# TYGART MEDIA • FIELD SUMMARY

Commercial Emergency Services Agreement (ESA): 8-Provisions Quick Card

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Update history: https://tygartmedia.com/commercial-emergency-services-agreement/

## DIRECT ANSWER: WHAT A COMMERCIAL EMERGENCY SERVICES AGREEMENT (ESA) IS

A commercial ESA is a **pre-loss contract** that gives a restoration company the **right of first response** to a facility's property emergencies and pre-decides scope, pricing, response time, indemnification, insurance, and termination before a loss ever happens. It converts the relationship from a 2 a.m. contract negotiation into an instant operational deployment where only physical facts remain to be solved.

## CONTRACT BOUNDARY MATRIX: WHAT THE ESA IS VS. WHAT IT IS NOT

### What the ESA IS

PRE-LOSS FRAMEWORK

- **Right of First Response:** Designates contractor as primary responder for physical property emergencies.
- **Operating Framework:** Pre-establishes settled rate sheets, certificate of insurance, mutual indemnity, and compliance protocols.
- **Emergency Stabilization Scope:** Covers extraction, source containment, temporary dry-out, equipment protection, site documentation.
- **Commercial Wedge:** Vetted and signed by facility legal and risk functions before catastrophe strikes.

### What the ESA IS NOT

DISTINCT LEGAL FORMS

- **NOT an Assignment of Benefits (AOB):** Does NOT transfer post-loss insurance claim rights (avoids FL §627.7152 restrictions).
- **NOT a Work Authorization:** The work authorization is a separate 1-page post-loss trigger signed at the loss event referencing the ESA.
- **NOT a Scope / Reconstruction Contract:** Permanent rebuild and finish repairs require separate competitively-bid construction contracts.
- **NOT a Sales Artifact:** Not an unenforceable "priority response guarantee" napkin signed at a vendor fair.

## THE 3-WAY RESPONSE-TIME FRAMEWORK (PROVISION 2)

Never rely on the single-phrase "one-hour response" cliché. A defensible commercial ESA defines response three separate ways:

### 1. Initial Acknowledgment

**Target:** Measured in **minutes** (24/7/365).
**Commitment:** Live confirmed response from a company authority with deployment and dispatch power.
**Impact:** The first touchpoint the facility director experiences; confirms priority deployment has begun.

### 2. Arrival On Site

**Target:** 1 to 2 hours (local metro) / up to 4 hours (regional).
**Commitment:** Physical boots-on-the-ground at facility address under normal conditions.
**Mechanism:** Local crew staging, pre-loaded extraction vehicles, and dedicated facility access credentials.

### 3. CAT-Event Modification

**Trigger:** Regional catastrophe (freeze, hurricane, flood).
**Commitment:** Defined priority sequencing among covered accounts rather than false 1-hr promises.
**Logistics:** Out-of-region mutual-aid affiliates, pre-staged equipment depots, and triage ranking.

### On-Call Structure & Facility Access Upkeep Rule

OPERATIONAL HYGIENE

An ESA must incorporate an operational call tree, escalation hierarchy, and backup contacts. Crucially, it must bind the facility to maintain current emergency contact directories and authorized access protocols (security badges, Knox boxes, escort authorizations) so responder crews never waste 15 minutes at a locked perimeter gate.

# TYGART MEDIA • STRUCTURAL MATRIX

The Eight Core Provisions of a Commercial Emergency Services Agreement

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| Provision | Core Operational Function | Risk Transfer & Drafting Rules |
|---|---|---|
| **1. Scope of Services & Separator** | Defines emergency stabilization: extraction, dry-out, source containment, initial equipment protection, site documentation. | Strictly excludes reconstruction, structural rebuild, and permanent finish work. Separates fast emergency response from bid reconstruction. |
| **2. Response Time & Staging** | Three-tier response commitment: initial acknowledgment (minutes), on-site arrival (hours), and CAT-event modification rules. | Establishes call trees, escalation contacts, and facility access-authorization upkeep to eliminate perimeter access delays. |
| **3. Pricing Framework & Rate Exhibit** | Comprehensive rate exhibit: labor by role and shift, daily/weekly equipment with min-days, consumables cost-plus, travel, CAT surcharges. | Reconciles with insurance databases via Option A (Xactimate default), Option B (contractor rate default), or Option C (hybrid stabilization/rebuild). |
| **4. Insurance & Certificates** | Mandates 4 coverages: General Liability, Workers' Comp, Commercial Auto, and Professional/Specialty (data, medical, fine art). | Requires facility additional-insured status, waiver of subrogation, 30-day notice of cancellation, and subcontractor insurance flow-through. |
| **5. Indemnification & Hold Harmless** | Mutual indemnification: each party holds harmless the other for damages arising strictly from its own negligence or breach. | Jurisdictionally fractured. Must comply with state anti-indemnity statutes (e.g., CA Civil Code §2782). Never sign broad-form templates unreviewed. |
| **6. Term, Renewal & Termination** | Fixed multi-year term (1–3 years) with automatic renewal. Termination for convenience (30–90 days notice) or cause (breach, loss of license). | Protects active work in progress: termination notice during an active loss event takes effect only AFTER stabilization completes. |
| **7. Data, Confidentiality & Compliance** | Protects regulated data touched during loss: healthcare (HIPAA / BAA), education (FERPA), finance (GLBA), cardholder data (PCI-DSS). | Establishes chain of custody for off-site document recovery, data preservation on IT electronics, and PHI handling for medical devices. |
| **8. Dispute Resolution & Venue** | Specifies local governing law and venue. Mandates meet-and-confer and mediation steps before formal litigation or arbitration. | Provides prevailing-party legal fees. Recognizes technical disputes (conservators, engineers) require qualified expert arbitrators. |

### SPECIALTY-SERVICES INTEGRATION (THE COMMERCIAL DOOR-OPENER)

A modern commercial ESA integrates specialty disciplines into the master agreement: **vital records/documents, critical electronics, fine art/collections, and medical equipment**. The restoration company acts as the single accountable party for incident coordination and site logistics, while specialized vetted subcontractors execute technical triage. The ESA pre-defines whether specialists bill direct or flow through with a coordination fee.

### ⚠ The Counsel Gate: Why Structure Is Shared but Words Belong to Counsel

State restoration contract law is deeply fragmented (e.g., Florida §627.7152 AOB restrictions vs. common law states). Trade association packages (such as the Restoration Industry Association contract sample package) are strictly informational and explicitly disclaim jurisdictional compliance. Never download sample clause text from the internet. Take this 8-provision structural framework, your rate exhibit, and your insurance declarations to a commercial attorney licensed in your facility's state. Budget $2,000–$4,000 for review.