

# **Disability Buy-Out Insurance**

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Pennsylvania Specimen Contract  
Policy Form – 18DB PA



Individual disability income products underwritten and issued by Berkshire Life Insurance Company of America (BLICOA), Pittsfield, MA. BLICOA is a wholly owned stock subsidiary of The Guardian Life Insurance Company of America (Guardian), New York, NY

Berkshire Life Insurance Company of America  
700 South Street • Pittsfield, Massachusetts 01201  
1-888-482-7342

## **Disability Buy-Out Insurance Policy** **Non-Participating**

This Policy, issued by Berkshire Life Insurance Company of America, provides insurance to the extent set out in the Policy. All of the provisions on this page and pages that follow are part of the Policy.



Secretary



President

### **CONDITIONALLY RENEWABLE TO YOUR AGE 65**

As long as the Policy remains in force, We cannot change any provision, add any restriction, or increase the premiums above those shown in the Schedule Page without the Policyowner's consent.

### **RENEWAL CONDITIONS**

The Policy is renewable to Your Age 65 by the timely payment of premiums until the first of the following events or occurrences, at which time the Policy will automatically terminate:

- The Policyowner, if an individual, no longer has an Ownership Interest in the Business(es) listed on the Schedule Page;
- You no longer have an Ownership Interest in the Business(es) listed on the Schedule Page;
- You are no longer Gainfully Employed Full Time by the Business(es) listed on the Schedule Page for any reason other than Total Disability;
- The Maximum Aggregate Benefit has been paid;
- A Buy-Sell Agreement is not in effect on a Policy Anniversary

### **NOTICE OF TEN-DAY RIGHT TO EXAMINE POLICY**

Please read the Policy carefully. It is a legal contract between the Policyowner and Us. The Policyowner may return the Policy to Us within ten days after it is received, by delivering or mailing it to Our Home Office or to the representative through whom the Policyowner bought it. When We receive the Policy, it will be deemed void from the beginning. Any premium paid on it will be refunded.

## Schedule Page [1a/1b]

Insured: [JOHN DOE] Policy Number: [Z1234567]  
 Policyowner: [SMITH INDUSTRIES, LLP] Policy Date: [##### ##, #####]  
 Business(es): [SMITH INDUSTRIES, LLP][ SMITH INDUSTRIES, LLP] [SMITH INDUSTRIES, LLP]

Policy Specifications for the Insured

Class of Risk: [Preferred, Select or Standard] Gender: [Male or Female]  
 Occupation Class: [6, 5, 4, 3, 2, 1, 6M, 5M, 4M, 3M, 2M, 1M, 6D, 5D, 4D, 3D, 2D, 1D] Issue Age: [18 – 60]

Policy Coverage and Premium Summary

Elimination Period: [360, 540, 720] Days  
 Accumulation Period: [540, 720, 900] Days  
 Premium Term: [Annual, Semiannual, Quarterly, Monthly]

<u>Coverage</u>	<u>Maximum Aggregate Benefit</u>	<u>Annual Premium</u>
Base Policy – Maximum Aggregate Benefit	\$999,999	\$99,999.99
Funding Method: [Lump Sum, Monthly Installment, Down Payment]		
Monthly Installment Period: [12, 24, 36, 48, 60] Months		
Maximum Monthly Installment Benefit: [\$99,999]		
Maximum Lump Sum Benefit: [\$999,999]		
Future Increase Option Rider		
Lump Sum Option Amount: [\$999,999]		
Monthly Installment Option Amount: [\$99,999]		
Each Option Amount will be offered annually for the next [99] years subject to the terms of the Future Increase Option Rider.		\$99.99
Annual premium before [discounts and] policy fee:		\$[99,999.99]
[#####% Extra Annual Premium		\$99,999.99]
[Applicable Policy Discount(s)		Discount Percent]
[Select Risk Class Discount:		25.00%]
[Preferred Risk Class Discount:		26.00%]
[Multi-Client Discount:		25.00%]
[Preferred Occupation Discount:		10.00%]
[Discounted Annual Premium before policy fee:		\$99,999.99]

This Schedule Page replaces any previously issued Schedule Page.

## Schedule Page [1a/1b]

Insured: [JOHN DOE] Policy Number: [Z1234567]  
 Policyowner: [SMITH INDUSTRIES, LLP] Policy Date: [##### ##, #####]  
 Business(es): [SMITH INDUSTRIES, LLP][ SMITH INDUSTRIES, LLP] [SMITH INDUSTRIES, LLP]

Annual Policy Fee: \$30.00

Annual Premium [after discounts and] including policy fee: [\$99,999.99]

About The Premium

The premiums for the Policy are based on [gender-distinct] rates.

If the Policyowner elects to increase, decrease or change Coverage or change the Premium Term, the premium for the Policy may change. A new Schedule Page will be provided to the Policyowner.

The following summarizes the premium for each Premium Term option during the level premium period for the Coverage that has been selected.

For a Semiannual Premium Term:

A premium of [\$99,999.99] must be paid every 6 months. This means an additional [\$99,999.99] or [##.##%] will be paid per year, or a total annualized premium of [\$99,999.99].

For a Quarterly Premium Term:

A premium of [\$99,999.99] must be paid every 3 months. This means an additional [\$99,999.99] or [##.##%] will be paid per year, or a total annualized premium of [\$99,999.99].

For a Monthly Premium Term under a list-bill arrangement or using Automatic Bank Draft (Guard-O-Matic):

A premium of [\$99,999.99] must be paid every month. This means an additional [\$99,999.99] or [##.##%] will be paid per year, or a total annualized premium of [\$99,999.99].

The additional charge, if any, that is added for paying premium more frequently than on an annual basis will remain the same until the end of the level premium period.

About The Maximum Aggregate Benefit

The Maximum Aggregate Benefit remains level until Age 61 at which point it decreases annually by 20% of its original amount as provided below:

<u>If Total Disability begins</u>	<u>the Maximum Lump Sum Benefit is</u>	<u>the Maximum Monthly Installment Benefit is</u>	<u>the Total Maximum Aggregate Benefit is</u>
prior to Age 61	\$999,999	\$99,999	\$999,999
at or after Age 61, but before Age 62	\$999,999	\$99,999	\$999,999
at or after Age 62, but before Age 63	\$999,999	\$99,999	\$999,999
at or after Age 63, but before Age 64	\$999,999	\$99,999	\$999,999
at or after Age 64, but before Age 65	\$999,999	\$99,999	\$999,999
at or after Age 65	\$0	\$0	\$0

This Schedule Page replaces any previously issued Schedule Page.

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Additional Coverage, if any, is shown in the Schedule Page and is described in the rider forms attached to the Policy.  
Please call Berkshire Life Insurance Company of America at 1-888-482-7342 with any questions about the Policy.

## DEFINITIONS

### **Accumulation Period**

The Accumulation Period is shown in the Schedule Page. It is an uninterrupted period of consecutive days that begins on the first day that You are Totally Disabled and during which the Elimination Period must be satisfied.

### **Age**

Age means Your age as of the Policy Anniversary that first occurs on or after the birthday on which You attain that age.

### **Business(es)**

Business(es) means the entity, or entities if more than one, as named in the Schedule Page and in which You have an ownership interest.

### **Buy-Sell Agreement**

Buy-Sell Agreement means a written agreement that requires the Policyowner to purchase Your Ownership Interest in the Business(es) in the event of Your Total Disability. The Buy-Sell Agreement must be in effect no later than one year after the Policy Date. The Buy-Sell agreement, or any subsequent revision to the agreement, must be in force at the time Total Disability begins. We are not a party to the Buy-Sell Agreement.

### **Class of Risk**

Class of Risk means the classification We select based on certain risk factors. It is shown in the Schedule Page.

### **Closing Date**

Closing Date means the date the Policyowner is obligated to purchase Your Ownership Interest in the Business based on the Buy-Sell Agreement.

### **Conversion Policy**

Conversion Policy means the individual disability income insurance policy issued based on the Conversion Option provision.

### **Coverage**

Coverage means the benefits available under the Policy.

### **Effective Date**

Effective Date means the date the Policy, or a rider, takes effect, in accordance with the Representations of the Proposed Insured and Owner section in the application.

### **Elimination Period**

Elimination Period is the number of days You must be Totally Disabled before benefits begin to accrue and starts on the first day that You are Totally Disabled. The days within this period need not be consecutive, but they must occur within the Accumulation Period. Benefits will not accrue or be payable during the Elimination Period. The Elimination Period is shown in the Schedule Page.

### **Family**

Family means Your spouse, domestic partner, brother, sister, parent, child, grandparent, aunt, uncle, cousin, niece, or nephew. This includes the Family of Your spouse or domestic partner.

### **Full Time**

Full Time means at least 30 hours each week.

### **Funding Method**

The Funding Method means the method by which benefits will be paid as selected by the Policyowner at the time of application for the Policy. It is shown in the Schedule Page.

### **Gainfully Employed or Gainful Employment**

Gainfully Employed or Gainful Employment means actively at work or engaged in activities for income, remuneration or profit.

**Injury**

Injury means an accidental bodily injury that first occurs on or after the Effective Date and while the Policy is in force, and that is not contributed to by Sickness.

**Issue Age**

Issue Age is Your age on the Policy Date. It is shown in the Schedule Page.

**Maximum Aggregate Benefit**

Maximum Aggregate Benefit means the maximum amount We may pay under the Policy and is shown in the Schedule Page. The Maximum Aggregate Benefit remains level until Your Age 61, at which point it decreases annually by 20% of its original amount.

**Maximum Lump Sum Benefit**

The Maximum Lump Sum Benefit means the maximum amount We may pay as a lump sum benefit when the Down Payment Funding Method is elected and is shown in the Schedule Page. The Maximum Lump Sum Benefit remains level until Age 61, at which point it decreases annually by 20% of its original amount.

**Maximum Monthly Installment Benefit**

The Maximum Monthly Installment Benefit means the maximum monthly benefit We may pay and is shown in the Schedule Page. The Maximum Monthly Installment Benefit remains level until Age 61, at which point it decreases annually by 20% of its original amount.

**Monthly Installment Period**

The Monthly Installment Period means the length of time, measured in months, for which a monthly benefit is to be paid.

**Monthly Purchase Amount**

Monthly Purchase Amount means the total amount the Policyowner has paid to You, or Your legal representative, during the prior month, to purchase Your Ownership Interest in the Business(es).

**Occupation Class**

Occupation Class means the classification We select based on occupational risk. It is shown in the Schedule Page.

**Ownership Interest**

Ownership Interest means any interest in the Business(es) to which an individual is legally or equitably entitled.

**Physician**

Physician means a person who is a duly licensed physician by law in the state in which he or she practices and is acting within the scope of that license to treat Injury or Sickness that results in a Total Disability. A Physician cannot be:

- You and/or the Policyowner; or
- anyone related to You and/or the Policyowner including a spouse, child, parent, brother or sister; or
- a member of Your and/or the Policyowner's household; or
- Your and/or the Policyowner's business or professional partner, employee or employer; or
- any person who has a financial affiliation or business interest with You and/or the Policyowner

If Your Total Disability is due to a Mental and/or Substance-Related Disorder, the Physician must be a licensed psychiatrist or a licensed doctoral level psychologist.

**Policy**

Policy means the legal contract between the Policyowner and Us. The entire contract consists of the Policy, any application(s), Schedule Pages, and any attached riders, amendments and endorsements.

**Policy Anniversary**

Policy Anniversary is the yearly anniversary of the Policy Date while the Policy remains in force.

**Policy Date**

The Policy Date is the date from which premiums are calculated and become due. It is shown in the Schedule Page.

**Policyowner**

Policyowner is the person or entity named as Policyowner in the Schedule Page. The Policyowner has the right to renew the Policy, to request a change in Coverage, and to make other Policy changes.

**Pre-existing Condition**

Pre-existing Condition means a physical or mental condition for which You received professional medical advice, diagnosis or treatment within two years before the Effective Date.

**Premium Term**

Premium Term means the frequency of premium payments. It is shown in the Schedule Page.

**Prior Buy-Out Coverage**

Prior Buy-Out Coverage means the total amount of benefits that have been paid or are eligible to be received under all other policies issued by any insurer prior to the Effective Date of the Policy for the same kind of loss that is covered by the Policy.

**Purchase Amount**

Purchase Amount means the total amount the Policyowner is obligated to pay to You, or Your legal representative, to purchase Your Ownership Interest in the Business(es).

**Sickness**

Sickness means an illness or disease which is diagnosed or treated on or after the Effective Date and while the Policy is in force.

**Total Disability or Totally Disabled**

Total Disability or Totally Disabled means that, solely due to Injury or Sickness, You are not able to perform the material and substantial duties of Your Occupation and You are not Gainfully Employed by the Business(es) named in the schedule page.

Working an average of more than 40 hours in a week, in itself, is not a material and substantial duty.

**Your Occupation**

Your Occupation means the occupation (or occupations if more than one) in which You are Gainfully Employed during the 12 months prior to the time You become Totally Disabled. Your Occupation does not mean a specific job title, designation, or industry.

**We, Us, Our, and Berkshire Life**

We, Us, Our, and Berkshire Life mean Berkshire Life Insurance Company of America.

**You and Your**

When used in the Policy, the words You and Your mean the person insured, who is named in the Schedule Page.



## PROVISIONS RELATING TO BENEFITS

### Disability Buy-Out Benefit

We will pay a benefit for Total Disability if each of the following conditions is met:

- You become Totally Disabled while the Policy is in force; and
- You were Gainfully Employed Full Time by the Business(es) when the Total Disability began; and
- You provide Proof of Loss, to include proof that the Buy-Sell Agreement is in effect; and
- You satisfy the Elimination Period; and
- You remain Totally Disabled until the Closing Date; and
- The Policyowner is obligated to purchase Your Ownership Interest in the Business(es) pursuant to the Buy-Sell Agreement.

Benefit payments under the Policy will be made according to the Funding Method.

If We pay less than the Maximum Aggregate Benefit, We will refund that portion of the premium paid in the 12 months prior to the date on which You became Totally Disabled attributable to the unpaid portion of the Maximum Aggregate Benefit. This refund will be made after We have paid all eligible benefits.

### Lump Sum Funding Method

If the Lump Sum Funding Method is elected, the benefit will become payable to the Policyowner after the end of the Elimination Period, or the Closing Date, if later. The benefit payable will be the least of:

- the Purchase Amount;
- the Maximum Aggregate Benefit; or
- the Business(es) Valuation Amount less the Prior Buy-Out Coverage.

In lieu of this payment, the Policyowner may request that the benefit be paid in equal, guaranteed installments over a period not exceeding ten years. The Policyowner and We must agree in writing to: (a) the method of payment; (b) the frequency of payment; and (c) the period over which payments will be made.

### Monthly Installment Funding Method

If the Monthly Installment Funding Method is elected, the benefits will become payable to the Policyowner after the end of the Elimination Period, or the Closing Date, if later. The monthly benefit payable will be the least of:

- the Monthly Purchase Amount; or
- the Maximum Monthly Installment Benefit; or
- an amount equal to  $(A \div B)$ , where:

A is the Business(es) Valuation Amount less the Prior Buy-Out Coverage, and

B is the number of months in the Monthly Installment Period.

After monthly benefits begin, even if You are no longer Totally Disabled, We will continue to pay benefits until the first of the following occurs:

- the Policyowner is no longer making payments to purchase Your Ownership Interest in the Business(es); or
- two monthly benefits have been paid following the date of Your death; or
- the Monthly Installment Period ends.

### Down Payment Funding Method

If the Down Payment Funding Method is elected, the benefits will become payable to the Policyowner after the end of the Elimination Period, or the Closing Date, if later.

We will first pay the Policyowner the least of:

- the actual down payment amount paid to You by the Policyowner; or
- the Maximum Lump Sum Benefit; or
- the Business(es) Valuation Amount less the Prior Buy-Out Coverage.

Thereafter, the monthly benefit payable will be the least of:

- the Monthly Purchase Amount; or
- the Maximum Monthly Installment Benefit; or
- an amount equal to  $(A - B) \div C$ , where:

A is the Business(es) Valuation Amount less the Prior Buy-Out Coverage

B is the total amount of benefit already paid by Us, and

C is the number of months in the Monthly Installment Period.

After monthly benefits begin, even if You are no longer Totally Disabled, We will continue to pay benefits until the first of the following occurs:

- the Policyowner is no longer making payments to purchase Your Ownership Interest in the Business(es); or
- two monthly benefits have been paid following the date of Your death; or
- the Monthly Installment Period ends.

#### **Medical Care Requirement**

We will neither pay benefits nor waive premium under the Policy for any period of Total Disability during which You are not under a Physician's regular care that is appropriate, according to prevailing medical standards, for the conditions causing Total Disability. Appropriate care includes a plan between You and Your Physician that addresses Your goals for treatment and recovery. The medical care must be provided by Physicians whose specialties are appropriate for Your Injury or Sickness causing Total Disability. You have the responsibility to obtain, and reasonably participate in, Your appropriate medical plan of care.

We will waive the medical care requirement during any claim under the Policy upon reasonable written proof that Your Injury or Sickness no longer requires the regular medical care of a Physician under prevailing medical standards. Such waiver will not restrict any of Our rights under the Policy.

#### **Concurrent Total Disability**

A Concurrent Total Disability is a Total Disability that is caused by more than one Injury and/or Sickness. Once a period of Total Disability begins, We will consider it to be one continuous period of Total Disability no matter what Injury or Sickness, or combination thereof, caused the Total Disability or caused it to continue. We will pay benefits for a Concurrent Total Disability as if there were only one Injury or Sickness.

#### **Waiver of Premium Benefit**

If You are Totally Disabled for the lesser of 90 consecutive days or the length of the Elimination Period due to Injury or Sickness not excluded from Coverage, We will:

- refund that portion of any premium paid that applies to the period of Total Disability beginning with the date that You were first Totally Disabled in the same claim; and
- waive any later premium that is due while You are continuously Totally Disabled in the same claim.

#### **Occupational Rehabilitation Benefit**

If You are Totally Disabled and the Elimination Period has not been satisfied, We will pay for a program of occupational rehabilitation if:

- You and We agree in advance of beginning the occupational rehabilitation program; and
- the program is a formal plan that will help You return to Gainful Employment in Your Occupation; and

- the program is directed by an organization or individual licensed or accredited to provide occupational rehabilitation or education to persons who are disabled; and
- the program is documented in a signed written agreement.

The extent of Our role in this program will be determined by the written agreement. We will pay only those costs, as agreed to, that are not otherwise covered by insurance, workers' compensation, or any public fund or program.

We will periodically review the program and Your progress in it. We will continue to pay for the program as long as We determine that it is helping You return to Gainful Employment in Your Occupation.

Participating in a program of occupational rehabilitation will not in itself be considered a recovery from the Injury or Sickness that resulted in Your Total Disability, and benefits will continue as provided in the Policy.

### **Modification and Access Benefit**

If You are Totally Disabled and the Elimination Period has not been satisfied, You may be eligible for a Modification and Access Benefit. If a modification is determined by Us to be appropriate and reasonable to enable You to perform Your material and substantial duties, We will reimburse the cost that is incurred for such modification upon written proof acceptable to Us as set forth in a signed written agreement. The purpose of any such modification must be to help You return to Gainful Employment in Your Occupation.

## **TRANSFER AND EXCHANGE PROVISIONS**

### **Assignment and Change of Ownership**

An assignment will take effect on the date the assignment is signed unless otherwise specified by the Policyowner. We will be bound by an assignment of the Policy for any claim only if We receive a written assignment from the Policyowner on a form provided by Us before We pay the benefits claimed. We will not be responsible for the validity or tax consequences of any assignment.

The Policyowner may be changed. We do not limit the number of changes that may be made. To make a change, We must receive a written request from the Policyowner on a form provided by Us for this purpose. A Change of Ownership will take effect on the date we receive the completed form at Our home office.

### **Transfer of Coverage Option**

After two years from the Effective Date, if the Policy terminates due to You not being Gainfully Employed in the Business(es), You may be insurable under a similar policy with a new owner without submitting medical evidence of Your insurability, provided each of the following conditions is met:

- You are not and have never been Totally Disabled under the Policy;
- You are not older than Age 60;
- You are Gainfully Employed Full Time in a different business in which You are an owner;
- this type of policy is available for issue in the state where the new policy is applied for;
- a written application for the new policy is received by Us within 90 days after the Policy terminates; and
- Evidence of a written buy-sell agreement that requires the new owner to purchase Your ownership interest in the different business and
- You meet all of Our underwriting requirements, other than those related to Your health, then in effect for new applicants for this type of coverage to be eligible for a new policy pursuant to this provision.

If You meet each of these conditions, the new policy will be issued subject to the following terms:

- the elimination period cannot be shorter than the Elimination Period for the Policy;
- the maximum benefit amount cannot be greater than the Maximum Aggregate Benefit of the Policy;
- the funding method must be the same as the Funding Method of the Policy;
- the premium for the new policy will be at Our rates then in effect for persons of Your age, class of risk, gender, occupation, funding method, elimination period and based on the amount of coverage issued under the new policy;
- any special class rating that is applicable to the Policy will also apply to the new policy; and

- any loss We have excluded by name or specific description that is applicable to the Policy will also apply to the new policy.

The effective date of the new policy will be the date We approve the written request to transfer coverage and the initial premium is received at Our home office.

### **Conversion Option**

At any time before Your Age 55, You may apply to convert the Policy to an individual disability income insurance policy issued on a policy form then being used by Us for new applicants on a regular basis in the place where You live, if each of the following conditions is met:

- The Policy has been in force for at least two years; and
- We receive a written request to terminate this Policy from the Policyowner; and
- We receive a written application for conversion signed by You within 90 days of Our receipt of the request for Policy termination; and
- You are Gainfully Employed Full Time for at least ten months each year; and
- You are not currently disabled, and have never been Totally Disabled under the Policy; and
- We receive all of the information necessary to determine Your eligibility for coverage under the Conversion Policy.

If You have other Disability Buy-Out insurance with Us that provides a similar conversion option, We will only provide an aggregate monthly indemnity of up to \$3,000 from all such options.

You will be the owner of the Conversion Policy. The Conversion Policy will:

- provide a monthly indemnity that cannot exceed \$3,000; and
- have an elimination period of at least 90 days; and
- have a two-year benefit period; and
- have no optional benefit riders.

The effective date of the Conversion Policy will be the date that We approve Your written application to convert the Policy and the initial premium is received at Our home office. The premium for the Conversion Policy will be at Our rates then in effect for persons of Your age, class of risk, gender and occupation class. Any special class rating that applies to the Policy will also apply to the Conversion Policy.

The Conversion Policy will only cover losses that result from Injury that occurs after the effective date of the Conversion Policy or Sickness that first manifests itself more than ten days after such date. Conditions that are limited or excluded by name or specific description under the terms of the Policy will be similarly limited or excluded under the Conversion Policy.

The Policy, and all riders and benefits provided by the Policy, will terminate on the effective date of the Conversion Policy.

In no event can the total sum of all of Your disability insurance coverage, after the conversion, exceed the maximum disability insurance We would then offer to new applicants. The total sum of all of Your disability insurance coverage includes benefits You would be eligible for from Us and any other insurer.

You must provide evidence of Your current income, employment, occupation and all other disability insurance that is in force, which You have applied for, or for which You are eligible. We may require additional evidence of financial insurability, as necessary. You do not have to provide evidence of Your medical insurability.

## **SUSPENSION FOR ACTIVE MILITARY SERVICE**

### **Suspension for Active Military Service**

The Policy will be suspended on the date You begin active duty in the military of any nation, or international authority including, but not limited to, the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or National Guard. Active duty does not include training that lasts 90 days or less, or any period of travel preceding a period of active duty.

The Policy must be in force and premium must be paid to the date it is suspended. Active duty begins at 12:01 a.m. on the date You are obligated to appear for active duty and for which You will be paid for such duty. Acceptance of premium by Us while You are on active duty will not waive the suspension of the Policy. Any premium paid that applies on or after the date it is suspended will be refunded.

While the Policy is suspended:

- We will neither require premium nor pay benefits under the Policy; and
- the Policy will not cover losses that result from Injury or Sickness that occurs or begins while the Policy is suspended; and
- no privileges or options under the Policy or any attached riders may be exercised.

The suspension of the Policy ends when You are no longer on active duty. On the date We receive a written request to place the Policy back in force and the required pro rata premium, the Policy will be placed back in force. We will not require evidence of insurability. Any such request and premium payment must be received by Us within 90 days after the date Your active duty ends. The grace period does not apply. The Policy will terminate if the premium for the Policy remains unpaid for more than 90 days after the suspension ends.

If the Policy is placed back in force following a suspension:

- premium will be at the same rate that it would have been had the Policy not been suspended; and
- the Policy will cover only losses that result from Injury that occurs after the date the Policy is placed back in force or Sickness that begins more than ten days after such date.

In all other respects, the Policyowner and We will have the same rights under the Policy as before it was suspended.

If Your Age 65 occurs while the Policy is suspended, the Policy will terminate.

## **EXCLUSIONS AND LIMITATIONS**

### **Exclusions**

We will not pay benefits for any Total Disability:

- caused by, contributed to by, or which results from, military training, military action, military conflict, or war, whether declared or undeclared, while You are serving in the military or a military auxiliary unit, either active or reserve, or working for contracted military services; or
- for any period of time in which You are incarcerated or under court-ordered home confinement; or
- caused by, contributed to by, or which results from, Your commission of, or attempt to commit, a felony as defined under local, state, or federal law; or
- caused by, contributed to by, or which results from, Your being engaged in an illegal occupation or professional misconduct; or

- caused by, contributed to by, or which results from, any suspension, revocation, restriction, inactivation, surrender, or the like, of Your professional or occupational license or certification; or
- caused by, contributed to by, or which results from, an intentionally self-inflicted injury; or
- due to any loss We have excluded by name or description.

#### **Pre-existing Condition Limitation**

We will not cover any loss that begins in the first two years after the Effective Date from a Pre-existing Condition.

## **PROVISIONS RELATING TO CLAIMS**

#### **Authorization**

We will require an authorization, without alterations, signed by You, or Your duly authorized legal representative, for Us to obtain information, as often as is reasonably necessary.

#### **Notice of Claim**

You must give Us written notice of claim within 30 days after any loss covered by the Policy occurs or begins, or as soon after that as is reasonably possible. Written notice of claim, with complete information to identify You and the Policyowner, will be sufficient if provided to Us, or any authorized agent, at Our home office, 700 South Street, Pittsfield, MA 01201.

#### **Claim Forms**

When We receive written notice of claim, We will send claim forms for filing proof of loss. Claim forms must be completed, signed and returned to Us, and are a required part of proof of loss. If We do not send You such forms within 15 days after receiving written notice of claim, You may submit a written statement within the time provided in the Policy for filing proof of loss, which provides the nature and extent of the loss for which a claim is made.

#### **Proof of Loss**

You must provide Us with written proof of loss at Our home office for any loss within 90 days after the end of each monthly period for which benefits are claimed. All losses must occur while the Policy is in force.

We can require any proof that We consider necessary to evaluate Your claim. Such proof may include, but is not limited to, the Buy-Sell Agreement, medical records, employment records, business records, financial records, tax returns, and any other information necessary for Us to evaluate Your claim.

We have the right, at Our expense, to analyze or require an analysis of all relevant business, financial and operational records, including, but not limited to, Your personal, business, and corporate federal and state tax returns, as often as We reasonably require by a financial examiner of Our choice. Such assessments may include analysis of business, financial and operational records for any business in which You have or may have an ownership interest. We can require that Your accounting practices be the same as those that were in effect immediately preceding the start of Your Total Disability.

If You cannot give Us written proof of loss within the prescribed time, We will not deny or reduce Your claim if You give Us written proof of loss as soon as reasonably possible. Under no circumstance will We pay benefits if written proof of loss is delayed for more than one year, unless You have lacked legal capacity.

#### **Payment of Claim**

All terms and conditions of the Policy must be satisfied in order for benefits to become payable. After all required proof of loss is provided and the claim is approved by Us, benefits due under the Policy will be paid to the Policyowner.

The Policy, and all Coverage, terminates upon Your death. Any benefits unpaid at Your death will be paid to the Policyowner. If the Policyowner is deceased, We will pay the benefits due to the Policyowner's successors, executors, administrators, or assigns.

If any benefit of the Policy becomes payable to a person not competent to give a release, We may pay such benefit, up to \$1,000, to a relative by blood or marriage of such person We deem appropriate. Any payment made in good faith under this provision will fully discharge Us to the extent of such payment.

**Overpayment of Benefits**

In the event that an overpayment of benefits occurs, We have the right to either recoup the overpayment from future claim benefits or require reimbursement within 60 days of notification of overpayment.

**Time of Claim Payment**

Subject to satisfactory written proof of loss and upon Our determination that benefits are payable under the Policy, We will pay all accrued benefits for Total Disability and other specified losses. Benefits will be payable according to the Funding Method. After the Policy terminates, any unpaid amounts due will be paid promptly after We receive satisfactory written proof of loss.

**Examinations**

We have the right to have You examined at Our expense and as often as We reasonably require to determine Your eligibility for benefits under the Policy as part of the Proof of Loss provision. We will select the examiner and the examination conditions. The examiner will be a specialist appropriate to the assessment of Your claim.

The examinations may include, but are not limited to, medical examinations, functional capacity examinations, psychiatric examinations, psychological examinations, neuropsychological examinations, vocational evaluations, rehabilitation evaluations, and occupational analyses. Such examinations may include any related tests that are reasonably necessary to the performance of the examination. We may deny or suspend benefits under the Policy if You fail to attend an examination, fail to cooperate with the examiner, or fail to comply with Our selected examination conditions.

**Responsibility to Cooperate and Obtain Appropriate Medical Care**

You have the responsibility to cooperate with Us concerning all matters relating to the Policy including, but not limited to, any claims under the Policy. You must meet with Our representative for a personal interview or review of records at such time and place, and as frequently, as We reasonably require. Upon Our request, You must provide appropriate documentation. You have the responsibility to obtain, and reasonably participate in, all appropriate medical care for the condition for which benefits are claimed.

**Claims While Outside the United States or Canada**

If You are living outside the United States or Canada during any period for which You are claiming Total Disability, We may require You to return to the United States or Canada, at Your own expense, when and as often as We may reasonably request to substantiate the claim. United States refers to the 50 states that comprise the United States and the District of Columbia.

## **PROVISIONS RELATING TO PREMIUM AND REINSTATEMENT**

**Premium**

Premiums are due on the first day of each Premium Term. If You die, any premium paid that applies to the period after Your date of death will be refunded to the Policyowner or the Policyowner's estate.

**Grace Period**

Except for the first premium, if the premium has not been paid by the premium due date, We allow a grace period of 31 days in which to pay each premium due. The Policy stays in force during the grace period. If the premium has not been paid by the end of the grace period, the Policy will lapse.

**Premium Term Changes**

The Policyowner may submit a written request to Our home office to change the Premium Term. On request, and subject to Our approval, premiums may be paid annually or on a periodic basis. The Premium Terms available are annual, semiannual, quarterly, or monthly. Any change to the Premium Term will begin with the next premium due date. We will not allow any change that would result in any premium not being due on a Policy Anniversary.

**Reinstatement**

If the Policy has lapsed at the end of the grace period, the Policyowner can apply to reinstate the Policy by completing an application for reinstatement and paying all overdue premium. We must receive the application within six months of the date the Policy lapsed.

We may require satisfactory evidence of insurability to reinstate the Policy. If We approve the application, the Policy will be placed back in force on the date of such approval. If We refuse to reinstate the Policy, We will refund the overdue premium. If We have neither approved nor refused the application in writing within 45 days after receipt of such application and overdue premium, the Policy will be reinstated on that 45th day.

The Policy will be reinstated as of the date We accept a premium if We do not require an application.

The reinstated Policy will cover only losses that result from Injury that occurs after the date of reinstatement, or Sickness that begins more than ten days after such date. In all other respects, the Policyowner and We will have the same rights under the Policy as before it lapsed, subject to any provisions endorsed on or attached to the Policy in connection with reinstatement.

## **GENERAL CONTRACT PROVISIONS**

### **Consideration**

We have issued the Policy in consideration of the representations in the application and payment of the first premium. A copy of the application is attached and is a part of the Policy.

### **When the Policy Is Effective**

The Policy takes effect at 12:01 a.m. on the Effective Date and terminates at 11:59 p.m. on the date on which the Policy terminates.

### **The Contract**

The Policy with any application(s), Schedule Pages, and any attached riders, amendments, and endorsements make up the entire contract. No change in the Policy will be valid unless it has been endorsed on, or attached to, the Policy in writing by the president, a vice president, or the secretary of Berkshire Life.

No agent or broker has authority to change the Policy or waive any of its provisions.

### **Time Limit on Certain Defenses**

After two years from the Effective Date of the Policy, no misstatements, except fraudulent misstatements, contained in the application for the Policy will be used to void the Policy or to deny a claim for loss incurred or Total Disability that starts after the end of such two-year period.

No claim for a loss incurred or Total Disability that starts after two years from the Effective Date of the Policy will be reduced or denied on the ground that a sickness or physical condition, not excluded by name or specific description, effective on the date of loss had existed before the Effective Date of the Policy.

In the event of a reinstatement, after two years from the date of reinstatement, no misstatements, except fraudulent misstatements, contained in the application for reinstatement will be used to void the Policy or to deny a claim for loss incurred or Total Disability commencing after the expiration of such two-year period.

In the event that any Coverage is added to the Policy after the date the Policy takes effect, after two years from the date that such Coverage was added to the Policy, no misstatements, except fraudulent misstatements, contained in the application for such Coverage will be used to void such Coverage or to deny a claim for loss incurred or Total Disability commencing after the expiration of such two-year period. No claim for a loss incurred or Total Disability that starts after two years from the date such Coverage takes effect will be reduced or denied on the ground that a sickness or physical condition, not excluded by name or specific description, effective on the date of loss, had existed before the date such Coverage took effect.

### **Termination of the Policy**

The Policy will terminate when the first of the following occurs:

- the premium for the Policy remains unpaid at the end of the grace period; or
- the premium for the Policy remains unpaid for more than 90 days after the end of a suspension for active military service; or



- Our receipt of the Policyowner's written request to terminate the Policy; or
- We issue a Conversion Policy based on the Conversion Option provision; or
- Your Age 65; or
- Your death; or
- the Policyowner, if an individual, no longer has an Ownership Interest in the Business(es); or
- You no longer have an Ownership Interest in the Business(es); or
- You are no longer Gainfully Employed Full Time by the Business(es) for any reason other than Total Disability; or
- the Maximum Aggregate Benefit under the Policy has been paid.

Termination will not prejudice any claim for Total Disability that begins while the Policy is in force.

#### **Conformity with State Laws**

Any provision of the Policy that, on the Effective Date, is in conflict with the laws of the state in which You reside on such date is hereby amended to meet the minimum requirements of such laws.

#### **Legal Actions**

No one can bring an action at law or in equity under the Policy until 60 days after written proof of loss, as required by the Proof of Loss provision under the Policy, has been furnished. In no case can an action be brought against Us more than three years after written proof of loss must be furnished.

#### **Misstatements of Age**

If Your age is misstated in the application, Coverage will be what the premium paid would have purchased based on the correct age.

If We would not have issued the Policy at Your correct age, there will be no insurance and We will refund all premiums paid for the period not covered by the Policy.

#### **Waiver of Policy Provisions**

Our failure to invoke or enforce any right under the terms of the Policy will not be deemed a waiver of that right.

## **FUTURE INCREASE OPTION RIDER**

This rider is part of the Policy to which it is attached. All provisions of the Policy apply to this rider and remain the same except where We change them by this rider.

### **DEFINITIONS**

The following definitions are added to the Policy:

**Increase Option**

Increase Option means the Policyowner's option to apply for an Increase Policy.

**Increase Policy**

Increase Policy means any policy that is issued as a result of an exercise of an Increase Option.

**Option Amount**

The Option Amount is shown in the Schedule Page.

**Option Date**

Option Date means the date of every Policy Anniversary while this rider is in effect.

**Option Period**

Option Period means the 63-day period beginning 31 days immediately before the Option Date and ending 31 days immediately following the Option Date.

### **PROVISIONS RELATING TO INCREASE OPTIONS**

**Exercising an Increase Option During an Option Period**

The Policyowner may exercise an Increase Option up to the Option Amount during an Option Period if You are Gainfully Employed Full Time by the Business(es). We must receive a written application for an Increase Policy during an Option Period.

If the Policyowner does not exercise an Increase Option during an Option Period, the Policyowner may apply for up to two times the Option Amount during the next Option Period.

Each Option Amount applied for during an Option Period will be underwritten to determine the total amount of allowable Maximum Aggregate Benefit under the Increase Policy, if any, available to the Policyowner. We will use Our underwriting rules in effect on either the Effective Date of the Policy or when the Policyowner applies for an Increase Policy, whichever are more favorable to the Policyowner.

An Increase Option may not be exercised when You are Totally Disabled or You are receiving, or eligible to receive, disability benefits from any source.

**Proof of Insurability**

When the Policyowner exercises an Increase Option, proof of insurability must be provided that includes, but is not limited to, the following evidence:

- information We require for Us to determine the Business(es) Valuation Amount; and
- Your Ownership Interest and employment in the Business(es); and
- the Policyowner's Ownership Interest in the Business(es), if the Policyowner is an individual; and
- all other disability insurance that You have with any insurer that is in force, has been applied for, or for which You are eligible.

Evidence of Your medical insurability or occupation does not have to be provided.

**Increase Policy**

The Increase Policy will be issued on a separate policy form then being used by Us for new applicants on a regular basis in the place where You live. Solely for the purposes of this rider, new applicants are individuals who do not have any coverage in force with Us at the time of application.

The Increase Policy will include those provisions, benefits and riders that are part of the Policy if We are then offering them to new applicants in the place where Your Increase Policy is issued. The provisions, benefits and riders of the Increase Policy may be different from the Policy.

The Increase Policy will have the same Elimination Period, Funding Method and, if applicable, the Monthly Installment Period as the Policy.

We will not issue an Increase Policy with less than \$10,000 of Maximum Aggregate Benefit.

The premium for each Increase Policy will be based on Our premium rates in effect on the date of issue of the Increase Policy, which may vary by state. The premium may also be based on, but not limited to, the following:

- the Increase Policy amount and any rider that is attached to the Increase Policy; and
- Your age on the date of issue of the Increase Policy; and
- Your gender on the date of issue of the Increase Policy; and
- the state and policy form of the Increase Policy; and
- the Class of Risk, Occupation Class, and any special class rating under the Policy.

The Class of Risk and Occupation Class under the Increase Policy will not be less favorable than under the Policy. If at the time the Policyowner applies for the Increase Policy, satisfactory evidence is submitted that You qualify for a more favorable Class of Risk and/or Occupation Class than under the Policy, We will apply the more favorable classification to the Increase Policy.

Conditions that are excluded by name or specific description under the terms of the Policy will be excluded under the Increase Policy.

An Increase Policy does not become effective until We receive the first premium for the Increase Policy.

**Rider Premium**

The premium for this rider is shown in the Schedule Page.

**TERMINATION**

This rider will terminate when the first of the following occurs:

- You attain Age 55; or
- the premium for this rider remains unpaid for more than 31 days; or
- the date We receive the Policyowner's written request to terminate this rider; or
- the Policy terminates.

**Berkshire Life Insurance Company of America**



Secretary

Berkshire Life Insurance Company of America  
700 South Street  
Pittsfield, MA 01201

## GROSS RECEIPTS BUSINESS(ES) VALUATION ENDORSEMENT

This endorsement is part of the Policy to which it is attached. All provisions of the Policy apply to this endorsement and remain the same except where We change them by this endorsement.

### DEFINITION

The following definition is added to the Policy:

#### **Business(es) Valuation Amount**

The Business(es) Valuation Amount is equal to A multiplied by B multiplied by C:

- A is the average of the Business(es)' annual gross receipts as reported for federal income tax purposes for the three tax years immediately prior to the date You became Totally Disabled; and
- B is [1, 1.25, 1.5, 1.75 – 5]
- C is the percentage of Your Ownership Interest immediately prior to the date You became Totally Disabled.

Berkshire Life Insurance Company of America

  
Secretary

## NET WORTH BUSINESS(ES) VALUATION ENDORSEMENT

This endorsement is part of the Policy to which it is attached. All provisions of the Policy apply to this endorsement and remain the same except where We change them by this endorsement.

### DEFINITIONS

The following definitions are added to the Policy:

#### **Business(es) Valuation Amount**

The Business(es) Valuation Amount is equal to (A multiplied by B) plus C, where:

- A is the average annual Total Owner Compensation as reported for federal income tax purposes in the two tax years immediately prior to the date You became Totally Disabled;
- B is 2
- C is the average Net Worth as of the last day of the two tax years immediately prior to the date You became Totally Disabled.

#### **Net Worth**

Net Worth means the assets of the Business(es) less the liabilities of the Business(es) as reported for federal income tax purposes multiplied by the percentage of Your Ownership Interest immediately prior to the date You became Totally Disabled. In the event that assets and liabilities are not required to be reported for federal income tax purposes, they may be provided through a compilation report as prepared by an independent certified public accountant applying mutually acceptable business valuation techniques on an accounting basis consistent with the Business(es)' most recent federal income tax return(s).

#### **Total Owner Compensation**

Total Owner Compensation means Net Income plus Compensation.

#### **Net Income**

Net Income means Your share of the Business(es)' profit or loss, as reported for federal income tax purposes.

#### **Compensation**

Compensation means salaries, wages, fees, commissions, bonuses, pension and profit sharing contributions earned by You, received by You or that is allocable to You by the Business(es), as reported for federal income tax purposes. All income or remuneration from sources other than from the Business(es) is not included in Compensation.

**Berkshire Life Insurance Company of America**



Secretary

Berkshire Life Insurance Company of America  
700 South Street  
Pittsfield, MA 01201

## TRADITIONAL BUSINESS(ES) VALUATION ENDORSEMENT

This endorsement is part of the Policy to which it is attached. All provisions of the Policy apply to this endorsement and remain the same except where We change them by this endorsement.

### DEFINITIONS

The following definition is added to the Policy:

**Business(es) Valuation Amount**

Business(es) Valuation Amount Means the fair market value of Your Ownership Interest as of the date You became Totally Disabled, determined by an independent certified public accountant applying mutually acceptable business valuation techniques.

Berkshire Life Insurance Company of America

  
Secretary