the breakdown.
- (b) If it is removed from site, repaired and reasonably returned to the site for use SCOPIC remuneration at the standby rate of 50% of the tariff rate plus bonus pursuant to sub-clause 5(iv) of the SCOPIC clause shall be payable from the breakdown to the date it is returned to the site.
- (c) If it is removed from the site and not returned SCOPIC remuneration ceases from the breakdown but is, in addition, payable for the period that it takes to return it directly to base at the stand-by rate of 50% of the tariff rate plus bonus pursuant to sub-clause 5(iv) of the SCOPIC clause.

APPENDIX A (SCOPIC) provided by www.lloydsagency.com

APPENDIX B (SCOPIC)

1. (a) The SCR shall be selected from a panel (the “SCR Panel”) appointed by a Committee (the “SCR Committee”) comprising of representatives appointed by the following:
 - 3 representatives from the International Group of P and I Clubs
 - 3 representatives from the ISU
 - 3 representatives from the IUMI
 - 3 representatives from the International Chamber of Shipping
 - (b) The SCR Committee shall be responsible for an annual review of the tariff rates as set out in Appendix A.
 - (c) The SCR Committee shall meet once a year in London to review, confirm, reconfirm or remove SCR Panel members.
 - (d) Any individual may be proposed for membership of the SCR Panel by any member of the SCR Committee and shall be accepted for inclusion on the SCR Panel unless at least four votes are cast against his inclusion.
 - (e) The SCR Committee shall also set and approve the rates of remuneration for the SCRs for the next year.
 - (f) Members of the SCR Committee shall serve without compensation.
 - (g) The SCR Committee’s meetings and business shall be organised and administered by the Salvage Arbitration Branch of the Corporation of Lloyd’s (hereinafter called “Lloyds”) who will keep the current list of SCR Panel members and make it available to any person with a bona fide interest.
 - (h) The SCR Committee shall be entitled to decide its own administrative rules as to procedural matters (such as quorums, the identity and power of the Chairman etc.)
2. The primary duty of the SCR shall be the same as the Contractor, namely to use his best endeavours to assist in the salvage of the vessel and the property thereon and in so doing to prevent and minimise damage to the environment.

3. The Salvage Master shall at all times remain in overall charge of the operation, make all final decisions as to what he thinks is best and remain responsible for the operation.
4. The SCR shall be entitled to be kept informed by or on behalf of the Salvage Master or (if none) the principal Contractors' representative on site (hereinafter called "the Salvage Master"). The Salvage Master shall consult with the SCR during the operation if circumstances allow and the SCR, once on site, shall be entitled to offer the Salvage Master advice.
5. (a) Once the SCOPIC clause is invoked the Salvage Master shall send daily reports (hereinafter called the "Daily Salvage Reports") setting out:-
 - the salvage plan (followed by any changes thereto as they arise)
 - the condition of the casualty and the surrounding area (followed by any changes thereto as they arise)
 - the progress of the operation
 - the personnel, equipment, tugs and other craft used in the operation that day.
- (b) Pending the arrival of the SCR on site the Daily Salvage Reports shall be sent to Lloyd's and the owners of the vessel. Once the SCR has been appointed and is on site the Daily Salvage Reports shall be delivered to him.
- (c) The SCR shall upon receipt of each Daily Salvage Report:-
 - (i) Transmit a copy of the Daily Salvage Report by the quickest method reasonably available to Lloyd's, the owners of the vessel, their liability insurers and (if any) to the Special Hull Representative and Special Cargo Representative (appointed under clause 12 of the SCOPIC clause and Appendix C) if they are on site; and if a Special Hull Representative is not on site the SCR shall likewise send copies of the Daily Salvage Reports direct to the leading Hull Underwriter or his agent (if known to the SCR) and if a Special Cargo Representative is not on site the SCR shall likewise send copies of the Daily Salvage Reports to such cargo underwriters or their agent or agents as are known to the SCR (hereinafter in this Appendix B such Hull and Cargo property underwriters shall be called "Known Property Underwriters").

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- (ii) If circumstances reasonably permit consult with the Salvage Master and endorse his Daily Salvage Report stating whether or not he is satisfied and
- (iii) If not satisfied with the Daily Salvage Report, prepare a dissenting report setting out any objection or contrary view and deliver it to the Salvage Master and transmit it to Lloyd's, the owners of the vessel, their liability insurers and to any Special Representatives (appointed under clause 12 of the SCOPIC clause and Appendix C) or, if one or both Special Representatives has not been appointed, to the appropriate Known Property Underwriter.
- (iv) If the SCR gives a dissenting report to the Salvage Master in accordance with Appendix B(5)(c)(iii) to the SCOPIC clause, any initial payment due for SCOPIC remuneration shall be at the tariff rate applicable to what is in the SCR's view the appropriate equipment or procedure until any dispute is resolved by agreement or arbitration.
- (d) Upon receipt of the Daily Salvage Reports and any dissenting reports of the SCR, Lloyd's shall distribute upon request the said reports to any parties to this contract and any of their property insurers of whom they are notified (hereinafter called "the Interested Persons") and to the vessel's liability insurers.
- (e) As soon as reasonably possible after the Salvage services terminate the SCR shall issue a report (hereinafter called the "SCR's Final Salvage Report") setting out:
- the facts and circumstances of the casualty and the salvage operation insofar as they are known to him.
 - the tugs, personnel and equipment employed by the Contractor in performing the operation.
 - a calculation of the SCOPIC remuneration to which the Contractor may be entitled by virtue of this SCOPIC clause.

The SCR's Final Salvage Report shall be sent to the owners of the vessel and their liability insurers and to Lloyd's who shall forthwith distribute it to the Interested Persons.

6. (a) The SCR may be replaced by the owner of the vessel if either:
 - (i) the SCR makes a written request for a replacement to the owner of the vessel (however the SCR should expect to remain on site throughout the services and should only expect to be substituted in exceptional circumstances); or
 - (ii) the SCR is physically or mentally unable or unfit to perform his duties; or
 - (iii) all salved interests or their representatives agree to the SCR being replaced.
 - (b) Any person who is appointed to replace the SCR may only be chosen from the SCR Panel.
 - (c) The SCR shall remain on site throughout the services while he remains in that appointment and until the arrival of any substitute so far as practicable and shall hand over his file and all other correspondence, computer data and papers concerning the salvage services to any substitute SCR and fully brief him before leaving the site.
 - (d) The SCR acting in that role when the services terminate shall be responsible for preparing the Final Salvage Report and shall be entitled to full co-operation from any previous SCRs or substitute SCRs in performing his functions hereunder.
7. The owners of the vessel shall be primarily responsible for paying the fees and expenses of the SCR. The Arbitrator shall have jurisdiction to apportion the fees and expenses of the SCR and include them in his award under the Main Agreement and, in doing so, shall have regard to the principles set out in any market agreement in force from time to time.

APPENDIX B (SCOPIC) provided by www.lloydsagency.com

APPENDIX C (SCOPIC)

The Special Representatives

1. The Salvage Master, the owners of the vessel and the SCR shall co-operate with the Special Representatives and shall permit them to have full access to the vessel to observe the salvage operation and to inspect such of the ship's documents as are relevant to the salvage operation.
2. The Special Representative shall have the right to be informed of all material facts concerning the salvage operation as the circumstances reasonably allow.
3. If an SCR has been appointed the SCR shall keep the Special Representatives (if any and if circumstances permit) fully informed and shall consult with the said Special Representatives. The Special Representatives shall also be entitled to receive a copy of the Daily Salvage Reports direct from the Salvage Master or, if appointed, from the SCR.
4. The appointment of any Special Representatives shall not affect any right that the respondent ship and cargo interests may have (whether or not they have appointed a Special Representative) to send other experts or surveyors to the vessel to survey ship or cargo and inspect the ship's documentation or for any other lawful purpose.
5. If an SCR or Special Representative is appointed the Contractor shall be entitled to limit access to any surveyor or representative (other than the said SCR and Special Representative or Representatives) if he reasonably feels their presence will substantially impede or endanger the salvage operation.

APPENDIX C (SCOPIC) provided by www.lloydsagency.com

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