



**EMERGENCY**

# **Cyber Excess Protection**

**POLICY WORDING**



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# Important Information

It is important that **you** read and understand the following:

## 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.

## 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:** contractadmin@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 15 business days of being notified, unless an alternative timetable has been agreed with **you**.

## 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 issuer 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

- 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** shall 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;
  - d. 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 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**.

### ➤ 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 possible and forward all documents, to enable **us** to investigate, settle or resist any claim as **we** may require.

At **our** sole 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**.

## 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.

### ➤ Conflict with the Underlying 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.
- 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:
- 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

- 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 circumstances or intention to make a claim been notified, **we** will refund **premium** to **you** calculated on a pro rata basis less an administrative charge of \$110 inclusive of applicable GST. Otherwise **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.

# EMERGENCE

Level 4, 99 Bathurst Street, Sydney NSW 2000

(02) 8280 3000

[emergenceinsurance.com.au](http://emergenceinsurance.com.au)