

苏黎世中国董事、高级管理人员和公司责任险2009版附加企业实体雇用行为赔偿责任条款（II）

考虑到所收取的保险费，双方理解并同意本保险单修改如下：

1. 本保险单增加以下额外的条款：

1.3 企业实体雇用行为赔偿责任

保险人将代表被保险公司对在保险期限或延长索赔报告期限（如适用）因不当行为而向被保险人首次提出的雇用行为索赔产生的财务损失进行赔偿。

2. 保单下第 8.9 项被全部删除并用以下内容替代：

8.9 雇用行为索赔是指：由被保险公司过去的、现在的、未来的、可能的雇员，根据任何实际或指控的不当解雇/解职/解聘、与雇佣有关的错误陈述、违反工作歧视的相关法律（包括工作地点的骚扰）、不当地不予升职、不当地惩罚、不当地剥夺工作机会、考核评估上的疏忽、侵犯个人隐私、与工作有关的诽谤、因工作遭受精神损害，以上述情况为理由向任何被保险人提起和保持的索赔（包括向英国平等就业机会委员会或类似的地方性机构、州立机构或政府有关部门提起的诉讼程序、调查、指控）。

3. 下列内容添加到 8.33 不当行为：

8.33.3 被保险公司，仅对于与雇用行为索赔有关的事宜。

4. 下列内容添加到 8.13 被保险人：

被保险公司，仅对于与雇用行为索赔。

5. 保单第 2.6 项被完全删除。

6. 修改保险单明细表中的免赔额及本保险单有关免赔额的段落，增加以下额外的免赔额：

因雇用行为索赔引起的被保险公司的财务损失的免赔额为 XXXX。

7. 保险人在本保单和本批单下针对所有被保险人的所有雇用行为索赔引起的所有财务损失的总计赔偿责任限定为 XXXX。该分项赔偿责任限额属于保险单明细表中的赔偿责任限额的一部分，而非其补充。

8. 本保险单第 2.8 条公司调查不适用于与雇用行为索赔有关的事项。

9. 保单第 9.3 项被完全删除并用以下内容替代：

9.3 由于保险期限之前就已经存在的任何索赔或情况而指控、引起、构成、引发、导致的任何索赔；而且，上述提及的索赔或情况已经在其他董事和高级管理人员责任、管理层责任或雇用行为责任保险中提出过；本保险是上述保险的续保、替换或是从时间先后而言的承继。

10. 保险人根据本保险单对指称存在以下情形或由以下情形引发或导致的针对被保险公司提起的雇用行为索赔有关的财务损失（包括抗辩费用）或调查费用不承担赔偿责任：

(i) 在以下列明的连续承保日之前启动或在该连续承保日仍未决的任何诉讼、诉案、索赔、仲裁或调解；或与这些先期的或未决的诉讼、控诉、索赔、仲裁或调解指称或基于相同或基本相同的事实的其他诉讼、控诉、索赔、仲裁或调解；

(ii) 在以下列明的连续承保日之前被保险人已经知道的、根据本保险单可合理预期将导致雇用行为索赔的任何情况或不当行为。

在本附加条款第 7 条的除外责任中所提及的术语“连续承保日”是指 。

11. 本保单下，针对**被保险公司**提起的**雇佣行为索赔**，**保险人**对针对**被保险公司**的**美国索赔**引起的**财务损失**（含**抗辩费用**）不承担赔偿责任。

12. 以下增加的除外责任和限制条款适用于针对**被保险公司**的**雇佣行为索赔**：

财务损失的定义不包括以下内容：

(a) 关于合同的或法规要求的通知期间应付的金额及/或因**被保险人**未能按照劳动合同的规定给予**雇员**解雇通知而需要支付的金额或代替解雇通知而支付的金额；

(b) **员工福利**；

(c) 因遵守指令性的、间歇性的或其他非货币的债务免除所发生的成本或遵守任何协议提供此类债务免除而发生的成本；

(d) 因遵守为失能或身体残疾人士提供更容易使用或更大活动空间的任何法律职责而调整或改变建筑物、房屋地基、固定设备、装置、厂房、设备或其他财产而发生的成本；

(e) 因**被保险人**未能根据以下法规通知**雇员**代表或与**雇员**代表商议而被判予的金额：英国 1981 年的企业转让规定（雇佣保护）；或对上述法案的任何修改、替代或任何类似的其他的联邦、州或地方法令、规则、普通法规或另一司法管辖权下的类似法律条款；

(f) 保护性裁决。

在本附加条款中，

员工福利是指：

(a) 临时津贴、额外津贴、奖金；

(b) 激励性或递延补偿的薪酬；

(c) **基于股票的福利**；

(d) 医疗或保险福利及应支付给任何个人的与员工福利计划或退休金计划有关的款项；

(e) 除了薪金（包括奖金）和工资之外的其他任何类型的报酬或相当于报酬的项目。

在本定义中，

基于股票的福利：是指任何实际的、受益的或可能发生的对福利、激励性或其他薪酬计划的权利，这些福利、激励性或其他薪酬计划的价值是由**被保险公司**股票的价值衍生出来的。包括但不限于股票期权、股票授予、限制性股票、股票保证、股票表现参与计划或单位、股票增值权利、或影子股票计划或安排。

13. 以下增加的除外责任和限制条款适用于针对**被保险公司**的**雇佣行为索赔**：

保险人根据本保险单对指称存在以下情形或由以下情形引发或导致的针对**被保险公司**提起的**雇佣行为索赔**有关的**财务损失**（包括**抗辩费用**）或**调查费用**不承担赔偿责任：

(a) 因事实上违反或被指称违反任何有关劳动报酬、雇主责任、失业保险、薪酬或**员工福利、工资及劳动时间行为**、遣散费、社会保障、退休金、失能保险的联邦、州、或地方规则、规定、成文法规、普通法或类似法律所规定的责任、义务或职责而遭受的索赔；

工资及劳动时间行为：包括但不限于任何以时钟打卡记录下班时间的工作、有关休息和进餐时间的规定、对雇员按有无加班费领取资格分类、支付最低工资、工资的及时支付、转化、最长工作时间、商业行为的公平性；

(b) 或可归因于**被保险人**根据其他任何口头或书面的合同或协议而承担的对第三方的

赔偿责任； 但此除外责任不包括**被保险人在没有该合同或协议的存在的情况下需要承担赔偿责任的财务损失**；

- (c) 基于或可归因于事实上违反或被指称违反任何法令或普通法所规定的有关允许雇员享有参与或不参与工会或其他集体活动的权利、或执行劳资双方谈判协议（包括但不限于不满申诉和仲裁的聆讯）的职责、义务和责任；
- (d) 基于或可归因于 1992 年《工会和劳动关系（合并）法案》或该法案的任何修改、替代或任何类似的联邦、州或地方的法令、规定或普通法、或另一司法管辖权下的类似条款中所定义的任何集体冗余人员处理或大规模裁员行为；
- (e) 基于或可归因于任何判决或法院命令要求某一**雇员**复职。

本附加条款与主险条款相抵触之处，以本附加条款为准，本保险单的所有其他条款、除外责任和条件维持不变。

EPL Entity Cover (II) Excluding USA/Canada

In consideration of the premium charged, it is hereby understood and agreed that the Policy is hereby amended as follows:

1. The following additional Insuring Clause is added to this policy:

1.3 Employment Practices Entity Coverage

The **Insurer** will pay on behalf of the **Company** such **Financial Loss** as arises from or is a consequence of any **Employment Claim** first made against an **Insured** during the **Period of Insurance** or the **Extended Reporting Period** (if applicable) by reason of a **Wrongful Act**.

[ALTERNATIVE: The **Insurer** will pay on behalf of the **Company** such **Financial Loss** as arises from or is a consequence of any **Employment Claim** brought by an **Employee** of the **Company** and first made against the **Company** during the **Period of Insurance** or the **Extended Reporting Period** (if applicable) by reason of a **Wrongful Act**, but, only if and so long as such **Employment Claim** against the **Company** is also made, and is continuously maintained, against a **Director or Officer**.]

2. Paragraph 8.11 is deleted in its entirety and replaced by the following:

8.9 Employment Claim

Employment Claim shall mean a **Claim** (including a proceeding/investigation/charge brought by or before the Equal Opportunities Commission in the UK or similar local, state or government authority) which is brought and maintained by or on behalf of any past, present, future or prospective **Employee** of the **Company** against any **Insured** based on any actual or alleged wrongful dismissal, discharge or termination of employment, employment related misrepresentation, violation of employment discrimination laws (including workplace harassment), wrongful failure to promote, wrongful discipline, wrongful deprivation of a career opportunity, negligent evaluation, invasion of privacy, employment related defamation or employment related infliction of emotional distress.

3. The following is added to 8.33 **Wrongful Act**:
the **Company**, but solely with respect to an **Employment Claim**.
4. In respect of an **Employment Claim** only, Paragraph 8.13 is amended to include any **Company**.
5. Paragraph 2.6 is deleted in its entirety.
6. The Deductible on the Schedule and the Deductible paragraph in the Policy is hereby amended to include the following additional Deductible:

XXX which applies to **Financial Loss** of the **Company** arising from **Employment Claims**.

7. The total aggregate limit of the **Insurer's** liability for all **Financial Loss** arising from all **Employment Claims** covered under this Policy, including this endorsement, for all **Insureds**, combined, is specifically sub-limited to **XXX**. This **Sub-limit of Liability** shall be part of and not in addition to the total aggregate **Limit of Liability** specified in the Schedule.
8. In respect of **Employment Claims** only, Paragraph 2.8 Company Investigations shall not apply.
9. Paragraph 9.3 is deleted in its entirety and replaced by the following:

alleging, arising from, based upon, attributable to or as a consequence of any claim or

circumstance existing prior to the **Period of Insurance** that has been reported under any directors and officers, management liability, or employment practices liability policy of which this Policy is a renewal or replacement or which it may succeed in time;

10. In respect of **Employment Claims** against the **Company**, the **Insurer** shall not be liable under this Policy to make any payment for **Financial Loss** (including **Defence Costs**) in connection with any **Employment Claim** made against the **Company**, or **Investigation Costs**:

(i) alleging, arising out of, based upon or attributable to any litigation, suit, **Claim**, arbitration or mediation initiated prior to or pending on the **Continuity Date** indicated below; or any litigation, suit, arbitration or mediation which alleges or is derived from the same or essentially the same facts as alleged in such prior or pending litigation, suit, **Claim**, arbitration or mediation; or

(ii) alleging, arising out of, based upon or attributable to any circumstances or **Wrongful Act** known by any **Insured** prior to the **Continuity Date** indicated below, which could reasonably have given rise to an **Employment Claim** under this Policy.

For the exclusions listed in this section 9 the term **Continuity Date** shall mean the inception date of the **Period of Insurance** of this Policy.

11. In respect of **Employment Claims** made against the **Company**, the **Insurer** shall not be liable under this Policy to make any payment for **Financial Loss** (including **Defence Costs**) in connection with any **US Claim** made against the **Company**.
12. In respect of **Employment Claims** made against the **Company**, the following additional exclusions and limitations shall apply:

The definition of **Financial Loss** shall, also, not include:

- (a) any amount payable in respect of contractual or statutory notice periods and/or which would not have been made but for the **Insured's** failure to give an **Employee** contractual notice of dismissal required under his or her contract of employment or payment in lieu thereof;
- (b) **Benefits**;
- (c) the costs to comply with any injunctive, interim or other non-monetary relief or any agreement to provide any such relief;
- (d) the modification of any building, premises, fixtures, fittings, plant, equipment or other property in order to comply with any legal obligation to make them some more accessible or accommodating to any disabled or physically impaired persons;
- (e) any award made in respect of the failure by the **Company** to inform or consult **Employee** representatives in accordance with the Transfer of Undertakings (Protection of Employment) Regulations of 1981, or any amendments thereto, replacements thereof, or any similar federal, state, or local statute, regulation, or common law; or any similar provisions in another jurisdiction;
- (f) a protective award.

For the purposes of this endorsement,

Benefits means:

- (a) perquisites, fringe benefits, bonus payments;

- (b) incentive or deferred compensation;
- (c) **Stock Based Benefits**;
- (d) medical or insurance benefits and payments due to any person in connection with an employee benefit plan or pension scheme; or
- (e) any other type of compensation or the equivalent value thereof other than salary (including bonus) and wages.

For the purposes of this definition,

Stock Based Benefits means the value of any actual, beneficial or contingent rights to benefits, incentives or other compensation whose value is imputed or derived in any way from the value of the securities of the **Company**, including but not limited to, stock options, stock grants, restricted stock, stock warrants, stock performance shares or units, stock appreciation rights, or phantom stock plans or arrangements.

13. With respect to **Employment Claims** made against the **Company**, the following additional exclusions shall, also, apply:

The **Insurer** shall not be liable under this Policy to make any payment for **Financial Loss** (including **Defence Costs**) in connection with any **Employment Claim** made against the **Company**, or **Investigation Costs**:

- (a) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state or local rules or regulations, statutory or common law, governing workers' compensation, employers liability, unemployment insurance, **Benefits** or compensation, **Wage and Hour Practices**, redundancy pay, social security, retirement benefits, disability benefits or similar law;

Wage and Hour Practices shall include, but is not limited to, any "off the clock" work, provisions regarding rest or meal periods, classification of **Employees** as exempt or non-exempt from overtime regulations, payment of minimum wages, payment of overtime wages, timely payment of wages, conversions, maximum working hours, fairness of business practices;

- (c) based upon, arising out of, or attributable to liability of others assumed by any **Insured** under any contract or agreement, either oral or written; provided, however, this exclusion shall not apply to the extent the **Insured** would be liable for such **Financial Loss** in the absence of such contract or agreement;
- (d) based upon, arising out of, or attributable to any actual or alleged violation of the responsibilities, obligations, or duties imposed by any statutory or common law that governs the rights of employees to engage in, or to refrain from engaging in, union or other collective activities, or the enforcement of any collective bargaining agreement, including but not limited to grievance and arbitration proceedings;
- (e) based upon, arising out of, or attributable to any collective redundancies or mass-layoffs as defined in The Trade Union and Labour Relations (Consolidation) Act 1992, or any amendment thereto, replacements thereof, or any similar federal, state or local statute, regulation, or common law; or any similar provisions of law in another jurisdiction;
- (f) based upon, arising out of, or attributable to any judgment or court order for the reinstatement of an **Employee**.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN UNCHANGED.