

Computer Services And Software Developers Professional Liability Insurance Policy

UIN No. IRDAN123CP0033V01201819

POLICY WORDINGS

WHEREAS the insured has made to us, the Company, a proposal, which is hereby agreed to be the basis of this policy and has paid to the Company the premium specified in the Schedule.

NOW THE COMPANY agrees, subject always to the following terms, exclusions, limitations and conditions, to indemnify the insured in excess of the amount of the Retention and subject to the Limit of Liability as specified in Item 3 of the Schedule, against such loss as is herein provided.

I. WHAT THIS AGREEMENT COVERS

ERRORS & OMISSIONS

The Company will pay amounts the insured is legally required to pay to compensate others for loss resulting from the insured's wrongful act or that of another for whom the insured is legally responsible.

As a condition precedent to the availability of coverage the wrongful act must be solely in the insured's performance of computer services for others for a fee, and the wrongful act must take place on or after the retroactive date and before the end of the policy period. A claim for such wrongful act must be first made against the insured during the policy period, and reported to the Company in writing in accordance with VII A.

II. DEFENDING & SETTLING LAWSUITS

The Company has the right and the duty to defend any claim brought against the insured covered under this policy, even if the claim is groundless or fraudulent. Defence expenses are part of and subject to the Company's Limits of Coverage. These limits are described in Section V. The Company's duty to defend any claim ends after the applicable limit of coverage has been used up by payment of defence expenses, settlements, judgments, awards, and interest accruing on judgments and awards prior to entry of judgment or issuance of an award.

The Company has the right to investigate any claim and, with the insured's written consent, settle any claim if the Company believes that is proper. The Company's duty to defend any claim against the insured ends if the insured refuses to consent to a settlement the Company recommends and the claimant has agreed in writing to accept. In this event the insured must then defend the claim at the insured's own expense and negotiate any settlement. The Company's liability for any settlement, judgment or award will not be more than the amount for which the Company could have settled had the insured consented, plus defence expenses up to the date the insured refused to consent.

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POST-JUDGEMENT

The Company will pay all interest on that amount of any judgment within the Company's limit of coverage:

- a) which accrues after entry of judgment, and
- b) before the Company has paid, offered to pay or deposited in the court that part of the judgment that is within the Company's applicable limit of coverage.

III. DEFINITIONS

Where the context so permits, references in this policy to the singular shall also include references to the plural and references to the male gender shall also include references to the female gender, and vice versa in both cases. In this policy words in bold print have special meaning and are defined.

1. Bodily injury means bodily harm, sickness, or disease, including death, resulting herefrom, and includes mental anguish, emotional distress or any other form of psychological injury.
2. Claim means a demand for monetary compensation, a legal proceeding in a court seeking monetary damages, and includes an arbitration proceeding .
3. Company means the Cholamandalam MS General Insurance Company Limited.
4. Computer services means a written agreement between the insured and a third party to perform services as specified within such agreement for a fee for any of the following services:
 - (a) system analysis, integration, designing, programming, data processing; and/or
 - (b) consulting on the development of data processing systems, which means the performance of feasibility studies and rendering of opinions regarding Electronic Data Processing; and/or
 - (c) outsourcing of Electronic Data Processing Systems which means the management or operation of a third party's information service department; and/or
 - (d) marketing, selling, servicing, distributing, installing and maintaining computer software and training in the use of such software;
5. Defence expenses means all expenses incurred by the Company in any claim defended by the Company or incurred by the insured with the Company's prior written consent as well as all reasonable costs levied against the insured in any such claim which does not exceed the Company's Limit of Liability. Defence expenses shall also include all reasonable expenses, other than loss of earning, incurred by the insured at the Company's request. Defence expenses shall not include post-judgment interest.
6. Insured means the individual, partnership, corporation, joint venture or other entity named in Item 1 of the Schedule and any subsidiary and any partner, director, officer or employee thereof while acting solely within the scope of his or her duties as such.
7. Policy means
 - a) the schedule, insuring clause(s), definitions, exclusions, conditions, and other terms contained herein; and

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- b) any endorsement attaching to and forming part of the Policy either at inception or during the policy period; and
 - c) the proposal.
8. Policy period means the period commencing on the effective date shown in the Schedule. This period ends on the earlier of the expiration date shown in Item 2 of the Schedule or the effective date of termination or cancellation of coverage and specifically excludes any Extended Reporting Period hereunder.
9. Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant, including: smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, asbestos containing materials, lead, lead containing materials and waste. "Waste" includes material to be recycled, reconditioned or reclaimed, as well as medical waste.
10. Property damage means (1) physical injury to, or destruction of tangible property including the loss of it, or (2) loss of the use of tangible property which has not been physically injured or destroyed.
11. Proposal means the application for insurance completed by insured and any ancillary information and documentation supplied by the insured in connection with this insurance.
12. Retroactive date means the date specified as such in Item 7 of the Schedule.
13. Subsidiary means any corporation of which the entity named in Item 1 of the Declarations owns more than 50% of the issued and outstanding voting stock either directly or indirectly through one or more of its subsidiaries. Subsidiary includes any corporation which becomes a subsidiary during the policy period provided that within 90 days of its becoming a subsidiary:
- a) the Company is provided full particulars of the new subsidiary and
 - b) subject to review and acceptance by the Company, any additional premium or amendment of the provisions of this policy required by the Company relating to such new subsidiary is agreed to and
 - c) any additional premium required by the Company is paid when due.
- This Policy does not cover any claim against a subsidiary or any partner, director, officer or employee thereof for any wrongful act when the entity named in Item 1 of the Declarations did not own more than 50% of the issued and outstanding voting stock of such subsidiary, either directly or indirectly through one or more of its subsidiaries.
14. Wrongful act means any actual or alleged negligent act, error or omission in the performance of computer services for others for a fee.

IV. EXCLUSIONS

This policy will not respond to any claim directly or indirectly caused by, based on, for or arising out of:

- 1. the insured's dishonest, fraudulent, criminal, reckless, or malicious act, error or omission;
- 2. bodily injury or property damage;
- 3. (a) false arrest, detention or imprisonment, (b) libel, slander or defamation of character, (c) assault or battery, (d) wrongful entry or eviction, or invasion of any right of privacy.

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4. delay in performance or failure to perform any contract unless such claim is arising out of a wrongful act;
5. the actual or alleged intentional non-performance or default of any of the insured's contractual obligations;
6. liability the insured assumed under any contract or agreement, by way of guarantee, warranty, penalty clause or any obligation deemed uninsurable under law. This exclusion does not apply to liability the insured would have in the absence of such contract or agreement;
7. Any guarantee of or the exceeding of cost estimates;
8. The gaining in fact of any improper personal profit or advantage to which the insured is not legally entitled, or out of any disputes or differences regarding the insured's fees, charges, commissions or for the return of money paid to insured;
9. Any costs and expenses incurred by the insured to comply with any warranties, guaranties, representations or promises made in respect of the insured's services, software or electronic products. This includes, but is not limited to the insured's costs of repair or replacement of defective material, workmanship or products error correction, system modification, product recall, withdrawal or inspection, delivery time, completion time, financial savings or of any property of which such products or work form a part;
10. Electrical failure, including any electrical power interruption, surge, brownout or blackout;
11. The failure to prevent unauthorised access to or use of any electronic data processing system or program, unless such unauthorised access is the result of a malfunction of the insured's software products;
12. any infringement of patent, copyright, trademark, service mark or other intellectual property right;
13. Any violation of any securities, anti-trust, restraint of trade, unfair trade practices;
14. The performance of or failure to perform professional services for any person or organization:
 - a) which is or was owned, managed, operated or controlled directly or indirectly, in whole or in part, by the insured ; or
 - b) which does or did own, manage, operate or control the insured directly or indirectly; or
 - c) which is or was affiliated with the insured through common majority ownership or control; or
 - d) in which the insured is or was a director, officer, partner or principal stockholder;
15. a) any notice, claim or legal proceeding which is known or pending prior to the policy period; and / or
b) any fact or circumstance of which written notice has been given by the insured, or ought reasonably to have been given, under any previous policy (whether issued by the Company or not) or of which the insured first became aware prior to the policy period and which the insured knew or ought reasonably to have known had the potential to give rise to a claim or loss;
16.
 - a) the presence of or the actual, alleged or threatened discharge, dispersal, release or escape of pollutants, or
 - b) any direction or request to test for, monitor clean up, remove, contain, treat, detoxify or neutralize

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pollutants, or in any way respond to or detoxify or neutralize pollutants, or in any way respond to or assess the effects of pollutants;

by any other person or organization covered under this policy;

17. unlawful discrimination on any basis whatsoever;

18. injury or damage to:

- a) the insured's employee or an independent contractor working for the insured; or
- b) the spouse or relative of such employee or independent contractor, as a consequence of injury or damage to the employee or independent contractor.

This exclusion applies:

- i) Whether the insured is liable as an employer or in any other capacity; and
- ii) To any obligation to share damages with or repay someone else who must pay damages because of injuries or damage.

19. Claims for which the insured, or any carrier as the insured's company, may be held liable under any worker's or unemployment compensation law, or disability benefits law, or any similar law;

20. Any form of relief other than the payment of money damages.

21. The bankruptcy or insolvency of the insured;

V. LIMITS OF LIABILITY

The limits shown in Item 3 of the Schedule to this policy and the information contained in this section state the most the Company will pay regardless of the number of:

- Persons or organization(s) covered by this policy, or
- Claimants or claims made.

Each wrongful act Limit: This is the most the Company will pay for all claims first made and reported to the Company in writing that result from a single wrongful act.

Aggregate Limit: This is the most the Company will pay for all claims first made and reported to the Company in writing while this policy is in effect.

Defence expenses are part of, not in addition to, the applicable limit of coverage.

Multiple Professional Liability Policies:

Two or more professional liability policies may be issued by the Company or other companies comprising American International Group Companies. These policies may provide coverage for:

- Claims arising from the same or related wrongful acts,

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- For which persons or organizations covered in those policies are jointly and severally liable.

In such a case, the Company will not be liable under this policy for an amount greater than:

- The proportion of the loss that this policy's applicable limit of coverage bears to the total applicable limits of coverage under all such policies.

In addition, the total amount payable under all such policies is the highest applicable limit of coverage among all such policies.

The Company shall not be obligated to pay any judgments or settlements or to undertake or continue the defence of any claim after the applicable Limit of Liability has been exhausted by payment of judgments, settlements or defence expenses.

VI. RETENTION

The Company will only pay for loss in excess of the Retention stated in Item 4 of the Schedule. The insured's payment of the Retention is a condition precedent to the Company's obligation to pay any defence expense or loss. All claims arising out of the same wrongful act or continuous or related wrongful acts shall be subject to one Retention.

VII. OTHER PROVISIONS AFFECTING COVERAGE**A. NOTICE PROVISION:**

- It is a condition precedent to the liability of the Company hereunder that the insured shall give the Company written notice as soon as is reasonably practicable and in any event within 21 days of:
 - any claim made against any insured during the policy period or Extended Reporting Period;
 - any circumstances occurring during the policy period which might reasonably be expected to give rise to a claim.
- The insured may give written notice by facsimile transmission or by hand, but if notice is given by such means then this must be confirmed by registered post and, subject to the insured providing proof if requested to do so by Company, the date of posting shall be deemed to be the date upon which such notice was given. Written notice is to be given to the following address:

**The Claims Department
Cholamandalam General Insurance Company Ltd.**

- Upon written notice having been given under (a) and (b) above, any claim which is notified under (a)(1) above and any subsequent claim arising out of circumstances notified under (a)(2) above shall in each case be deemed to have been made during the policy period.
- In the event of notification under either (a)(1) or (a)(2) above, the insured shall disclose to the Company all relevant information and documentation and, in addition, shall provide assistance to the Company to enable the Company or their agents to investigate any claim and/or to enable the Company to determine their liability under this policy. Specifically in the case of a notification under (a)(2) above, the insured shall additionally give reasons for the anticipation of a claim(s), in each case with full particulars including the circumstances, dates and persons involved.

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B. REPORTED ACTS

Notice of suspected wrongful act(s) which might give rise to a claim must include:

1. How, when and where the wrongful act took place;
2. Names and addresses of any witnesses;
3. Nature and location of any injury or damage.
4. Potential claim amount.
5. Date when the insured first became aware of this potential loss

send the Company copies of all demands, suit papers or other legal documents the insured receives, as soon as possible.

The Company will cover claims first made against the insured after the policy period, but only if:

- The insured reasonably believes a wrongful act has taken place and claim might be made, and
- The insured reports the suspected wrongful act to the Company or the Company's authorised agent, in writing, during the policy period.

C. POLICY TERRITORY AND CLAIMS-MADE PROVISIONS

This policy applies to wrongful acts occurring in India subject to the terms, conditions and exclusions of the policy and provided that:

- a. the claim is brought in India; and
- b. the claim for such wrongful act is first made against the insured during the policy period or any applicable discovery period; and
- c. the claim is reported in writing to the Company during the policy period or any applicable extended reporting period; and
- d. the claim alleges a wrongful act that occurred on or after the retroactive date and the insured did not know or could not have reasonably foreseen, prior to the retroactive date, that such a wrongful act could lead to a claim against the insured; and
- e. the same wrongful act or continuous, repeated or related wrongful acts were not contained in any claim which has been reported, and such wrongful acts were not the subject of notice, to an insurer under any policy of which this policy is a renewal, replacement or which it may succeed in time.

For the avoidance of doubt, this policy will not respond to the actual or attempted enforcement against the insured within India of a judgment or award or any other order obtained outside of India whether or not such judgment or award or any other order is subsequently deemed enforceable by a Court within India. It is acknowledged and agreed by the insured that the premium for this policy has been calculated accordingly and no consideration has been paid in respect of liabilities arising under any other law or the jurisdiction of any other Courts.

D. EXTENDED REPORTING PERIOD

If the Company cancels or does not renew this policy, the insured has the right to a period of 30 days following the effective date of cancellation to report to the Company any claim made against the insured during that 30 day period. That claim must be for a wrongful act after the retroactive date and before the end of the policy period.

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After the end of that 30 day extended reporting period, the insured has the right, upon payment of an additional premium of 65% of the full policy premium, to buy a twelve (12) month Extended Reporting Period Endorsement. The endorsement applies only to covered claims arising from a wrongful act after the retroactive date and before the end of the policy period. The claim must first be made against insured and reported to the Company in writing during the twelve (12) month period after the end of the 30 day extended reporting period.

To obtain this reporting endorsement the insured must request it in writing and pay the additional premium during the 30 day extended reporting period after the policy ends. If the insured does so, the Company cannot cancel the Extended Reporting Period Endorsement, but all of the other terms, conditions and exclusions of this policy (save for this clause) shall remain in force. If the Company does not receive the written request and payment as required, the insured may not exercise this right to obtain an Extended Reporting Period Endorsement at a later date. If the insured cancels the endorsement, there will be no return of premium.

Any change in premium or terms from this policy shall not be considered a refusal of the Company to renew.

The provision of an extended reporting period does not increase the aggregate limit of coverage described in the Limits of Liability section of this policy.

E. INSURED'S ASSISTANCE AND CO-OPERATION

It is a condition precedent to Company's liability that:

- (a) The Company shall have the right and the duty to conduct, in the name of and with the co-operation of the insured and whether directly or through the Company's agents, the investigation, defence or settlement of any claim and to represent the insured in any legal or other forum in respect of that claim. Any amount incurred by or on behalf of the Company on behalf of the insured shall form part of the defence expenses.
- (b) The insured does not incur any defence expenses, admit liability for or attempt to settle, make any admission, offer any payment or otherwise assume any contractual obligation with respect to any claim without the Company's prior written consent, such consent not to be unreasonably withheld. The Company shall not be liable for any defence expenses, settlement, admission, offer, payment, or assumed obligation to which they have not previously consented in writing.
- (c) The insured shall use due diligence and ensure that all reasonable and practicable steps are taken to avoid or diminish any liability which may give rise to or has given rise to a claim.

The Company will not settle any claim without the insured's consent, but if the insured refuses to consent to any settlement or compromise recommended by the Company or its agents and acceptable to the claimant and elects by its conduct or otherwise to contest the claim then the Company's liability shall not exceed the amount for which the Company would have been liable if the claim had been so settled or compromised when and as so recommended, and the Company shall have the right to withdraw from the claim by tendering control of it to the insured.

The Company shall not be obliged to make any payments under this policy or to undertake or continue with the defence or settlement of any claim once the Company's Limits of Liability have been exhausted by the making of any earlier payments in respect of damages or defence expenses, and in such a case the Company shall have the right to withdraw from the claim by tendering control of it to the insured.

F. OTHER INSURANCE

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Coverage for loss under this policy shall apply only in excess of any other coverage which may apply. This clause will apply whether that other coverage is insurance, self-insurance, or indemnification or similar agreement, or whether such other coverage is stated to be primary, pro rata, contributory, excess, contingent or otherwise.

G. RECOVERING DAMAGES FORM A THIRD PARTY

In the event of any payment under this policy, the Company shall be subrogated to all of the insured's rights of recovery to the extent of such payments against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights and ensure that nothing is done to prejudice such rights and provide the Company with whatever reasonable co-operation and assistance they might require.

However, it is specifically agreed that the Company will not exercise its rights of subrogation against an employee of the insured unless the aforesaid payment has been caused by or contributed to in any way by the fraud or dishonesty of any such employee.

In the event of any recovery being made, it is specifically understood that the recovered funds shall be applied in the following order:

- (a) Company shall be reimbursed to the extent of any payment they have made under this policy.
- (b) Company shall be reimbursed the actual costs and expenses they have incurred in pursuing the recovery.
- (c) The insured shall be entitled to reimbursement in respect of its losses only after the payment of (a) and (b) and only to the extent of any recovered funds that might remain.

H. POLICY CHANGES

This policy contains all the agreements between the insured and the Company concerning this insurance. The first named insured in the Declarations is authorised to make changes in this policy with the Company's consent. This policy can only be changed by a written endorsement that the Company issues and makes a part of this policy.

I. ASSIGNMENT

The interest hereunder of any insured is not assignable. If the insured shall die or be adjudged incompetent, this policy shall cover the insured's legal representative as the insured with respect to liability previously incurred and covered by this policy.

J. SPECIAL RIGHTS AND DUTIES OF THE FIRST NAMED INSURED

The insured agrees that when there is more than one person or organization covered under this policy, the first named insured in the Declaration shall act on behalf of all of the insureds as to:

- giving and receiving notice of cancellation;
- payment of premiums and receipt of return premiums;
- acceptance of any endorsements to this policy.

K. FRAUDULENT DECLARATIONS OR CLAIMS

The insured agrees that this policy is issued in reliance upon the truth of those representations. This policy includes all of the agreements between the insured and the Company concerning this insurance.

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If the insured shall make any claim for indemnity knowing the same to be false or fraudulent, as regards amount or otherwise, this policy shall be voidable at the option of the Company and if Company elects to avoid then the policy shall be avoided in its entirety and be of no effect whatsoever and all claims for indemnity hereunder shall be forfeited.

L. ENTIRE CONTRACT

By acceptance of this policy the insured agrees that the statements in the proposal are their statements and representations, that this policy is issued in reliance upon the truth of such statements and representations and that this policy embodies all agreements existing between the insured and the Company or any of its agents relating to this insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms of this policy nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

M. CANCELLATION

- a) The Company may cancel this policy by giving 30 days written notice of such cancellation to the last known address of the insured and in such event the Company will return a pro-rata portion of the premium for the unexpired policy period.
- b) This policy may also be cancelled by the insured by giving 30 days written notice to the Company in which event the Company will retain premium at the customary short period scale, provided that there has been no claim under the policy during the policy period in which case no refund of premium shall be allowed.
- c) The payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

N. DUE OBSERVANCE

The due observance of and compliance with the terms, provisions, warranties and conditions of this policy insofar as they relate to anything to be done or complied with by the insured shall be a condition precedent to any liability of the Company.

O. INNOCENT NON-DISCLOSURE

In the event of the Company being entitled to avoid this policy ab initio, the Company may at their sole election instead give notice in writing to the insured that they regard this policy as of full force and effect save that there shall be excluded from any insurance afforded hereunder any claim which has arisen or which may arise and which is related to the circumstances which entitle the Company to avoid this policy. This policy shall then continue in full force and effect but shall be deemed to exclude the particular claim referred to in the said notice (as if the same had been specifically endorsed ab initio).

P. ARBITRATION

The parties to the contract may mutually agree and enter into a separate Arbitration Agreement to settle any and all disputes in relation to this policy. Arbitration shall be conducted under and in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

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GRIEVANCES

If You have a grievance about any matter relating to the Policy, or Our decision on any matter, or the claim, You can address Your grievance as follows:

1. OUR GRIEVANCE REDRESSAL OFFICER

You can send Your grievance in writing by post or email to Our Grievance Redressal Officer at the following address:

In case of any grievance the insured person may contact the company through

Website : www.cholainsurance.com

Toll free : 1800 208 9100

E-Mail : customercare@cholams.murugappa.com

Fax : 044 -4044 5550

Courier : Cholamandalam MS General Insurance Company Limited,
Customer services, Head

Office Dare House 2nd floor, No 2 N.S.C. Bose Road, Chennai 600 001

Insured person may also approach the grievance cell at any of the company's branches with the details of grievance. If insured person is not satisfied with the redressal of grievance through one of the above methods, insured person may contact the grievance officer at GRO@cholams.murugappa.com

For details of grievance officer, kindly refer the link www.cholainsurance.com

If any Grievances / issues on Health insurance related claims pertaining to Senior Citizens, Insured can register the complaint / grievance in 'Senior Citizen Channel' which shall be processed on Fast Track Basis by dedicated personnel.

If Insured Person is not satisfied with the redressal of grievance through above methods, the insured person may also approach the office of Insurance Ombudsman of the respective area/region for redressal of grievance as per Insurance Ombudsman Rules 2017.

Grievance may also be lodged at IRDAI Integrated Grievance Management system <https://igms.irda.gov.in/>

2. CONSUMER AFFAIRS DEPARTMENT OF IRDAI

a. In case it is not resolved within 15 days or if You are unhappy with the resolution You can approach the Grievance Redressal Cell of the Consumer Affairs Department of IRDAI by calling Toll Free Number 155255 (or) 1800 4254 732 or sending an email to complaints@irdai.gov.in. You can also make use of IRDAI's online portal - Integrated Grievance Management System (IGMS) by registering Your complaint at igms.irda.gov.in.

b. You can send a letter to IRDAI with Your complaint on a Complaint Registration Form available by clicking here. You must fill and send the Complaint Registration Form along with any documents by post or courier to General Manager, Insurance Regulatory and Development Authority of India (IRDAI), Consumer Affairs Department- Grievance Redressal Cell, Sy.No.115/1, Financial District, Nanakramguda, Gachibowli, Hyderabad-500032.

c. You can visit the portal <http://www.policyholder.gov.in> for more details.

3. INSURANCE OMBUDSMAN

You can also approach the Insurance Ombudsman, depending on the nature of grievance and the financial implication, if any. Information about Insurance Ombudsmen, their jurisdiction and powers is available on the website of the Insurance Regulatory and Development Authority of India (IRDAI) at www.irdai.gov.in, or of the General Insurance Council at www.generalinsurancecouncil.org.in, the Consumer Education Website of the IRDAI at <http://www.policyholder.gov.in>, or from any of Our Offices.

Please find below the latest/updated link of the Ombudsman offices

<https://www.cioins.co.in/Ombudsman>

INFORMATION ABOUT US

Cholamandalam MS General Insurance company Limited

HO: Dare House 2nd Floor, No. 2 NSC Bose Road, Chennai – 600 001.

Toll Free : 1800 208 9100

Cholamandalam MS General Insurance Company Ltd. Reg office: 2nd Floor, "Dare House", No.2, NSC Bose Road, Chennai - 600001, India. IRDAI Registration Number: 123|CIN: U66030TN2001PLC047977| Toll Free Number: 1800 208 9100 | SMS Chola to 56677| Customercare@cholams.murugappa.com| www.cholainsurance.com.

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SMS: "CHOLA" TO 56677 *(Premium SMS charges apply)

Email –customercare@cholams.murugappa.com

Web site: www.cholainsurance.com