

# PROHIBITED BUSINESS PRACTICES POLICY

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## *Preamble and Instructions:*

*The following policy (or in the case of Berkshire Hathaway Inc. (“Berkshire”) subsidiaries with unique anti-corruption risk or economic and trade sanctions and embargo compliance risk profiles, a variation of the following policy tailored to the assessed anti-corruption and economic and trade sanctions risks profiles of each subsidiary, as applicable) shall be adopted by each Berkshire subsidiary to address compliance risks arising from such subsidiary’s operations, and shall be placed in each subsidiary’s policy and procedure manual or otherwise appropriately incorporated into the subsidiary’s code of conduct or written policies and procedures. Each Berkshire subsidiary shall distribute the policy (translated into the applicable languages of the regions in which it operates) to its Senior Management and other individuals who manage the risk areas or are likely to be faced with the compliance risks discussed in this document. Each Berkshire subsidiary is directed to foster a culture of ethics and compliance at all levels of the company.*

*This policy is not intended to supplant more restrictive, detailed or specific policies which may already be in place at, or may hereafter be adopted by, a Berkshire subsidiary. Except to the extent modified to comply with foreign laws as discussed below in the instructions to Sections III and IV of this policy or as otherwise permitted by Section III of this policy, this policy sets forth the minimum standard with which all Berkshire subsidiaries must comply. Each subsidiary shall regularly assess and periodically review its individual operations and compliance risks and document a risk assessment that captures the compliance risk areas discussed in this document that are applicable to the subsidiary as a result of the unique nature of its business operations, its size, industry, geographic footprint, anti-corruption and sanctions compliance risks and other factors that might impact its anti-corruption, trade and sanctions compliance program. Subsidiaries shall update that risk assessment as the risk profile of the subsidiary changes and adopt additional policies and procedures as appropriate so that it maintains an effectively designed compliance policy that is tailored to the unique compliance risks the subsidiary faces. For example, subsidiaries that face a significant level of anti-corruption compliance risk because of the geographic areas or industries within which they operate, their workforce’s exposure to foreign government officials, traditional local practices or other reasons, shall implement a more robust and detailed anti-corruption compliance policy that provides their employees with additional guidance, more detailed policies relating to limits on gifts and entertainment and also on third-party due diligence requirements, as well as a detailed framework for requiring documented approvals in the area of third-party due diligence, gifts and entertainment, and anti-corruption compliance as well as certifications of compliance from relevant managers, employees and third-party agents, consultants or intermediaries. These subsidiaries with higher assessed anti-corruption compliance risk should seek the guidance of experienced anti-corruption and Foreign Corrupt Practices Act of 1977 (“FCPA”) compliance professionals to ensure their compliance program is sufficient to address the higher level of assessed risk and shall devote sufficient resources to ensure an appropriate level of supervision of the compliance program. Each subsidiary is required, based upon an examination of its risk assessment and the history of the operation of its compliance program (including the detection of compliance policy violations), to devote sufficient resources to administer its compliance program, including this policy, and is required to appoint a high-level executive to be responsible to administer its compliance program. Subsidiaries are required to periodically assess and monitor the effectiveness of their compliance program, including examining instances where violations of compliance policies have been detected, and where possible, implement improvements designed to prevent such violations in the future. Compliance assessments and testing should integrate data analytics capabilities wherever possible. Each subsidiary should also incorporate into this periodic assessment lessons learned from what is publicly known of the successes and failures of peers in their industry or geographic region relating to anti-corruption, trade and sanctions compliance and compliance practices and policies. In performing this assessment, subsidiaries or their outside counsel shall consider the U.S. Department of Justice’s Guidance Document on the Evaluation of Corporate Compliance Programs: <https://www.justice.gov/criminal-fraud/page/file/937501/download> and also evaluate the program in light of the following three fundamental questions: (1) Is the anti-corruption and sanctions compliance program well designed?; (2) Is the program adequately resourced and empowered to function effectively?; (3) Does the program work in practice? In addition, each subsidiary shall devote sufficient resources to effectively train personnel and third-party agents and intermediaries on the requirements of its compliance program and this policy and ensure that personnel and third-party agents and intermediaries have access to the subsidiary’s anti-*

*corruption, trade and sanctions compliance policies. Each subsidiary shall also ensure that policies are updated on a regular basis and that those charged with day-to-day operational responsibility for the anti-corruption, trade and sanctions compliance programs have sufficient resources, autonomy and direct access to governing authorities of the subsidiary to function effectively. Each subsidiary shall also ensure that there exists a mechanism for the timely and thorough investigation of any concerns of misconduct by the subsidiary, its employees or third-party agents, including the use of outside counsel where appropriate, and that any violation is appropriately remediated after a root cause analysis is performed—including appropriate employee discipline. Each subsidiary is required to implement policies and procedures, that to the maximum extent provided for under applicable law, allow for the collection and review of emails, texts, messages, communications and electronically stored documents for auditing, compliance and compliance investigation purposes by the subsidiary, Berkshire, outside legal counsel or forensic accountants working at the direction of Berkshire. Within those policies and procedures, each subsidiary, to the extent consistent with applicable law, shall obtain advance consent from employees that allows for the collection and review of the aforementioned data.*

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It is the policy of Berkshire Hathaway Inc. and its subsidiaries to strictly comply with all laws and regulations that apply to any of their activities and operations, or that may give rise to the risk of liability for Berkshire, its subsidiaries or persons employed by any of them.

This Prohibited Business Practices Policy (“Policy”) applies to all officers, directors and employees of Berkshire and each of its subsidiaries. The requirements set forth in this Policy also apply to any agent, consultant, representative, sales agent, reseller, distributor, joint venture partner, customs/import broker, freight forwarder, contractor, or other third party as they conduct business on behalf of or for the benefit of Berkshire or any of its subsidiaries (“Intermediary”). Using a risk-based approach, each subsidiary shall develop a procedure to communicate the requirements of this Policy to its Intermediaries. Each person shall comply with this Policy, strictly abide by all applicable laws and regulations, and exercise great care not to take or authorize any actions that may create even the appearance of illegal conduct or other impropriety. Persons who violate this Policy shall be subject to appropriate disciplinary action up to, and including, termination. **Berkshire and its subsidiaries will not undertake, authorize or tolerate any business practice that does not comply with this Policy.**

## **I. COMPLIANCE WITH BOTH U.S. AND FOREIGN ANTI-CORRUPTION LAW IS REQUIRED**

The purpose of this Policy is to set forth Berkshire’s position against bribery and corruption and to describe the minimum procedures that must be followed to ensure compliance with this Policy and anti-bribery and anti-corruption laws. This Policy (1) identifies certain specific laws and regulations that may apply to a Berkshire subsidiary’s operations, and (2) sets forth the minimum standards that must be followed to ensure compliance with those laws and regulations. The applicable laws and regulations include not only federal, state and local laws and regulations of the U.S., but also laws and regulations of any foreign countries in which a Berkshire subsidiary does business, such as the United Kingdom’s Bribery Act of 2010 and the Brazil Clean Company Act of 2014. Because the FCPA, as amended, is the anti-corruption law which most broadly affects international business, this Policy uses that statute as a framework for setting forth Berkshire’s Policy. However, the Policy uses the term “government official” in most places where the FCPA uses the term “foreign official” to make it clear that Berkshire’s Policy applies to interactions with all government officials worldwide, and that adherence to the principles and procedures set forth within this Policy will ensure compliance with all nations’ anti-bribery and anti-corruption laws.

This Policy is not exhaustive, and there may be additional laws and regulations that apply to a Berkshire subsidiary's operations that are not discussed here. Even if a particular law or regulation is not discussed here, it is the policy of Berkshire that each of its subsidiaries ensure compliance with that law or regulation as applicable and adopt additional policies as necessary to address compliance with that law or regulation.

Any Berkshire subsidiary employee who has a question about whether particular conduct might be illegal or involve any unethical or improper act or violate this Policy must promptly report those concerns. Each Berkshire subsidiary, or in the case of a group of Berkshire companies, the Berkshire subsidiary that is the "parent" of such group, shall designate a Compliance Officer to receive and investigate such reports and to implement this Policy. Employees may also report their concerns to their supervisors or managers. If permitted by local law, anonymous reports can be made via the Berkshire Ethics and Compliance Hotline (800-261-8651) or Berkshire's web reporting site, which is located at [www.brk-hotline.com](http://www.brk-hotline.com).

If in doubt as to the lawfulness or propriety of particular conduct by a Berkshire subsidiary or Berkshire subsidiary employee, a report of the matter should be made so that the issue can be investigated. Berkshire prohibits retaliation of any kind for making such a report in good faith, even if it turns out that the conduct being reported is not illegal or improper.

If requested, every employee of Berkshire or a Berkshire subsidiary is required to cooperate with any effort by Berkshire, outside legal counsel or forensic accountants hired by Berkshire to investigate whether a violation of any compliance policy of Berkshire or any Berkshire subsidiary has occurred or whether the compliance program is operating effectively. Such cooperation includes providing information that is requested and participating in interviews, investigations and audits.

## **II. PROHIBITED OFFERS OR PAYMENTS**

Each Berkshire subsidiary must strictly comply with the U.S. law known as the FCPA and all other applicable anti-bribery and anti-corruption laws. The FCPA prohibits bribes, kickbacks and favors to government officials to obtain an improper advantage or benefit, such as, among other examples, the awarding of business or a government contract, obtaining a tax benefit or reduction of value-added tax or corporate income taxes, or obtaining a permit or license.

***Prohibited Purposes.*** To ensure compliance with the FCPA, no Berkshire subsidiary or its Intermediaries acting on behalf of or for the benefit of such Berkshire subsidiary may corruptly provide, authorize, promise or offer to provide anything of value to a government official for any of the following purposes:

- Influencing the official;
- Securing any improper advantage;
- Affecting any official decision; or
- Helping the Berkshire subsidiary obtain or retain business or direct business to any other person or company.

Similarly, no Berkshire subsidiary, its employees or Intermediaries may authorize a third-party to corruptly offer or promise to provide something of value to a government official for any of the purposes listed above.

**“Corrupt” Payments.** The FCPA prohibits promising, providing, offering to provide, or authorizing the provision of things of value to a government official if done “corruptly.” This means that the giver has an intent or desire to improperly influence the recipient and to get something in return, *i.e.*, a *quid pro quo*. The word “corruptly” is used in the FCPA to clarify that the offer, payment, promise or gift must be intended to induce the official to misuse an official position to assist the giver in obtaining a business advantage.

**Government Officials.** The prohibition of improper payments found in the FCPA applies to more than just individuals actively serving in governments. Under the FCPA, a government official is:

- Any officer or employee of a government or any department, agency, or instrumentality of a government;
- Elected officials;
- Any officer or employees of a public international organization such as the United Nations or World Bank;
- Any individual acting in an official capacity for or on behalf of a government agency, department, instrumentality or of a public international organization;
- Any officer or employee of a company owned or controlled by a government, including, for example, a state-owned oil company or state-owned hospital;
- Political parties outside of the U.S. and their employees;
- Candidates for political office outside of the U.S.; and
- Any member of a royal family who may lack formal authority but who may otherwise be influential, including by owning or managing state-owned or controlled companies.

It is important to note that employees of state-owned or controlled entities (whether partially or completely state-owned or controlled) are considered government officials under the FCPA regardless of their rank, nationality or classification under local law. Some individuals, who may not be considered government officials in their own country, are considered government officials under the FCPA. In addition, a company may be under government control even if it is publicly traded, and even if some of its stock is not owned by the government. In some countries, government control of publicly traded companies is common. Similarly, in some countries, entities like oil companies and hospitals are state-owned, which makes all of their employees, regardless of their rank, nationality or classification under local law, government officials under the FCPA. This Policy prohibits promising, authorizing, providing or offering to provide anything of value to employees or agents of state-owned or controlled companies for any of the prohibited purposes described above, even if those companies are engaged in purely commercial businesses.

For purposes of this Policy, close family members of government officials (*i.e.*, brother, sister, mother, father, husband, wife or child) are treated as government officials to whom a Berkshire subsidiary, its officers, employees or Intermediaries acting on behalf of or for the benefit of such Berkshire subsidiary shall not corruptly promise, offer, authorize or provide anything of value. Similarly, for purposes of this Policy, the Policy’s prohibitions also apply with regard to

former government officials in cases where the former government official retains some sort of quasi-official status.

***Indirect and Direct Payments.*** The prohibition against improper payments or gifts under the FCPA applies not only to direct payments or offers of payment, but also to indirect offers or payments made through any Intermediaries or agents. Care must be taken to ensure that Intermediaries of a Berkshire subsidiary, such as sales representatives, consultants, advisors, lobbyists, resellers, distributors, joint venture partners, customs/import brokers, freight forwarders or other contractors do not authorize, promise, offer or provide anything of value to a government official for any of the prohibited purposes described above.

***Anything of Value.*** The term “anything of value” is construed very broadly under the FCPA and includes far more than just monetary gifts. Each of the following, among other things, could constitute a thing of value:

- Monetary gifts in any form (whether cash, check, wire, etc.);
- Other types of gifts;
- Meals (including drinks);
- Entertainment, such as golf outings or sporting events;
- Travel, whether domestic or foreign;
- Flights on private or Berkshire subsidiary provided aircraft;
- Excessive discounts on products or services;
- Excessive commissions;
- Sales at less than market value;
- Purchases at above market rates;
- Art;
- Vehicles;
- Personal gifts
- Contractual rights;
- Donations to charity; and
- Scholarships for family members

The term also applies to intangible benefits such as contributions to an official’s favorite charity, offers of employment or internships for an official’s friends or family, assisting an official’s family member or friend in gaining admittance to a school, or other kinds of help or assistance to officials or their friends and family. This Policy applies equally to offers of payment and things of value to relatives and family members of government officials, as to the government officials themselves.

***Nominal Gifts and Entertainment.*** There are circumstances under which providing inexpensive items to a government official may be permissible under the FCPA. For instance, providing gifts of nominal value such as pens or mugs with the Berkshire subsidiary logo, without any intent to influence the official, is not unlawful. Before providing even nominal gifts or entertainment to a government official, Berkshire subsidiary employees or the subsidiary must confirm that doing so is permitted by local law by consulting with a local lawyer. Some countries prohibit providing anything of value to government officials, even gifts or entertainment of nominal value; in those countries, this Policy prohibits providing gifts or entertainment of any kind

to government officials. Where permitted by local law, gifts or entertainment to government officials may be made under this Policy only when they are (1) made to promote general goodwill and not as a *quid pro quo* for any official action, (2) of very modest value (in determining whether the value is modest, the value of all previous gifts or entertainment for the same official in the same year should be added together), (3) not in the form of cash, (4) customary in type and value in the country where made, (5) given openly and not secretly, (6) not intended to improperly influence the government official, and (7) accurately reflected in the applicable Berkshire subsidiary's books and records.

***Willful Blindness Is Not a Defense.*** The FCPA imposes liability on companies and individuals, even if they have no actual knowledge of an improper payment to a government official, in circumstances where they should have known there was a high probability that an intermediary intended to make or was likely to make an improper payment. Accordingly, subsidiaries and subsidiary employees must not be willfully blind to facts which suggest improper payments, gifts, promises or offers of payments, gifts or something of value to a government official. Liability for an FCPA violation cannot be avoided by attempting to ignore or “not see” the warning signs or indications of improper conduct. Employees who suspect or see indications that corrupt payments or offers of payment might be under consideration or might have been made on a Berkshire subsidiary's behalf must not “look the other way” or ignore the indications or “red flags.” For instance, if employees become aware that a sales agent may intend to or may have improperly provided money to a government official, they must immediately report that concern. Similarly, each employee should be alert to, and promptly report, concerns that other employees may be involved in or intend to be involved in such payments.

***Bona Fide and Reasonable Business Expenses.*** The FCPA permits paying bona fide and reasonable travel and lodging expenses for government officials if the expenses relate directly to (1) the promotion, demonstration or explanation of products or services, (2) the execution or performance of a contract, or (3) other legitimate charitable or educational programs. To ensure compliance with the FCPA, this Policy permits paying such expenses only upon the advance written approval of the applicable Berkshire subsidiary's Compliance Officer and only where to do so would be legal under local law and where the official's government or government entity is aware of, and approves of in writing, the expenditures contemplated. Such expenses must only be approved by the Compliance Officer where they are (1) directly related to the promotion, demonstration or explanation of the Berkshire subsidiary's products or services or the execution or performance of a contract or legitimate charitable or educational programs, (2) not intended to improperly influence the official, and (3) are in compliance with the requirements of this Policy. Such expenses must be **reasonable (not lavish)** and limited to travel and accommodation expenses that are incurred for an official's direct travel to and from the location of the Berkshire subsidiary event or location. The expenses paid must not include expenses for any “side trip” taken to other cities or countries. Lodging expenses should include only reasonable accommodation costs, including reasonable expenditures for meals actually incurred in or incidental to lodging in business-class hotels, and only during the period of the particular meeting, facility visit, seminar, or event, or en route to such activities. Where such expenses are approved for payment, any payment should be made to the intermediary (for instance, an airline or hotel) rather than to the government official whenever practicable, and any such payments must be supported by receipts and be properly documented and recorded in the applicable Berkshire subsidiary's books and records. Under no circumstances shall per diem payments or allowances be provided to a

government official, nor shall a Berkshire subsidiary pay for any portion of expenses incurred by any spouse or other family member of a government official.

***Facilitating Payments.*** The FCPA permits a “facilitating or expediting payment” that is small in amount and made in furtherance of a routine governmental action. Examples of “routine governmental action” include processing visas or customs forms. Routine governmental action does not include discretionary acts such as a decision to award new business or to continue business with a particular party. Routine governmental action also does not include an agreement by a government official to ignore or allow the payer to evade a government rule or regulation. Thus, paying a government official a small amount to have the power turned on at a factory might be a facilitating payment under the FCPA, but paying an inspector to ignore the fact that the company does not have a valid permit to operate the factory would not be. Some countries have more restrictive rules regarding facilitating payments; for example, facilitating payments are not permissible in the United Kingdom and in Canada. In fact, the U.S. is in the minority of countries that tolerate facilitating payments. Most countries have embraced the regulations of the Organization for Economic Co-operation and Development (“OECD”), which describes facilitating payments as “corrosive” and recommend that member countries “encourage companies to prohibit or discourage the use of facilitation payments.” Therefore, before providing any facilitating or expediting payments, Berkshire subsidiary employees must confirm through a local lawyer that doing so is permitted by local law. Where permitted by local law, this Policy permits facilitating or expediting payments only when nominal in value and designed merely to expedite routine governmental action that the Berkshire subsidiary is entitled to receive. Any doubts as to whether a facilitating or expediting payment may be made should be raised promptly, and where possible in advance, with the applicable Berkshire subsidiary’s Compliance Officer or other appointed representative such as the subsidiary’s Legal Department. If a facilitating payment is made, it must be accurately reflected in the applicable subsidiary’s books and records.

***Political Contributions.*** Any political contribution made must be consistent with local law and in compliance with the FCPA, and cannot be made to obtain or retain business, direct business to another person or entity, or to obtain an improper advantage. No political contribution should be made outside of the U.S. without: (1) the receipt of a written legal advice by local counsel concerning the legality of the contribution under local law, (2) the receipt of written legal advice from U.S. counsel concerning the legality of the contribution under the FCPA, and (3) prior written approval of the applicable Berkshire subsidiary’s Compliance Officer or other appointed representative such as the subsidiary’s Legal Department.

***Charitable and Educational Contributions.*** Any charitable or educational contribution, including expenses for travel, lodging or meals, must be consistent with local law and in compliance with the FCPA, and cannot be made to obtain or retain business, direct business to another person or entity, or to obtain an improper advantage. Berkshire and its subsidiaries should perform and document appropriate risk-based due diligence prior to making a charitable or educational contribution outside of the U.S. to determine if “red flags” exist which might increase the anti-corruption compliance risk associated with making the contribution.

***The FCPA’s Accounting and Internal Control Provisions.*** The FCPA imposes strict accounting and recordkeeping requirements on Berkshire and its majority-owned subsidiaries. These accounting provisions have two primary components: the books and records provision and the internal controls provision.

### ***Books and Records***

The accounting provisions require Berkshire and its subsidiaries to maintain books and records which accurately and in reasonable detail fairly reflect transactions and the disposition of assets. This requirement extends not only to the general ledgers but also to all documents that describe business transactions and dispositions of assets such as invoices, receipts, expense reports, purchase orders and shipping documents. False, misleading or incomplete entries in Berkshire subsidiary records are prohibited. This Policy also prohibits the maintenance of undisclosed or unrecorded funds or accounts. Because the books and records provision does not include a materiality requirement, any false record, no matter what the amount, can give rise to an FCPA violation. Therefore, all personnel must take responsibility for compliance with the books and records requirements of the FCPA. No employee should assume that accurate books and records is the responsibility of just those in finance and accounting.

### ***Internal Controls***

The internal controls provision of the FCPA requires Berkshire and its subsidiaries to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (1) transactions are executed in accordance with management's general or specific authorization; (2) transactions are recorded as necessary to: (a) permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements and (b) maintain accountability of assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. It is the policy of each Berkshire subsidiary that all transactions be recorded in a timely, consistent and accurate manner in terms of amount, accounting period, purpose and accounting classification. Furthermore, each Berkshire subsidiary must abide by the following rules:

- Each transaction or disposition of assets by a Berkshire subsidiary must have proper authorization. Receipts must be obtained and kept for any travel, gifts or entertainment provided to a government official. A request for reimbursement for such expenses must be accompanied by supporting documentation including: (a) a description of the expenditure; (b) its purpose; (c) identification of the recipient of the funds; (d) the amount of money spent; and (e) the manner of payment. These records should be periodically monitored for compliance with this Policy.
- No secret or unrecorded fund or asset of a Berkshire subsidiary shall be created or maintained, and no accounting balances shall be created or maintained that do not have documentary support, are fictitious in whole or in part, or have no reasonable basis in fact.
- No checks of a Berkshire subsidiary may be written to "cash," to "bearer," or to third-party designees of a party entitled to payment. Other than documented petty cash transactions, no cash transactions may be made, unless such transaction is evidenced by a receipt bearing the signature of the recipient and the recipient is a party with whom the relevant Berkshire subsidiary has a written contract.
- All petty cash accounts must be maintained with strict controls to ensure that no cash is dispensed without the proper approvals. Approval must be subject to the recipient's



demonstration that the funds are to be expended only for a proper purpose. The use of cash should be limited to the extent possible, and all uses of petty cash must be appropriately documented with third-party receipts, where practicable. Documentation supporting petty cash transaction should include: (a) the business purpose for the use of the cash; (b) the date; (c) the amount paid; (d) the name of the person dispensing the cash; (e) the name of the person receiving such cash from the Berkshire subsidiary account; and (f) the name of the ultimate recipient of the cash, if different.

- Payments to Intermediaries should be made only in the country where the Intermediary provides the services or in the country, if different, in which the Intermediary has its headquarters. The practice of transferring funds to accounts in countries other than the location of the services or the Intermediary's headquarters is not permissible unless the Intermediary provides a valid business purpose, proper supporting documentation and the transactions are authorized by the designated Berkshire subsidiary's Compliance Officer.
- Access to systems of accounting or financial records shall not be given to individuals without proper authorization. Destruction or removal of a Berkshire subsidiary's records may be undertaken only in compliance with such Berkshire subsidiary's internal policy and the policy of Berkshire.

Any individual who has reason to believe that a violation of the foregoing rules may have occurred at any Berkshire subsidiary (including that a payment to a government official was mischaracterized in a Berkshire subsidiary's books and records) must promptly report that concern to a supervisor or Compliance Officer, or through the Berkshire Ethics & Compliance Hotline. Any inquiry from the internal or independent auditors of a Berkshire subsidiary must be responded to fully, accurately and promptly.

When requested, every employee is required to cooperate with any effort by Berkshire or outside counsel hired by Berkshire to investigate whether a violation of any compliance policy of Berkshire or any Berkshire subsidiary has occurred. Such cooperation includes providing information that is requested and participating in interviews, investigations and audits when requested.

***Penalties.*** A violation of the FCPA can result in serious consequence for a Berkshire subsidiary and for the individuals involved. Criminal penalties for individuals include fines up to \$250,000 per violation and imprisonment of up to five years for anti-bribery violations and fines up to \$5,000,000 per violation and imprisonment of up to twenty years for accounting provision violations. Individual officers, directors and employees may be prosecuted even if the company for which they work is not. Fines assessed against individuals may not be reimbursed by Berkshire or any Berkshire subsidiary.

The FCPA criminal provisions establish that companies may be fined up to \$2,000,000 for an anti-bribery violation and up to \$25,000,000 for each accounting provision violation. Under alternative sentencing provisions, these fines can be even higher. The FCPA also allows a civil action for a fine of up to \$10,000 against any company or person that violates the FCPA, although that sum also can increase substantially depending upon the circumstances.

***All Improper Payments Prohibited.*** While the FCPA applies to bribes and kickbacks paid to government officials, improper payments to other persons may violate other U.S. laws or the local law of the country in which such payments are made. This Policy expressly prohibits the promise, authorization, offering or payment of bribes or kickbacks to any person under any circumstances in order to influence their actions or gain some improper business advantage, whether the recipient is domestic or foreign and whether or not the recipient is a government official. For example, Berkshire subsidiary employees must not offer or pay anything of value to managers, employees or agents of customers or prospective customers to induce them to award business to a Berkshire subsidiary, to influence their actions or to obtain any other improper advantage. Berkshire subsidiary employees must exercise care when providing meals, gifts or other business courtesies. Providing business courtesies in a commercial setting to create goodwill may be permissible, but providing or offering business courtesies with the intent or expectation of obtaining more favorable business terms or opportunities that otherwise would not be available is prohibited. Berkshire subsidiaries, subsidiary employees and Intermediaries are prohibited from directly or indirectly engaging in commercial bribery. They also must not receive such payments from any person or company in return for providing an improper advantage such as awarding business to such person or company.

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***Instructions to Sections III and IV:***

***This policy is primarily focused on U.S. laws and regulations. Because conflicts may exist between U.S. laws and the laws of other countries in which a subsidiary operates, each Berkshire subsidiary organized outside of the U.S. or with operations outside of the U.S. should undertake an analysis prior to adopting Sections III and IV of this policy to confirm that no aspect of those Sections violates any non-U.S. laws applicable to it. If a subsidiary determines that implementation of the policies in Sections III and IV would violate local law, the subsidiary must consult with the Berkshire Chief Financial Officer to receive additional guidance on potential modifications of the policies below.***

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**III. PROHIBITED TRANSACTIONS WITH CERTAIN COUNTRIES/REGIONS AND PERSONS**

Each Berkshire subsidiary and its employees must strictly comply with all applicable economic and trade sanctions and embargo programs under U.S. law, United Nations resolutions and the laws and regulations of other countries to which they are subject. Compliance requires careful monitoring of, and sometimes prohibition of, transactions involving sanctioned countries and regimes and sanctioned individuals, entities, vessels, and aircraft (for example, terrorists, proliferators of weapons of mass destruction and narcotics traffickers). In most cases, violations can result in criminal penalties of up to 20 years in jail, a \$1 million fine, or both, and civil penalties per violation in an amount up to the greater of \$311,562 or twice the value of the transaction involved. However, depending on the type of violation and the statutory regime implicated, the applicable penalties can be higher.

Most of the trade restrictions described in Section III of this Policy apply to “U.S. persons,” which include all (i) companies organized in the U.S. and their foreign branches, (ii) companies

and persons located in the U.S. or otherwise subject to U.S. jurisdiction (e.g., through utilization of the U.S. banking system) and (iii) U.S. citizens and permanent resident aliens wherever located (including U.S. persons acting on behalf of foreign persons). For purposes of the U.S. embargo of Cuba and the sanctions applicable to Iran, as described below, foreign entities owned or controlled by U.S. persons are also covered.

The policies set forth in this Section III must be adopted by all Berkshire subsidiaries that are organized in the U.S. or that have U.S. operations. Any Berkshire subsidiary that is organized outside of the U.S. and does not have U.S. operations should carefully evaluate its legal obligations with respect to these trade restrictions, taking into account such factors as its ownership, the citizenship of its employees, the nature and location of its operations and third-party relationships (in particular banking relationships) and whether it utilizes or sells goods, services, or technology subject to U.S. export controls, and shall adopt all portions of this Policy that are applicable to its operations, or are otherwise prudent, to the extent consistent with local law. Any potential conflict between local law and the trade restrictions described below should be addressed by the Compliance Officer of the affected Berkshire subsidiary in consultation with legal counsel and the Chief Financial Officer of Berkshire or other person designated by the Chief Financial Officer of Berkshire.

**Below is more specific information regarding certain country or activity-specific sanction programs:**

***Transactions with Cuba, Iran, North Korea, Syria, and the Crimea Region of Ukraine.***

The U.S. has instituted comprehensive embargoes against the following countries/geographical regions:

- Cuba;
- Iran;
- North Korea;
- Syria; and
- The Crimea Region of Ukraine.

These sanctions programs embargo or prohibit, with certain exceptions, U.S. persons from engaging in trade, commercial, or financial transactions involving the above countries/regions. Some non-exhaustive examples of dealings that may be restricted include:

- Imports into the U.S., and, in some cases, into other countries, of goods, technology, software, or services from, or originating in, the embargoed country/region;
- Exports from the U.S. or, in some cases, from foreign countries, of goods, technology, software, or services, either directly or through intermediaries, to the embargoed country/region;
- Investments in the embargoed country/region;
- Brokering the sale of goods, technology or services to or from the embargoed country/region, even if the transaction is done entirely outside of the U.S.;
- Providing insurance or reinsurance to businesses or property of the embargoed country/region or its nationals, or for imports from, or exports to, the embargoed country/region or its nationals; and

- Other transactions in which a financial institution or other person acting on behalf of the embargoed country/region has any interest.

The embargo programs are subject to frequent changes. Detailed information regarding these embargoes, including “FAQs” and other guidance, can be obtained from the Office of Foreign Assets Control (“OFAC”) website at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>, and compliance officials at Berkshire subsidiaries are encouraged to consult the OFAC website regularly and to sign up to receive email announcements from OFAC when changes occur or new information or guidance becomes available.

In addition, no Berkshire or Berkshire subsidiary employee or representative may travel for business to the embargoed countries listed above without the prior written approval of the Compliance Officer of the Berkshire subsidiary. If such travel is approved, it may be undertaken only in accordance with any conditions of the approval. Furthermore, regardless of whether the travel is for business or for personal reasons, no Berkshire or Berkshire subsidiary employee may carry Berkshire or Berkshire subsidiary issued devices into those countries (i.e., laptops, mobile phones, tablets or other mobile devices, etc.), and no employee’s personal mobile device carried on such travel may include any application(s) that allow access to any Berkshire or Berkshire subsidiary’s email system or network.

***Transactions with Venezuela.*** Due to ongoing and increasing concerns of the U.S. Government regarding political and social developments in Venezuela, OFAC and other federal agencies have developed and implemented sanction programs relative to a variety of specific industries, government agencies, individuals and entities. The various sanction programs, when considered together in light of their breadth and complexity, make this a *de facto* embargo on dealings with Venezuela. As a consequence, Berkshire has a policy of not doing business with or in Venezuela, or with individuals or entities that constitute the government of Venezuela.

To ensure compliance with the foregoing laws and sanction programs, **no Berkshire subsidiary to which this Section III applies may engage in any transactions or conduct of the type described above that is known to, directly or indirectly, involve Cuba, Iran, North Korea, Syria, Venezuela or the Crimea Region of Ukraine**, without prior consultation with the Compliance Officer of the affected Berkshire subsidiary in consultation with legal counsel and the Chief Financial Officer of Berkshire or other person designated by the Chief Financial Officer of Berkshire.

***Russian Sectoral Sanctions.*** Executive Order 13662 authorizes sectoral sanctions, pursuant to which OFAC has designated entities determined to be operating in three designated sectors of the Russian economy (defense, energy and financial services) for inclusion on the Sectoral Sanctions Identification List (“SSI List”). The prohibitions are set forth in four OFAC “Directives.” Directives 1 (banking), 2 (energy) and 3 (defense) generally prohibit U.S. persons or those in the U.S. from dealing in “new debt” of the SSI entities designated under the applicable Directive (also in “new equity” of the banks under Directive 1). Importantly, “new debt” as defined includes trade credit offered to SSI customers. Directive 4 (energy) prohibits U.S. persons or those in the U.S. from providing goods, services (except for financial services), or technology to any SSI entity designated under Directive 4 in support of oil exploration/production projects of three types

— deep water, Arctic offshore, or shale — that have the potential to produce oil in the Russian Federation or its claimed maritime area. In addition, for projects initiated on or after January 29, 2018, Directive 4 was expanded to cover deep water, Arctic offshore, and shale projects that have the potential to produce oil in any location (not just within the Russian Federation) in which an SSI designated under Directive 4 holds a 33% or greater interest, directly or indirectly. In addition, for all Directives, if an entity that does not appear on the SSI List is owned 50% or more, directly or indirectly, by one or more SSIs designated under the same Directive, then the entity will be subject to that Directive even if it is not itself listed on the SSI List. Therefore, it is important to conduct ownership due diligence of prospective trading partners, as well as screening against the SSI List and other applicable lists. Prior to doing any business involving these Russian sectors, Berkshire subsidiaries must adopt detailed written operating policies and procedures regarding how business will be conducted in strict compliance with these regulations and submit such policies and procedures for the prior approval of the Chief Financial Officer of Berkshire or other person designated by the Chief Financial Officer.

***Transactions with China.*** China is the recent target of significant U.S. economic sanctions and export control measures that restrict dealings with Chinese companies or individuals or prohibit or place license requirements on certain U.S. exports and re-exports to China. Multiple U.S. Government agencies have updated their various lists to include Chinese Government entities and officials, as well as numerous private entities and individuals. Under the U.S. Export Administration Regulations (“EAR”) discussed in Section IV of this Policy, the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”) Entity List identifies numerous well known Chinese companies and their worldwide affiliates (such as Hauwei) to whom U.S. exports and re-exports are not permitted without a BIS license. In addition, the EAR applies end-use controls and an export and re-export license requirement (with a policy of denial) for certain commercial items when shipped to companies in China that also manufacturer and support defense articles for use by the Chinese military or companies in China who support military intelligence. To assist exporters in applying these controls, BIS recently introduced the Military End-Users List (found in Supplement 7 to Part 744 of the EAR) and the Military-Intelligence End-Users List (found in Section 744.22 of the EAR). The U.S. Government also changed its approach with regard to treatment of Hong Kong, removing separate export licensing rules and permissions and requiring imported goods to reflect Chinese, rather than Hong Kong, origin. Recent human rights laws are also focused on forced labor in China, resulting in an import ban into the U.S. of several products produced in the Xinjiang Uyghur Autonomous Region, including agricultural products, automobiles and electronics (see OFAC’s 2021 Xinjiang Supply Chain Business Advisory). These and other restrictions are developing quickly. Berkshire subsidiaries that do business with and in China are encouraged to review new developments on a regular basis and make sure that their policies and procedures align with current economic sanction, export and import requirements.

***Transactions with Certain Blocked Individuals, Entities and Groups.*** The U.S. has also instituted economic and trade sanctions programs prohibiting U.S. persons, including companies located outside the U.S. who are owned by a U.S. parent, from engaging in unlicensed transactions of almost any nature with designated individuals, entities, vessels and aircraft. The U.S. Government identifies such individuals, entities, vessels and aircraft by putting their names on the list of “Specially Designated Nationals and Blocked Persons” (the “SDN List”) maintained by OFAC. Other lists of parties with which various transactions are restricted or off-limits include the Entity List, the Denied Persons List and the Unverified List, each as maintained by BIS; and the

Debarred Parties List, as maintained by the U.S. Department of State's Directorate of Defense Trade Controls.

The SDN List includes entities that have engaged in conduct that is inimical to U.S. national security and foreign policy interests, such as "Transnational Criminal Organizations," "Narcotics Traffickers," "Terrorist Organizations," "Proliferators of Weapons of Mass Destruction" and other conduct such as cyber-related crime, election interference, corruption and human rights violations. Others on the list include persons and entities from the embargoed countries and regions described above (*i.e.*, Cuba, Iran, North Korea, Syria and Crimea Region of Ukraine), as well as others who have engaged in conduct related to certain specified countries or regions, including, but not limited to, the Balkans, Belarus, Burma (Myanmar), Central African Republic, the Democratic Republic of the Congo, Ethiopia, Hong Kong, Iraq, Lebanon, Libya, Mali, Nicaragua, Russia, Somalia, South Sudan, Sudan and Darfur, Ukraine, Venezuela, Yemen and Zimbabwe.

The SDN List is updated frequently (sometimes, as often as several times a week) and is available on the Internet at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>.<sup>1</sup>

Persons subject to OFAC sanctions include not only persons named on the SDN List but also persons that are directly or indirectly 50% or more owned in the aggregate by one or more entity on the SDN List. Such entities must be treated as blocked or designated parties. Thus, it is important to know the ownership structure of companies with which transactions are conducted to determine whether the company, though perhaps itself not an SDN, is an SDN by application of OFAC's 50 Percent Rule. This analysis often includes an understanding of the companies' owners' owners. In addition to all persons explicitly named on the SDN List or that are SDNs by application of OFAC's 50 Percent Rule, blocking requirements apply to the Governments of Cuba, Iran, North Korea and Syria; as well as most Cuban individuals and entities and all Iranian financial institutions.

In addition to being prohibited from engaging in transactions with SDNs, U.S. persons who come into possession or control of any property in which an SDN has any interest, must "block" or "freeze" such property (e.g., by placing blocked funds in a blocked account) and reporting the blocking to OFAC within 10 business days. This is most often relevant in a banking context but may be a reason why a seller (located anywhere in the world) is unable to be paid for services previously rendered or goods already delivered.

Before entering into any transaction and shipping goods, each Berkshire subsidiary should conduct applicable screening of parties (including vendors and customers) and, when applicable, their owners against the SDN and other restricted party lists, including the SSI List, to identify any applicable restrictions that may prohibit or restrict the transaction. The U.S. Government has aggregated U.S. lists into the Consolidated Screening List which is available at <https://legacy.export.gov/csl-search>. In lieu of manual screening, there are a variety of third-party software vendors that can provide automated screening tools. Berkshire subsidiaries are

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<sup>1</sup> The OFAC website also offers a search engine for the SDN List and other lists maintained by OFAC at <http://sdnsearch.ofac.treas.gov/>.

encouraged, as part of their risk assessments, to consider whether acquiring such a screening tool would be appropriate given the volume and nature of its transactions. Each Berkshire subsidiary that adopts a screening tool should ensure that it covers all applicable U.S. lists and all applicable lists of other countries in or with which the subsidiary does business.

Each subsidiary should develop a risk-based procedure to screen transactions and ensure compliance with any applicable prohibitions, sanctions and embargoes. Subsidiaries should monitor compliance with Section III of this Policy.

No Berkshire subsidiary or employee to which this Section III applies may engage in any transactions, or conduct any activities with, any person, entity, vessel or aircraft on the SDN List (or any person who is otherwise blocked), whether directly, or indirectly, and any prospective dealings with persons on, or suspected to be on, the SDN List must be immediately reported to the applicable Berkshire subsidiary's Compliance Officer.

***Ransomware Payments.*** OFAC issued an advisory regarding the payment of ransom in connection with malware attacks. Persons associated with several types of malware have been added to the SDN List, including persons associated with Triton, Cryptolocker, SamSam, WannaCry 2.0 and Dridex, as well as companies that facilitate financial transactions for ransomware actors, including SUEX. In addition, OFAC recently issued guidance designed to assist the virtual currency industry in complying with OFAC sanctions

([https://home.treasury.gov/system/files/126/virtual\\_currency\\_guidance\\_brochure.pdf](https://home.treasury.gov/system/files/126/virtual_currency_guidance_brochure.pdf)).

As discussed above, U.S. persons are prohibited from dealing with persons on the SDN List and entities directly or indirectly 50% or more owned in the aggregate by one or more SDNs and OFAC has stated that applications for licenses allowing ransomware payments to SDNs are subject to a presumption of denial. Berkshire subsidiaries who face ransomware demands from malicious cyber actors, or who provide insurance or reinsurance covering cyber ransomware demands or payments, should undertake due diligence to ensure that the party demanding a ransom payment is not an SDN or otherwise subject to trade sanctions. Ransomware payments, where a Berkshire subsidiary is the victim, should only be made by the subsidiary when approved by that Berkshire subsidiary's Compliance Officer. In cases where the Berkshire subsidiary provided insurance or reinsurance covering cyber ransomware demands, such reinsurance claims should only be paid after compliance with the applicable written cyber ransomware due diligence procedures that have been approved by that subsidiary's Compliance Officer. OFAC also strongly recommends prompt reporting of such demands to law enforcement. OFAC's latest guidance on potential sanctions risks of facilitating ransomware payments contains important information regarding OFAC's expectations regarding reducing the risk of extortion by a sanctioned actor through adopting or improving cybersecurity practices, as well as cooperation with OFAC and law enforcement may be found at:

([https://home.treasury.gov/system/files/126/ofac\\_ransomware\\_advisory.pdf](https://home.treasury.gov/system/files/126/ofac_ransomware_advisory.pdf)).

The U.S. Department of the Treasury has also urged organizations of all sizes to take measures to reduce their risk of ransomware attacks and improve their cybersecurity resilience, and has created the website [www.stopransomware.com](http://www.stopransomware.com), which brings together tools and resources from multiple federal government agencies that organizations can use to learn more about how ransomware works, how to protect themselves, how to report incidents and how to request technical assistance.

**Facilitation.** No Berkshire subsidiary or employee, wherever located, may facilitate any transaction with any embargoed country or individual subject to sanctions, to include any SDN, without appropriate license or other authorization having been issued. “Facilitation” is “any unlicensed action by a U.S. person that assists or supports trading activity with [a sanctions target] by any person,” with certain narrow exceptions (e.g., activities of a “purely clerical” nature, or of a “reporting nature that does not further trade or financial transactions”).

If you receive a communication from a Berkshire foreign subsidiary that may be related to any transaction(s) that would be prohibited if performed by a U.S. person or within the U.S., please consult with your subsidiary’s Compliance Officer or outside counsel before responding to that communication or engaging in discussion regarding the transaction.

Any activities or communications with Berkshire’s foreign subsidiaries or their personnel, whether in the U.S. or abroad, that may be interpreted as facilitating such transactions are strictly prohibited. OFAC interprets these terms very broadly. For example, facilitation occurs if a Berkshire subsidiary or employee:

- Alters policies or procedures to permit a foreign affiliate to accept a transaction involving a prohibited party.
  - You may not alter a foreign affiliate’s operating policy or procedure, or those of a foreign affiliate, to permit a foreign affiliate to accept or perform a specific contract, engagement or transaction involving a prohibited party without the approval of the U.S. person, where such transaction previously required approval by the U.S. person and such transaction by the foreign affiliate would be prohibited by this part if performed directly by a U.S. person or from the U.S.
  - You may not change the operating policies and procedures of a particular affiliate with the specific purpose of facilitating transactions that would be prohibited by U.S. sanctions laws if performed by a U.S. person or from the U.S.
- Responds to a request for proposal involving a prohibited party or country.
  - You may not respond to a foreign person’s purchase orders, requests for bids, or similar business opportunities involving a prohibited party or country to which the U.S. person could not directly respond as a result of U.S. sanctions laws.
- Formally or informally votes on a transaction (e.g., as a board member), approves, directs, or executes transaction documents, where the transaction would be prohibited if performed by a U.S. person or within the U.S.
- Allows a foreign Berkshire subsidiary to utilize the resources of a U.S. Berkshire entity (e.g., computer systems, licensed software, banking relationships, operational oversight, management, or legal services, etc.) to support its transactions, where the transaction would be prohibited if performed by a U.S. person or within the U.S.



The facilitation rule *does not* prevent the following activities in relation to transactions that violate U.S. sanctions laws or would violate U.S. sanctions laws if conducted by U.S. persons:

- Compliance advice and counseling on the requirements of and compliance with U.S. laws, as long as the advice and counseling does not facilitate transactions that violate U.S. sanctions laws or would violate U.S. sanctions laws if conducted by U.S. persons.
- Passive receipt of financial reporting information, provided that any follow-up communications or discussions regarding any such information received are subject to the above consultation requirement.

***Secondary Sanctions.*** The U.S. Government also maintains “secondary sanctions” programs, in many cases mandated by legislation, under which sanctions can or must be imposed on foreign persons who engage in dealings with SDNs or other activities contrary to U.S. national security or foreign policy. Secondary sanctions seek to regulate the business of foreign companies that have no nexus to the U.S. by imposing consequences for engaging in such activities. Secondary sanctions are particularly prevalent in the context of the Iran and Russia sanctions programs, but many other sanctions programs also have secondary sanctions elements. Under secondary sanctions, foreign companies that do business with SDNs and embargoed countries can be subject to certain consequences that may affect their ability to do business with the U.S., including denial of access to the U.S. financial system and/or designation of the foreign person as an SDN. Berkshire’s non-U.S. subsidiaries should inform themselves of, and consider possible secondary sanctions risks of dealing with SDNs or engaging in other dealings that could result in secondary sanctions exposure.

***Disclosure of Iran-Related Activities.*** Section 13 of the U.S. Securities Exchange Act of 1934 requires that certain issuers registered with the Securities and Exchange Commission (“SEC”), including Berkshire, disclose in their public filings and in separate reports to the SEC if the issuer or any of its affiliates has knowingly engaged in certain specified activities related to Iran. For these issuers, quarterly and annual reports must include disclosure on all of the reportable activities that occurred during the period covered by the report (*e.g.*, for an annual report, during the fiscal year). Disclosure is required regarding the activities of each of Berkshire’s subsidiaries, which are considered affiliates under the law.

A broad range of activities are reportable, including those relating to Iran’s energy sector, military capabilities, suppression of human rights, or involving certain financial transactions; or Iranian SDNs. Reportable activities include, among others:

- Certain activities relating to Iran’s petroleum industry, such as providing insurance or reinsurance contributing to Iran’s ability to import refined petroleum products;
- Certain activities contributing materially to Iran’s ability to acquire or develop destabilizing numbers and types of advanced conventional weapons or weapons of mass destruction; and
- Certain activities supporting Iran’s acquisition or use of goods or technologies that are likely to be used to commit human rights abuses against the people of Iran.

In addition, the law requires that issuers disclose any transactions or dealings with any person or entity designated as a global terrorist or proliferator of weapons of mass destruction on the SDN List (whether or not relating to Iran).

The required report must include detailed information such as the nature and extent of the activity, gross revenues and net profits (if any) attributable to the activity, and whether the company intends to continue the activity. Such information is made available to the public and may result in an investigation or imposition of sanctions by the U.S. Government.

If employees of a Berkshire subsidiary have reason to believe that any potentially reportable activity has occurred, they must promptly report the matter to the Chief Financial Officer of Berkshire, so that a determination may be made as to whether the activity is of the type required to be disclosed under U.S. law. Because there is no materiality threshold for transactions subject to the disclosure requirement, it is important that Berkshire be made aware of any and all such activities, even those that may seem minor or incidental.

***Ongoing Compliance.*** As anti-terrorism and foreign policy programs evolve and related rules change, the nature and extent of permitted and prohibited activities could change; for instance, additional countries or persons could become subject to embargoes or sanctions programs, or existing embargoes could be lifted or sanctions programs relaxed. Also, additional or different requirements may be applicable to Berkshire companies that are not U.S. persons or that are doing business outside of the U.S. Each Berkshire subsidiary should monitor applicable sanctions programs and other trade restrictions to ensure that its policies remain current. Berkshire subsidiary employees should consult with their Compliance Officer to confirm compliance with applicable requirements before entering into any contractual or business relationship with persons or involving countries implicating potential embargoes or sanctions programs.

Guidance regarding OFAC's expectations regarding risk assessments and compliance is available at [https://home.treasury.gov/system/files/126/framework\\_ofac\\_cc.pdf](https://home.treasury.gov/system/files/126/framework_ofac_cc.pdf).

#### **IV. OTHER RESTRICTED TRANSACTIONS**

***U.S. Anti-Boycott Laws.*** U.S. anti-boycott laws prohibit U.S. companies and their "controlled in fact" foreign affiliates, to the extent U.S. commerce is involved, from participating in foreign boycotts that the U.S. does not sanction. Moreover, if a boycott-related request is received, it must be reported to the Commerce Department within 30 days of the end of the calendar quarter in which it was received. Participating in an unsanctioned foreign boycott can also have negative tax consequences.

Although the anti-boycott laws apply to all non-U.S.-sanctioned boycotts imposed by foreign countries, the Arab League's boycott of Israel is the principal foreign economic boycott covered. While the Treasury Department has identified Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria and Yemen as boycotting countries, other countries may be sources of boycott requests, as well.

It is the policy of each Berkshire subsidiary to comply fully with all applicable U.S. anti-boycott laws. No Berkshire subsidiary or its employees may take any action that, directly or indirectly, supports the boycott of Israel or any other foreign boycott not sanctioned by the U.S. Any employee with concerns as to whether a transaction implicates U.S. anti-boycott rules, or the boycott or anti-boycott laws of any other country, should consult with the subsidiary's Compliance

Officer and not proceed with the transaction until advised. Moreover, if employees receive a boycott-related request, they must promptly notify the subsidiary's Compliance Officer.

***Export and Import Compliance.*** Through various statutes and regulations including, but not limited to, the International Traffic in Arms Regulations (“ITAR”), the EAR, the Importation of Arms, Ammunition and Implements of War regulations, and U.S. Customs laws and regulations (collectively “U.S. Import and Export Control Laws”), the U.S. Government controls the import (permanent and temporary) into and the export (temporary and permanent) directly from the U.S., or indirectly from or through a foreign country, of products, software and technology/technical data; and the provision of related defense services to foreign persons/nationals. In addition, the ITAR includes registration requirements for U.S. manufacturers (including processors) and brokers of defense articles subject to the ITAR, even if those companies do not export from the U.S. The ITAR and EAR prohibit exports and re-exports of all commodities subject to their respective controls, as well as exports of covered technology/technical data and software, and the provision of defense services and certain brokering services (even by companies organized abroad), without an applicable export license or approval having been issued, or an applicable exemption or exception being available. The EAR and ITAR also prohibit any unauthorized release of controlled technical information to a foreign national; even when the transfer occurs in the U.S., the regulations “deem” the release an export to the individual’s country or countries of nationality (this is often called a “deemed export”). The agencies responsible for administering the EAR and the ITAR have also published lists of parties with which various export or re-export transactions are restricted or off-limits (referenced above in the *Transactions with Certain Blocked Individuals, Entities and Groups* section). It is the policy of each Berkshire subsidiary to comply fully with U.S. Import and Export Control Laws, as well as applicable local export and import laws. Each Berkshire subsidiary should evaluate its operations to determine whether it is subject to these regulations and, if so, develop appropriate procedures to address its individual compliance risks.

## **V. RETENTION OF INTERMEDIARY SERVICES**

Prior to engaging intermediaries, each Berkshire subsidiary shall conduct appropriate and thorough due diligence documented in writing concerning intermediaries, which include agents, resellers, distributors, lobbyists, joint venture partners, customs brokers, freight forwarders or other contractors. Each Berkshire subsidiary employing the services of such Intermediaries shall develop and maintain documented due diligence procedures appropriate to the risks presented which allow the subsidiary’s compliance personnel to evaluate and consider the business rationale for needing the third party’s assistance as well as the compliance risks posed by the third-party partners, including the third-party partners’ reputations and relationships, if any, with foreign officials or the family members of foreign officials and any compliance risk “red flags.” Each Berkshire subsidiary shall engage in monitoring, assessing and managing the compliance risks associated with the use of Intermediaries throughout the lifetime of the relationship, and not just during the onboarding process, by periodically updating the due diligence on Intermediaries. Subsidiaries should update the due diligence of Intermediaries that face a higher assessed risk of FCPA compliance at least every three years and determine an appropriate risk-based timeline for lower risk Intermediaries.

Due diligence performed on Intermediaries shall include, at a minimum, a documented evaluation of the third party’s owners and management to determine if any are affected by a listing

on any U.S. prohibited parties lists, such as the SDN List, as well as whether any qualify as foreign officials under the FCPA, and an evaluation of the third party's character, qualifications, experience, reputation for integrity and proven ability to provide the service for which it is being retained. Factors against retention of a third party include, but are not limited to, any unusual requests for compensation and any unusual payment, shipment or destination terms as well as the discovery of any facts, circumstances or "red flags" that might suggest that use of the Intermediary might create an increased FCPA, trade or sanctions compliance risk. The following are examples of some common red flags that are associated with an increased FCPA compliance risk:

- The transaction involves a country known for an increased risk of corruption based on the Corruption Perception Index ("CPI") ranking of the country.
- A reference check reveals flaws in the Intermediary's background.
- Due diligence reveals that the Intermediary is a shell company or that there is something else unorthodox about the Intermediary's structure.
- The Intermediary requests payment to an offshore account or other non-standard payment terms.
- The Intermediary is not clearly qualified or lacks the necessary experience to perform the functions for which it has been hired.
- The Intermediary is recommended by a government official.
- The Intermediary is partially owned or controlled by a government official.
- The Intermediary has a close personal family or business relationship with a government official or relative of a government official or makes large or frequent political contributions to government officials.
- The Intermediary charges above market amounts for its services.
- The Intermediary suggests that a particular amount of money may be necessary to obtain business or to close a certain deal.
- The Intermediary requests reimbursement of extraordinary, poorly documented or last-minute expenses.
- The Intermediary objects to FCPA representations, warranties and covenants and related anti-corruption language in agreements with the Berkshire subsidiary.
- The Intermediary objects to signing FCPA compliance certifications.
- The Intermediary refuses to disclose its ownership, including any beneficial or other indirect owners, principals, or employees, or requests that the identity of its owners, principals or employees not be disclosed.
- The Intermediary requests a large contingency or success fee.

For any Intermediary regarding whom there is an appreciable risk that the Intermediary may interact with government officials or present an FCPA, trade or sanctions compliance risk, Berkshire subsidiaries are required to have a written agreement with anti-corruption/trade compliance contract terms appropriate to the risks presented, including audit rights, and must require the Intermediary to execute an appropriate annual certification of compliance with trade and/or anti-corruption laws, including the FCPA. Such certifications of compliance shall be annually updated and maintained by the subsidiary.

## **VI. MERGERS AND ACQUISITION DUE DILIGENCE**

Where a merger or acquisition is consummated, efforts shall be taken to ensure that this Policy and any additional policies of the acquiring Berkshire entity are implemented as quickly as is practicable to the newly the acquired business; and anti-corruption compliance training is conducted in accordance with this Policy for the directors, officers, and relevant employees of the newly acquired business. In addition, following the acquisition, the acquiring Berkshire subsidiary shall ensure that a thorough and documented assessment of the acquired company's individual operations and compliance risks is performed that captures the compliance risk areas discussed in this document and that are applicable to the acquired company as a result of the unique nature of its business operations and its geographic location. Based upon this documented risk assessment, the acquiring Berkshire subsidiary shall require the acquiree to implement and adopt additional policies and procedures as appropriate so that it maintains an effectively designed compliance policy that is tailored to the unique compliance risks the subsidiary faces.

## **VII. IMPLEMENTATION AND TRAINING**

***Distribution.*** General managers of Berkshire subsidiaries are responsible for the enforcement of and compliance with this Policy within their area of responsibility, including distribution of this Policy to Senior Management reporting to them, and other individuals that manage the risk areas discussed in this document, including each employee, agent or manager who is likely to communicate, interact or have business dealings with government officials or manage persons likely to communicate, interact or have business dealings with government officials. Berkshire subsidiaries should, when possible, make anti-corruption, trade and sanctions compliance policies accessible to employees electronically in their native languages in an easily searchable and accessible format that can also be easily and regularly updated. Berkshire subsidiaries should consider based upon assessed risk whether to employ data analytics to understand which compliance policies are being accessed most frequently. Berkshire subsidiaries shall ensure that compliance personnel charged with administering the anti-corruption, sanctions and trade compliance program receive specialized training to enable them to effectively perform their roles.

***Training.*** This Policy and any related documentation (as well as any subsidiary policy that is more robust) must be included in all employee manuals for each Berkshire subsidiary, shall be provided to each member of Senior Management of each Berkshire subsidiary, and shall be available to all employees of the Berkshire companies in English and the local languages applicable to each subsidiary. Review and explanation of this Policy and any related documentation (including any more robust anti-corruption, export controls or sanctions policy) shall be made a part of the training for each manager of a Berkshire subsidiary and for: (i) each employee or manager who is likely to communicate, interact or have business dealings with government officials or manage persons likely to communicate, interact or have business dealings with government officials; and (ii) employees whose activities impact trade compliance. Periodic training must be provided to these personnel to ensure that they have the knowledge and tools they need to conduct business effectively and in compliance with the FCPA and applicable anti-bribery and anti-corruption laws as well as export control, sanctions, anti-boycott and customs laws. For Intermediaries who may have direct or indirect dealings with government officials on a Berkshire subsidiary's behalf, each Berkshire subsidiary must confirm through due diligence that such Intermediary has an adequate training program in place or it must adopt a procedure to provide

anti-bribery and anti-corruption training to the Intermediary using a risk-based approach. The procedure should include periodic refresher training for such Intermediaries. Where appropriate, the training for employees and Intermediaries will be conducted in the audience's native language; otherwise, training will be provided in English with translation as necessary. Training shall be performed in a manner that is tailored to an audience's size, sophistication and subject matter expertise, and where possible should provide a means for trainees to ask questions. Training should also be designed to adequately cover any prior compliance incidents and lessons learned from what is publicly known of the successes and failures of peers in the subsidiary's industry or geographic region relating to anti-corruption compliance practices and policies, should include discussion of real-world scenarios based upon the subsidiary's risk assessment, and each subsidiary shall regularly evaluate the effectiveness of its training programs.

**Resources:** This Policy discusses a variety of statutes, regulations, and U.S. Government agencies. Each agency offers helpful guidelines and resources on its webpage. The following are some U.S. Government websites that you may find helpful as you review and apply the compliance areas discussed in this Policy:

- **U.S. DOJ's Guidance Document on the Evaluation of Corporate Compliance Programs:** <https://www.justice.gov/criminal-fraud/page/file/937501/download>
- **U.S. DOJ's FCPA Resource Guide:** <https://www.justice.gov/criminal-fraud/fcpa-resource-guide>
- **OFAC Sanctions Program Guides by Country:** <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>
- **U.S. BIS' Resources for Establishing an Export Compliance Program:** <https://www.bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance/compliance>
- **U.S. DDTC's Resources for Establishing an Effective ITAR Compliance Program:** [https://www.pmdtc.state.gov/ddtc\\_public?id=ddtc\\_kb\\_article\\_page&sys\\_id=4f06583fdb78d300d0a370131f961913](https://www.pmdtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=4f06583fdb78d300d0a370131f961913)

It is also possible to sign up for regular email updates from OFAC, BIS and DDTC through the links above. Berkshire subsidiaries should review these and other resources to make sure they are familiar with the controls that apply to their business and keep current with changes in law and regulation.

**Disciplinary Action.** Because Berkshire is committed to compliance with the law and this policy, **the failure of any Berkshire subsidiary personnel to comply with this Policy will result in disciplinary action up to, and including, termination.**

Disciplinary action may also be taken against the manager of an employee who violates this Policy should the manager fail to properly supervise the employee or know that the employee is engaging in behavior which violates the Policy and fail to stop or prevent such behavior.