

emergence



Cyb@r Excess Protection

CXP-001.4

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.....	4
Renewal Procedure.....	4
Complaints and Dispute Resolution Process.....	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 CXP-001.4
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 lead by Market Syndicate Management - Syndicate 3000. 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: 1300 799 562
Postal address: GPO Box R748 Royal Exchange
Sydney, NSW 2001

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 and Dispute Resolution Process

If **you** have any concerns or wish to make a complaint in relation to this **policy** or **our** services, please let **us** know and **we** will attempt to resolve **your** concerns in accordance with **our** Internal Dispute Resolution procedure. Please contact Emergence in the first instance:

Complaints Officer
Emergence Insurance Pty Ltd
By Phone: 1300 799 562
By Email: info@emergenceinsurance.com.au
By Post: Emergence Complaints,
GPO Box R748 Royal Exchange
Sydney, NSW 2001

We will acknowledge receipt of **your** complaint and do **our** utmost to resolve the complaint to **your** satisfaction within ten (10) business days.

If **we** cannot resolve **your** complaint to **your** satisfaction, **we** will escalate **your** matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited
By Phone: +61 2 8298 0783
By Email: idraustralia@lloyds.com
By Post: Suite 1603 Level 16,
1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to **you** within thirty (30)

calendar days of the date on which **you** first made the complaint unless certain exceptions apply.

You may refer **your** complaint to the Australian Financial Complaints Authority ('AFCA'), if **your** complaint is not resolved to **your** satisfaction within thirty (30) calendar days of the date on which **you** first made the complaint or at any time. AFCA can be contacted as follows:

By Phone: 1800 931 678
By Email: info@afca.org.au
By Post: GPO Box 3, Melbourne VIC 3001
Website: www.afca.org.au

Your complaint must be referred to AFCA within two (2) years of the final decision, unless AFCA considers special circumstances apply. If **your** complaint is not eligible for consideration by AFCA, **you** may be referred to the Financial Ombudsman Service (UK) or **you** can seek independent legal advice. **You** can also access any other external dispute resolution or other options that may be available to **you**.

General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

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 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:

By Post: GPO Box R748 Royal Exchange
Sydney, NSW 2001

By Phone: 1300 799 562

By Email: privacyofficer@emergenceinsurance.com.au

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

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**.

- c. any policy issued in substitution or renewal of a. or b. above.

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 lead by Market Syndicate Management - Syndicate 3000 (the underwriters), as insurers of this **policy** and Emergence acting on behalf of underwriters as issuer of this **policy**.

Note: **You** can obtain further details of the underwriters from Emergence upon request

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.
2. This **policy** will not respond to and **we** will not be liable for any loss, damage, expense or benefit arising out of physical cause or natural peril, such as fire, wind, water, flood, lightning, explosion, collision, subsidence, earthquake, solar flares or storms, or any other type of radiation, or act of God howsoever caused.

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**.

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:

- a. the **primary insurance** specified in the **schedule**; and
- b. any underlying excess policy specified in the **schedule** providing indemnity in excess of the **primary insurance**, up to the Limits of Liability specified in the **schedule**; and

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 you 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 to such change or amendment.

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. The insurers will submit to the jurisdiction of any competent Court in the Commonwealth of Australia.

Sanctions Limitations Clause

10. No [re]insurer shall be deemed to provide cover and no [re]insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that [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, United States of America or any trade or economic sanctions, laws or regulations of any other jurisdiction.

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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