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Cyber Excess Protection

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Important Information
& Policy Wording



Contents

Important Information 3
- About the Insurer 3
- About Emergence Pty Ltd 3
- Your Duty of Disclosure 3
- Receiving Your Policy Documents 3
- Words with Special Meaning 3
- Headings 3
- The Cost of Your Policy 3
- Renewal Procedure 4
- Complaints 4
- General Insurance Code of Practice 4
- Privacy Statement 4

Policy Wording 6
- What Certain Words Mean 6
- Exclusions 6
- Claims Conditions 6
- General Conditions 7

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Cyber Excess Protection
Important Information & Policy Wording

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Important Information

This important information explains the cover provided by the **policy** wording and provides **you** with notices, but is not part of the **policy** wording. Please read both this important information and the **policy** wording.

Words or expressions in bold in this important information share the same meaning as they do in the **policy**.

About the Insurer

This insurance is underwritten by certain underwriters at Lloyd's. Lloyd's underwriters are authorised by the Australian Prudential Regulation Authority ('APRA') under the provisions of the *Insurance Act 1973* (Cth).

If **you** require further information about this insurance or wish to confirm a transaction, please contact Emergence.

About Emergence Insurance Pty Ltd

Emergence Insurance Pty Ltd (ABN 46 133 037 153, AFSL 329634) ('Emergence') acts under a binding authority given to it by certain underwriters at Lloyd's to administer and issue policies, alterations and renewals. In all aspects of arranging this **policy**, Emergence acts as an agent for certain underwriters at Lloyd's and not for **you**. Contact details are:

Email: info@emergenceinsurance.com.au
Telephone: +61 2 8280 3000
Postal address: PO Box A2016, Sydney South NSW 1235

Your Duty of Disclosure

Before **you** enter into an insurance contract, **you** have a duty to tell **us** anything that **you** know, or could reasonably be expected to know, may affect **our** decision to insure **you** and on what terms.

You have this duty until **we** agree to insure **you**.

You have the same duty before **you** renew, replace, extend, vary, continue under a similar insurance or reinstate an insurance **policy**.

You do not need to tell **us** anything that:
- reduces the risk **we** insure **you** for; or
- is common knowledge; or
- **we** know or should know as an insurer; or
- **we** waive **your** duty to tell **us** about.

If you do not tell us something

If **you** do not tell **us** anything **you** are required to, **we** may cancel **your policy** or reduce the amount **we** will pay **you** if **you** make a claim, or both.

If **your** failure to tell **us** is fraudulent, **we** may refuse to pay a claim and treat the **policy** as if it never existed.

Receiving Your Policy Documents

It is a condition of this **policy** that **you** shall receive **your policy** documents electronically only. If **you** are unable or unwilling to receive **your policy** documents electronically, **we** shall not enter into a contract of insurance with **you**.

Emergence will send **your policy** documents to the email address nominated by **you** or **your** agent. Each electronic communication will be deemed to be received by **you** 24 hours after it leaves Emergence's information system.

You are responsible for ensuring that the email address that Emergence has for **you** is up to date. Please contact Emergence to change **your** email address.

Words with Special Meaning

Some words and expressions used in the **policy** have special meanings. These words are always in bold. The meaning of words and expressions in bold are explained under the heading "What Certain Words Mean".

Headings

The headings of clauses in the **policy** are for reference purposes only. They do not form part of the **policy**.

The Cost of Your Policy

The amount that **we** charge **you** for this **policy** when **you** first acquire it and when **you** renew **your policy** is called the **premium**. The **premium** is the total that **we** calculate when considering all of the factors which make up the risk. Depending on the frequency of **claims** the **premium** on renewal of the **policy** may be different to the **premium** for this **policy**.

The **premium** is subject to government taxes, levies and duties such as GST and Stamp Duty. Emergence may also charge a policy fee in addition to the **premium**.

The total cost of **your policy** is shown on the **schedule** and is made up of **your premium** plus government taxes, levies and duties (where applicable) and a policy fee (if applicable).

Renewal Procedure

Before this **policy** expires, we will advise **you** whether **we** intend to offer **you** a renewal and if so, on what terms. It is important to check the terms of any renewal before renewing it to ensure that the details are correct.

Complaints

Step 1
Any enquiry or complaint relating to this insurance should be referred to Emergence in the first instance. Please contact Emergence:

By phone: +61 2 8280 3000
By email: info@emergenceinsurance.com.au
In writing to: Emergence Complaints, PO Box A2016 Sydney South NSW 1235

If Emergence requires additional information, Emergence will contact **you** to discuss. If your complaint is not immediately resolved Emergence will respond within fifteen (15) business days of receipt of **your** complaint or agree a reasonable alternative timeframe to respond.

Step 2
If this does not resolve the matter or **you** are not satisfied with the way a complaint has been dealt with, **you** can contact Lloyd's Underwriters' General Representative in Australia:

By phone: +61 2 8298 0783
By email: idraustralia@lloyds.com
By fax: +61 2 8298 0788
In writing to: Level 9, 1 O'Connell St, Sydney NSW 2000

Lloyd's Underwriters' General Representative in Australia will respond to **your** complaint within fifteen (15) business days of being notified, unless an alternative timetable has been agreed with **you**.

Step 3:
If **we** are unable to resolve **your** complaint within 45 calendar days of the date **we** first received **your** complaint or if **you** remain dissatisfied, **you** may seek a free and independent review by the Australian Financial Complaints Authority (AFCA). **We** agree to be bound by AFCA's decisions. **You** do not have to accept their decision and **you** have the right to seek legal advice at any time. **You** can contact AFCA any time:

By visiting: www.afca.org.au
By email: info@afca.org.au
By phone: 1800 931 678 (free call)
In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001

If **your** complaint does not fall within the AFCA Terms of Reference, **you** may be able to refer it to the Financial Ombudsman Service (UK). **We** can provide further details upon request and will do so if **your** complaint reaches this stage.

General Insurance Code of Practice

We proudly support the General Insurance Code of Practice. The objectives of the Code are to:

- commit **us** to high standards of service;
- promote better, more informed relations between **us** and **you**;
- maintain and promote trust and confidence in the general insurance industry;
- provide fair and effective mechanisms for the resolution of complaints and disputes between **us** and **you**; and
- promote continuous improvement of the general insurance industry through education and training.

You can obtain a copy of the Code from the Insurance Council of Australia website www.insurancecouncil.com.au or by phoning (02) 9253 5100.

Privacy Statement

In this Privacy Statement the use of "**we**", "**our**" or "**us**" means the Insurer and Emergence, unless specified otherwise.

We are committed to protecting **your** privacy.

We are bound by the obligations of the *Privacy Act 1988* (Cth) and the Australian Privacy Principles. These set out basic standards relating to the collection, use, storage and disclosure of personal information.

We need to collect, use and disclose **your** personal information (which may include sensitive information) to consider **your** application for insurance and to provide the cover **you** have chosen, administer the insurance and assess any claim. **You** can choose not to provide **us** with some of the details or all of **your** personal information, but this may affect **our** ability to provide the cover, administer the insurance or assess a claim.

The primary purpose for **our** collection and use of **your** personal information is to enable **us** to provide insurance services to **you**.

We may collect personal information in a number of ways, including directly from **you** via **our** website or by telephone or email. Personal information will be obtained from individuals directly where possible and practicable to do so. Sometimes it may be collected indirectly (e.g. from **your** insurance intermediary or co-insureds). If **you** provide personal information for another person **you** represent to **us** that:

- **you** have the authority from them to do so and it is as if they provided it to **us**;
- **you** have made them aware that **you** will or may provide their personal information to **us**, the types of third parties **we** may provide it to, the relevant purposes **we** and the third parties **we** disclose it to will use it for, and how they can access it. If it is sensitive information **we** rely on **you** to have obtained their consent on these matters. If **you** have not done or will not do either of these things, **you** must tell **us** before **you** provide the relevant information.

We may disclose the personal information **we** collect to third parties who assist **us** in providing the above services, such as related entities, distributors, agents, insurers, reinsurers and service providers. Some of these third parties may be located outside of Australia including New Zealand, Philippines, Vietnam, Malaysia and United Kingdom. In all instances where personal information may be disclosed to third parties who may be located overseas, **we** will take reasonable measures to ensure that the overseas recipient holds and uses **your** personal information in accordance with the consent provided by **you** and in accordance with **our** obligations under the *Privacy Act 1988* (Cth).

In dealing with **us**, **you** consent to **us** using and disclosing **your** personal information as set out in this statement. This consent remains valid unless **you** alter or revoke it by giving written notice to Emergence's Privacy Officer. However, should **you** choose to withdraw **your** consent, **we** may not be able to provide insurance services to **you**.

The Emergence Privacy Policy, available at www.emergenceinsurance.com.au or by calling Emergence, sets out how:

- Emergence protects **your** personal information;
- **you** may access **your** personal information;
- **you** may correct **your** personal information held by **us**;
- **you** may complain about a breach of the *Privacy Act 1988* (Cth) or Australian Privacy Principles and how Emergence will deal with such a complaint.

If **you** would like additional information about privacy or would like to obtain a copy of the Privacy Policy, please contact the Emergence Privacy Officer by:

Postal Address: PO Box A2016, Sydney South NSW 1235
Phone: +61 2 9307 6656
Fax: +61 2 9307 6699
Email: privacyofficer@steadfastagencies.com.au

You can download a copy of the Emergence Privacy Policy by visiting www.emergenceinsurance.com.au

Policy Wording

1. Subject to payment of the **premium**, this **policy** will respond in excess of the **underlying limits**, up to the **policy limit**.
2. Unless stated otherwise in the **policy, we** will provide cover on the same terms, conditions and limitations of the **primary insurance** for claims first made by **you** under this **policy**.
3. This **policy** will only respond once the **underlying limits** are exhausted i.e. the insurers of the **underlying insurance** have paid or have admitted liability or have been held liable to pay the full aggregate **underlying limits**.
4. Notwithstanding any sublimit in any **underlying insurance**, this **policy** will only respond in excess of the **underlying limits**.

What Certain Words Mean

The words listed below have been given a specific meaning in this **policy** and these specific meanings apply when the words appear in **bold** font.

policy limit means the amount specified in **your schedule**. One aggregate applies to **your policy limit** for the entire **policy period**. The aggregate **policy limit** is the most **we** will pay, including costs and expenses, irrespective of the number of claims or losses. The **policy limit** stated on **your schedule** is exclusive of GST.

policy means this document, the **schedule** and any endorsement(s) stated in **your schedule**.

policy period means the period set out in **your schedule**.

premium means the amount **you** must pay to **us**. The **premium** is set out in **your schedule**.

primary insurance means the policy specified as such in **your schedule**, or a policy issued in substitution or renewal of that policy.

schedule means the document **we** provide to **you** which sets out the personalised details of **your policy** with **us**.

underlying insurance means all those policies specified in **your schedule**, or policies issued in substitution or renewal of those policies, including the **primary insurance**.

underlying limits means the combined limits of the **underlying insurance** set out in **your schedule**.

you/your means the policyholder specified in the **schedule** and as otherwise defined in the **primary insurance**.

we/our/us means certain underwriters at Lloyd's (the underwriters), and the insurer of this **policy**.

Exclusions

1. This **policy** will not respond to any claim arising from, attributable to, based upon or in connection with any claim, loss, judgement or award made in the United States of America or which applied the laws of the United States of America.

Claims Conditions

Claim Notification

You can notify **us** by calling the Emergence claims reporting line on 1300 799 562 or in writing at claims@emergenceinsurance.com.au.

1. **You** must notify **us** as soon as reasonably practicable of:
   a. any claim, or
   b. the receipt of any notice of an intention to make a claim; or
   c. any circumstances of which **you** become aware which might reasonably be expected to give rise to a claim under this **policy**, giving detailed reasons for the anticipation of such claim, together with full particulars as to dates and persons involved;

   if it is reasonably likely that the quantum of such claims or losses including costs and expenses may exceed 50% (fifty percent) of the available **underlying limits**.
2. **You** must also notify **us** if the circumstances of a claim change such that it is reasonably likely that the quantum of such claims or losses including costs and expenses may exceed 50% (fifty percent) of the available **underlying limits**.

Claims Handling

3. In the event it appears likely that the quantum of any claim (including costs and expenses incurred in the defence or settlement of such claim) or loss may exceed 50% (fifty percent) of the **underlying limits**, then **you** shall:

   a. not admit liability for or settle or attempt to settle any claim or incur any costs and expenses in connection with any claim without **our** prior written consent;

   b. give all such information or assistance reasonably necessary and forward all documents, to enable **us** to investigate, settle or resist any claim as **we** may reasonably require.

   At **our** discretion **we** may participate in the investigation, defence or settlement of any claim covered under this **policy** even if the **underlying insurance** has not been exhausted.

   No costs or expenses shall be incurred on **our** behalf without **our** prior written consent, and no settlement shall be effected without **our** prior written consent if such settlement will involve this **policy**. **Our** written consent shall not be unreasonably withheld.

General Conditions

Cessation

1. Cover under this **policy** immediately ceases if **your** cover under the **primary insurance** or any policy of **underlying insurance** ceases for any reason.

Alteration to Primary Insurance

2. No alteration, change or amendment to the **primary insurance** shall alter, change, amend or extend this **policy** unless **we** expressly agree in writing.

Conflict with the Underlying Insurance

3. In the event of a conflict between the Claims Conditions or General Conditions of this **policy** and the **underlying insurance** then the Claims Conditions and General Conditions of this **policy** shall prevail.

Step Down/Drop Down Clause/Reduction or Exhaustion of Underlying Insurance

4. If by reason of the payment of any claims or costs and expenses by the insurers of the **underlying insurance**, the amount of cover provided by the **underlying insurance** is:

   a. partially reduced, then this **policy** shall apply in excess of the reduced amount of the **underlying insurance** for the remainder of the **policy period**;

   b. totally exhausted, then this **policy** shall continue in force for the remainder of the **policy period** however on the basis that this **policy** shall only pay in excess of any self-insured retention, deductible or excess specified for the **underlying insurance**.

   Any payment outside the scope of the indemnity provided by the **primary insurance** will be deemed not to have reduced or exhausted the aggregate **underlying limits** for purposes of this **policy**.

   Insolvency or inability to meet financial obligations by any **underlying insurer** for any reason will be deemed not to reduce or exhaust the **underlying limits** for purposes of this **policy**.

Maintenance of Underlying Insurance

5. This **policy** only provides cover if the **underlying insurance** is maintained in full force and effect for the duration of the **policy period** except for any reduction of any aggregate limits contained in the **underlying insurance** solely by payment of claims or of costs and expenses incurred in the defence or settlement of such claims.

Obligation to Notify

6. **You** must immediately notify **us** in writing of any of the following events:

   a. any **underlying insurance** is cancelled or avoided;

   b. any **additional premium** is charged in respect of **underlying insurance** or

   c. any change to the terms, conditions, exclusions or any other change to the **primary insurance**.

   d. the insurer of any of the **underlying insurance** denies indemnity or reduces the amount payable on a claim under the **underlying insurance**.

   e. if **you** go into voluntary bankruptcy, receivership, administration or liquidation; or

   f. **you** become aware of a pending appointment of a receiver or the commencement of bankruptcy or winding up proceedings to **your business**.

Subrogation and Recoveries

7. If **we** make a payment under this **policy**, then **we** are entitled to assume **your** rights against any third party to the extent of **our** payment. **You** must, at **your** own cost, assist **us** and provide necessary information to **us** to enable **us** to bring the subrogation or recovery claim. **You** must not do anything that may prejudice **our** position or **our** rights of recovery against any party. The expenses of all recovery proceedings shall be apportioned among the recipients in the ratio of their respective recoveries. The proceeds of any subrogation or recovery action will be applied between **you** and **us** in accordance with the provisions of the *Insurance Contracts Act 1984 (Cth)*.



Cancellation

8. **You** may cancel the **policy** at any time by providing **us** with written notice stating when thereafter cancellation is to take effect. **We** can only cancel the **Policy** in accordance with the provisions of the *Insurance Contracts Act 1984 [Cth]*.
   As long as no claim has been made, and no circumstance or intention to make a claim has been notified, **we** will refund **premium** to **you** calculated on a pro rata basis less an administrative charge of $110 inclusive of applicable GST. If a claim has been made or an intention to make a claim has been notified, **we** shall retain the total premium for this **policy** regardless of whether any payment is finally made under this **policy**.

Governing Law and Exclusive Jurisdiction

9. This **policy** including its construction, application and validity, is governed by the laws of the Commonwealth of Australia and/or the State of New South Wales. Any dispute relating to the interpretation of this **policy** will be submitted to the exclusive jurisdiction of the Courts of the State of New South Wales.

Sanctions

10. **We** will not be deemed to provide cover and shall not pay any claim or provide any benefit to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose **us** or any (re) insurer 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.

Obligations Several, Not Joint

11. 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.

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Level 4, 99 Bathurst Street, Sydney NSW 2000
(02) 8280 3000
emergenceinsurance.com.au