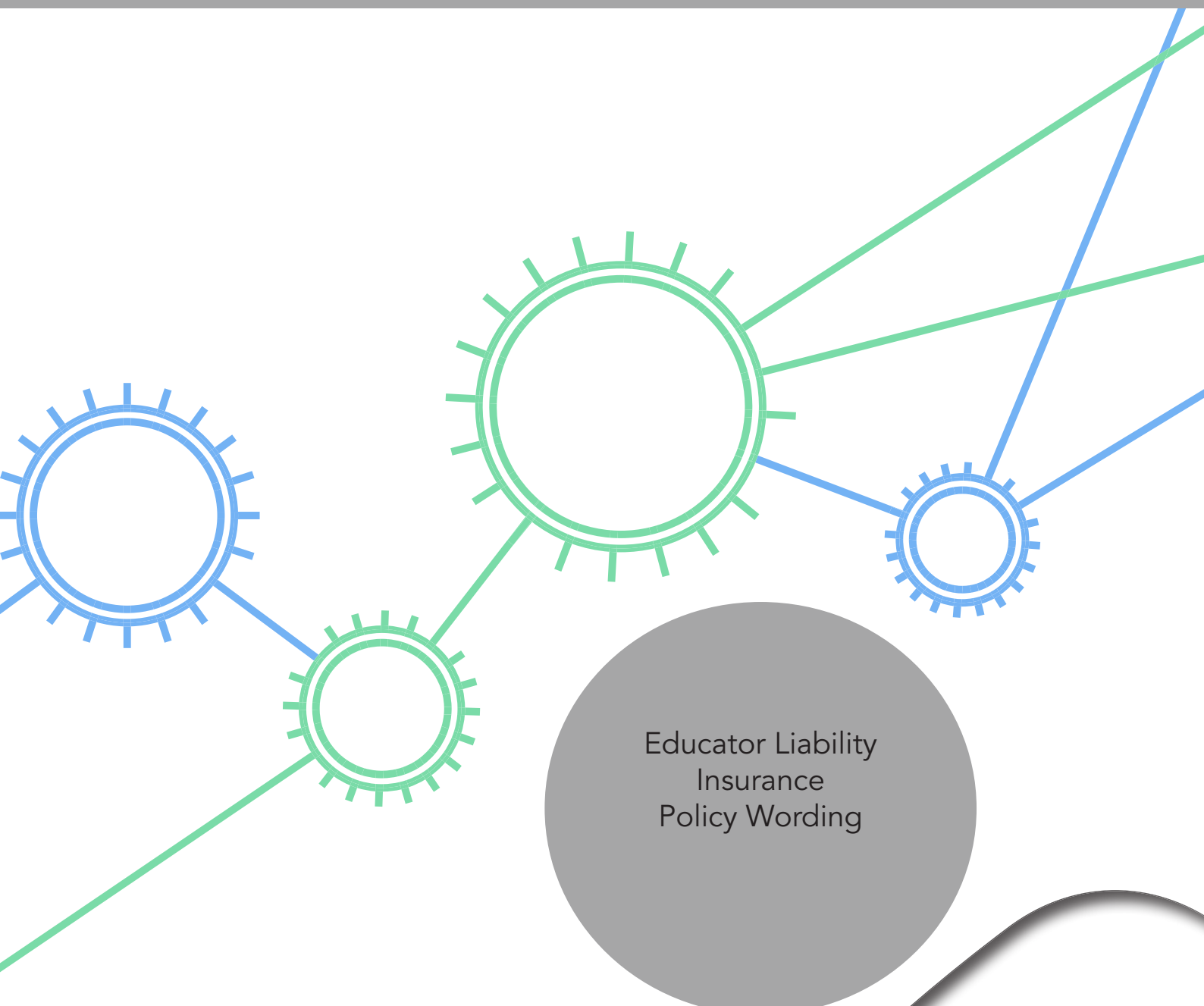




making relationships count

EDUCATOR LIABILITY POLICY WORDING



Educator Liability
Insurance
Policy Wording

Insured by



MSIG



DUAL Asia Educators Liability Insurance

Policy Wording

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DUAL Asia Educators Liability Insurance

Policy Wording

Section 1: PREAMBLE

- 1.1 We will provide the cover described in the **policy**, subject to its terms and conditions, for the **insurance period**.
- 1.2 The cover under the **policy** commences upon the payment of the premium unless otherwise agreed in writing.
- 1.3 Except as otherwise provided herein, this **policy** only covers **claims** first made against the **insured** and reported to **us** in the **insurance period**.

Section 2: INSURING CLAUSES

2.1 Cover for You

We agree to pay on behalf of each **insured person** all **loss** on account of any **claim** first made against such **insured person** and reported to **us** during the **insurance period** in respect of any:

- a) **wrongful act**; or
- b) **employment practice breach**; or
- c) **trustee breach**

for which the **educator** is not permitted or required to indemnify the **insured person**.

2.2 Cover for the Educator

We agree to pay all **loss**:

- a) Professional Indemnity - on behalf of the **insured** on account of any **claim** first made against the **insured** and reported to **us** during the **insurance period** in respect of any **civil liability** resulting from a **wrongful act** by the **insured** in the conduct of the **educational services**;
- b) Educator Reimbursement - on behalf of the **educator** on account of any **claim** first made against an **insured person** and reported to **us** during the **insurance period** in respect of a **wrongful act** by the **insured person** for which the **educator** is permitted or required to indemnify the **insured person**;
- c) Management Liability - on behalf of the **educator** on account of any **claim** first made against the **educator** and reported to **us** during the **insurance period** for a **wrongful act** by the **educator**.

The total amount payable by **us** under this Insuring Clause 2.2(c) for all such **loss** in the **insurance period** including **defence costs** shall not exceed the sub-limit specified in Item 4 in the **schedule**. This sub-limit forms part of, and is not payable in addition to, the **indemnity limit**;

- d) Employment Practices - on behalf of the **educator** on account of any **claim** first made against the **educator** and reported to **us** during the **insurance period** for an **employment practice breach**;
- e) Trustee - on behalf of the **educator** on account of any **claim** first made against the **educator** and reported to **us** during the **insurance period** for a **trustee breach** by the **educator**;
- f) Crime - sustained by the **educator**, in excess of the **deductible**, which is first **discovered** during the **insurance period** and caused by **dishonest acts**.

The maximum amount payable by **us** under this Insuring Clause 2.2(f) for all such **loss discovered** in the **insurance period** is the applicable sub-limit of liability as specified in Item 4 of the **schedule**. This sub-limit is part of, and is not payable in addition to the **indemnity limit**.

2.3 Defence Costs for Claims

We agree to pay to or on behalf of the **insured** any **defence costs** either incurred by **us** or incurred by the **insured** with **our** prior written consent.

We also agree to advance **defence costs** before final disposition of a **claim**:

- a) where **we** give the **insured** written confirmation that **we** will pay the **insured's loss** arising from the **claim**; or
- b) where **we** take over and conduct proceedings in respect of the **claim** under Claims Condition 10.4 (Legal Representation and Settlement)

For the purpose of Insuring Clauses 2.1 and 2.2(b)-(e), this clause is subject to Extension 4.1 (Advancement of Defence Costs), **we** may pay **defence costs** before final disposition of a **claim** at **our** discretion.

If **we** subsequently refuse to pay **loss** under the **policy**, the **insured** must reimburse **us** for any **defence costs** that **we** have paid in advance, according to their respective rights and interests.

For the purpose of this clause and the terms, conditions and Exclusions of the **policy**, **claim** also means an official investigation, examination or inquiry under Extension 4.2 (Official Investigations and Inquiries).

2.4 Retroactive Date

The **policy** will only provide cover in respect of a **wrongful act, employment practice breach, trustee breach** and/or **dishonest act** committed after the **retroactive date**.

Section 3: EXTENSIONS APPLICABLE TO INSURING CLAUSE 2.2(A) – PROFESSIONAL INDEMNITY

These Extensions to coverage apply automatically under Insuring Clause 2.2(a) and are subject to the Insuring Clauses and all other terms and conditions of this **policy**.

3.1 Consultants, Subcontractors and Agents

We agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** arising from the conduct of any consultant, sub-contractor or agents of the **educator** in the conduct of the **insured's educational services** and for whose acts, errors or omissions the **educator** is liable.

Cover under this Extension is not available to consultants, sub-contractors or agents in respect of their own liability.

3.2 Continuous Cover

Notwithstanding Exclusion 6.13 (Prior Known Facts), **we** agree to provide cover in respect of any **claim** made against the **insured** in the **insurance period** where the **insured**:

- a) first became aware, prior to the **insurance period**, that a **claim** might or could arise from facts or circumstances known to it; and
- b) had not notified **us** of such facts or circumstances prior to the **insurance period**.

Provided that:

- i) **we** were the professional indemnity liability insurer of the **educator** when the **insured** first became aware of such facts or circumstances and have continued, without interruption, to be the **educator's** professional indemnity insurer until this **policy** came into effect; and
- ii) there has not been any fraudulent non-disclosure or fraudulent misrepresentation by an **insured** in respect of such facts or circumstances; and
- iii) if the fact or circumstance had been notified under the previous policy, the **insured** would have been entitled to indemnity under the previous policy; and
- iv) if **we** had been notified of the facts or circumstances when the **insured** first became aware of such facts, the **insured** would have been indemnified under the policy in force at that time, however is now not entitled to be indemnified by that policy, and the **insured** would, but for Exclusion 6.13 (Prior Known Facts) otherwise be indemnified by this **policy**; and

- v) **we** have the discretion to apply either the terms and conditions of the policy on foot when the **insured** first became aware of the facts and circumstances, including but not limited to the **indemnity limit** and **deductible**, or the terms and conditions of this **policy**; and
- vi) the **insured** all agree only to make a **claim** under one professional indemnity **policy** issued by **us**.

For the purpose of this Extension only the Definition of **we/us/our** (Definition 9.48) of this **policy** also includes the Insurer(s) for which **we** were the agent on any previous policy issued by **us** as such Insurer's agent to the **insured**. Subject to the terms of this Extension and the terms of the **policy**, the intention of this Extension is to provide continuous cover notwithstanding any change in the identity of the Insurers for which **we** presently act, or have previously acted, as agent.

3.3 Court Attendance Costs

We agree to pay to or on behalf of the **educator** any court attendance costs of any **officer** or **employee** who is legally compelled to and does attend Court as a witness in a **claim** for **civil liability** covered by this **policy**, to the amount specified in Item 4 of the **schedule**.

3.4 Defamation

We agree to pay to or on behalf of the **insured** all **loss** and **defence costs** resulting from any **claim** for **civil liability** for defamation committed in the conduct of the **educational services**, provided that the **insured** did not intend to defame.

3.5 Discovery Period

The **insured** may give written notice to **us** of any **claim** resulting from **civil liability** in relation to the conduct of the **educator's educational services** prior to the expiration of the **insurance period** and during a **discovery period** immediately following the **insurance period** of:

- a) 60 days granted automatically with no additional premium payable; or
- b) 12 months, if the **educator** requests such period in writing within 30 days after the end of the **insurance period** and tenders an additional premium of 100% of the expiring annual premium, commencing immediately after the end of the **insurance period**, such premium is payable within 30 days of the receipt by **us** of such written request; or
- c) 84 months, if a **transaction** takes place and the **educator** requests such period in writing within 30 days following the end of the **insurance period**, on such terms and conditions, if any, and for such additional premium as **we** may reasonably require.

This Extension is not available if this **policy** is:

- i) renewed or replaced with any similar or like professional indemnity insurance; or
- ii) cancelled or avoided.

Any **discovery period** purchased under this Extension is non-cancellable and the premium paid for the **discovery period** is fully earned by **us** and is non-refundable.

3.6 Fraud and Dishonesty for Innocent Parties

Notwithstanding Exclusion 6.3 (Fraud and Dishonesty), but subject to all other terms and conditions of this **policy**, **we** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** made against the **insured**, provided that **we** will not provide cover to any **insured** committing or condoning any act, omission or breach.

3.7 Intellectual Property

Notwithstanding Exclusion 6.6 (Intellectual Property), but subject to all other terms and conditions of this **policy**, **we** agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** made against the **insured** arising from infringement or alleged infringement of any intellectual property right, provided that the **insured's civil liability** results from the conduct of the **insured's educational services**.

3.8 Lost Data

We agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** for **civil liability** for the unintentional destruction, misplacement, damage, deletion, corruption or loss of **data** while in the physical custody or control of the **insured**, provided that the discovery of the loss of **data** occurred during the **insurance period**.

The maximum amount payable by **us** under this Extension is the applicable sub-limit of liability as specified in Item 4 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply to each **claim** under this Extension as specified in Item 4 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

3.9 Molestation Defence Costs

Notwithstanding Exclusion 6.10 (Molestation), but subject to all other terms and conditions of this **policy**, **we** agree to pay **defence costs** up to a limit of HKD\$1,000,000 in the aggregate for the **insurance period** (which limit shall be part of and not in addition to the **indemnity limit** shown in Item 4 of the **schedule**).

Section 4: EXTENSIONS APPLICABLE TO INSURING CLAUSES 2.1 AND 2.2(B-E) – MANAGEMENT LIABILITY, EMPLOYMENT PRACTICES LIABILITY AND TRUSTEES LIABILITY

These Extensions to coverage apply automatically under Insuring Clause 2.1 and Insuring Clause 2.2(b) - (e) and are subject to the Insuring Clauses and all other terms and conditions of this **policy**.

4.1 Advancement of Defence Costs

We agree to pay for **defence costs** in respect of any **claim** covered under this **policy** as and when they are incurred prior to final resolution of the **claim**, and within 30 days of receipt by **us** of sufficiently detailed invoices for those costs.

The maximum amount of **defence costs** and other costs and expenses **we** will advance is the amount of any applicable sub-limit or the **indemnity limit**. Upon exhaustion of the applicable sub-limit or the **indemnity limit** our obligation to advance **defence costs** will cease.

However any **defence costs** that are paid will be repayable to **us** by the **insured** in the event and to the extent that it is determined under the **policy** that the **insured** was not entitled to the payment of the **defence costs**.

4.2 Attendance at Investigations

We agree to pay to or on behalf of the **insured** any **legal representation costs** resulting directly from the attendance by the **insured** at any **investigation**. This Extension applies only if:

- a) the **insured** is legally compelled to attend the **investigation**; and
- b) the notice or process requiring the **insured** to attend or answer questions is first served during the **insurance period**; and
- c) the **insured's** attendance is required because of the **insured's** conduct in the **educator's educational service**; and
- d) the **insured** notifies **us** during the **insurance period** that the **insured** is legally compelled to attend the **investigation**; and
- e) **our** consent is obtained before the **legal representation costs** are incurred; and
- f) at **our** option, **we** can nominate the legal advisers to represent the **insured**.

The maximum amount payable by **us** under this Extension is the applicable sub-limit of liability specified in Item 4 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply to each **investigation** under this Extension as specified in Item 4 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

4.3

Automatic Reinstatement of the Limit of Liability for Insured Persons

Solely in respect of Insuring Clause 2.1, in the event of a reduction (in whole or in part) of the **indemnity limit** due to payment by **us** of **loss** under Insuring Clauses 2.1 and/or 2.2(b), **we** agree that the **indemnity limit** shall be reinstated by the amount by which the **indemnity limit** is reduced, provided in all events that:

- a) the total amount payable by **us** for such re-instatement under this **policy** shall not exceed an aggregate total amount equal to the **indemnity limit**; and
- b) if the **educator** has in effect any policy or policies providing coverage in excess of this **policy**, then the reinstated amount of the **indemnity limit** as allowed for by this extension will take effect after the total exhaustion of any amounts payable under any such other policies but before any similar reinstatement provisions as may be contained in any such other policies.

This provision shall not apply in respect of Sections 2.2(a), or 2.2(c) – (f) of this **policy**. It is only applicable where we pay **loss** under Insuring Clauses 2.1 and/or 2.2(b).

4.4

Continuous Cover

Notwithstanding Exclusion 6.13 (Prior Known Facts), **we** agree to provide cover in respect of any **claim** made against the **insured** in the **insurance period** where the **insured**:

- a) first became aware, prior to the **insurance period**, that a **claim** might or could arise from facts or circumstances known to it; and
- b) had not notified **us** of such facts or circumstances prior to the **insurance period**.

Provided that:

- i) **we** were the management liability/employment practices liability/trustees liability insurer of the **educator** when the **insured** first became aware of such facts or circumstances and have continued, without interruption, to be the **educator's** management liability/employment practices liability/trustees liability insurer until this **policy** came into effect; and
- ii) there has not been any fraudulent non-disclosure or fraudulent misrepresentation by an **insured** in respect of such facts or circumstances; and
- iii) if the fact or circumstance had been notified under the previous policy, the **insured** would have been entitled to indemnity under the previous policy; and
- iv) if **we** had been notified of the facts or circumstances when the **insured** first became aware of such facts, the **insured** would have been indemnified under the policy in force at that time, however is now not entitled to be indemnified by that policy, and the **insured** would, but for Exclusion 6.13 (Prior Known Facts) otherwise be indemnified by this **policy**; and
- v) **we** have the discretion to apply either the terms and conditions of the policy on foot when the **insured** first became aware of the facts and circumstances, including but not limited to the **indemnity limit** and **deductible**, or the terms and conditions of this **policy**; and
- vi) the **insured** all agree only to make a **claim** under one management liability/employment practices liability/trustees liability **policy** issued by **us**.

For the purpose of this Extension only the Definition of **we/us/our** (Definition 9.48) of this **policy** also includes the Insurer(s) for which **we** were the agent on any previous policy issued by **us** as such Insurer's agent to the **insured**. Subject to the terms of this Extension and the terms of the **policy**, the intention of this Extension is to provide continuous cover notwithstanding any change in the identity of the Insurers for which **we** presently act, or have previously acted, as agent.

4.5

Crisis Containment

We shall reimburse the **educator** for the **crisis loss** which the **educator** incurs by reason of a **crisis event** which first occurs and is notified to **us** during the **insurance period**.

The maximum amount payable by **us** under this Extension is the applicable sub-limit of liability as specified in Item 4 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply to each **claim** under this Extension as specified in Item 4 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

4.6 Discovery Period

The **insured** may give written notice to **us** of any **claim** resulting from a **wrongful act, employment practice breach** or **trustees breach** prior to the expiration of the **insurance period** and during a **discovery period** immediately following the **insurance period** of:

- a) 60 days granted automatically with no additional premium payable; or
- b) 12 months, if the **educator** requests such period in writing within 30 days after the end of the **insurance period** and tenders an additional premium of 100% of the expiring annual premium, commencing immediately after the end of the **insurance period**, such premium is payable within 30 days of the receipt by **us** of such written request; or
- c) 84 months, if a **transaction** takes place and the **educator** requests such period in writing within 30 days following the end of the **insurance period**, on such terms and conditions, if any, and for such additional premium as **we** may reasonably require.

This Extension is not available if this **policy** is:

- i) renewed or replaced with any similar or like management liability/employment practices liability/trustees liability insurance; or
- ii) cancelled or avoided.

Any **discovery period** purchased under this Extension is non-cancellable and the premium paid for the **discovery period** is fully earned by **us** and is non-refundable.

4.7 Emergency Defence Costs

If **our** written consent cannot reasonably be obtained before **defence costs** are incurred by an **insured**, **we** will pay those **defence costs** if the **insured** obtains **our** consent within 30 days of the date that the first of those **defence costs** were incurred.

If **we** subsequently determine that there is no entitlement under the **policy** for any **defence costs** that **we** have paid under this clause, the **insured** must repay those amounts to **us** immediately.

The maximum amount payable by **us** under this Extension is the applicable sub-limit of liability specified in Item 4 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply under this Extension as specified in Item 4 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

4.8 Former Subsidiary Cover

We agree to pay to or on behalf of the **insured** all **loss** resulting from any **claim** in respect of a **wrongful act, employment practice breach** or **trustees breach** by a **subsidiary** that ceased or ceases to be a **subsidiary** either before or during the **insurance period**. There is no cover under Insuring Clause 2.2(f) under this Extension.

4.9 Heirs, Estates and Legal Representatives

We agree to provide cover for any estate, heirs, legal representatives or assigns of any deceased or mentally incompetent **insured** in respect of any **claim** resulting from any **wrongful act, employment practice breach** or **trustee breach** committed by an **insured person**.

4.10 Newly Created or Acquired Entity or Subsidiary

We agree to provide cover to any entity or **subsidiary** acquired or created by the **educator** during the **insurance period** from the date of such acquisition or creation provided that the **subsidiary**:

- a) undertakes the same **educational services** covered under this **policy**; and
- b) does not have any revenue or assets in the United States of America or Canada; and
- c) has total gross assets that are less than 10% of the total gross assets of the **insured** covered under this **policy**; and
- d) has total gross revenues that are less than 10% of the total gross revenue of the **insured** covered under this **policy**.

We may, at our discretion, agree to provide coverage where the **subsidiary** fails to meet any one of the above conditions if:

- i) the **policyholder** has notified **us** of the acquisition or creation of the entity or **subsidiary** and has provided all information requested by **us**; and
- ii) any terms imposed by **us**, including the charging of any additional premium considered appropriate, have been agreed by the **policyholder**.

Provided always that any coverage provided under this Extension will only apply in respect of a **wrongful act, employment practice breach, trustee breach or dishonest acts** occurring subsequent to the date of acquisition or creation, unless otherwise agreed in writing by **us**.

4.11 Occupational Safety and Health

Notwithstanding Exclusion 6.2 (Bodily Injury), **we** agree to provide cover for **defence costs**, in respect of any **claim** made against an **insured** where such **claim** arises from a breach or alleged breach of any occupational safety and health legislation.

The maximum amount payable by **us** under this Extension is the applicable sub-limit of liability specified in Item 4 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply under this Extension as specified in Item 4 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

4.12 Outside Directorship Cover

We agree to provide cover for all **loss** on account of any **claim** made against any **insured person** who was, is or may become, at the written request of the **educator**, a director, **officer, trustee**, governor or equivalent position, in any **outside entity** for any **wrongful act, employment practice breach or trustee breach** in such **insured person's** capacity as a director, **officer, trustee**, governor or equivalent position, in the **outside entity**.

This cover shall be specifically in excess of any insurance in force in respect of the **outside entity** as well as any indemnification provided by the **outside entity**. The cover provided by this Extension shall not apply in connection with any **claim** made against an **insured person** by the **outside entity**, any of its directors, **officers, trustees**, governors or equivalent or any shareholder of the **outside entity** holding more than 20% of the issued and outstanding voting share capital of the **outside entity**.

We are not liable to make any payment for **loss** arising out of, based upon, attributable to or in any way connected with the actual or alleged insolvency of any **outside entity** or any actual or alleged inability of any **outside entity** to pay its debts as and when they fall due.

4.13 Public Relations Cover

We agree to pay to or on behalf of the **educator** all **public relations expenses** incurred by the **educator** with our prior written consent in connection with an **incident** in order to prevent or minimise the risk of a **claim** which would be covered under the **policy**, or in connection with an **incident** that results in a **claim** covered under the **policy**.

Cover under this Extension is conditional upon the **insured** providing **us** with full written details of the **incident** no later than 30 days after the **insured** first becomes aware of the **incident**. The **incident** must occur and be reported during the **insurance period**.

The **incident** must occur outside of the USA/Canada.

The maximum amount payable by **us** under this Extension is the applicable sub-limit of liability as specified in Item 4 of the **schedule**. This sub-limit is part of and not in addition to the **indemnity limit**.

A separate **deductible** will apply to each **incident** under this Extension as specified in Item 4 of the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

4.14 Retirement Cover

If the **educator** does not renew this **policy** or replace it with any other insurance providing similar coverage and one of the **discovery period** options detailed in Extension 4.6 (Discovery Period) of this **policy** has not been purchased, then any **insured person** will be automatically entitled to a 12 month **discovery period** at no additional premium after the expiry of the **insurance period** provided that the **insured person** retired from all employment or office prior to the expiry of the **insurance period**.

Section 5: EXCLUSIONS APPLYING TO ALL INSURING CLAUSES

We will not cover the **insured** for **loss, defence costs, legal representation costs** or other amounts, in respect of:

5.1 Asbestos

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) asbestos; or
- b) any actual or alleged asbestos related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure or potential exposure to asbestos.

5.2 Radioactive Contamination, Chemical, Biological, Biochemical and Electromagnetic Weapons

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any:

- a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel ; or
- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
- c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The Exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes; or
- e) any chemical, biological, bio-chemical or electromagnetic weapon.

5.3 Sanctions Limitation

Any **claim** or **investigation** or provision of any benefit hereunder to the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

5.4 War and Terrorism

death, disability, loss, damage, destruction, any legal liabilities, cost or expense including consequential loss of whatsoever nature, directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

- a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, or civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b) any act of terrorism including but not limited to:
 - i) the use or threat of force, violence and/or
 - ii) harm or damage to life or to property (or the threat of such harm or damage) including, but not limited to, nuclear radiation and/or contamination by chemical and/or biological agents,

by any person(s) or group(s) of persons, committed for political, religious, ideological or similar purposes, express or otherwise, and/or to put the public or any section of the public in fear; or

- c) any action taken in controlling, preventing, suppressing or in any way relating to (a) or (b) above.

If **we** allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the **insured**.

Section 6: EXCLUSIONS APPLYING TO INSURING CLAUSES 2.1 AND 2.2(A)-(E) – MANAGEMENT LIABILITY/EMPLOYMENT PRACTICES LIABILITY/TRUSTEE LIABILITY

The following Exclusions apply to all Insuring Clauses and any relevant Extension except Insuring Clause 2.2(f).

We will not cover the **insured** for **loss, defence costs, legal representation costs** or other amounts, in respect of:

6.1 Assumed Liability

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any obligation assumed by the **insured** under any agreement, except that this Exclusion does not apply to:

- a) any liability which is, or would have been, implied by law in such agreement or would have arisen separately from it; or
- b) any liability which is in respect of the treatment or use of confidential information; or
- c) a **claim** for an **employment practice breach** to the extent the **educator** would have had such liability in the absence of such contract or agreement.

6.2 Bodily Injury

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of the death of, or bodily injury or illness to, any person.

However this Exclusion shall not apply:

- a) in respect to Insuring Clause 2.2(a) where it results directly from the **insured's** conduct of the **educator's educational services**; and/or
- b) in respect to Insuring Clause 2.2(d) any **claim** in respect of mental anguish or emotional distress or disturbance alleging an **employment practice breach**.

6.3 Fraud and Dishonesty

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) any actual or alleged act or omission by an **insured** or any of their consultants, sub-contractors or agents which was reckless, fraudulent, dishonest, malicious or criminal.
- b) any wilful breach of any statute, regulation, contract or duty by an **insured** or any of their consultants, sub-contractors or agents.

For the purpose of determining the applicability of these Exclusions, the conduct and knowledge of any **insured** shall not be imputed to any other **insured**. In relation to any **claim** under Insuring Clause 2.1(a) or 2.2(b) these Exclusions shall only apply if it is established through a judgment or any other final adjudication adverse to the **insured**, or any admission by an **insured**, that the relevant conduct did in fact occur.

6.4 Insolvency

Any **claim** arising from or in any way connected with the insolvency, liquidation, bankruptcy, receivership or administration of the **educator** or any **subsidiary** or its actual or alleged inability to meet any or all of its debts as and when they fall due.

6.5 Insured vs Insured

Any **claim** which is brought by or on behalf of the **educator**; provided, however, that this Exclusion shall not apply to:

- a) **defence costs**;
- b) any **claim** brought or maintained by the **educator** for contribution or indemnity, if the **claim** directly results from another **claim** otherwise covered under the **policy**;
- c) any **claim** brought or maintained on behalf of the **educator** by any external administrator to the **educator** (including but not limited to a liquidator, receiver, administrator or other external

administrator) where such external administrator is appointed by a Court and such **claim** is brought without the solicitation, assistance or co-operation of any **insured person**.

6.6 Intellectual Property

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any infringement or alleged infringement of any intellectual property right including but not limited to copyright, patent, trademark, privacy, plagiarism, design or confidentiality.

6.7 Investment Performance

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) any actual or alleged dealings of any nature by which it is sought to affect the price of, or market in, any shares or debentures of any company or commodity or currency, or of any negotiable instrument, other than dealings carried out in accordance with the laws, rules and regulations applicable to such dealings; or
- b) any financial or investment advice provided by the **insured**, including but not limited to any advice or recommendation as to the valuation, tax implications or performance of any investment; or
- c) a failure by the **insured** to warn of the risks of market fluctuation of any investment.

6.8 Liability as Occupier

Any **claim** or **investigation** arising from or incurred or alleged to have been incurred in connection with the use, occupation, ownership or lease of any real estate or personal property, by or on behalf of the **insured**.

6.9 Major Shareholder

Any **claim** brought by any shareholder owning, directly or indirectly, more than or equal to 15% of the voting share capital of the **educator** or any of its **subsidiaries** or any **associated entity** and/or by any shareholder that has or had any Board representation on the **educator** or any of its **subsidiaries** or any **associated entity**.

6.10 Molestation

Any **claim** or **investigation** arising from or directly or indirectly attributable to any actual or alleged molestation or any kind of abuse of people under the care of **educator**.

However this Exclusion shall not apply to a **employment practice breach**.

6.11 Pension Fund Liabilities

Any **claim**:

- a) arising out of or in any way connected with the failure of the **educator** to pay into, or collect contributions for, a **fund** as required by law and/or a **fund** trust deed;
- b) for or in respect of **benefits**.

6.12 Pollution

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of the actual, alleged or threatened discharge of **pollutants**.

However this Exclusion shall not apply to:

- a) **defence costs** up to a limit of HKD\$1,000,000 in the aggregate for the **insurance period** (which limit shall be part of and not in addition to the **indemnity limit** shown in Item 4 of the **schedule**); or
- b) **claims** made by any shareholder of the **educator** either directly or derivatively alleging financial damage to the **educator** or its shareholders or members.

6.13 Prior Known Facts

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) actual or alleged facts or circumstances that the **educator** or any **insured person** knew, or ought reasonably to have known prior to the **insurance period**, might or could give rise to a **claim**; or

- b) actual or alleged facts which could have been, or which can be notified under any previous insurance policy existing prior to the commencement of the **insurance period**; or
- c) pending or prior litigation, or derived from the same or essentially the same facts as are or might be alleged in such pending or prior litigation, as at the commencement of the **insurance period**; or
- d) any fact or matter referred to in the **proposal** or notified under any previous like policy existing prior to the commencement of the **insurance period**; or
- e) any contingent liability noted in the **educator's** Financial Statements.

6.14 **Property Damage**

Any **claim** arising from or directly or indirectly attributable to or in consequence of the loss or destruction of, or damage to, any property, unless it results directly from the **insured's** conduct of the **educator's educational service**.

6.15 **Trading Debt**

Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of any trading debt or business liability of the **insured** or any guarantee given by the **insured** for a debt.

Section 7: **ADDITIONAL EXCLUSIONS APPLYING TO INSURING CLAUSE 2.2(C) – MANAGEMENT LIABILITY**

The following Exclusions also apply to Insuring Clause 2.2(c) and any relevant Extension.

We will not cover the **insured** for **loss, defence costs, legal representation costs** or other amounts, in respect of:

7.1 Any **claim** or **investigation** arising from or directly or indirectly attributable to or in consequence of:

- a) any actual or alleged breach of any law, whether statutory, regulatory or common law, relating to anti-trust, business competition, price fixing, unfair or restrictive trade practices, or tortious interference in any other party's business or contractual relationships;
- b) any actual or alleged contractual liability of the **educator** under any express or implied contract or agreement. However, this Exclusion shall not apply to a **claim** for an **employment practice breach** to the extent the **educator** would have had such liability in the absence of such contract or agreement;
- c) fines or penalties or non-monetary relief;
- d) any obligation, or breach of an obligation, under any law or regulation providing for paid or unpaid leave of any kind or any **industrial instrument**; or
- e) any obligation pursuant to any law, regulation, or **industrial instrument** in respect of workers' compensation, occupational safety and health, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law, regulation or **industrial instrument** whatsoever.

Section 8: **ADDITIONAL EXCLUSIONS APPLYING TO INSURING CLAUSE 2.2(F) - CRIME**

The following Exclusions also apply to Insuring Clause 2.2(f) and any relevant Extension.

We will not cover the **insured** for **loss, defence costs, legal representation costs** or other amounts, in respect of:

8.1 **We** will not cover the **educator** for or in connection with:

- a) **direct financial loss** arising out of or in any way connected with any **dishonest acts** committed, in whole or part, outside of the Hong Kong Special Administrative Region

- b) **direct financial loss:**
- i) first **discovered** prior to the commencement of the **insurance period**; or
 - ii) first **discovered** after the end of the **insurance period**, or the **discovery period** if applicable; or
 - iii) in any way connected with any **employee** from the time any director or **officer** (who is not in collusion with such **employee**) had actual knowledge that the **employee** had committed or was suspected of having committed any fraudulent or **dishonest act**, even if it does not constitute a **dishonest act** as defined.
- c) **direct financial loss** arising out of or in any way connected with any fraudulent or dishonest activities, or involving collusion by or complicity, of:
- i) a director or officer; or
 - ii) any shareholder who, at the time of committing such acts, had direct or indirect ownership of or control over more than 5% of the voting share capital of the educator or any of its subsidiaries or any associated entity.
- d) any indirect or consequential loss of any nature, including but not limited to:
- i) any loss of income (such as interest and dividends) not realised by the educator or any other person or organisation;
 - ii) any costs incurred by the educator in re-writing or amending the educator's software programs or systems where such re-writing or amending is necessary to correct the programs or systems;
 - iii) any contractual penalties incurred by the educator;
 - iv) any liability to a third party;
 - v) any costs, fees or other expenses incurred by the educator in establishing a right under this policy (except as provided for under Section 10 Claims Conditions);
 - vi) any costs, fees or other expenses incurred by the educator in prosecuting or defending any demand, claim or legal proceeding
- resulting from a **direct financial loss** which is covered under this **policy**.
- e) **direct financial loss** the proof of which is dependent solely upon:
- i) a profit and loss computation; or
 - ii) a comparison of inventory records with an actual physical count.
- If, however, an **employee** is identified as having caused a **direct financial loss**, then inventory records and actual physical count of inventory can be submitted as partial evidence in support of proof of the **direct financial loss** as required by Claims Condition 10.7 (Notification of Direct Financial Loss);
- f) **direct financial loss** arising out of or in any way connected with the accessing, use or dissemination of any confidential information including, but not limited to, trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods.
- g) **direct financial loss** arising out of or in any way connected with:
- i) the voluntary giving or surrendering of money, securities or other tangible property in any exchange or purchase, unless such direct financial loss is directly caused by dishonest acts committed.
 - ii) the complete or partial non-payment or default under any credit arrangement including any payments made or withdrawals from any customer account involving items which are not finally paid for any reason.
 - iii) any trading, whether or not in the name of the educator and whether or not in a genuine or fictitious account.

- h) **direct financial loss** arising from, attributable to or in any way relating to:
 - i) the issuing of cheques exceeding HKD\$25,000 that are not countersigned;
 - ii) any bank transfers that are not properly authorised; or
 - iii) employees responsible for cheque orders that also have cheque signing authority.

Section 9: DEFINITIONS

In the **policy**:

9.1 Associated entity means any **associated entity** named in the **proposal** and in which the **educator** owns on or before the inception of the **insurance period** more than or equal to 25% of the issued and outstanding voting shares, either directly or indirectly through one or more of its **subsidiaries**.

9.2 Benefits means any amount payable to a beneficiary of a **fund** by the **trustee** under the rules governing the **fund**.

9.3 Civil liability means a legally enforceable obligation to a third party.

9.4 Claim means:

- a) any civil proceeding brought by a third party against the **insured** for compensation; or
- b) a written demand by a third party for monetary damages; or
- c) a verbal notice; or
- d) any formal administrative or regulatory proceeding including any arbitration, mediation, conciliation or alternative dispute resolution proceeding alleging an **employment practice breach, trustee breach or wrongful act**

first made against the **insured** during the **insurance period**.

All **claims** which arise out of or are attributable to or are in any way connected with a single **wrongful act, employment practice breach or trustee breach** shall constitute a single **claim** for the purposes of this **policy**. A single **wrongful act, employment practice breach or trustee breach** means all respective **wrongful acts, employment practice breaches or trustee breaches** which are related or form part of a series of related conduct or form part of a course of conduct that is not entirely unconnected, different and/or unrelated.

9.5 Credit arrangement means any credit agreement, extension of credit, loan or transaction in the nature of a loan, lease or rental agreement, invoice, account, agreement or other evidence of debt.

9.6 Crisis event means any of the following unforeseen events where, in the reasonable opinion of the chief executive officer (or equivalent) of the **educator**, the event has the potential to cause an imminent decrease of greater than 30% of the total consolidated annual revenues of the **educator** if left unmanaged:

- a) the sudden, unexpected death or disability of any Executive;
- b) 10% or more of enrolled or pre-enrolled students to withdraw or cancel acceptance;
- c) **employee** workplace violence;
- d) the first apparent unauthorized intrusion into any **educators** computer facilities;
- e) a man-made disaster;
- f) any criminal or fraud investigation.
- g) public health crisis

Crisis event does not include an event that affects an **educator's** industry in general; rather than an **educator**, specifically.

9.7 Crisis loss means the reasonable and necessary fees, costs and expenses paid by the **educator** for external crisis management services provided in response to a **crisis event** within the first thirty (30) days after the event.

- 9.8** **Data** means:
- a) information such as text, numbers, sounds and images that can be processed by any form of electronic device; or
 - b) deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and **documents** of any nature whatsoever, whether written, printed or reproduced by any method but will not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.
- 9.9** **Deductible** means the amount specified in Item 6 of the **schedule** or otherwise specified in any Extension to this **policy**.
- 9.10** **Defence costs** means all necessary and reasonable fees, expenses, costs and disbursements incurred in investigating or defending a **claim** covered by the **policy**.
- Defence costs** does not include wages, salaries or other remuneration or **benefits** paid by the **educator** to its directors, **officers** and **employees**.
- 9.11** **Direct financial loss** means financial loss suffered directly by the **educator** which is covered under Insuring Clause 2.2(f) (Crime).
- Direct financial loss** does not include wages, salaries or other remuneration or benefits paid by the **educator** to its directors, **officers** and **employees**, or any amount excluded by the Exclusions applicable to Insuring Clause 2.2(f).
- All **direct financial loss** caused by multiple **dishonest acts** that are related, or are part of a series of such conduct that is not entirely unconnected and entirely different, shall be a single **loss** for the purpose of cover under Insuring Clause 2.2(f).
- 9.12** **Discovered** means when an **officer** first becomes aware of facts which would cause a reasonable person to believe that a **direct financial loss** of the kind covered by this **policy** has been or is likely to be incurred, even though the exact amount or detail of the **direct financial loss** may not then be known.
- 9.13** **Discovery period** means the period of time specified in Extension 3.3 and Extension 4.6 (Discovery Period) during which time written notice may be given to **us** of any:
- a) **claim** which is first made against the **insured** for a **wrongful act** committed or allegedly committed; or
 - b) **direct financial loss** which is first **discovered** and results from **dishonest acts** committed prior to the end of the **insurance period** or prior to the **transaction**.
- 9.14** **Dishonest acts** means any fraudulent or **dishonest acts** committed by an **employee** (acting alone or in collusion with others) with the principal intent to cause the **educator** to sustain a **direct financial loss** and results in the **employee** making an improper financial gain for themselves or for any other individual or organisation intended by the **employee** to receive such gain.
- 9.15** **Documents** means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data but does not mean bearer bonds or coupons, stamps, bank or currency notes, **money** or any negotiable instrument.
- 9.16** **Educational services** means student selection, enrolment, admission, suspension or expulsion, provision and content of teaching materials, student assessment and grading, educational instruction, career guidance and counselling, selection of curricula, study tours, busing and other student transportation practices relating to a program or plan of integration or desegregation.
- 9.17** **Educator** means any entity approved by the Education Bureau of the Hong Kong Special Administrative Region or relevant statutory authority to operate as an educational institution.
- Educator** also includes:
- a) for the purposes of Insuring Clauses 2.1 and 2.2(b)-(f), the **not-for-profit entity** or entities specified in Item 2 of the **schedule**; and
 - b) any **subsidiary** in existence at the commencement of the **insurance period**.

9.18 Employee means

- a) any natural person who is a past, present or prospective employee or volunteer of the **educator**;
- b) in respect of Insuring Clause 2.2(f) only, any natural person who is a present employee or volunteer of the **educator**

including any full-time, part-time or casual employee.

Employee does not include consultants, independent contractors, secondees to or agents of the **educator** or their respective employees (including the employees of labour-hire agencies).

9.19 Employment practice breach means any breach of duty or breach of trust owed by the **insured** in relation to any of the following: employment-related actual or alleged unfair or wrongful dismissal from, termination or discharge of employment (either actual or constructive, including breach of an implied contract), misrepresentation, wrongful failure to employ or promote, failure to grant tenure, discrimination, harassment, retaliation (including lockouts), humiliation, defamation, invasion of privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference) which relate solely to the **policyholder** and its past, present or prospective **employees**.

9.20 Employment related benefits includes but is not limited to:

- a) non-monetary benefits including but not limited to the allocation of a **educator** car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- b) stock, shares, stock options, share options or any entitlement or right under any employee plan of any description;
- c) participation in any stock, share option or share option plan, or participation in any employee plan of any description;
- d) severance or redundancy payments or entitlements;
- e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under any commission scheme);
- g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement **fund**, or any other account, **fund**, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event.
- h) any amount the **educator** pays or is ordered to pay pursuant to any determination or settlement in respect of an allegedly unfair contract, notwithstanding that it acted in accordance with the terms of the employment contract.

9.21 Fund means any **fund** established for the benefit of **employees** under the Mandatory Provident Fund Schemes Ordinance &/or Occupational Retirement Schemes Ordinance. **Fund** does not include any industry or master mandatory provident funds.

9.22 Incident means an event in the **insurance period** which causes the **insured's** reputation and skill in the conduct of the **educational service** to be brought into question.

9.23 Indemnity limit means the amounts specified in Item 4 of the **schedule**.

9.24 Industrial instrument means

- a) an award, collective or individual agreement, minimum wage order or any other instrument made or authorised under statute;
- b) any other collective agreement;

which regulates the terms and conditions of employment.

9.25 Insurance period means the period specified in Item 3 of the **schedule**.

9.26

Insured means:

- a) the **educator**; and
- b) any **subsidiary** if the **educator** is incorporated; and
- c) any **insured person**.

For the purpose of Insuring Clause 2.2(a) only and its related extensions, it also includes the definition of **insured** also includes **employees**.

9.27

Insured person means any past, present or future director, management, committee member, secretary, **officer**, **employee** and volunteer of the **educator**, its sponsoring body, school management company as referred to the Education Ordinance (Chapter 279 of the Laws of Hong Kong) or any **trustee**, or any natural person who by virtue of any applicable legislation or law is deemed to be a director or **officer** of the **educator**.

Insured person does not include:

- a) a receiver, receiver and manager, official manager, liquidator, administrator, **trustee** or other person administering a compromise or scheme of arrangement made between the **educator** and any other person or persons;
- b) for the purpose of Insuring Clauses 2.1 and 2.2(b), any **employee** or volunteer while not acting in the management of the **educator** or as a **trustee**;
- c) any **educator**, organisation or other body corporate.

9.28

Investigation means any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate the conduct of the **educational services** of the **insured**.

9.29

Legal representation costs means reasonable legal fees, costs and expenses incurred with **our** prior written consent (which will not be unreasonably withheld or delayed) by or on behalf of an **insured** or **insured person** in:

- a) preparing for, attending or producing documents to an **investigation**; or
- b) responding to a raid on, or on-site visit to, any **insured** by an **official body** that involves the actual or possible production, review copying or confiscation of files or interviews of any **insured**.

Legal representation costs does not include the remuneration of any **insured**, the cost of their time or overheads of any **insured**.

9.30

Loss means for the purpose of Insuring Clauses 2.1 and 2.2(a) – (e):

- a) damages or claimant's costs or both payable by the **insured** pursuant to an award or judgment entered against the **insured**; or
- b) settlements negotiated by **us** and consented to by the **insured**; or
- c) settlements negotiated by the **insured** but only with **our** prior written consent.

Loss does not include any of the following:

- a) **defence costs**;
- b) **legal representation costs**;
- c) **benefits**;
- d) amounts uninsurable at law;
- e) wages, salaries, allowances, fees, commissions, awards, bonuses, travel or accommodation costs incurred by the **insured** in assessing, investigating, dealing with or assisting others to deal with the **claim**;
- f) fees, commissions or any **employment related benefits** or amounts calculated by reference to any **employment related benefits** paid or payable;

- g) costs incurred by the **educator** to modify any building or property, or to provide any service, in order to make such building or property, or make any service more accessible or accommodating to any disabled person;
- h) costs incurred by the **educator** in connection with any educational, corrective, sensitivity or other programme, policy or seminar relating to any **employment practice breach**;
- i) amounts ordered to be paid pursuant to a determination by a Court, Commission or other tribunal in relation to an unfair contract;
- j) taxes, fines or penalties;
- k) punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment.

For the purpose of Insuring Clause 2.2(f), **loss** means only **direct financial loss**.

All **loss** attributable to one source or originating cause will be deemed one **loss**.

9.31 **Lost data** means **data** that cannot be located following a diligent search, and **data** that has been destroyed or damaged.

9.32 **Money** means only local or foreign currency, coins, bank notes, cheques, travellers cheques, registered cheques, postal orders, money orders and bullion.

9.33 **Not-for-profit entity** means any entity which has a written constitution which prohibits the distribution of profits or assets amongst its members during the lifetime of the entity or upon its winding up.

9.34 **Officer** means any past, present or future:

- a) **educator** secretary, office bearer or director of the **educator** or a **subsidiary**; or
- b) an **employee** who makes or participates in making decisions that affect the whole, or a substantial part, of the management of the **educator** or a **subsidiary**.

9.35 **Outside entity** means any **associated entity** or any **not-for-profit entity** named in the **proposal** (other than a **not-for-profit entity** specified in the **schedule**). **Outside entity** also means any other corporation, partnership, joint venture or the organisation which has been listed by Endorsement to this **policy**.

9.36 **Policy** means this **policy** wording, the **schedule**, the **proposal** and any Endorsement attaching to and forming part of the **policy** either at commencement or during the **insurance period**.

9.37 **Policyholder** means the organisation or natural person specified in Item 2 of the **schedule** and any **subsidiary**.

9.38 **Pollutants** means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours and fumes.

9.39 **Public relations expenses** means any reasonable fees, costs and expenses of a public relations consultant retained with **our** prior written consent (which shall not be unreasonably delayed or withheld). It does not include overheads, staff remuneration or management time of any **insured** or compensation or other payments made to customers, clients or potential **claims** or any fines and penalties.

9.40 **Proposal** means the **proposal** form, submission and all other supporting documentation and attachments provided to **us** in the application for this **policy**.

9.41 **Retroactive date** means the date specified in Item 6 of the **schedule**.

9.42 **Schedule** means the **schedule** attached to this **policy** or any **schedule** subsequently substituted for it during the **insurance period** and duly signed, stamped and dated by an authorised representative of **us**.

9.43 **Securities** for the purposes of the cover in, and terms of this **policy** applicable to, Insuring Clause 2.2(f) means any negotiable or non-negotiable instruments or contracts representing **money** or other property, but excluding **money**. For the purposes of the other terms, conditions and Exclusions of this **policy**, **securities** means any shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.

9.44 **Subsidiary** means any entity which by virtue of any applicable legislation or law is deemed to be a **subsidiary** of the **policyholder** or in which the **policyholder** owns or controls, directly or indirectly greater than 50% of the issued voting shares of such entity.

9.45 **Transaction** means any one of the following events:

- a) the **policyholder** consolidates with or merges into or sells all or a controlling interest in its assets to any other person or entity or group of persons and/or entities acting in concert;
- b) any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **policyholder** or control the appointment of directors who are able to exercise a majority of votes at Board Meetings of the **policyholder**;
- c) the insolvency of the **policyholder**;
- d) the appointment of an administrator, liquidator, receiver, receiver and manager or court appointed manager to the **policyholder**.

9.46 **Trustee** means any **insured person** or the **educator** if validly appointed to act, and while acting in the capacity, as a **trustee** of a **fund**.

9.47 **Trustee breach** means any **wrongful act** committed or allegedly committed:

- a) by an **insured person** in their capacity as a **trustee**, or as a director or **officer** of the **educator** acting as corporate **trustee**;
- b) by the **educator** acting in its capacity as corporate **trustee**;
- c) by any other person for which an **insured person** referred to in (a) or the **educator** referred to in (b) is legally liable;

but only in respect of the administration of a **fund**.

9.48 **We/Us/Our** means DUAL Underwriting Agency (Hong Kong) Limited as agent of the Insurer MSIG Insurance (Hong Kong) Limited.

9.49 **Wrongful act** shall mean any breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, or other act committed or attempted by:

- a) for the purpose of Insuring Clauses 2.1 and 2.2(b), any **insured person**, individually or otherwise, solely because of their status as such in the course of his or her duties to the **educator** or **outside entity**.
- b) for the purpose of Insuring Clauses 2.2(c)-(e), the **educator**.
- c) for the purpose of Insuring clause 2.2(a), the **insured** but solely while acting in a professional capacity in the conduct of the **educational services**

9.50 **You/Your** means any **insured person(s)**.

Section 10: CLAIM CONDITIONS

10.1 Notification

It is a condition precedent to cover under this **policy** that the **educator** and/or any **insured** must notify **us** in writing of any **claim** or **investigation**, or other relevant circumstance which may trigger this **policy** as soon as is reasonably practicable after they first become aware of such circumstance and within the **insurance period** or any applicable **discovery period**.

The written notice should include, so far as is reasonably practicable and so far as the relevant **insured** is aware:

- a) the identity of the claimant if relevant; and
- b) an outline of the factual matrix; and
- c) an estimate of the likely quantum of any **loss**.

The notice must be delivered to:

Claims Department
DUAL Underwriting Agency (Hong Kong) Limited
Suite 2103, 21/F
Fu Fai Commercial Centre
27 Hillier Street
Sheung Wan, Hong Kong

Any written notice will be considered effective from the date such notice is first received by **us**.

10.2 Co-operation

- a) The **insured** must, at the **insured's** own cost, frankly and honestly provide **us** with all information, documentation, evidence and assistance reasonably required by **us** and/or any lawyers, investigators or other professionals, who may be appointed by **us**.
- b) The **insured** must, at their own cost, do all things reasonably practicable to minimise any **loss**, including but not limited to the **insured's** liability in respect of any **claim**.
- c) Each **insured** must provide **us**, at their own cost, with all information, assistance and co-operation which **we** reasonably require, and in the event of a **claim** or potential **claim**, each **insured** agrees that they will not do anything that could potentially prejudice **our** position or **our** potential or actual rights of recovery.
- d) No **insured** may settle any **claim** or incur any **defence costs** or assume any contractual obligation or admit any liability with respect to any **claim** without **our** written consent.

10.3 Allocation

Our liability under this **policy** is limited to the proportion of **loss, defence costs and legal representation costs**, which is a fair and equitable allocation as between:

- a) covered and uncovered parties; and/or
- b) covered and uncovered matters;

having regard to the relative legal and financial exposures attributed to the covered and uncovered matters and/or parties. Only **loss, defence costs and legal representation costs** incurred by covered parties in relation to covered matters will be covered by this **policy**, and is subject always to the terms and conditions of this **policy**.

We will use **our** best endeavours to agree upon a fair and equitable allocation of the proportion covered under this **policy**, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties.

If an allocation cannot be agreed then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association of the jurisdiction in which the **policy** was underwritten. The Senior Counsel will make a determination as an expert based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Submissions made to the Senior Counsel will be in writing.

Pending Senior Counsel's determination **we** will meet the **loss, defence costs and legal representations costs** on an interim basis at the percentage at which **we** contend they should be fairly and equitably allocated. After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior Counsel's determination. The costs of any referral for determination to a Senior Counsel under this clause will be borne by **us**.

10.4 Legal Representation and Settlement

Unless otherwise specified in a **policy**, it will be **our** duty and not the duty of the **insured** to defend **claims** and arrange for legal representation at **investigations**.

The **insured** will not admit liability, settle any **claim**, make any admission, offer any payment or assume any obligation in connection with any **claim** or investigation, incur any **defence costs, legal representation costs** or other **loss** covered by this **policy**, without **our** prior written consent, which will not be unreasonably withheld or delayed.

We will not be liable for any settlement, **defence costs** or other form of **loss**, admission, offer, payment or assumed obligation to which **we** have not given **our** prior written consent.

We will have the right and will be given the opportunity to associate with each **insured** and participate in the defence of any **claim** or **investigation** including the negotiation and settlement of a covered **claim**.

With respect to any **claim** or **investigation** involving more than one **insured**, the **insureds** agree that **we** have the right to require such **insureds** to retain separate legal representation.

10.5 Order of Payments

If the payment of **loss**, **defence costs** and **legal representation costs** in respect of a covered claim under a **policy** where such **loss** in the aggregate exceeds the remaining available **indemnity limit**, **we** will:

- a) first pay such **loss** for which the **policyholder** does not indemnify an **insured person**; then
- b) to the extent of any remaining amount of the **indemnity limit** available after payment under 10.5(a) above, pay such **loss** for which coverage is provided under any other provision of this **policy**.

We will otherwise pay **loss** covered under this **policy** in the order in which such **loss** is presented to **us** for payment.

10.6 Subrogation & Recoveries

Where **we** have paid any amount of **loss**, **defence costs** and **legal representation costs** under the **policy**, **we** become entitled to assume any rights available to the **insured** against any party to the extent of **our** payment. On **our** request, the **insured** must assign all rights of recovery against any person or entity, but only to the extent that payment has been made under the **policy**.

The **insured** must, at its own cost, assist **us** and provide information as **we** may reasonably require, to exercise **our** rights of recovery and/or subrogation. This may include providing and signing statements and other documents and the giving of evidence.

Where a recovery is made, the proceeds of such a recovery will be applied as follows:

- a) firstly, to the satisfaction of all costs incurred in effecting the recovery
- b) secondly, to the **insured** for the amount of **loss**, **defence costs** and **legal representation costs** in excess of the **indemnity limit** specified in the **schedule** which is also in excess of any excess insurance purchased over this **policy**
- c) thirdly, to **us** and any excess insurers amounts paid under the **policy** and such excess policies
- d) finally, to the **insured** for the amount paid in respect of the **deductible**.

10.7 Notification of Direct Financial Loss

The **educator** shall, as a condition precedent to **our** obligations under this **policy**, give written notice to **us** of any **direct financial loss** as soon as practicable within the **insurance period**, or within the **discovery period** if applicable, but in any event not later than 60 days after any **direct financial loss** is first **discovered**.

The **educator** must, at its own cost, also:

- a) provide **us** with affirmative proof of the **direct financial loss** with full particulars within 6 months of the **direct financial loss** being first **discovered**, and
- b) provide **us** with all requested information and documents and co-operate with **us** in all matters pertaining to the **direct financial loss**.

10.8 Settlement of Direct Financial Loss

If the **educator** notifies **us** of a **direct financial loss** and **we** accept the notification under this **policy**, subject to the **educator's** compliance with Claims Condition 10.7 above, an appropriate fraud investigator will be nominated by the **insured**, and approved in writing by **us**, to establish proof of any element or part of the **direct financial loss** not yet accepted by **us**. The fraud investigator shall:

- a) investigate the facts behind such unproven **direct financial loss**; and
- b) determine the quantum of such unproven **direct financial loss**, and
- c) advise when and how the **educator's** controls were or may have been breached; and

- d) provide recommendations which may prevent future similar **direct financial loss**; and
- e) issue their findings in a report format approved by **us**; and
- f) provide a copy of the report to the **educator** and to **us**.

The report of the fraud investigator will not be binding and definitive as to the facts and quantum of such unproven **direct financial loss**.

We will pay for the reasonable and necessary fees, costs and expenses of the fraud investigator provided the unproven **direct financial loss** is ultimately determined to be covered under this **policy**. If that part of the **direct financial loss** is determined not to be covered under this **policy**, the **educator** will pay the said fees, costs and expenses of the fraud investigator.

Any amount of investigator's fees paid by **us** under this Claims Condition will be paid in addition to the **indemnity limit**, and will not be the subject of any **deductible**.

10.9 Basis of Valuation

With respect to any **direct financial loss** which is covered under this **policy**, **we** are not liable for more than:

- a) the actual market value of **securities, money** or precious metals at the close of business on the day the **direct financial loss** was first **discovered** (determined by the Securities and Futures Commission (SFC)), or the actual cost of replacing the **securities, money** or precious metals, whichever is less; or
- b) the actual cash value of other tangible property (not referred to in (a) above) at the close of business on the day the **direct financial loss** was first **discovered**, or the actual cost of replacing the property with property of like quality or value, whichever is less; or
- c) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the **educator** in order to reproduce books of account and other records; or
- d) the cost of labour for the actual transcription or copying of electronic data furnished by the **educator** in order to reproduce such electronic data; or
- e) artwork is to be valued at the average valuation of two licensed independent artwork valuers, selection of which is to be mutually agreed upon by the **insured** and **us**.

Section 11: GENERAL CONDITIONS

The following General Conditions apply to all **policies** purchased and shown as having been purchased in the **schedule**.

Each **policy** purchased is to be read and interpreted as a separate contract of insurance with its own separate **indemnity limit**, unless specified otherwise in the **schedule**.

11.1 Interpretation

Words and phrases appearing in bold text and where used in a **policy**, have the meaning defined in that **policy** or **policies** purchased by the **policyholder** as shown in the **schedule**.

To the extent that there are any inconsistencies between the **policy** and this General Conditions Section, the terms and conditions contained in the **policy** will prevail.

In the **policy**:

- a) the singular includes the plural and the masculine includes the feminine; and
- b) the headings are for descriptive purposes only; and
- c) in the event that any portion of the **policy** is found to be invalid or unenforceable, the remainder will remain in full force and effect.

11.2 Alteration to Risk

The **insured** must notify **us** in writing as soon as practicable of any material alteration to the risk during the **insurance period** including:

- a) the **insured** going into voluntary bankruptcy, receivership or liquidation; or
- b) the **insured** failing to pay debts as and when those debts become due; or
- c) the **insured** breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- d) any material change in the nature of the **educational services**.

We may not cover the **insured** for any **claim** if the **insured** does not notify **us** in writing as soon as practicable of any material alteration to risk.

If during the **insurance period** a **transaction** occurs then the cover under the **policy** will only apply to any act, error or omission committed prior to the effective date of the **transaction**.

If, during the **insurance period**, the **educator** decides to make a public offering of its securities in any jurisdiction the **educator** must provide **us** with any prospectus or offering statement for **our** review and assessment. **We** will be entitled to amend the terms and conditions of any **policy** and/or charge an additional premium reflecting any potential increase in exposure, which **we** deem reasonable.

11.3 Assignment

The **insured** must not assign the **policy** or any rights under the **policy** without **our** prior written consent by way of Endorsement to the **policy**.

11.4 Cancellation

The **educator** has the right to cancel this **policy** at any time by giving **us** written notice to that effect. Upon cancellation, **we** will refund that part of the premium which relates to the unexpired part of the **insurance period**.

If a **claim** and/or circumstance has been notified to **us** under this **policy**, **we** will be entitled to the entire premium and no refund of premium will be made. If the **educator** withdraws such **claim** and/or circumstance then the **policy** may be cancelled and **we** will refund that part of the premium which relates to the unexpired part of the **insurance period**.

We have the right to cancel the **policy** if the premium has not been paid within 60 days.

11.5 Several Liability

The subscribing Insurers' obligations under Contracts of Insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Insurers are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

11.6 Territorial Scope

Unless otherwise stated in the **schedule** and subject to General Condition 11.7 (Jurisdictional Limitation), cover provided under this **policy** extends to the conduct of the **educator's educational services** anywhere in the world.

11.7 Jurisdictional Limitation

Unless otherwise stated in the **schedule**, cover provided under this **policy** extends to **loss** with respect to a **claim** or **investigation** brought and maintained anywhere in the world, except within the territorial limits of the United States of America or Canada or their respective territories or protectorates or to enforce any judgment, order or award obtained in or determined under the laws of the United States of America or the Canada or their territories or protectorates.

11.8 Governing Law

The **policy** is governed by the laws of the Hong Kong Special Administrative Region where the **policy** was issued.

Any dispute or difference arising out of this **policy** shall first be referred to mediation at the Hong Kong International Arbitration Centre (HKIAC) and dealt with in accordance with HKIAC Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then such dispute or difference shall be referred to arbitration at HKIAC and in accordance with HKIAC Domestic Arbitration Rules. Each party shall bear its own costs regardless of the outcome of the mediation. All other costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the mediator such costs.

Any dispute or difference arising out of this **policy** which is referred to arbitration at the HKIAC will be dealt with in accordance with HKIAC Domestic Arbitration Rules in force when the Notice of Arbitration is submitted. The parties shall jointly designate one arbitrator and the arbitration proceedings shall be conducted in English. All costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the arbitrator such costs.

11.9 Indemnity Limit

- a) Subject to any Extension of coverage which states otherwise, **our** total liability under the **policy** in respect of any one **claim** or **investigation**, and in the aggregate for all **claims** and **investigations** for all **insureds**, will not exceed the **indemnity limit** inclusive of all **loss**.
- b) The **schedule** will indicate the **indemnity limit** applicable to each **policy**. If more than one **policy** has been purchased, the **schedule** will also indicate the aggregate **indemnity limit** for all policies which have been purchased by the **policyholder**.
- c) **We** will have no liability in excess of the sub-limits specified in the **schedule** in the aggregate for the applicable Extension of cover, irrespective of the number of **policy** sections, which respond to the **claim** or **investigation**. In such circumstances, **we** will apply the higher of the sub-limits or **indemnity limit** available.
- d) For the purposes of determining the **indemnity limit** available for each **claim** covered by the **policy**, all **claims** arising from the same act, error or omission, or related acts, errors or omissions, shall be regarded as one **claim**.

11.10 Deductible

- a) **Our** liability under this **policy** for **loss** will only apply to that part of each **loss**, **defence costs** and **legal representation costs** which is in excess of the **deductible** specified in the **schedule**. Such **deductible** will be borne by the **insured**, except where otherwise provided.
- b) Unless otherwise expressed in the **schedule**, all **deductibles** are inclusive of **defence costs** and/or **investigation costs** and/or **loss** to the amount of the **deductible**.
- c) Except as otherwise stated in the **policy**, costs and expenses incurred by **us** in determining whether we are liable to indemnify the **insured** under the **policy** will not erode the **indemnity limit** and will be met by **us**.
- d) For the purposes of determining the **deductible(s)** applicable to any **claim(s)** covered by the **policy**, all **claims** arising from the same act, error or omission, or related acts, errors or omissions, shall be regarded as one **claim**.

11.11 Severability, Non-Imputation and Non-Avoidance

No state of mind or knowledge possessed by any one **insured person** will be imputed to any other **insured person** for the purpose of determining whether any provision in this **policy** applies. However, any state of mind or knowledge possessed by any past or present chairman of the board, chief executive **officer**, chief operating **officer** or chief financial **officer** of the **policyholder** or any **subsidiary** will be imputed to the **educator**.

We agree not to rescind or avoid this **policy** in whole or in part, for any misrepresentation in the **proposal** or for any non disclosure (whether such misrepresentation is innocent, negligent, fraudulent or otherwise).

In the event of fraudulent misrepresentation or fraudulent non disclosure which would otherwise entitle **us** to avoid or rescind the **policy**, **we** will only reduce **our** liability under the **policy** in respect of such **insureds** who were involved in or were aware of the fraudulent non disclosure or misrepresentation.

11.12 Preservation of Right to Indemnity

In the event and to the extent that the **educator** has not indemnified an **insured person** but is legally permitted or required to do so in respect of a **claim** or **investigation**, but for whatever reason, refuses to do so, then **we** will pay on behalf of the **insured person** any **loss** arising from the **claim**, **defence costs** or **legal representation costs** within the **deductible** and, the applicable **deductible** will be paid by the **educator** to **us**.

11.13 Other Insurance

This **policy** will only cover **loss** to the extent that the amount of such **loss** is in excess of any indemnity or cover available to the **insured** in respect of that **loss** under any **other insurance policy/policies**. The **insured** must advise **us** of the **other insurance policy/policies** at the time of making a **claim** under the **policy** and provide **us** with details of **other insurance**.

11.14 Currency

Any reference to premium, **indemnity limits, deductibles, loss, defence costs, investigation costs** or any other amounts payable by **us** under this **policy** are expressed and are payable in in the currency as referenced in the **schedule** of the **policy**. Where any payment is to be made into an admitted foreign jurisdiction, such payment is to be made and denominated in the currency referenced in the **schedule** of the **policy** at the cash rate for the purchase of the currency referenced in the **schedule** of the **policy** set by the currency conversion website, Oanda.com or if it has ceased to be current, a currency conversion website selected by **us** as at 4.00pm on the date which the foreign payment becomes due.

11.15 Confidentiality

The **insured** must not disclose, either personally or through any person or entity acting on the **insured's** behalf or at the **insured's** direction, to any third party:

- a) the existence of this **policy**; or
- b) the nature of the indemnity provided; or
- c) the **indemnity limit**; or
- d) the amount of premium paid.

However, the **insured** may disclose the above matters to the extent that:

- i) the **insured** is required to do so by the law; or
- ii) **we** consent to the disclosure in writing.

Appendix: Notice to customers relating to the Personal Data (Privacy) Ordinance ("the Ordinance")

MSIG Insurance (Hong Kong) Limited ("MSIG", "we" or "us") would ask that you take the time to read this privacy policy carefully. In case of discrepancies between the English and Chinese versions of this statement, the English version shall prevail.

PRIVACY POLICY

MSIG takes your privacy very seriously. To ensure your personal information is secure, we communicate and enforce our privacy and security guidelines according to the relevant laws and regulations. MSIG takes precautions to safeguard your personal information against loss, theft, and misuse, as well as against unauthorised access, disclosure, alteration, and destruction. Furthermore, we will not sell your personal information to anyone for any purposes. MSIG imposes very strict sanction control and only authorised staff on a need-to-know basis are given access to or will handle your personal data, and we provide regular training to our staff to keep them abreast of any new developments in privacy laws and regulations.

We will only retain your personal data in our business records for as long as it is necessary for business and tax purposes as permitted by the laws. We will require our agent, contractor or third party who provides administrative or other services on our behalf to protect personal data they may receive in a manner consistent with this policy. We do not allow them to use such information for any other purposes. If you have any questions or inquiries regarding our privacy policy, please feel free to contact us.

We may amend this Privacy Policy at any time and for any reason. The updated version will be available by following the 'Privacy Policy' link on our website homepage at www.msig.com.hk. You should check the Privacy Policy regularly for changes.

Personal Information Collection Statement

Personal information is data that can be used to uniquely identify or contact a single person. As our customers, it is necessary from time to time for you to supply us with your personal data in relation to the general insurance services and products ("the Product") that we provide to you and in order for us to deliver and improve the customer service. This includes but not limited to the personal data contained in the proposal form or in any documents in relation to the Product or any claim made under the Product.

Your personal data may be used for **obligatory purpose** or **voluntary purpose**. If personal data are to be used for an obligatory purpose, you MUST provide your personal data to MSIG if you want MSIG to provide the Product. Failure to supply such data for obligatory purpose may result in MSIG being unable to provide the Product.

The **obligatory purposes** for which your personal data may be used are as follows:-

- processing and evaluating your insurance application and any future insurance application you may make;
- our daily operation and administration of the services and facilities in relation to the Product provided to you;
- variation, cancellation or renewal of the Product;
- invoicing and collecting premiums and outstanding amounts from you;
- assessing and processing claims in relation to the Product and any subsequent legal proceedings;
- exercising any right of subrogation by us;
- contacting you for any of the above purposes;
- other ancillary purposes which are directly related to the above purposes;
- complying with applicable laws, regulations or any industry codes or guidelines; and
- detecting and preventing fraud (whether or not relating to the policy issued in respect of this application).

The **voluntary purposes** for which your personal data may be used are any sales, marketing, promotion of other general insurance services and products provided by MSIG. The personal data we intend to use for voluntary purposes are your name, your address, your phone number and email address.

If you do not wish MSIG to use your personal data for the voluntary purposes listed above, you should tick the box on the right and send us a copy of this Notice at the address listed below together with the required information which are necessary for us to process your opt-out request. You may also notify us by sending an email to 'dpo@hk.msig-asia.com'.

In your notification, you must supply the same required information as listed below.

To enable us to process your opt-out request, please provide us below information and send to: The Data Protection Officer at 9/F, Cityplaza One, 1111 King's Road, Taikoo Shing, Hong Kong.	
Full Name:	
Contact Number:	
HKID Number:	<i>(for identification purpose)</i>
Policy / Certificate / Acknowledgement Number (if you have one):	
NOTE: This instruction will override all previous instructions relating to direct marketing that have been given to MSIG.	

In connection with any of the above purposes, the personal data that we have collected might be transferred to:

- third party agents, contractors and advisors who provide administrative, communications, computer, payment, security or other services which assist us to carry out the above purposes (including medical service providers, emergency assistance service providers, telemarketers, mailing houses, IT service providers and data processors);
- in the event of a claim, loss adjudicators, claims investigators and medical advisors;
- reinsurers and reinsurance brokers;

- your insurance broker;
- our legal and professional advisors;
- our related companies as defined in the Companies Ordinance;
- the Hong Kong Federation of Insurers (or any similar association of insurance companies) and its members;
- the Insurance Complaints Bureau and similar industry bodies; and
- government agencies and authorities as required or permitted by law;
- fraud prevention organizations;
- other insurance companies (whether directly or through fraud prevention organization or other persons named in this paragraph);
- the police; and
- databases or registers (and their operators) used by the insurance industry to analyse and check information provided against existing information.

In order to confirm the accuracy of your personal data, you agree to provide us with authorisation to access to and to verify any of your personal data with the information collected by any federation of insurance companies from the insurance industry.

Under the relevant laws and regulations, you have the right to request access to and to request correction of your personal data held by us. If you wish to exercise these rights, please write to our Data Protection Officer at 9/F Cityplaza One, 1111 King's Road, Taikoo Shing, Hong Kong.

If you have any enquiries or require assistance with this **Personal Information Collection Statement**, please call **MSIG at (852) 3122 6922**.