

GENERAL LIABILITY AND PROFESSIONAL LIABILITY BENEFIT PLAN

Various provisions in this plan restrict benefits. Read the entire plan carefully to determine rights, duties and what benefits are and are not provided.

Throughout this plan the word "association" refers to the BANA Association which provides the benefits outlined in this plan document.

Throughout this plan the word you and your, refer to the "member". Other words and phrases that appear in quotation marks are defined in **SECTION V – DEFINITIONS**.

SECTION I – BENEFITS

1. Benefit Agreement

- a. Subject to the Benefit Limits, as stated in **SECTION III – BENEFIT LIMITS**, the "association" will pay those sums that the "member" becomes legally obligated to pay as "Damages" because of injury arising out of any negligent act, error, or omission in rendering or failure to render "Professional Services", during the plan period committed by the "member". The "association" will defend the "member" against any "suit" seeking those "damages". However, the "association" will have no duty to defend the "member" against any "suit" seeking "damages" to which this benefit plan does not apply. The "association" may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount the "association" will pay for "damages" is limited as described in **SECTION III – BENEFIT LIMITS**; and
- (2) The "association's" defense ends when it has used up the applicable benefit limit in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **SUPPLEMENTARY PAYMENTS**.

- b. This benefit plan applies to "damages" only if:

- (1) The "damage" is caused by an "occurrence" that takes place in the "benefit plan territory";
- (2) The "damage" occurs during the Benefit Plan Period; and
- (3) Prior to the Benefit Plan Period, no "member", knew that the "damage" had occurred, in whole or in part. If such a listed "member" knew, prior to the Benefit Plan Period, that the "damage" occurred, then any continuation, change or resumption of such "damage" during or after the Benefit Plan Period will be deemed to have been known prior to the Benefit Plan Period.

- c. "Damage" which occurs during the benefit plan period and was not, prior to the benefit plan period, known to have occurred by any "member" includes any continuation, change or resumption of that "damage" after the end of the benefit plan period.

- d. "Damage" will be deemed to have been known to have occurred at the earliest time when any "member":

- (1) Reports all, or any part, of the "damage" to the "association" or any other insurer;
- (2) Receives a written or verbal demand or claim for "damages"; or
- (3) Becomes aware by any other means that "damage" has occurred or has begun to occur.

2. Exclusions

This plan does not apply to:

a. Expected or Intended Injury

"Damage" expected or intended from the standpoint of the "member". This exclusion does not apply to "damage" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Damages" for which the "member" is obligated to pay by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for "damages":

- (1) That the "member" would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than a "member" are deemed to be "damages", provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which "damages" to which this plan applies are alleged.

c. Liquor Liability

"Damages" for which any "member" may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation and Similar Laws

Any obligation of the "member" under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily Injury" to:

- (1) An "employee" of the "member" arising out of and in the course of:
 - (a) Employment by the "member"; or
 - (b) Performing duties related to the conduct of the "member's" business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the "member" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

f. Pollution

- (1) "Damages" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any "member". However, this subparagraph does not apply to:
 - (i) "Bodily Injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Damages" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional benefit holder with respect to your ongoing operations performed for that additional benefit holder at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any "member", other than that additional benefit holder; or
 - (iii) "Damages" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any "member" or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any "member"; or
 - (ii) Any person or organization for whom you may be legally responsible; or

- (d) At or from any premises, site or location on which any "member" or any contractors or subcontractors working directly or indirectly on any "member's" behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such "member", contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Damages" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "Damages" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such "member", contractor or subcontractor;
 - (ii) "Damages" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Damages" arising out of heat, smoke or fumes from a "hostile fire".
 - (e) At or from any premises, site or location on which any "member" or any contractors or subcontractors working directly or indirectly on any "member's" behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any "member" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "damage" that the "member" would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto or Watercraft

"Damages" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any "member". Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any "member" allege negligence or other wrong doing in the supervision, hiring, employment, training or monitoring of others by that "member", if the "occurrence" which caused the "damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any "member".

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to the "member";
- (4) "Damages" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Damages" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any "member"; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Damages", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage to Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the "member";
- (5) "Property damage" to property that is owned, rented, occupied, or in the care, custody, or control of any person of the "members" family or household.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to premises, including the contents of such premises, rented to or occupied by you for a period of seven (7) or fewer consecutive days. A separate benefit limit applies to Damage to Premises Rented or Occupied by You as described in **SECTION III – BENEFIT LIMITS.**

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage to Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage to Impaired Property or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall of Products, Work or Impaired Property

"Damages" claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or

(3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

p. Bodily Injury to Family or Household

"Bodily Injury" to any person of the "member's" family or household.

q. Communicable Disease Exclusion

"Damages" caused by, arising out of, or in any way connected with transmission or exposure by anyone a communicable disease," illness or condition or to claims related to any "communicable disease" by:

- (1)** An act or failure to act by any "member"; or
- (2)** Any allegation of negligence by an "member":
 - (a)** In properly hiring, training or supervising any "employee";
 - (b)** In controlling, monitoring or supervising the care of any person in the custody of any "member"; or
 - (c)** In testing, screening, segregating or obtaining medical treatment.

r. Sexual Abuse and/or Physical Abuse Exclusion

"Damages" sustained by any person arising out of or resulting from Sexual and/or Physical abuse by any certificate of benefits holder, any additional benefit holder or any other person. The "association" shall not have any duty to defend any suit against you seeking these "damages".

The intent of this exclusion is to exclude all injuries sustained by any person, including emotional distress, arising out of Sexual and/or Physical abuse including but not limited to Sexual and/or Physical abuse caused by negligent employment, investigation, supervision, or reporting to the proper authorities, or failure to report, or retention of a person for whom any "member" is or ever was legally responsible.

s. Lead Exclusion

"Damages" arising out of the manufacture, sale, lease, distribution, storage, handling, installation, repair, removal, testing, inspection, disposal or other use of, exposure to, or contact with any goods, products, materials, plant life, or structures containing lead in any form including, without limitation, claims arising out of continuous, intermittent or repeated exposure to and/or ingestion, inhalation or absorption of lead. This exclusion applies regardless whether the "damages" result from inhaling, eating, drinking, physical contact or any other means of lead contamination.

t. Employment Related Practices Exclusion

"Bodily injury" to:

- (1)** A person arising out of any:
 - (a)** Refusal to employ that person;
 - (b)** Termination of that person's employment; or
 - (c)** Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the "member" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

u. Asbestos Exclusion

"Damages" arising out of (1) The use or installation of asbestos in constructing or manufacturing any good, product or structure; (2) The removal of asbestos from any good, product or structure; (3) The manufacturing, storage or disposal of asbestos or goods or products containing asbestos; or (4) Inhaling, ingesting or prolonged physical exposure to asbestos or goods or products containing asbestos.

v. Punitive or Exemplary Damage Exclusion

This benefit plan does not apply to claims or indemnification for punitive or exemplary damages nor to any form of equitable relief.

w. Fungi or Bacteria Exclusion

1. "Damages" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
2. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any "member" or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

x. Additional Services Exclusion

"Damages" arising out of:

- (a) Sun Tanning Salons;
- (b) Massage/movement using implements other than the body;
- (c) Manipulations or adjustments of the human skeletal structure;
- (d) Use of lasers;
- (e) Hair implanting or hair transplanting or any attempt at these; including the sales, service or application of wigs or toupees;
- (f) The use of any dye or coloring to eyelashes or eyebrows except:
 - (1) mascara; or (2) Eyebrow pencils;
- (g) Body piercing of any type;
- (h) Tattooing, including but not limited to the act or practice of adding color by making punctures in the skin and inserting pigments to achieve a permanent design and/or mark on the skin;
- (i) Branding, including but not limited to the act or practice of branding or scarring the skin with branding irons or other implements in order to raise scars on the skin to achieve a decorative effect;
- (j) The removal or any attempt to remove:
 - (1) warts; (2) moles; or (3) growths;
- (k) Chiropody or podiatry;
- (l) The practice of law;

- (m) The practice of acupuncture, homeopathy, naturopathy, psychotherapy, psychology or nutritional counseling or any other branch of medicine including all claims to diagnose, analyze, assess, examine, evaluate, treat, rehabilitate, prevent or cure any disease, disorder, condition or nutritional imbalance; or all recommendations, advises, counsels, suggestions, or the prescription of any treatment, cure, rehabilitation or nutritional intervention for any medical, dental, veterinary or psychological disease, disorder or condition;
- (n) The insertion of probes or other foreign objects into the human body for any reason; including the medical procedure known as pelvic floor muscle rehabilitation or incontinence training using an anal or vaginal probe.
- (o) Psychological and related therapies.

y. Designated Products Exclusion

“Damages” arising out of any goods or products manufactured; rebottled; or packaged by you or any other “member” or sold under the label of you or any other “member”.

z. Criminal Acts / Violation Exclusion

“Damages” arising out of dishonest, fraudulent, criminal or malicious acts or omissions of the “member” including the violation of any statute, governmental rule or regulation.

SUPPLEMENTARY PAYMENTS

1. The “association” will pay, with respect to any claim the “association” investigates or settles, or any "suit" against a “member” the “association” defends:
 - a. All expenses the “association” incurs.
 - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. The “association” does not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable benefit limit. The “association” does not have to furnish these bonds.
 - d. All reasonable expenses incurred by the “member” at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
 - e. All costs taxed against the “member” in the "suit".
 - f. Prejudgment interest awarded against the “member” on that part of the judgment the “association” pays. If the “association” makes an offer to pay the applicable Benefit Limit, the “association” will not pay any prejudgment interest based on that period of time after the offer.
 - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before the “association” has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Benefit Limit.

These payments will reduce the Benefit Limits.

2. If the “association” defends a “member” against a "suit" and an additional benefit holder of the “member” is also named as a party to the "suit", the “association” will defend that additional benefit holder if all of the following conditions are met:
 - a. The "suit" against the additional benefit holder seeks damages for which the “member” has assumed the liability of the additional benefit holder in a contract or agreement that is an "insured contract";
 - b. This plan applies to such liability assumed by the “member”;
 - c. The obligation to defend, or the cost of the defense of, that additional benefit holder, has also been assumed by the “member” in the same "insured contract";
 - d. The allegations in the "suit" and the information the “association” knows about the "occurrence" are such that no conflict appears to exist between the interests of the “member” and the interests of the additional benefit holder;

- e. The additional benefit holder and the "member" ask us to conduct and control the defense of that additional benefit holder against such "suit" and agree that the "association" can assign the same counsel to defend the "member" and the additional benefit holder; and
- f. The additional benefit holder:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the additional benefit holder; and
 - (d) Cooperate with the "association" with respect to coordinating other applicable insurance available to the additional benefit holder; and
 - (2) Provide the "association" with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the additional benefit holder in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that additional benefit holder, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the additional benefit holder at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of **Section I – BENEFITS**, such payments will be deemed to be "damages" and will reduce the benefit limits.

Our obligation to defend a "member's" additional benefit holder and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. The "association" has used up the applicable benefit limits in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – BENEFIT PLAN PERIOD

This plan applies to "occurrences", claims made or "suits" brought against any "member" during the membership period stated on the "member's" certificate of benefits.

SECTION III – BENEFIT LIMITS

Regardless of the number of (1) "members" under this plan; (2) persons or organizations who sustain "damages" payable under this plan; or (3) claims made or "suits" brought on account of the benefits afforded by this plan, the "association's" benefits are limited as follows:

- 1. The each "occurrence" benefit limit under this plan is equivalent to the each "occurrence" benefit limit as stated on each "Member's" certificate of benefits. This each "occurrence" Benefit Limit is further limited by the annual aggregate limit as stated in the "member's" certificate of benefits.
- 2. The Damage To Premises Rented or Occupied By You Benefit Limit as stated on each "Member's" certificate of benefits is the most the "association" will pay under **SECTION I – BENEFITS** for "damages" because of "property damage" to any one premises, while rented or occupied by you with permission of the owner. All claims or "suits" brought against the "member" for "property damage" to premises rented or occupied by you will be paid under the Damage To Premises Rented or Occupied By You only. Any payments made under this benefit limit will reduce the annual aggregate limit as stated in the member's certificate of benefits.

SECTION IV – GENERAL LIABILITY AND PROFESSIONAL LIABILITY CONDITIONS

1. Duties In The Event Of Occurrence, Offense, Claim or Suit

- a. You must see to it that the "association" is notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and

- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any "member", you must:
- (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify the "association" as soon as practicable.
- c. You and any other involved "member" must:
- (1) Immediately send the "association" copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize the "association" to obtain records and other information;
 - (3) Cooperate with the "association" in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist the "association", upon our request, in the enforcement of any right against any person or organization which may be liable to the "member" because of injury or damage to which this plan may also apply.
- d. No "member" will, except at that "member's" own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without the "association's" consent.

2. ACTION AGAINST THE ASSOCIATION

No action shall extend against the "association" unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of the plan, nor until the amount of the "member's" obligation to pay shall have been finally determined either by judgment against the "member" after actual trial or by written agreement of the "member", the claimant and the "association". Nothing in this provision shall bar the "member" from seeking to enforce his rights under the plan in the absence of a judgment.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this plan to the extent of the benefits afforded by this plan. No person or organization shall have any right under this plan to join the "association" as a party to any action against the "member" to determine the "member's" liability, nor shall the "association" be impleaded by the "member" or his legal representative. Bankruptcy or insolvency of the "member" or of the "member's" estate shall not relieve or increase the "association" of any of its obligations hereunder.

3. OTHER INSURANCE

The benefits provided under this plan shall be excess over any valid and collectible insurance or other legal rights of recovery available to the "member", either as an insured under an insurance policy or otherwise.

4. SUBROGATION

In the event of any payment under this plan, the "association" shall be subrogated to all the "member's" rights of recovery thereof against any third party or organization and the "member" shall execute and deliver instruments and papers and do whatever else is necessary to the full extent of law and regulations to secure such rights. In the event this plan responds for defense and/or money "damages" on behalf of any "member" and thereafter, the "member" collects "damages", costs and/or attorney's fees from any third party, the "association" shall be entitled to all such "damages", costs and/or attorney's fees so collected, up to the limit of its actual payment under this plan.

5. CHANGES

Notices to any agent, or knowledge possessed by any agent or by any other person shall not effect a waiver, or change in part this plan or stop the "association" from asserting its right under the terms of this plan; nor shall the terms of this plan be waived or changed, except by endorsement issued to form a part of this plan signed by a duly authorized agent of the "association."

6. CANCELLATION

This benefit plan may be cancelled by the "member" by mailing to the "association" written notice stating when thereafter the cancellation shall be effective. This plan may be cancelled by the "association" by sending notice via electronic mail or mailing to the "member" at the address shown in the certificate of benefits written notice stating when not less than sixty (60) days thereafter such cancellation shall take effect. In the event of non-payment of membership cost, cancellation will automatically take place upon thirty (30) days after the non-payment of membership cost event.

7. ASSIGNMENT

The interest of the "Member" under this plan shall not be assignable.

8. DECLARATIONS

By acceptance of this plan, the "Members" agree that the statements made by each "Member" in the membership enrollment process are their agreements and representations, that this plan is issued in reliance upon the truth of such representations and that this plan embodies all agreements existing between the "Members" and the "association or any of its agents relating to this plan.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
 - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Benefit territory" means:
 - a. The United States of America (including its territories and possessions);
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
 - c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on business

provided the "member's" responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement the "association" agrees to.

5. "Damages" means all damages including "bodily injury or "property damage" which are payable because of injury to which this benefit plan applies.
6. "Employee" includes loaned, rented, leased, or temporary employees, as well as persons who qualify as borrowed servants or employees or persons who are or may be deemed employees of any "member" under the doctrines of borrowed servant, borrowed employee, respondeat superior, or any similar doctrine, or for whom any "member" may be held liable as an employer.
7. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
8. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
9. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
 - (i). The repair, replacement, adjustment or removal of "your product" or "your work"; or

(ii). Your fulfilling the terms of the contract or agreement.

10. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the "member", if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the "member's" rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Member" means an individual person who has completed enrollment with the NBCB Association and has been issued and named as the primary certificate holder on a valid certificate of benefits, under the terms and conditions of this plan. In addition, any additional benefit holder named on a member's certificate of benefit is also considered a "member", but only for liability arising out of the sole negligence of the primary certificate holder.

13. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

- (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

14. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any "member";
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

17. "Professional Services" means the act of providing services associated with the following certifications only: Biofeedback Certification Institute of America Certified (BCIA-C), Certified Neurotherapy Supervisor (CNS), Biofeedback Certification Institute of America Fellow (BCIA-F), Certified Peak Performance Instructor (CPPI), Biofeedback Certification Institute of America EEG Certified (BCIA-EEG), Certified Peak Performance Specialist (CPPS), Biofeedback Certification Institute of America EEG Fellow (BCIA_EEGF), Certified Sound Therapist (CST), Board Certified Neurotherapist (BCN), Certified Sound Therapy Instructor (CSTI), Certified Biofeedback Instructor (CBI), Diplomate in Neurotherapy (Dipl-N), Certified Biofeedback Supervisor (CBS), Diplomate in Biofeedback (Dipl-B), Certified Biofeedback Therapist (CBT) Diplomate in Peak Performance (Dipl-PP), Certified Neurotherapy Instructor (CNI),

Quantum Biofeedback Specialist (QBS), Quantum Biofeedback Instructor (QBI),
Diplomate in Quantum Biofeedback (Dipl-Q)

18. "Property damage" means:

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this plan, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

19. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this plan applies are alleged. "Suit" includes:

- a.** An arbitration proceeding in which such damages are claimed and to which the "member" must submit or does submit with our consent; or
- b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the "member" submits with our consent.

20. "Your product":

a. Means:

- (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a)** You;
 - (b)** Others trading under your name; or
 - (c)** A person or organization whose business or assets you have acquired; and
- (2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- (2)** The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

21. "Your work":

a. Means:

- (1)** Work or operations performed by you or on your behalf; and
- (2)** Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2)** The providing of or failure to provide warnings or instructions.