

emergence



Cyb@r Excess Protection

CXP-001.4 NZ
General Information
& Policy Wording



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General Information

About the Insurer

This insurance is underwritten by certain underwriters at Lloyd's. If **you** require further information about this insurance or wish to confirm a transaction, please contact Emergence.

About Emergence NZ Limited

Emergence NZ Limited (Emergence) acts under a binding authority given to it by Certain Underwriters at Lloyd's lead by Market Syndicate Management - Syndicate 3000 (the underwriters) to administer and issue policies, alterations and renewals. In all aspects of arranging this **policy**, Emergence acts as an agent of the underwriters and not the **policyholder**.

Emergence contact details are:

Email: info@emergenceins.co.nz
Telephone: 0800 129 237 or 0800 1 CYBER
Postal Address: Level 11, Shortland Centre
55 Shortland Street
Auckland 1010

Emergence – the story

Emergence Insurance Pty Ltd launched in Sydney in April 2015. It has grown to be one of the largest providers of cyber insurance in Australia.

Emergence is a Lloyd's coverholder and a specialist cyber insurer. Cyber is all it does. It has been distributing cyber insurance through a white label agreement in New Zealand for 6 years. Now is the time to launch Emergence NZ Limited and have a presence in New Zealand.



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:

- 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

- 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 the **policy** and Emergence acting on behalf of underwriters as issuer of this **policy**.

Note: **You** can obtain further details of the underwriters from Emergence on 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 0800 129 237 (that's 0800 1 CYBER) or in writing at claims@emergenceinsurance.co.nz

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

The following General Conditions apply to all sections of the **policy**.

Compliance with Conditions

1. You must comply with the conditions of this **policy** at all times. If you or any other person or entity we cover under this **policy**, or anyone acting on your behalf, breaches any of the terms and/or conditions of this **policy**, we may:
 - a. refuse to pay a claim in whole or in part, and/or
 - b. declare this **policy** or all insurance the insured has with us to be of no effect and to no longer exist.

True Statements

2. True statements and answers must be given, whether by you or any other person, when:
 - a. applying for this insurance, and/or
 - b. notifying us regarding any change in circumstances, and/or

- c. making any claim under this **policy** and communicating with us or providing any further information regarding the claim.

Duty of Disclosure

3. When you apply for insurance you have a legal duty of disclosure. This means you or anyone applying on your behalf must tell us everything you know (or could be reasonably expected to know) that might affect our decision when deciding:
 - a. to accept your insurance, and/or
 - b. the cost or terms of the insurance, including the **excess**.
 - c. In particular, you should tell us anything which may increase the chance of a claim under this **policy**, or the amount of a claim under this **policy**.
 - d. You also have this duty every time your insurance renews and when you make any changes to it. If you or anyone on your behalf breaches this duty of disclosure, we may treat this **policy** as being of no effect and to have never existed.

Please ask us if you are not sure whether you need to tell us about something.

Cessation

4. 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

5. 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

6. 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

7. 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

8. 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

9. **You** must immediately notify **us** in writing of any of the following events:
- any **underlying insurance** is cancelled or avoided;
 - any additional **premium** is charged in respect of **underlying insurance** or
 - any change to the terms, conditions, exclusions or any other change to the **primary insurance**.
 - the insurer of any of the **underlying insurance** denies indemnity or reduces the amount payable on a claim under the **underlying insurance**.

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

10. 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.

Assignment of Rights

11. This **policy** and any rights under it cannot be assigned without **our** written consent.

GST

12. Where GST is recoverable by **us** under the Goods and Services Tax Act 1985:
- all **limits** exclude GST, and
 - all sub-limits exclude GST, and
 - all **excesses** include GST, and
 - GST will be added, where applicable, to claim payments.

Cancellation

13. The cancellation procedure is

a. By you

You may cancel this **policy** at any time by notifying us in writing. We will refund any **premium** that is due to you based on the unused portion of the **policy period**. You must pay any outstanding **premium** due for the expired portion of the **policy period**.

b. By us

We may cancel this **policy** by giving the you, or your broker, notice in writing or by electronic means, at the your, or your broker's last known address. The **policy** will be cancelled from 4pm on the 30th day after the date of the notice. We will refund any **premium** that is due to you based on the unused portion of the **policy period**.

c. Any **premium** owing to us under this **policy** must be paid to us within 60 days of the commencement of this **policy**. If the **premium** remains unpaid after the 60 day period The **policy** will be cancelled from 4pm on the 30th day after the date of the notice.

Currency

14. All **premiums, limits, loss** and other amounts under this **policy** are expressed and payable in New Zealand dollars. Except as otherwise provided, if judgement is rendered, settlement is denominated or another element of loss under this **policy** is stated in other than New Zealand dollars, payment under this **policy** shall be made in New Zealand dollars at the cash rate of exchange for the purchase of New Zealand dollars in accordance with the Reserve Bank of New Zealand on the date final judgement is reached, the amount of the settlement is agreed upon or the other element of loss becomes due.

Policy Disputes, Governing Law & Jurisdiction

15. The underwriters accepting this insurance agree that:

- a. if a dispute arises under this insurance, this **policy** will be subject to New Zealand law and practice and the underwriters will submit to the jurisdiction of any competent Court in New Zealand;
- b. any summons notice or process to be served upon the underwriters may be served upon the Lloyd's Underwriters' General Representative in New Zealand,

Lloyd's General Representative in New Zealand
C/o Hazelton Law
PO Box 5639
Wellington, New Zealand
Telephone: +64 4 472 7582

who has authority to accept service and to appear on the underwriters' behalf;

- c. if a suit is instituted against any of the underwriters, all the underwriters participating in this policy will abide by the final decision of such Court or Appellate Court.

In the event of a claim arising under this **policy** NOTICE should be given to Emergence NZ Limited as soon as possible.

Sanctions Limitation Clause

16. 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

17. 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.

Complaints

18. Any enquiry or complaint relating to this **policy** should be referred to Emergence NZ Limited in the first instance.

If this does not resolve the matter or the policyholder is not satisfied with the way the enquiry or complaint has been dealt with, the policyholder should write to:

Lloyd's General Representative in New Zealand
C/O Hazelton Law
PO Box 5639
Wellington, New Zealand
Telephone: +64 4 472 7582

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