Berkshire Hathaway Specialty Insurance

Executive First Fiduciary Liability Policy

In consideration of the payment of the premium and subject to all terms, conditions and limitations of this Policy, 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 Policy, 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 Policy.

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 Policy.

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 set forth in **Item 4. B.** of the Declarations, first incurred during the **Policy Period** or during the policy period of which this Policy is a continuous renewal and, if coverage is sought by the **Insured**, reported to the **Insurer** as required by this Policy.

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 Policy.

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 Policy.

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 Policy 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 Policy is disproven, such that a **Claim** falls outside the scope of coverage under this Policy, 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 policy 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) a **Company** alleged to be the sponsor of a **Sponsored Plan** was not in fact the sponsor of such plan.

Section III Definitions

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.

3. **"Application"** shall mean the application submitted to the **Insurer** for this Policy together with any written materials attached thereto or submitted to the **Insurer** in connection with the underwriting of this Policy. **Application** shall also include all publicly available documents filed by or on behalf of the **Insured Entity** with any

federal, state, local or foreign regulatory agency during the twelve (12) months preceding the effective date of this Policy.

4. **"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.

5. **"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 Policy if the **Insured Person** or **Insured Entity** elects to give to the **Insurer** written notice thereof pursuant to **Section IX Notice** below, 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 Policy if the **Insured Person** or **Insured Entity** elects to give to the **Insurer** written notice thereof pursuant to **Section IX Notice** below, 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 Policy if the **Insured Person** or **Insured Entity** elects to give to the **Insurer** written notice thereof pursuant to **Section IX Notice**, below, at which point such **Internal Appeal** shall be deemed first made.

6. **"Company"** shall mean the **Parent Company** and any **Subsidiary**, including in the event of a bankruptcy, the **Parent Company** and any **Subsidiary** as a debtor in possession as such term is used in Chapter 11 of the United States Bankruptcy Code.

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

8. **"Defense Costs"** shall mean that part of **Loss** consisting of:

a. reasonable fees, costs and expenses incurred by the **Insureds** in the defense or appeal of any **Claim**, including the costs of an appeal bond, attachment bond or similar bond, but does not include the obligation to apply for or furnish such bonds; and

b. reasonable fees, costs and expenses incurred by the **Insureds** at the **Insurer's** request to assist the **Insurer** in investigating a **Claim**.

Defense Costs shall not include (i) any salaries, wages, overhead, benefits or benefit expenses associated with any **Insured**, or (ii) any fees, costs or expenses incurred by an **Insured** prior to the time that the **Claim** is first made against the **Insured**.

9. **"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.

10. **"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.

11. **"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.

12. **"Financial Insolvency"** shall mean an **Insured Entity** becoming a debtor in possession (as defined under U.S. bankruptcy law or equivalent foreign law), or the appointment, pursuant to state or federal law, of a receiver, conservator, liquidator, trustee, rehabilitator or other official to control, supervise, manage or liquidate the **Insured Entity**.

13. **"Foreign Jurisdiction"** shall mean any jurisdiction, other than the United States or any of its territories or possessions.

14. **"Foreign Policy"** shall mean the standard fiduciary liability policy (including all mandatory endorsements, if any) approved by the **Insurer** for use within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded under this Policy. The term "**Foreign Policy**" shall not include any directors and officers, partnership or professional liability policy or similar coverage.

15. **"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**.

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

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

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

19. **"Insured Person"** 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 **Company** 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 **Company** that is a limited liability company 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 a **Company** that is a limited liability company 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" 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**.

20. **"Insurer"** shall mean the insurance company identified at **Item 2**. of the Declarations.

21. **"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.

22. **"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, as set forth in **Item 4**. of 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 **Company**, 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 Policy 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.

23. **"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.

24. **"Management Control"** shall mean:

a. owning an interest of an entity representing more than fifty percent (50%) of the power to manage or control said entity, including the power to elect, appoint or designate a majority of the board of directors or equivalent executives of such entity; or

b. having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an entity (including a limited liability company or joint venture), to elect, appoint or designate a majority of the board of directors or equivalent executives of such entity.

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

26. **"Parent Company"** shall mean the entity or organization identified in **Item 1.** of the Declarations.

27. **"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 **Company**. **Plan** shall mean a **Multiemployer Plan**, but solely with respect to the coverage afforded pursuant to subsection **f.** of the definition of **Wrongful Act**.

28. "**Policy Period"** shall mean the period from the inception date of this Policy to the expiration date of this Policy as set forth in **Item 3.** of the Declarations (subject to its earlier cancellation in accordance with **Section XIV Cancellation or Non-Renewal**) and the Discovery Period, if applicable.

29. **"Pollutants"** shall mean any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on any list of hazardous substances issued by, the U.S. Environmental Protection Agency or any state, county, municipality or locality counterpart thereof including, but not limited to, nuclear material or nuclear waste.

30. **"Related Wrongful Acts"** shall mean all **Wrongful Acts** that are logically or causally connected by any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

31. **"Securities Retention"** shall mean the Retention listed in **Item 5. B.** of the Declarations.

32. **"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 a **Company**, or operated jointly by a **Company** and a labor organization, in each case solely for the benefit of any past or present employees or directors of the **Company**;

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 **Company** prior to the formal creation of such plan or program.

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

33. **"Subsidiary"** shall mean any entity with respect to which the **Company** has **Management Control,** including any not-for-profit entity described in Section 501(c) of the Internal Revenue Code of 1986, as amended, sponsored exclusively by the **Company**. **"Subsidiary"** shall also include, automatically, any new **Subsidiary** created during the **Policy Period**.

34. **"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**.

35. **"Voluntary Compliance/Correction Program Costs**" shall mean fine, 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** and which are incurred during the **Policy Period** (or during the policy period of a policy issued by the **Insurer** of which this Policy is a continuous renewal)**.**

36. "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**; and

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**;

f. solely as respects a **Multiemployer Plan**, any negligent act, error, or omission by an **Insured Person** or the **Company**, in facilitating such **Multiemployer Plan's** administration by a third party, including but not limited to transmitting data concerning **Company** 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 or arising out of 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 coverage part, provided the insurer of such policy does not reject such notice as invalid.

C. Bodily Injury/Property Damage

1) for bodily injury, sickness, disease, or death of any person provided, however, this exclusion **C 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; and

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

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

D. Discrimination and Violation of Law

for 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 Limit of Liability

A. **Defense Costs** shall be part of, and not in addition to, the Limits of Liability stated in **Item 4**. of the Declarations. Such **Defense Costs** shall reduce the Limit of Liability.

B. The maximum liability of the **Insurer** for all **Loss** arising from all **Claims** combined shall be the amount stated in **Item 4.A.** of the Declarations. The maximum liability of the **Insurer** for all **Voluntary Compliance/Correction Program Costs** combined under **Section II Coverage Extensions, A.** shall be the amount stated in **Item 4.B.** of the Declarations. The maximum liability of the **Insurer** for the civil or tax penalties described in the **Section III Definitions, 22. e. iv.** shall be the respective individual amounts set forth in the Declarations. The amounts stated in **Items 4.B** and **4.C-4.G.** of the Declarations are sublimits that are part of and not in addition to the aggregate Limit of Liability in **Item 4.A**. of the Declarations.

Section VI Retention

A. The Retention specified in **Item 5.A**. of the Declarations shall apply to **Loss** resulting from each **Claim**, other than a **Claim** as described in paragraph **B.** of this **Section VI Retention**, except that no Retention shall apply to **Loss** under **Section I Insuring Agreements, A.**, **Voluntary Compliance/Correction Program Costs** nor to the civil or tax penalties enumerated in **Section III Definitions, 22. e. iv**.

B. The Retention specified in **Item 5 B**. of the Declarations shall apply to **Loss** based upon or arising from any **Claim** in which a plaintiff alleges a loss or seeks damages based upon a change in or challenge to the price or valuation of securities of or issued by: the **Company**, the parent of the **Company**, any company that is acquired in whole or in part by the **Company**, or any former parent of any company that is acquired in whole or in part by the **Company** (hereinafter all collectively referred to as "Employer Securities").

The Retention specified in **Item 5 B.** of the Declarations shall not apply to **Loss** resulting from a **Claim** in which plaintiffs allege a loss or seek damages as a result of a **Sponsored Plan's** allegedly excessive fees or excessive cash holdings within an investment fund designed to hold Employer Securities as long as there is no allegation based on a drop in the price or decrease in the valuation of such Employer Securities.

C. The **Insurer's** liability with respect to covered **Loss** resulting from each **Claim** shall be excess of the applicable Retention specified in **Item 5**. of the Declarations. The applicable Retention shall be borne by the **Insured Entity** uninsured under this policy, and shall apply to all covered **Loss**, including **Defense Costs**.

D. If an **Insured Entity** refuses or fails within sixty (60) days after an **Insured Person's** request to indemnify or advance covered **Loss** or if an **Insured Entity** is unable to indemnify or advance covered **Loss** due to its **Financial Insolvency**, the **Insurer** shall pay such covered **Loss** without applying the applicable Retention. If the **Insurer** pays under this Policy any **Loss** incurred by an **Insured Person** for which the **Insured Entity** is legally permitted or required and is financially able to advance or indemnify, then the **Insured Entity** shall reimburse the **Insurer** for such amounts up to the applicable Retention, and such amounts shall become due and payable as a direct obligation of the **Insured Entity** to the **Insurer**.

Section VII Related Claims

More than one **Claim** involving the same **Wrongful Act**, **Related Wrongful Acts,** or arising from the same or related facts or circumstances or series of causally or logically related facts or circumstances, shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. In the event such single **Claim** triggers more than one Retention, the highest retention shall be applicable.

All such **Claims** constituting a single **Claim** shall be deemed to have been first made on the earlier of the following dates: (1) the earliest date on which any such **Claim**

was first made; or (2) the earliest date on which any such **Wrongful Act**, **Related Wrongful Act**, or fact or circumstance, was reported under this Policy or any other policy providing similar coverage, regardless of whether such date is before or during the **Policy Period**. In no event shall a single lawsuit or proceeding constitute more than one **Claim** subject to more than one Retention.

Section VIII Defense and Settlement

A. Defense of Claims

1) The **Insureds**, and not the **Insurer**, shall have the duty to defend all **Claims**.

2) However, notwithstanding paragraph **1)** of this **Section VIII Defense and Settlement, A.**, the **Insureds** shall, within 60 days of reporting a **Claim** to the **Insurer**, have the right to tender the defense of such **Claim** to the **Insurer**.

3) The **Insureds** shall not incur **Defense Costs** in connection with any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld or delayed. The **Insurer** shall not be liable under this Policy for any **Defense Costs** incurred without such consent.

4) The **Insurer** shall advance such **Defense Costs** on a current basis but no later than sixty (60) days after the **Insurer** receives itemized invoices for such **Defense Costs**; provided that to the extent it is finally established that any such **Defense Costs** are not covered under this Policy, the **Insureds**, severally according to their interests, shall repay such **Defense Costs** to the **Insurer**.

B. Settlement of Claims

1) The **Insureds** shall not admit liability, offer to settle, or agree to any settlement in connection with any **Claim,** or agree to any **Voluntary Compliance/Correction Program Costs** for which coverage is sought, without the express prior written consent of the **Insurer**, which consent shall not be unreasonably withheld or delayed. The **Insurer** shall not be liable under this Policy for **Loss** or **Voluntary Compliance/Correction Program Costs** resulting from any such admission, offer or agreement to which the **Insurer** did not so consent.

2) Notwithstanding the preceding paragraph, the **Insureds** may settle all **Claims** subject to a single Retention without the **Insurer's** prior written consent only if the settlement amount plus **Defense Costs** for all such **Claims** do not exceed the applicable Retention.

C. Right to Associate

The **Insurer** shall have the right, but not the duty, to associate with the **Insureds** in the investigation, defense or settlement of any **Claim** that may implicate coverage

under this Policy. The **Insureds** shall cooperate with the **Insurer** and provide the **Insurer** with such information as it may reasonably require in the investigation, defense or settlement of any **Claim**. The failure of one **Insured Person** or **Insured Entity** to comply with this provision shall not impair the rights of any other **Insured Person** under this Policy.

D. Allocation

If in any **Claim** the **Insureds** incur **Loss** jointly with others (including other **Insureds**) who are not afforded coverage under this Policy for such **Claim** or incur both **Loss** covered by this Policy and other amounts which are not covered by this Policy, the **Insureds** and the **Insurer** shall allocate such amounts between covered **Loss** and uncovered loss based on the relative legal and financial exposures of the parties to covered and uncovered matters. If the **Insureds** and the **Insurer** cannot agree on an allocation of **Defense Costs**, the **Insurer** shall advance **Defense Costs** which the **Insurer** believes to be covered under this Policy until a different allocation is negotiated, arbitrated or judicially determined. In such event, such allocation shall be applied retroactively to all **Defense Costs**.

Notwithstanding the foregoing, if for any **Claim** the duty to defend has been tendered to the **Insurer** pursuant to **Section VIII Defense and Settlement, A. 2.**, above, then there shall be no allocation of **Defense Costs** with respect to such **Claim**, provided at least one allegation triggers coverage under the Policy.

Section IX Notice

A. Claims

The **Insureds** shall, as a condition precedent to their rights under this Policy with respect to a **Claim**, give the **Insurer** notice in writing of any such **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, 5. e-g**, above. Any notice provided pursuant to this section shall be given as soon as practicable after the risk manager or in-house general counsel or equivalent positions of the **Parent Company** first learns of such **Claim**, but in no event later than sixty (60) days after the end of the **Policy Period**.

B. Late Notice – Prejudice Required

If the **Insureds** fail to provide timely notice to the **Insurer** as specified above, the **Insurer** shall not be entitled to deny coverage based solely upon late notice unless the **Insurer** can demonstrate its interests were materially prejudiced by reason of such late notice.

C. Potential Claims

During the **Policy Period** or the **Discovery Period** (if purchased), the **Insureds** may give written notice to the **Insurer** of circumstances that may reasonably be expected to give rise to a **Claim**; and

1) such notice shall set forth the **Wrongful Act** allegations anticipated and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved;

2) any **Claim** which is subsequently made against such **Insured** alleging, arising out of, based upon or attributable to such circumstances, shall be considered made at the time notice of such circumstances was first given to the **Insurer**, and

3) notice of any such subsequent **Claim** shall be given to the **Insurer** as soon as practicable after the risk manager or in-house general counsel of the **Parent Company** first learns of such **Claim**. No coverage shall be provided under this Policy for fees, costs, expenses or other loss incurred as a result of such circumstances prior to the time such subsequent **Claim** is actually made.

D. Except as otherwise provided in this Policy, all notices under any provision of this Policy shall be in writing and given by email, prepaid express courier or certified mail properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Parent Company** at the address shown in **Item 1**. of the Declarations. Notice to the **Insurer** shall be given to the respective address shown in **Item 6**. of the Declarations. If notice is given as described above, it shall be deemed to be received and effective upon the date of transmittal, subject to proof of transmittal.

Section X Transactions: Coverage Implications of Mergers, Acquisitions and Sales of the Company or any Subsidiary

A. Merger or Acquisition of Parent Company

If during the **Policy Period** any of the following events occur:

1) the **Parent Company**: (i) sells all or substantially all of its assets to any other person or entity or affiliated group of persons or entities, or (ii) merges or consolidates with another entity such that the **Parent Company** is not the surviving entity; or

2) any person, entity or affiliated group of persons or entities acquires **Management Control** of the **Parent Company**;

then coverage under this Policy shall continue until expiration of the **Policy Period**, but only for **Wrongful Acts** taking place prior to the effective date of such transaction. The entire premium for this Policy shall be deemed earned as of the date of such transaction.

B. Acquisition of a Subsidiary

1) Except as set forth in the following paragraph **B.2.**, if before or during the **Policy Period** any entity qualifies as a **Subsidiary**, then such **Subsidiary** and its **Insured Persons** and **Sponsored Plans** shall be **Insureds**, but only with respect to **Wrongful Acts** occurring or allegedly occurring after such entity qualified as a **Subsidiary**.

2) If an entity first qualifies as a **Subsidiary** during the **Policy Period** and if at that time such **Subsidiary's** total employee benefit plan assets exceed twenty-five percent (25%) of the total consolidated **Sponsored Plan** assets of the **Parent Company** as of the inception of the **Policy Period**, then coverage under this Policy for such **Subsidiary**, its **Insured Persons** and **Sponsored Plans** as set forth in the preceding paragraph shall cease ninety (90) days after such entity first qualifies as a **Subsidiary** unless:

a) the **Company** within such ninety (90) days provides the **Insurer** with written notice of the acquisition;

b) the **Company** and the **Insurer** agree on any revisions to the Policy either party may require; and

c) the **Company** pays any additional premium required by the **Insurer** as a result of the addition of the new **Subsidiary**.

C. Cessation of a Subsidiary or Sponsored Plan

If during or prior to the **Policy Period** any entity ceases to be a **Subsidiary** or a **Sponsored Plan**, then coverage for such former **Subsidiary** or **Sponsored Plan** and its **Insured Persons** under this Policy shall only be available, subject to all other terms and conditions of this Policy, for **Wrongful Acts** occurring or allegedly occurring prior to the date it ceased to qualify as a **Subsidiary** or, with respect to a **Sponsored Plan**, prior to the date that the **Company** 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 XI Indemnification, Other Insurance and Subrogation

A. Indemnification of Insured Persons

The **Insured Entity** agrees to indemnify the **Insured Persons**, including the advancement of **Defense Costs** incurred by **Insured Persons**, to the fullest extent permitted by law.

B. Other Insurance

All amounts payable under this Policy will be specifically excess of, and will not contribute with, any other valid and collectible insurance, including but not limited to any insurance under which there is a duty to defend or any employment

practices liability insurance, unless such other insurance is specifically excess of this Policy; provided this Policy shall apply on a primary basis with respect to any personal umbrella excess liability insurance policy purchased by an **Insured Person**. This Policy will not be subject to the terms of any other insurance policy.

C. Subrogation and Waiver of Recourse

1) In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Insured Entity** and **Insured Persons** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Insured Persons** or the **Insured Entity**. The **Insurer** shall not exercise any available right of subrogation against an **Insured Person** under this Policy unless **Section IV Exclusions, A**., applies to such **Insured Person**. In the event that this Policy has been purchased by the **Company** or an **Insured Person**, the **Insurer** expressly agrees to waive its right of recourse pursuant to **ERISA** Section 410(b)(1), as amended.

2) In the event the **Insurer** recovers amounts it paid under this Policy, the **Insurer** will reinstate the applicable Limits of Liability of this Policy to the extent of such recovery, less the **Insurer's** costs incurred in obtaining such recovery. The **Insurer** assumes no duty to seek a recovery of any amounts paid under this Policy.

Section XII Order of Payments

A. The **Insurer** shall be entitled to pay **Loss** as it becomes due and payable under this Policy without consideration of other future payment obligations.

B. In the event **Loss** under Insuring Agreement I.A and any other **Loss** become due and payable concurrently, the **Insurer** shall pay, subject to the Limit of Liability, **Loss** covered under Insuring Agreement I.A first before paying any other **Loss**.

C. The bankruptcy or insolvency of any **Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this Policy as set forth above.

Section XIII Discovery Period

A. In the event the **Insurer** refuses to renew this Policy or the **Company** cancels or non-renews this Policy, the **Company** and the **Insured Persons** shall have the right to elect an extension of the coverage provided by this Policy for the time period and subject to the additional premium set forth in **Item 7**. of the Declarations. Coverage for any **Claim** deemed first made during the Discovery Period shall apply only with respect to any **Wrongful Act** committed or alleged to have been

committed before the expiration date of the **Policy Period** as set forth in **Item 3**. of the Declarations.

B. As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid and a written request to elect the Discovery Period, together with payment of the additional premium for the Discovery Period, must be provided to the **Insurer** no later than sixty (60) days following the effective date of such non-renewal or cancellation. The premium paid for the Discovery Period is deemed fully earned at the inception of the Discovery Period.

C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the Discovery Period shall not in any way increase the Limit of Liability stated in **Item 4**. of the Declarations. For purposes of the Limit of Liability, the Discovery Period is considered to be part of, and not in addition to, the **Policy Period**.

Section XIV Cancellation or Non-Renewal

A. This Policy may be cancelled by the **Company** at any time by prior written notice to the **Insurer** stating the effective time of such cancellation. Upon cancellation, the **Insurer** shall be entitled to retain the *pro rata* proportion of the premium calculated from the effective date of such cancellation, unless **Section X Merger or Acquisition of Parent Company, A.** above, applies, in which case the entire premium for this Policy shall be deemed fully earned.

B. This Policy may be cancelled by the **Insurer** only for nonpayment of premium. Such cancellation shall be effective on the date specified in the written notice of cancellation given by the **Insurer** to the **Parent Company**, provided such date is at least ten (10) days after the date such notice is given. If the **Parent Company** pays in full the premium due prior to such effective date, the **Insurer's** notice of cancellation shall be ineffective.

C. If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Parent Company** with no less than sixty (60) days advance written notice thereof.

Section XV Application

A. The **Insureds** represent and acknowledge that statements made and information in the **Application** are accurate and complete, are the basis of this Policy and are incorporated in and constitute part of this Policy. The **Application** shall be construed as a separate **Application** for each **Insured**.

B. With respect to any statements or other information provided in the **Application**, the knowledge possessed by any one **Insured Person** shall not be imputed to any other **Insured Person**.

C. If any statement in the **Application** was (i) not accurate and complete and (ii) either was made with the intent to deceive or materially affected the acceptance of the risk or hazard assumed by the **Insurer** under this Policy, then the **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** based upon, arising out of or in consequence of the facts that were not accurately and completely disclosed in the **Application**, to the extent such **Loss** is incurred by:

1) an **Insured Person** who knew, prior to the **Policy Period**, the facts that were not accurately and completely disclosed in the **Application** if prior to the **Policy Period** a reasonable person would have believed such facts were likely to give rise to a **Claim**; or

2) any **Insured Entity**, if the signer of the **Application,** the Chief Financial Officer or the Director of Human Resources of the **Parent Company** or functional equivalent official knew, prior to the **Policy Period**, the facts that were not accurately and completely disclosed in the **Application** if prior to the **Policy Period** a reasonable person would have believed such facts were likely to give rise to a **Claim**;

whether or not such **Insured Person** or official knew the **Application** contained such inaccurate and incomplete information.

D. To the extent the **Insurer** asserts that any **Loss** is not covered pursuant to **Section XV Application, C.**, above, the **Insured** which incurred such **Loss** or the **Insured Entity** which paid such **Loss**, to the extent the **Loss** would attach **to Section I Insuring Agreements**, **B**. or **Section II Coverage Extensions, B.** or **C.**, shall be entitled to a judicial determination of whether **Section XV Application, C.**, above, applies to such **Loss**. **Section XVI Dispute Resolution Process**, shall not apply to any dispute arising out of **Section XV Application, C.**, above. If any **Insured** seeking a judicial determination pursuant to this section prevails, the fees and costs incurred by such **Insured** in connection with the judicial determination shall be paid by the **Insurer** within 30 days of a final judgment.

E. The **Insurer** shall not be entitled under any circumstances to rescind or void this Policy in whole or in part.

Section XVI Dispute Resolution Process

The **Insurer** and the **Insureds** shall attempt in good faith to resolve any dispute arising out of or relating to this Policy promptly by negotiation between executives with authority to settle such dispute. If any dispute cannot be resolved through negotiation, the parties agree that they will submit the dispute to non-binding mediation. The parties will use best efforts to agree on the terms of any such mediation process, but if they do not agree within thirty (30) days of either party requesting mediation, the dispute will be submitted to JAMS for mediation. Each party will bear their own costs, regardless of the mediation process used. If the

dispute is not settled at mediation, no party may commence an action against any other party until at least thirty (30) days after the final mediation session.

Section XVII Action Against the Insurer

A. No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy.

B. No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against an **Insured**, nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

Section XVIII Spouses, Domestic Partners, Estates and Legal Representatives

A. The coverage provided by this Policy shall also apply to an **Insured Person's** lawful spouse or domestic partner under applicable law or the provisions of any formal program established by the **Company**, but only for a **Claim** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

B. The coverage provided by this Policy also shall apply to the estates, heirs, legal representatives or assigns of any **Insured Person** in the event of their death, incapacity or bankruptcy, but only for **Claims** arising out of any actual or alleged **Wrongful Acts** of such **Insured Person**.

Section XIX Assignment

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

Section XX Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws are hereby amended to conform to such laws.

Section XXI Territory and Loss in Foreign Jurisdictions

A. Worldwide Territory

Coverage shall apply to **Claims** made and **Wrongful Acts** committed worldwide.

B. Liberalization Clause for Claims in Foreign Jurisdictions

If permitted by applicable law, when determining coverage under this Policy for **Loss** from that portion of any **Claim** maintained in a **Foreign Jurisdiction** or to which the law of a **Foreign Jurisdiction** is applied, the **Insurer** shall apply to such **Claim** the terms and conditions of this Policy, as amended to include the terms and conditions of the **Foreign Policy** in such **Foreign Jurisdiction** that are more

favorable to **Insureds** in the **Foreign Jurisdiction**. However, this paragraph shall not apply to: (i) any provision of any **Foreign Policy** addressing limits of liability, retentions, other insurance, non-renewal, duty to defend, defense within or without limits, taxes, conformance to law or excess liability coverage, or any claims made provisions, and (ii) any provision in this Policy that excludes or limits coverage for specific events or litigation.

C. Loss Incurred By a Company in a Foreign Jurisdiction

Any **Loss** incurred by a **Company** in a **Foreign Jurisdiction** may be deemed a **Loss** of the **Parent Company** payable to the **Parent Company** at the address listed at **Item 1**. of the Declarations. Any such payment by the **Insurer** to the **Parent Company** pursuant to this paragraph shall fully discharge the **Insurer's** liability under the Policy for such **Loss** to such **Company**.

D. Side A Loss in a Foreign Jurisdiction

Any **Loss** incurred by an **Insured Person** in a **Foreign Jurisdiction** and which is not indemnified or paid by an **Insured Entity** shall, to the extent permissible under applicable law, be paid to such **Insured Person** in a jurisdiction mutually acceptable to such **Insured Person** and the **Insurer**.

Section XXII Compliance with Applicable Trade and Economic Sanction Laws

This Policy does not provide coverage that would be in violation of the laws or regulations of the European Union, United Kingdom or United States of America concerning trade or economic sanctions, including, but not limited to, those administered and enforced by the or U.S. Treasury's Office of Foreign Asset Control (OFAC). Payment of **Loss** under this Policy shall only be made in full and complete compliance with all economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by OFAC.

Section XXIII Currency

All premiums, limits, retentions, **Loss** and other amounts under this Policy are and shall be expressed and payable in the currency of the United States of America. If any covered **Loss**, including judgments or settlements, is expressed in, calculated on or otherwise based upon any other currency, payment of such **Loss**, whether in such other currency or U.S. dollars, shall be made at the rate of exchange published in *The Wall Street Journal* on the date the **Insurer's** obligation to pay such **Loss** is established (or, if not published on that date, on the date of next publication).

Section XXIV Bankruptcy

Bankruptcy or insolvency of any **Insured Entity** or any **Insured Persons** shall not relieve the **Insurer** of any of its obligations under this Policy. In such event the **Insureds** hereby waive and release any automatic stay or injunction in such proceeding which may apply to this Policy or its proceeds and agree not to oppose or object to any efforts by the **Insurer** or any **Insureds** to obtain relief from any such stay or injunction.

Section XXV Headings

The descriptions in the headings of this Policy form no part of the terms and conditions of the coverage under this Policy.

Section XXVI Entire Agreement

By acceptance of this Policy, all **Insureds** and the **Insurer** agree that this Policy (including the Declarations and **Application**) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement hereto.

Section XXVII Authorization

By acceptance of this Policy, the **Parent Company** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of any notice provided for in this Policy (except the giving of notice to apply for any Discovery Period), the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements, and the **Insureds** agree that the **Parent Company** shall act on their behalf.