Berkshire Hathaway Specialty Insurance

Fiduciary Liability Coverage Part

In consideration of the payment of the premium and subject to all terms, conditions and limitations of this Coverage Part and the **General Terms and Conditions for Liability Coverage Parts**, the **Insureds** and **Insurer** agree:

Section I Insuring Agreements

A. Side A Coverage: Non-indemnified Loss of Insured Persons

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** as a result of a **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Act** and reported to the **Insurer** as required by this Coverage Part, but only to the extent such **Loss** is not paid or indemnified by an **Insured Entity**.

B. Side B Coverage: Indemnified Loss of Insured Persons

The **Insurer** shall pay on behalf of the **Insured Entity** all **Loss** for which an **Insured Entity** indemnifies the **Insured Persons**, as a result of a **Claim** first made against the **Insured Person** during the **Policy Period** for a **Wrongful Act** and reported to the **Insurer** as required by this Coverage Part.

C. Side C Coverage: Insured Entity Claim

The **Insurer** shall pay on behalf of an **Insured Entity** all **Loss** as a result of a **Claim** first made against such **Insured Entity** during the **Policy Period** for a **Wrongful Act** and reported to the **Insurer** as required by this Coverage Part.

Section II Coverage Extensions

A. Voluntary Compliance/Correction Program Costs

The **Insurer** shall pay on behalf of the **Insured** all **Voluntary Compliance/Correction Program Costs** first identified by or assessed against such **Insured**, subject to the sublimit of liability shown on the Declarations, first incurred during the **Policy Period** or during the policy period of which this Policy and/or Coverage Part is a continuous renewal and, if coverage is sought by the **Insured**, reported to the **Insurer** as required by this Coverage Part.

B. Fact-Finding Investigation

The **Insurer** shall pay on behalf of the **Insured** all **Loss** as a result of a **Fact-Finding Investigation** of the **Insured** first made during the **Policy Period** and if coverage is sought by the **Insured**, reported to the **Insurer** as required by this Coverage Part.

C. Internal Appeal

The **Insurer** shall pay on behalf of the **Insured** all **Loss** as a result of an **Internal Appeal** first made during the **Policy Period** and, if coverage is sought by the **Insured**, reported to the **Insurer** as required by this Coverage Part.

D. Labor Management Relation Act ("LMRA") Coverage

In the event that, and solely while, **Section I Insuring Agreement**, **A.**, **B.** and/or **C**. of this Coverage Part is/are triggered, the **Insurer** shall pay on behalf of the **Insured** all **Loss** of any **Insured** arising from an allegation that such **Insured** violated Section 301 of LMRA relating to alleged violations of collectively bargained contracts in connection with a **Sponsored Plan**.

E. Anti-Clawback Protection

If an allegation which triggers potential coverage under this Coverage Part is disproven, such that a **Claim** falls outside the scope of coverage under this Coverage Part, then the **Insurer** shall not seek recovery of amounts that it has previously paid. Situations that would trigger this protection include, but are not limited to when it is proven that:

1. any natural person who is insured under this Coverage Part who was alleged to be a fiduciary of a **Sponsored Plan** was not in fact a fiduciary of a **Sponsored Plan**;
2. an alleged **Sponsored Plan** was not a plan or not a covered **Sponsored Plan**; or
3. an **Organization** alleged to be the sponsor of a **Sponsored Plan** was not in fact the sponsor of such plan.

F. Additional Fiduciary Liability Defense Costs

Notwithstanding anything to the contrary in this Coverage Part, and if **Included** as shown on the Declarations, the Additional Fiduciary Liability Defense Costs shall be in addition to, and not part of the Aggregate Limit of Liability for this Coverage Part. Such Additional Fiduciary Liability Defense Costs shall attach only after the exhaustion of such Aggregate Limit of Liability and any amounts payable under any other insurance policies that are specifically written to apply in excess of this Coverage Part.

Section III Definitions

For purposes of this Coverage Part:

1. **"Administration"** shall mean solely with respect to a **Plan**: counseling or providing interpretations to employees, participants or beneficiaries; determining or calculating benefits or eligibility for benefits; preparing, distributing, or filing required notices, including, but not limited to COBRA notices; handling records; or effecting enrollments, terminations or cancellations of employees, participants or beneficiaries.

2. **"Affordable Care Act"** shall mean the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 and any amendments thereto.

3. **"Benefits"** shall mean any obligation under a **Plan** to a **Plan** participant or beneficiary to make a payment of money or property or to grant a privilege, right, option, or perquisite, including such obligations that are due or to become due under or to any **Plan** or which would be due under or to any **Plan** if such **Plan** complied with applicable law.

4. **"Claim"** shall mean:

a. a written demand against an **Insured**:

i. for monetary or non-monetary (including injunctive) relief, other than an initial application for benefits;

ii. to toll any statute of limitations; or

iii. to engage in arbitration or mediation;

which shall be deemed first made upon receipt by the **Insured** of such demand;

b. a civil or criminal proceeding against an **Insured**, which shall be deemed first made upon:

i. the service of a complaint or similar pleading upon the **Insured**; or

ii. in the case of a criminal proceeding, an arrest, the return of an indictment or information, or the receipt or filing of notice of charges or similar document;

c. any formal administrative or regulatory proceeding against an **Insured** which shall be deemed first made upon receipt of a notice of charges, complaint or similar document by the **Insured**;

d. any investigation, other than a **Fact-Finding Investigation**, by the U.S. Department of Labor, U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority which shall be deemed first made upon service on or receipt by the **Insured** of a written document from the U.S. Department of Labor, U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority identifying such **Insured** as a target of the investigation or as a person or entity against whom a proceeding as described in subsections **b.** or **c.** above may be brought;

e. solely with respect to **Section II Coverage Extensions, A.**, a **Voluntary Compliance/Correction Program**, provided, however, that a **Voluntary Compliance/Correction Program** only shall constitute a **Claim** under this Coverage Part if the **Insured Person** or **Insured Entity** elects to give to the **Insurer** written notice thereof pursuant to **Section VI Notice of Claims** of this Coverage Part, at which point such **Voluntary Compliance/Correction Program** shall be deemed first made;

f. solely with respect to **Section II Coverage Extensions, B.**, a **Fact-Finding Investigation**, provided, however, that a **Fact-Finding Investigation** only shall constitute a **Claim** under this Coverage Part if the **Insured Person** or **Insured Entity** elects to give to the **Insurer** written notice thereof pursuant to **Section VI Notice of Claims** of this Coverage Part, at which point such **Fact-Finding Investigation** shall be deemed first made; or

g. solely with respect to **Section II Coverage Extensions, C.**, an **Internal Appeal**, provided, however, that an **Internal Appeal** only shall constitute a **Claim** under this Coverage Part if the **Insured Person** or **Insured Entity** elects to give to the **Insurer** written notice thereof pursuant to **Section VI Notice of Claims** of this Coverage Part, at which point such **Internal Appeal** shall be deemed first made.

5. **"Corporate Trustee Company"** shall mean any corporation formed and operating outside of the United States and established by the **Parent Organization** and duly appointed to act as a trustee of any **Sponsored Plan**.

6. **"Employee Benefit Law"** shall mean solely with respect to any **Plan**:

   a. **ERISA** and any applicable similar common or statutory law anywhere in the world (including but not limited to the United Kingdom's Pensions Act 2004, Pensions Act 1995, Pension Scheme Act 1993; and the Pension Benefits Standards Act, 1985, as amended), and any rules or regulations promulgated thereunder to which a **Plan** is subject;

   b. the privacy regulations under **HIPAA**; and

   c. solely with respect to subsection **b.** of the definition of **Wrongful Act**, unemployment insurance, Social Security, government-mandated disability benefits (other than workers' compensation)

   Employee Benefit Law shall not include any law, other than **ERISA**, concerning workers' compensation, unemployment insurance, social security, government-mandated disability benefits, or similar law.

7. **"ERISA"** shall mean the Employee Retirement Income Security Act of 1974, as amended, including but not limited to amendments pursuant to:

   a. COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985);

   b. **HIPAA**;

   c. The Newborns' and Mothers' Health Protection Act of 1996;

   d. The Mental Health Parity Act of 1996;

   e. The Women's Health and Cancer Rights Act of 1998

   f. The Pension Protection Act of 2006; and

   g. The **Affordable Care Act**;

   and any rules and regulations promulgated thereunder.

8. **"Fact-Finding Investigation"** shall mean any investigation into a possible violation of **Employee Benefit Law** with respect to a **Sponsored Plan** by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation, or any similar governmental authority outside the United States.

9. **"Healthcare Exchange"** shall mean any public, private, or government-sponsored or controlled entity established to facilitate the purchase of health insurance in accordance with the **Affordable Care Act**.

10. **"HIPAA"** shall mean the Health Insurance Portability and Accountability Act of 1996 and amendments thereto.

11. **"Insured(s)"** shall mean any **Insured Person** or **Insured Entity**.

12. **"Insured Entity"** shall mean any **Organization**, **Sponsored Plan**, employee benefits or **Plan** committee, or **Corporate Trustee Company**.

13. **"Insured Person(s)"** shall mean, solely with respect to any **Plan**, any natural person who was, is or shall be:

a. a duly elected or appointed director, officer, employee or trustee of an **Insured Entity**, or a member of an employee benefit or **Plan** committee established by the **Organization** in his or her capacity as a fiduciary, trustee, or settlor of a **Sponsored Plan** or in his or her **Administration** of a **Plan**;

b. a manager, member of any board of managers or the equivalent executive of a **Organization** that is a limited liability organization or a joint venture in his or her capacity as a fiduciary, trustee or settlor of a **Sponsored Plan** or in his or her **Administration** of a **Plan**;

c. an official of an **Insured Entity**, including an **Insured Entity** organized or operated in a **Foreign Jurisdiction**, while serving in a functionally equivalent position to those described in subsections **a.** or **b.**, above; and

d. a former duly elected or appointed director, officer, trustee, or in the case of an **Organization** that is a limited liability organization or a joint venture, a member of the board of managers or the equivalent executive, serving in a consulting or an advisory capacity to any **Sponsored Plan** if such person is indemnified by the **Insured Entity** in the same manner as is provided to other **Insured Persons**.

"Insured Person(s)" shall not include any individual in his or her capacity as an employee of any third party, including a service provider, other than a **Corporate Trustee Company**.

14. **"Internal Appeal"** shall mean an appeal of an adverse benefits determination made by an **Insured** pursuant to the U.S. Department of Labor's claim procedure regulation, 29 C.F.R. 2560.503-1(h) or similar claim procedures under applicable law.

15. **"Loss"** shall mean those amounts any **Insured** is legally obligated to pay as a result of a **Claim**, including, but not limited to:

a. compensatory, punitive, exemplary and multiple damages;

b. settlements and judgments, including costs and fees awarded pursuant to a covered judgment and pre-judgment and post-judgment interest on that portion of a covered judgment;

c. **Defense Costs**;

d. reasonable fees of an independent fiduciary if such fiduciary is retained to review a proposed settlement of a covered **Claim** and reasonable fees and costs of any law firm hired by such independent fiduciary to facilitate a review of such proposed settlement;

e. the following civil fines and penalties:

i. the 5% or less, or 20% or less, civil penalty imposed upon an **Insured** under Section 502(i) or (l), respectively, of **ERISA**, with respect to covered settlements and judgments;

ii. the civil fines and penalties imposed by the United Kingdom's Pension Ombudsman or Pensions Regulator or any successor thereto;

iii. the civil penalties imposed by the Republic of Ireland's Pensions Board or Pensions Ombudsman; and

iv. the civil or tax penalties, subject to their corresponding sublimits, shown on the Declarations.

Loss (other than **Defense Costs**) shall not include any of the following:

i. fines, penalties, taxes or tax penalties, except as provided at subsection **e.** above;

ii. any amount for which an **Insured** is legally absolved from payment;

iii. any amount incurred to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;

iv. **Benefits**, or that portion of any settlement or judgment in an amount equivalent to, or substantially equivalent to, such **Benefits**, unless and to the extent that such **Benefits** are payable as a personal obligation of an **Insured Person** and are based on a covered **Wrongful Act**; provided, however, the foregoing shall not exclude that portion of any settlement or fund for settling any **Claim** made against an **Insured** to the extent it alleges loss to a **Plan** and/or loss in the actual accounts of participants in a **Plan** by reason of a change in value of the investments held by that **Plan**, including, but not limited to the securities of the **Organization**, regardless of whether the amounts sought in such **Claim** have been characterized as "benefits" or held by a court to be "benefits;"

v. wages, tips and commissions;

vi. any amount not insurable under the law pursuant to which this Coverage Part shall be construed; or

vii. costs incurred by an **Insured** to comply with any order for non-monetary relief (including injunctive relief) or with any agreement to provide such relief.

16. **"Managed Care Services"** shall mean the management or administration by any entity that is not an **Insured** of any **Sponsored Plan** that is a health care, pharmaceutical, vision or dental plan, utilizing cost control mechanisms.

17. **"Multiemployer Plan"** shall mean a multiemployer plan as defined in **ERISA**, which is operated jointly by the **Organization**, a labor organization, and one or more other employers for the benefit of the employees of the **Organization** and other unrelated organizations.

18. **"Plan"** shall mean any **Sponsored Plan** or any government-mandated insurance program for unemployment insurance, social security or disability benefits; in each case for the employees of any **Organization**. **Plan** shall mean a **Multiemployer Plan**, but solely with respect to the coverage afforded pursuant to subsection **f.** of the definition of **Wrongful Act**.

19. **"Securities Retention"** shall mean the Retention shown on the Declarations.

20. **"Sponsored Plan"** shall mean:

a. any qualified or non-qualified plan, trust, fund or program, including but not limited to: pension, welfare, health savings account, IRA-based, stock option, stock purchase, deferred compensation, supplemental executive retirement, top-hat, excess benefit, cafeteria, and fringe benefit plans; employee assistance, dependent care assistance, and wellness programs; and VEBA's (Voluntary Employees' Beneficiary Association as defined in the Internal Revenue Code of 1986, as amended); established anywhere in the world and sponsored solely by an **Organization**, or operated jointly by an **Organization** and a labor organization, in each case solely for the benefit of any past or present employees or directors of the **Organization**;

b. automatically, any new employee benefit plan created during the **Policy Period**; and

c. any employee benefit plan otherwise described in subsection **a.** above while such plan is being considered, developed, formed or proposed by any **Organization** prior to the formal creation of such plan or program.

Sponsored Plan shall not include any **Multiemployer Plan**.

21. **"Voluntary Compliance/Correction Program"** shall mean any voluntary compliance resolution program or similar voluntary settlement program administered by the U.S. Internal Revenue Service, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any similar domestic or foreign authority, including but not limited to: the Employee Plans Compliance Resolution System, the Delinquent Filer Voluntary Compliance Program, the Voluntary Fiduciary Correction Program, the Premium Compliance Evaluation Program, and the Participant Notice Voluntary Correction Program, under which the **Insured** corrects any inadvertent non-compliance by a **Sponsored Plan**.

22. **"Voluntary Compliance/Correction Program Costs**" shall mean fines, penalties, sanctions, and reasonable fees, costs or expenses related to the assessment or correction of a **Sponsored Plan's** non-compliance in accordance with any **Voluntary Compliance/Correction Program**.

23. **"Wrongful Act"** shall mean:

a. any actual or alleged violation by any **Insured** of any of the responsibilities, obligations or duties imposed upon a fiduciary by **Employee Benefit Law** with respect to a **Sponsored Plan**;

b. any actual or alleged act, error or omission in **Administration** of a **Plan**, by any **Insured**;

c. any matter claimed against any **Insured Person** solely by reason of such **Insured Person's** actual or alleged service as a fiduciary or in the **Administration** of any **Sponsored Plan**;

d. any actual or alleged act, error or omission in any **Insured's** settlor capacity with respect to any **Sponsored Plan**;

e. any actual or alleged act, error or omission by an **Insured** in connection with insurance actually or attempted to be purchased through a **Healthcare Exchange**; and

f. solely as respects a **Multiemployer Plan**, any negligent act, error, or omission by an **Insured Person** or the **Organization**, in facilitating such **Multiemployer Plan's** administration by a third party, including but not limited to transmitting data concerning **Organization** employees who are participants in such **Multiemployer Plan**.

Section IV Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. Conduct

based upon, arising out of, or relating to:

1. such **Insured** gaining any profit, financial advantage or remuneration that he, she or it was not legally entitled to receive; or

2. any deliberately fraudulent act or deliberately fraudulent omission or any intentional violation of any statute, rule or law by such **Insured**;

provided, however, that this exclusion shall only apply if a final and non-appealable adjudication adverse to such **Insured** in an underlying proceeding establishes that such conduct occurred.

B. Prior Notice

based upon, arising out of or attributable to any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given before the inception of the **Policy Period** under any fiduciary liability policy or similar coverage part, provided the insurer of such policy or coverage part does not reject such notice as invalid.

C. Pending and Prior Litigation

based upon, arising out of or attributable to essentially the same facts, circumstances, situations, transactions or events underlying or alleged in any litigation, any administrative or regulatory proceeding, any investigation or any alternative dispute resolution proceeding that was pending on or prior to the **Pending or Prior Date** shown on the Declarations.

D. Bodily Injury/Property Damage

1. for any actual or alleged bodily injury, sickness, disease, or death of any person provided, however, this exclusion **D.1.** shall not apply to:

a. a **Claim** for actual or alleged negligent or improper selection of a **Managed Care Services** provider or improper delay or denial of **Benefits** by a **Managed Care Services** provider; or

b. **Defense Costs** in the defense of a **Claim** for violation of **ERISA** by an **Insured**; or

2. for any actual or alleged damage to or destruction of any tangible property, including the loss of use thereof.

E. Discrimination and Violation of Law

for any actual or alleged discrimination in violation of any law provided, however, this exclusion shall not apply to a **Claim** for discrimination in violation of **Employee Benefit Law**.

For purposes of determining the applicability of these Exclusions, the **Wrongful Acts** and knowledge of any **Insured** shall not be imputed to any other **Insured**.

Section V. Sublimits of Liability

The maximum liability of the **Insurer** for all **Voluntary Compliance/Correction Program Costs** combined under **Section II Coverage Extensions, A.** shall be the amount shown on the Declarations. The maximum liability of the **Insurer** for the civil or tax penalties described in the **Section III Definitions, 15. e. iv.** shall be the respective individual amounts shown on the Declarations. Such amounts shown on the Declarations are sublimits that are part of and not in addition to the Aggregate Limit of Liability for this Coverage Part.

Section VI Notice of Claims

The **Insureds** shall, as a condition precedent to their rights under this Coverage Part with respect to a **Claim**, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period**, except that this section shall not apply to any **Voluntary Compliance/Correction Notice**, **Fact-Finding Investigation**, or **Internal Appeal** that the **Insured** elects not to treat as a **Claim** pursuant to **Section III Definitions, 4. e-g**, above. Any notice provided pursuant to this section shall be given as soon as practicable after the Chief Executive Officer, Chief Financial Officer or equivalent position of the **Organization** first learns of such **Claim**, but in no event later than sixty (60) days after the end of the **Policy Period**.

Section VII Cessation of a Sponsored Plan

If during or prior to the **Policy Period** any entity ceases to be a **Sponsored Plan**, then coverage for such former **Sponsored Plan** and its **Insured Persons** under this Coverage Part shall only be available, subject to all other terms and conditions of this Coverage Part, for **Wrongful Acts** occurring or allegedly occurring prior to the date that the **Organization** or **Insured Person** ceases to be a fiduciary or ceases the **Administration** of any sold, spun-off or transferred **Sponsored Plan**, or in the case of a terminated **Sponsored Plan**, the final date of distribution of the assets of such **Sponsored Plan**.

Section VIII Waiver of Recourse

In the event that this **Fiduciary Liability Coverage Part** has been purchased by the **Organization** or an **Insured Person**, the **Insurer** expressly agrees to waive its right of recourse pursuant to **ERISA** Section 410(b)(1), as amended.