

Customer Name

Property Address

Comments

A DEPOSIT OR DEDUCTIBLE IS DUE UPON THE SIGNING OF THIS CONTRACT AND BEFORE ABBOTTS COMMENCES ANY WORK, INCLUDING EMERGENCY SERVICES, OTHER MITIGATION, AND REPAIR WORK.

Customer authorizes ABBOTTS FIRE & FLOOD ("Abbotts") to (i) provide all emergency services, mitigation work, damage appraisal, testing, restoration, cleaning, and repairs to the structure(s) (the "Structure") located at the Property described above, and (ii) remove, clean, store and return all inventoried personal property (the "Contents"), located at the Property relating to the loss (the "Loss") occurring at the Property (collectively, "Work") as provided herein, and agrees to pay Abbotts for all Work performed in accordance herewith, whether or not reimbursed by an insurance company. Customer represents and warrants that Customer is properly authorized to approve the Work and to enter into this Contract and, to Customer's knowledge, if the Loss is covered by insurance, adequate coverage exists to provide prompt payment for the Work. **CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER HAS READ THIS CONTRACT, INCLUDING THE FOLLOWING TERMS AND CONDITIONS, UNDERSTANDS THEM AND AGREES TO BE BOUND THEREBY.**

Customer

Abbotts Fire & Flood

By

Date

By

Date

## TERMS AND CONDITIONS

1. Estimate. Customer agrees to pay Abbotts for all Work performed (the "Settlement Amount") based on industry standard pricing as determined by Xactimate® and described in an estimate(s) to be agreed to by Abbotts, Customer and Customer's insurance company, as applicable (the "Estimate"), a copy of which will be attached hereto and incorporated herein. Customer will pay Abbotts all amounts due for emergency and mitigation Work upon completion of such services and the balance of the Settlement Amount, including any storage fees, by progress payments based on milestones completed as determined in Abbott's reasonable discretion. Customer agrees to pay Abbotts' reasonable fee for any appointments missed or canceled by Customer without 24 hours' prior notice.
2. Payment. All payments for Work will be paid directly to Abbotts, including payments for any deductibles, depreciation, adjustments or other amounts not covered by Customer's insurance. Customer acknowledges and agrees that Customer has no right to set off or deduct any sums from the insurance proceeds until Abbotts has been paid in full. Customer agrees to promptly sign its insurance company's Proof of Loss, Certificate of Completion and other documents reasonably necessary for payment to be issued to Abbotts. Customer will give Abbotts written notice of any issues with Work within 48 hours of being presented with a Certificate of Completion or shall be deemed to have approved same. All invoices are due upon receipt. Customer agrees to pay interest at the rate of 1.75% per month on any amounts not paid within 30 days of the invoice date. Customer agrees to pay Abbotts in full upon completion of the Work, and prior to the return of any personal property, subject only to withholding an amount equal to the cost of completing any final walkthrough items, as defined in the Estimate. Customer will immediately notify Abbotts upon receipt of any check from its insurance company relating to any Work and shall deliver or relinquish same to Abbotts, properly endorsed if Customer is named on the check, within three business days of receipt.
3. Assignment of Insurance Benefits. Any and all Customer insurance rights, benefits and proceeds under any applicable insurance policies are hereby assigned to Abbotts, as same relate to the Work (Assignment of Benefits), and authorization for the direct payment of any such benefits or proceeds to Abbotts (Direction of Payments) is hereby given. Customer hereby directs its insurance company to release all information requested by Abbotts relating to the Loss for purposes of obtaining payment for the Work, and Customer hereby expressly waives any privacy rights.
4. Work. Work desired by Customer that is not set forth in the initial Estimate, including Supplemental Work (covered by insurance) and Additional Work (not covered by insurance), may be requested verbally, and Customer acknowledges that such Work will be added to the Estimate. Additional Work specifically includes Customer requested design consultation and betterment, as well as any Work required by applicable building codes or regulations to correct existing violations or deficiencies.
5. Estimate. The Estimate will be used to define the scope of the Work and will be changed or added to by Abbotts from time to time as needed to reflect the complete scope of Work. The most current Estimate will reflect the amount due for the Work and, unless written notice is given by Customer to Abbotts within 24 hours of receipt of any Estimate, is deemed accepted by Customer. Customer may not cancel any material part of the Work (materiality will be determined in Abbotts' sole discretion). Customer authorizes Abbotts to use alternate methods to complete Work without reduction of the amount due therefor.
6. Repair Work. All Work involving restoration, repairs or replacement covers the damaged area only and does not include correcting existing deficiencies. The scope of work in the Estimate assumes existing Structure and Contents are sound and constructed plumb, level, square and straight. "Allowances" in the Estimate are based upon customary industry standards. All Work will be performed using current techniques and materials reasonably calculated to approximate the finish and quality prior to the Loss, including deletion of certain items deemed unnecessary by Abbotts. Seams or joints in carpet or light colored finishes, or irregularities in shiny surfaces, will be visible. Restoration of Contents and Structure items is not an exact science and therefore results cannot be guaranteed. Customer shall pay Abbotts for attempts to restore items whether or not successful. The quality of the restored item will be judged against similar items of Customer displaying the approximate condition prior to the Loss. Customer acknowledges that permanently discolored, faded or bleached areas may remain even

with Abbotts' diligent efforts to restore same. All Estimates specifically exclude concealed conditions (e.g. carpet back separating or improper seams, plumbing, electrical wiring, structural conditions or unanticipated framing). Painting is estimated to return existing surfaces to their pre-Loss color. A change in color, finish or surface will constitute Additional Work. Any color, style, quality selections or Work decisions that are made by Customer are Customer's responsibility and Abbotts shall not be liable therefor. Abbotts shall not be liable for any damages, existing or future, resulting either directly or indirectly from any mold, mildew, dampness or any other moisture related issue, except as expressly provided herein. Abbotts shall remove all construction debris from the job site and leave same in a broom-clean condition upon completion of Work.

7. **Limited Warranty.** All Work will be completed in a good and workmanlike manner in conformity with customary industry practices (this does not mean "zero defects"), and in accordance with this Contract. Provided that Abbotts has been paid in full for the Work and that Customer gives Abbotts written notice, within one year of the earlier of substantial completion or use of the affected area by Customer, of any defect in the Work, Abbotts will cure such defect. Abbotts will assign to Customer any applicable manufacturer or supplier warranties. THIS WARRANTY IS LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE WORK AT ABBOTTS' OPTION AND SPECIFICALLY EXCLUDES ANY INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, AND THOSE RESULTING FROM SUBSTANDARD STRUCTURE FINISHES OR OTHER PREVIOUSLY EXISTING CONDITIONS. ABBOTTS TOTAL LIABILITY TO CUSTOMER HEREUNDER IS LIMITED TO THE AMOUNT PAID OR PAYABLE TO ABBOTTS HEREUNDER. Abbotts does not warrant (i) roof repairs, (ii) that concrete, plaster or tile work to be free from coating, cracking or other related defects, or (iii) appliances or fixtures covered by manufacturers, suppliers or others' warranties. Except as expressly stated herein, there are no other warranties, express or implied. Defects noted after any final walkthrough, or delivery of a Certificate of Completion, will be addressed in accordance with the provisions of this Limited Warranty. Title to any materials supplied by Abbotts will remain with Abbotts until all amounts due hereunder are paid in full.

8. **Work Conditions.** Customer shall provide Abbotts with clear and continuous access to perform the Work on a concurrent, unscheduled basis during normal working hours (8:00 a.m. to 5:00 p.m. weekdays, excluding holidays). Customer's telephone, electricity, toilet, heat and water are to be made available for Abbotts' use while the Work is being performed at no cost to Abbotts. Customer agrees to be present during all onsite Work or to supply Abbotts with a premises key to be placed in Abbotts supplied lock box.

9. **Completion Date.** Abbotts will diligently pursue substantial completion of all Work, but shall not be held liable for delays due to late deliveries, weather or any other conditions beyond Abbotts' direct control. Customer shall not delay the Work and agrees to avoid interfering, or casually visiting, with Abbotts' employees while the Work is being performed. "Substantial completion" is the date when Work is sufficiently complete so Customer can utilize the Work area for its intended purpose.

10. **Hazardous Substances and Unsafe Conditions.** During the course of the Work, should Abbotts encounter any hazardous substance (e.g. asbestos, chemicals, gas, or the like) or any unsafe condition (e.g., electrical wiring or like conditions), Abbotts may halt the Work. Should the Work be halted for more than one week for this reason, or for any other reason whatsoever, Abbotts may terminate this Contract and Customer agrees to pay Abbotts for all Work performed to date, without retention, as determined by Abbotts' reasonable estimate and invoice, including costs of demobilization, substance investigation, testing and any additional costs occasioned by the discovery and disposal of, and decontamination due to, said hazardous substance or condition. Prior to commencing Work, Customer agrees to inform Abbotts of any known presence of any Hazardous Substances or unsafe conditions contained within the Contents or Structure, and does hereby agree to indemnify and to hold Abbotts harmless from any and all claims by any person arising therefrom.

11. **Mold and other Contaminants.** If Abbotts encounters mold, sewage, microbial growth, fungi or mildew, asbestos or other contaminants, removal will be done in accordance with existing protocols set by the organizations that govern, recommend, or determine how such contaminants are to be mitigated. In the event that the protocol recommends that the premises not be occupied while the Work is being performed, Customer will comply with such recommendations. Abbotts expressly disclaims and assumes no liability for same. As part of the remediation, Abbotts may treat affected materials with a commercial antimicrobial agent or other chemicals and will provide Customer with written information regarding such agents. Customer agrees to seek a medical opinion of the potential health effects of the contaminant and any chemical treatments being used by Abbotts. Customer further accepts all risks associated with the presence of any such contaminants and any chemical or agents used by Abbotts.

12. **Insurance.** Abbotts shall provide all necessary licenses, evidence of Worker's Compensation and General Liability insurance. At all times that Work is being performed, Customer will maintain "all risk" Property, Building, Contents and premises liability insurance to cover the Work (including all materials and supplies on site but not yet installed) and shall list Abbotts as an additional named insured. Any liability claim (including but not limited to bodily injury, property damage, or theft) Customer may have against Abbotts shall be first addressed to Customer's insurance company in effect at the time of loss, and Customer shall not retain any amount owing under this Contract on account of such claim. Customer hereby waives any rights of subrogation that Customer may have against Abbotts. Abbotts' insurance specifically excludes coverage for cash, jewelry, artwork, firearms, collectibles, separately scheduled insured and similar items ("Excluded Items"). In the event that Customer has no insurance and a claim is made on Abbotts' insurance for damage to the Structure or the Contents in Abbotts' custody, Customer agrees that said claim shall be limited to the lesser of agreed value or actual cash value prior to Abbotts' receipt of the item.

13. **Customer Obligations.** All Excluded Items will be removed from the Property prior to Abbotts commencing Work. Customer shall make Customer selections within Abbotts' designated timeframes so as not to interfere with Abbotts' Work schedule, or Customer will be deemed to have authorized Abbotts to make the required selections and understands and agrees to be bound thereby. Customer agrees to inspect Work at Abbotts' request, and to diligently schedule and expedite any inspections required by mortgage companies, lenders or any entity that may be responsible for releasing funds due Abbotts for the performance of the Work. Upon return of the Contents, Customer is liable for same. Customer agrees that any equipment placed on the Property is part of the Work provided by Abbotts for the benefit of Customer and Customer is solely responsible for the equipment's safekeeping while on the Property. Restoration Work can pose safety hazards (e.g., slippery floors, sharp objects, tripping, shocks, and other hazards) to anyone in or around the Work. Customer accepts sole responsibility for keeping all family members, agents, pets, guests and the public at large away from Abbotts' equipment, the Work and surrounding areas. Customer hereby agrees to indemnify and hold harmless Abbotts for any liabilities, including costs and attorneys' fees, resulting from damage, injuries or claims, directly or indirectly caused by or related to the equipment or the Work. Customer agrees to remove unsalvageable items from Abbotts' facilities within ten days of Abbotts' delivery of salvageable items to Customer and acknowledges that, thereafter, unsalvageable items will be disposed of by Abbotts.

14. **Default.** In the event that Customer is in default of any of Customer's obligations hereunder, Abbotts may, at its option, choose from any or all of the following remedies, as well as any other remedies available at law or equity: retain possession of the Contents in its possession and charge storage fees until the default has been cured; cease all Work and, following three days written notice to Customer and Customer's failure to cure, terminate this Contract; and may assert a lien for the Work against the Property, all materials and Contents pursuant to Colorado law; and may sell the Contents as provided by law. Customer agrees that this provision shall constitute a security agreement under the Uniform Commercial Code and that Abbotts may at any time file a Financing Statement, and that the materials and Contents shall be the collateral as required by CRS Section 4-9-203.

15. **Termination.** Should Customer desire to terminate Abbotts' services hereunder, Customer will pay Abbotts for all Work performed to the date of termination, including all materials ordered or delivered for the Work, whether incorporated into the improvements or not, if Customer terminates all or any portion of the Work, Customer will pay Abbotts a termination fee equal to 20% (10% overhead plus 10% profit) of all amounts which Customer would have been required to pay to Abbotts had Abbotts been permitted to complete the Work. Should Abbotts decline to accept an insurance company's adjusted settlement offer, Customer shall pay Abbotts for all Work performed through the date of declination, including demobilization, as determined by Abbotts' reasonable estimate and invoice, and this Contract shall thereupon terminate. Abbotts may terminate this Contract, without cause, upon 48 hours' prior written notice to Customer. Upon receipt of such notice, Customer shall pay Abbotts for all Work performed through the date of the notice, including demobilization, as determined by Abbotts' reasonable estimate and invoice.

16. **General.** This Contract, including the Estimate and any amendments thereto, constitutes the entire agreement of the parties. The parties agree that this Contract shall be binding upon their heirs, assigns, successors, and legal representatives; however, this Contract may not be assigned by Customer without Abbotts' prior written consent. If any provision of this Contract is found to be illegal or unenforceable, the remainder of this Contract shall remain in full force and effect. A waiver of any breach of this Contract shall not constitute a waiver of any other breach. Customer hereby expressly authorizes Abbotts to photograph and/or videotape the Work performed on the Property and that Abbotts is expressly permitted to use such photos and/or videos for marketing purposes.

17. **Legal Matters.** Venue and jurisdiction for any dispute hereunder shall be proper only in Denver, Colorado, or the County in which the Property is located. This Contract shall be governed by Colorado law. In the event that Customer's account is referred to a collection agency or attorney, Customer agrees to pay Abbott's reasonable collection costs, attorneys' fees, court costs, and expenses. CUSTOMER AND ABBOTTS BOTH SPECIFICALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY.