

# First Onsite Property Restoration

## ADDITIONAL TERMS AND CONDITIONS

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**Acknowledgement and Temporary Work Disclaimer.** Client acknowledges that emergency restoration Work is temporary in nature. This may include, without limitation, temporary roofing, boarding up of property, and winterization. Client acknowledges that First Onsite shall not be held liable for damages to the Property occurring during or upon completion of temporary repairs and shall hold harmless First Onsite from and against any and all claims related to the Property. Client further understands that “call backs” constitute further temporary repairs and will be charged accordingly. First Onsite is not responsible for damage to any surfaces on walls, floors and/or ceilings in and around the work area when building containment and hanging critical barriers. Client further acknowledges that First Onsite is not responsible for damages arising from the removal of tape and/or spray adhesive, as these may cause minor damages to the surfaces to which they were adhered.

**No Environmental Liability.** First Onsite shall in no way be liable for any claim or damage related to mold, asbestos, viral contamination or other environmental hazards, and Client hereby knowingly releases and waives First Onsite from any and all such claims and/or damages.

**Default.** If Client defaults in any of its obligations herein, First Onsite may, at its option, in addition to other remedies provided in this Client Work Agreement or pursuant to applicable law or principles of equity, pursue one or more of the following remedies: (i) suspend some or all of the Work until all defaults have been cured; (ii) upon 3 days written notice to Client, terminate some or all of First Onsite’s obligations under this Client Work Agreement; and/or (iii) recover all amounts due under this Client Work Agreement plus all expenses and reasonable attorneys’ fees and expenses incurred by First Onsite, as a result of Client’s breach or First Onsite’s enforcement of this Client Work Agreement. Upon default or should Client desire to terminate First Onsite’s services herein, Client shall pay First Onsite for all Work performed to the date of termination, including all materials delivered for the Work, whether incorporated into the Property or not, plus a sum equal to 30% of all costs that would have been incurred by First Onsite, but for the termination of this Client Work Agreement. Should First Onsite decline to accept an Insurer’s payment offer, Client shall pay First Onsite for all Work performed to date of the declination including demobilization, upon First Onsite invoicing for same.

**Insurance and Other Party Direction.** Client irrevocably directs Client’s insurance carrier(s) providing coverage for the Work (“Insurer”) to include the name of First Onsite on any checks or drafts issued in connection with the Work, to the extent the checks or drafts relate to the Work. Client specifically authorizes and directs Insurer to disclose the status, to First Onsite, of such Client’s payments regarding the Work, to the extent the payments relate to the Work. To secure payment, and to induce First Onsite to perform the Work, Client assigns all rights to insurance proceeds to First Onsite, to the extent that the proceeds relate to the Work. Client is ultimately responsible for prompt payment of all invoices related to the Work. It is fully understood and agreed that the Client is personally responsible for any and all deductible, depreciation or any charges or costs not covered by insurance. Client agrees that any applicable deductible shall be paid in full at the commencement of the Work. In the event Client’s Insurer issues payment to Client, without designation as to Client’s insurance policy coverage(s), the same shall be deemed to first, be on account of the Work. Client understands and agrees that the proceeds of the payment instrument are the property of First Onsite and depositing of the payment instrument into a Client controlled account constitutes conversion of First Onsite’s property. Pending payment to First Onsite, Client shall hold any and all applicable insurance proceeds in trust for the benefit of First Onsite. Client understands and agrees that the specified duties owed to First Onsite are fiduciary in nature. In the event the Insurer includes, on the payment instrument, any other parties when issuing payment to First Onsite, Client agrees to promptly endorse the instrument to First Onsite and agrees to obtain any mortgage company and all other endorsements, as may be necessary, within 7 days of receipt of the payment instrument. If any mortgage company deposits the insurance payment instrument, instead of delivery to First Onsite, Client hereby instructs such mortgage company to make payment directly to First Onsite, in the amount of the insurance payment instrument. Client specifically authorizes and directs mortgage company to disclose to First Onsite the status of payments from Insurer, on account of the Work.

**Acknowledgment.** Client acknowledges that Client is responsible for all amounts to be paid pursuant to this Agreement related to the Work and the lack of insurance coverage or the failure to receive insurance proceeds shall not relieve Client of this responsibility.

**Client Obligations.** Unless Client is a landlord in a multi-tenant building, Client represents to First Onsite that there are no other persons or entities with contents or personal property at the Property. Client agrees to remove or to secure all valuables including, without limitation, cash, jewelry, firearms, silverware, fine art, valuable collections such as coins or stamps, cameras, electronics, etc. before commencement of Work. Client agrees to notify First Onsite in writing of any valuables prior to a pack out or onsite Work. Client agrees that First Onsite shall not be responsible for any unsecured valuables that Client fails to remove from the Property or fails to notify First Onsite of such in writing. This includes, without limitation, all household pets. Client shall make Client selections within the designated time frames, so as not to interfere with First Onsite’s Work schedule. Client shall schedule inspections as requested by First Onsite and it being understood that the scheduling request may occur prior to completion of the Work. Client agrees to inspect Work at the request of First Onsite and to diligently schedule and expedite any inspections required by lenders or any entity that may be responsible for release of funds due First Onsite for the performance of the Work. Client agrees to sign an acceptance form upon substantial completion of particular portions of the Work provided it is substantially completed and agrees not to withhold payment for Work substantially completed. Client agrees to promptly sign Insurer’s proof of loss and other documents reasonably necessary for payment to be issued. Client agrees to sign any and all final walkthrough forms when prepared and presented. Upon return of contents or personal property, if First Onsite does not unpack boxed contents and/or place articles in their final location, Client agrees that First Onsite shall not be liable for breakage, damage, or loss discovered subsequent to said return.

**Change Order.** Client may request changes in the Work consisting of additions, deletions, or modifications only by written change order (“Change Order”). A Change Order may take any written form including, without limitation, an executed formal document, an email, or a text message, so long as the written form expresses the mutual agreement of the parties.

**Warranty and Limited Liability.** Upon receipt of, and conditioned upon, final payment, First Onsite shall warrant its labor to be free from defects in workmanship for a period of 1 year from Substantial Completion and shall assign to Client all applicable manufacturer’s or supplier’s warranties. This limited warranty is limited to the repair or replacement cost, at First Onsite’s option, of the Work provided by First Onsite and specifically excludes incidental or consequential damages. First Onsite specifically does not warrant or cover manufacturer’s, supplier’s, or others’ warranties. There are no other warranties express or implied. In order to perfect a warranty claim hereunder, the Client shall first provide First Onsite with written notice of a claim and provide First Onsite with a reasonable opportunity and access to the Work to determine the validity and merit of the claim and its response

thereto. If any repair or replacement of the Work is undertaken, without the Client first permitting First Onsite with the written notice and access, as described herein, then this limited warranty shall be void and unenforceable. Notwithstanding anything else contained herein to the contrary, it is expressly understood and agreed that First Onsite's maximum aggregate liability to Client or any third-party, in any way related to this Client Work Agreement which shall include, without limitation, claims sounding in contract, tort, strict liability or otherwise shall not exceed the total amount actually paid by Client to First Onsite, for the Work. Client waives any and all rights to claims for consequential or punitive damages in any way related to this Client Work Agreement.

**Contents Disposal.** If First Onsite takes possession of Client's personal property and/or any other item (the "Personal Property") and performs cleaning, repair or storage services, First Onsite shall charge Client monthly storage fees, from the pack-out date until the date of delivery or pickup. The Client is responsible for payment of any and all storage fees. Upon delivery or pickup of the Personal Property, THE CLIENT SHALL HAVE THIRTY (30) DAYS TO VERIFY THE PERSONAL PROPERTY AND ITS CONDITION. AFTER THIRTY (30) DAYS, FIRST ONSITE SHALL NOT BE HELD RESPONSIBLE FOR ANY DAMAGE TO THE PERSONAL PROPERTY. In the event that First Onsite takes possession of Client's Personal Property, for the purposes of cleaning, repair or storage and is unable to reach Client for sixty (60) consecutive days, then Client hereby authorizes First Onsite to sell or otherwise dispose of the Personal Property and keep any proceeds.

**Non-Assignment.** This Client Work Agreement is non-assignable by Client. First Onsite shall have the right to assign this Client Work Agreement.

**Jurisdiction and Disputes.** This Client Work Agreement shall be exclusively governed by the laws of the State or Commonwealth, in which the Property is located, and venue shall be proper in the city and/or county in which the Property is located.

**Claims and Disputes.** CLIENT AND FIRST ONSITE, JOINTLY AND SEVERALLY, KNOWINGLY, WILLINGLY, AND VOLUNTARILY, AND BY THEIR EXPRESS DESIRE AND INTENT, DO EXPRESSLY HEREBY WAIVE a trial by jury on all issues, claims, counterclaims, and cross-claims of any kind or nature arising out of or in connection with this Client Work Agreement, and further waive all and any claims against each other for delay, exemplary, and consequential damages of any type or nature arising out of or relating to this Client Work Agreement. Client and First Onsite agree that any claim and/or dispute arising in connection with this Client Work Agreement shall be settled by arbitration, before one (1) arbitrator jointly agreed upon by the parties, the same to be administered by the American Arbitration Association ("AAA"), or at the sole discretion of First Onsite, some equivalent organization, and the proceedings shall be conducted in accordance with the Construction Industry Arbitration Rules of the AAA (the "Rules"); notwithstanding the preceding, First Onsite may, at its sole discretion, in addition to instituting the arbitration proceedings, file separate judicial proceedings, in a court of appropriate jurisdiction, to establish and/or enforce a mechanic's lien, and then stay the judicial proceedings pending the final determination of the arbitration. Client and First Onsite agree that the filing of a judicial action to establish and/or enforce a mechanic's lien shall not be deemed to be a waiver of the right to have the claim settled by arbitration. Judgment on the award rendered through arbitration may be entered in any one or more courts having jurisdiction thereof, including, but not limited to, a court of appropriate jurisdiction located in the state and county where the Property is located, as well as a court of appropriate jurisdiction located in any state and county where the Client conducts business. In addition to any other powers conferred pursuant to the Rules, the arbitrator shall have the power to determine the right to the establishment and enforcement of a mechanic's lien. The parties further agree that if First Onsite has filed a judicial proceeding to establish and/or enforce a mechanic's lien, the court where the judicial proceeding was filed shall have the right, upon motion filed by a party, to lift the stay of the judicial proceedings and to enter the judgment in accordance with the decision of the arbitrator and to enforce the same with respect to both the mechanic's lien and/or any monetary judgment rendered in connection with the arbitration proceedings. The arbitrator may, in the award, allocate all or part of the costs of the arbitration including, but not limited to, the fees of the arbitrator and the prevailing party's reasonable attorneys' fees. Absent such an award, the parties agree to equally split and pay the costs of the sole arbitrator. If the parties cannot agree on a single arbitrator, then each party shall nominate an arbitrator, with construction industry experience, and then those 2 nominated arbitrators shall jointly agree upon the selection of one arbitrator, who shall serve as the sole arbitrator.

**Material Change.** In the event of any significant timing delay or price increase of material, equipment and/or energy occurring during the performance of the Work through no fault of First Onsite, the billing for the Work, the time of performance, and/or other Agreement requirements shall be equitably adjusted by a Change Order, in accordance with the procedures otherwise set forth the Agreement. A delay in timing or change in price shall be considered significant, for purposes of this provision, when the delay and/or price increases by at least 10% percent between the date of this Agreement and the date of installation or procurement.

**Severability.** If any provision of this Client Work Agreement, or the application thereof shall, for any reason and to any extent, be deemed invalid or otherwise unenforceable, then such term shall be conformed to the maximum extent lawfully permitted pursuant to applicable law or regulation. The Client Work Agreement and the application of such provisions to other persons, firms, entities, or circumstances shall otherwise not be affected thereby and shall remain in full force and effect.