



**Errors and Omissions (Technology) Insurance
Policy**

OUR PROMISE TO YOU

This is a claims made and notified policy. This means that, subject to its other provisions, the policy only covers claims first made against **you** first arising in the policy period and which are also notified to **us** in writing in that period.

Our promise is to indemnify **you** where:

1. a problem arises which falls within **WHAT HAS TO GO WRONG**; and
2. **you** first become aware of this problem and tell **us** about it in accordance with **WHAT YOU MUST NOTIFY AND WHEN**; and
3. neither the claim nor its consequences are excluded in **WHAT WE WILL NOT PAY**; and
4. the problem's financial consequences are covered by **WHAT WE WILL PAY AND HOW MUCH** and are within the **policy limit** set out in the **schedule** and subject to the provisions of **WHAT WE WILL PAY AND HOW MUCH**; and what we will pay
5. **you** have paid the **excess** and have complied with the requirements set out in **YOUR OBLIGATIONS TO US** and otherwise, all of which are conditions precedent to **our** liability to make payment.

Please read the entire policy carefully so that **you** understand **your** rights and duties and what is and is not covered.

WHAT HAS TO GO WRONG

The performance of **your business activities** for a client results in a claim against **you** for financial compensation, including an injunction or restraining order, during the **policy period** due to any:

- a. unintentional breach of a written contract with a client to design, produce or supply **deliverables** due to:
 - i. the **deliverables** not conforming in all material respects with any written specification that forms part of the relevant contract and where it is an express term of the contract that the **deliverables** must comply with that specification;
 - ii. the **deliverables** containing a material defect;
 - iii. the **deliverables** failing to meet any implied statutory term concerning necessary quality, safety or fitness;
- b. negligent act, negligent error, negligent omission, negligent misstatement, negligent misrepresentation or breach of an express or implied contractual duty to use reasonable care and skill;
- c. infringement of intellectual property rights (but not any patent or trade secret) including copyright, trademark, trade dress or moral rights or an act of passing-off;
- d. breach of confidence or infringement of any right to privacy, misuse of any information which is either confidential or subject to statutory restrictions on its use;
- e. Defamation;
- f. civil liability but not any liability for breach of contract beyond that specifically set out above.

WHAT YOU MUST NOTIFY AND WHEN

You must give us written notice during the policy period of:

- a. **your first awareness of a problem arising out of your technology business activities** which is likely to lead to a claim or threatened claim against **you**.

If **we** accept **your** notification, this does not alter **your** obligation to take reasonable steps to correct any problem but **we** will regard any subsequent claim as notified to this policy.

- b. Any actual claim or threatened claim against **you**.

We will not indemnify you under this policy unless you notify us as soon as practicable in the policy period, or at the latest 60 days after the policy period for a claim you first become aware of in the last 60 days of the policy period.

WHAT YOU MUST NOTIFY AND WHEN

We have the right but not the obligation to take control of and conduct in **your** name, the investigation, settlement or defence of any claim and to take control on any occasion when **your** client refuses to pay **your** contractually agreed fees. If **we** think it necessary **we** will appoint a lawyer, adjuster or other appropriate person to deal with the claim. Proceedings will only be defended if there is a reasonable prospect of success and taking into account the commercial considerations of the cost of defence.

WHAT WE WILL PAY AND HOW MUCH

Paying your outstanding fees

Subject to the **policy limit** and **your** payment of the **excess**, **we** will pay the following:

If **your** client brings or threatens to bring a claim against **you** covered by a. to f. of WHAT HAS TO GO WRONG and **your** client refuses to pay **your** contractually agreed fees (including any amount **you** are legally liable to pay a sub-contractor at the date **your** client first refuses to pay) and **you** satisfy **us** that

- a. **you** do not have reasonable grounds legally to compel payment of the amount owed; and
- b. There is written evidence from **your** client that they intend to make a legitimate claim against **you** for an amount covered by this policy which is greater than the amount **you** are owed.

We will pay the amount **you** are owed (excluding any amount for lost profit, mark-up, any taxes, management costs or any lost business) after payment of the **excess**.

If subsequently a claim is still made against **you** following **our** payment of these outstanding fees and the claim is successful then these payments will be deducted from the **policy limit** for that claim.

Claims

For each claim against **you** covered by the terms of this policy, **we** will pay:

- a. The amount agreed by **you** and **us** through negotiation, mediation or some other form of alternative dispute resolution to settle **your** alleged liability for a claim or the amount **you** are held liable to pay, including claimant's costs, in court, arbitration or alternative dispute resolution proceedings. Any punitive, exemplary or multiple damages will be included in the **policy limit** if the law where the claim is brought and the law under which **we** make payment of the claim allows **us** to pay them.
- b. all reasonable and necessary costs, incurred with **our** prior consent, of investigating, settling and defending each claim, including costs associated with defending a claim for an injunction or restraining order. This does not include **your** management, administration or other overhead costs. If a payment for a claim is greater than the **policy limit** then **our** liability for costs will be limited to the same proportion that the limit bears to the payment made unless there is no additional limit for costs.

This policy covers Insured events occurring anywhere in the world, but, **our** liability to make any payment under this policy is restricted to making payment within India and in Indian Rupees

WHAT WE WILL PAY AND HOW MUCH

We will not make any payment for any claim nor will we pay any defence or investigation costs for any claim or part of a claim which is not covered by this policy. If, following your and our best efforts it is not possible to agree on the fair and proper allocation of the covered and non-covered portions of any claim and its costs, the matter will be referred to arbitration in accordance with the provisions of this policy. If we make any payment to which you are not entitled, then you will repay us in full on demand and you further agree that we may set off such sums from any amounts due you.

Subrogation

If there is a third party from whom you could recover all or part of a loss, then you must do everything needed to make sure that right of recovery is protected and pursued. You must do this at your own cost and expense, and may have to do this before we have made payment under this policy. You must not settle or compromise any right of recovery without our prior written consent. We are allowed to reduce the amount of any recovery against any payment due to you. If we make a payment under this policy, your right of recovery will belong to us and you will assist us in enforcing that right. If you have unduly restricted or financially limited our rights of recovery (including against a sub-contractor) by a specific term or otherwise (including in a sub-contract with a sub-contractor), then our payment to you will be reduced proportionately and may be extinguished altogether.

OUR MAXIMUM PAYMENT

The schedule sets out the amount of policy limit and excess which apply to this policy and also the basis upon which that policy limit and excess apply. The policy limit is our maximum liability for all claims made during the policy period regardless of the number or amount or types of claims made or the number of years you have been insured by us. Any payments made by us will reduce the policy limit including when your client refuses to pay your contractually agreed fees.

At any stage, we can pay you the policy limit or what remains after any earlier payment. We will then have no further liability to you under this policy, including for defence costs.

EXCESS

You must pay the excess which applies to each claim or loss as shown in the schedule. We will only pay you after you have fully paid the excess.

RELATED CLAIMS

All claims against you (including all problems likely to give rise to a claim) which arise from:

- a) the same original cause, a single source or a repeated or continuing problem in your work; or
- b) a single or continuing investigation or a common set of facts or state of affairs in relation to a defamatory statement;

will be treated as a single claim and you will pay a single excess and we will only pay a maximum of a single policy limit for all these claims and all defence costs. All of the notifications which are related will be considered as having been made on the date of the first notification.

WHAT WE WILL NOT PAY

This policy does not respond to every conceivable claim or loss and so we will not make any payment for any claim or part of a claim or loss including any costs or expenses which would otherwise be covered by this policy, directly or indirectly arising from, or due to:

1. the failure or interruption of the service provided by an internet service provider or any telecommunications or other utility provider except when **you** provide those services.
2. **your** own loss of revenue or profit, or any future or anticipated loss of revenue or profit, including the loss of any account of **yours** or failure to obtain any account.
3. the use or provision of any gaming, gambling or lotteries.
4. any actual or alleged infringement of any patent.
5. any wrongful appropriation, use or disclosure of trade secrets.
6. **your** insolvency.
7. Any financial advice **you** give or the arrangement of any financing or credit.
8. non-payment, part-payment, late payment, the unauthorised or fraudulent use or misuse of any credit, debit, charge or store card. This does not apply to a claim for breach of a right to privacy or confidentiality where a **hacker** has caused **you** to unintentionally infringe a third party's right to privacy.
9. the breach or alleged breach of any unfair competition, unfair, restrictive or deceptive trade practices, restraint of trade or anti-trust legislation or regulation.
10. the breach or alleged breach or enforcement of regulatory or governmental provision, including any provisions of Federal Trade Commission, the Federal Communications Commission or any national, state or local government, agency, authority, body or entity.
11. the sale or purchase of or dealing in any stocks, shares or other securities or the misuse of any information relating to them including breach or alleged breach of any relevant legislation or regulation, including but not limited to the Securities and Exchange Board of India Act 1992, rules, regulations, notification and orders issued thereunder and the Securities Contracts (Regulation) Act 1956, the U.S. Securities Act of 1933 and Securities and Exchange Act of 1934 both as amended.
12. any breach or alleged breach of the Racketeer Influenced and Corrupt Organisations Act 18 USC Sections 1961 et seq, any amendments to this Act or any rules or regulations made under it.
13. a breach or alleged breach of any taxation legislation or of any rules or regulations issued thereunder.
14. any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.
15. death or any bodily injury or mental injury or disease suffered or alleged to be suffered by anyone unless directly arising from designs, plans, specifications, formulae, directions or advice prepared or given by **you** for a fee.
16. death or any bodily or mental injury or disease suffered or alleged to be suffered by anyone in the **USA/Canada**. However, if this policy covers claims first brought in the **USA/Canada** then this will not apply to claims for mental anguish or distress if

alleged in conjunction with a claim for defamation or breach of privacy.

17. the loss, damage or destruction or loss of use of any tangible property unless directly arising from designs, plans, specifications, formulae, directions or advice prepared or given by **you** for a fee.
18. The loss, damage or destruction of or loss of use of any tangible property in the **USA or Canada**.
19. The operation or administration of any health, pension or employee benefit scheme, plan, trust or fund including breach or alleged breach of any relevant legislation or regulation including but not limited to the Employees Provident Fund and Miscellaneous Provisions Act 1952, the Workmen's Compensation Act 1923, the Employees State Insurance Act 1948, the Payment of Gratuity Act 1972 and U.S. Employment Retirement Income Security Act of 1974.
20. any breach or alleged breach of any duty, obligation or liability owed by **you** as an employer to any employee, prospective employee or ex-employee, including any kind of discrimination or harassment.
21. any statement, representation (express or implied) or information either contained in **your** accounts, reports or financial statements, or concerning **your** financial viability.
22. any personal liability incurred by a director or officer of **yours** when acting in that capacity or managing **your** business.
23. the ownership, possession or use of any land or building, any animal, any aircraft, watercraft or any motor vehicle
24. any claim or loss recoverable under any other insurance unless in excess of the limit of that insurance.
25. any claim brought by an insured within the definition of **you** or any employee of **yours** or any party with ownership, executive or managerial interest in **you**, including any parent company or any party in which **you** have an ownership, executive or managerial interest, including any subsidiary or any entity that you control or controls you, whether alone or with another and whether in whole or in part. This does not apply to a claim based on a liability to an independent third party which is brought against **you** via a subsidiary or parent company or any entity that **you** control or controls **you**, whether alone or with another and whether in whole or in part.
26. any claims brought by any past employee, freelancer, partner, director, agent, manager or officer of **yours**. However, this will not apply if the claim arises out of or relates to material or services supplied during a time when such persons did not work for **you**
27. **your** act, breach, error or omission or infringement which is alleged to be fraudulent, criminal, malicious or grossly negligent or which **you** deliberately or dishonestly or recklessly commit, condone or deliberately ignore in disregard of the consequences; or any intentional or knowing or reckless violation of the applicable law, or gaining of any profit or advantage to which **you** are not legally entitled; however, **we** will pay defence costs for claims alleging such conduct, if in the absence of those allegations there is a claim covered by this policy, until there is a judgment, final adjudication, adverse admission or finding of fact by a judge, or arbitration against **you** as to such conduct in any proceeding, including a criminal proceeding in which **you** plead no contest, or a proceeding between **you** and **us** regarding coverage, at which time **you** shall reimburse **us** for all costs and expenses paid in defence of the claim.

28. any allegation of collusion, conspiracy, extortion or threatened violence by the claimant.
29. fines or contractual penalties.
30. any claim or loss or problem which is likely to lead to a claim or loss which **you** knew about, or ought reasonably to have known about, before **we** agreed to insure **you**.
31. any claim, including any arbitration proceedings, brought outside the countries set out in the Schedule under Applicable Courts unless you have worldwide cover. This includes proceedings in the Applicable Courts which are based on a judgement or award from outside the Applicable Courts.
32. any sort of nuclear reaction, nuclear radiation or radioactive contamination.
33. any armed struggle, civil unrest or conflict or any nationalization, confiscation, requisition, expropriation, appropriation, seizure or destruction of property by or under the order of any government or public or local authority.
34. any act or threatened act of terrorism, including but not limited to the use of force or violence, of any person(s) or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
35.
 - a) the mining, processing, manufacturing, use, testing, ownership, sale or removal of asbestos, asbestos fibres or material containing asbestos; or
 - b) Exposure to asbestos, asbestos fibres or materials containing asbestos; or
 - c) the provision of instructions, recommendations, notices, warnings supervision or advice given, or which should have been given, in connection with asbestos, asbestos fibres or structures or materials containing asbestos.
36. any virus, worm, logic bomb or Trojan horse which indiscriminately replicates itself and is automatically disseminated on a global or national scale or to an identifiable class or sector of users unless created by a **hacker**.
37. any failure by any equipment (including any hardware, firmware or software) to correctly recognise any given date or to process any data or to operate properly due to any failure to correctly recognise any given date.
38. any defect in any **deliverables** which is solely the responsibility of the supplier, manufacturer or originator other than **you**.

This exclusion does not apply to any amount **you** satisfy **us** that **you** are legally able to recover under a written contract with a third party.
39. **your** failure to take reasonable steps to remedy or rectify, at **your** expense, any defect or failure in the **deliverables** or services **you** have supplied to a client arising (i) prior to **your** client's acceptance of the **deliverables** or (ii) within 180 days of acceptance or any longer period specified in any contract with **your** client, including a maintenance contract. **You** must, therefore, ensure that **you** can correct any such defect by having the relevant versions of the source code, if available to **you**, or by keeping back-up copies of relevant software or data.
40. any products or services **you** provide causing any damage to or having a material adverse effect on any set top box'



41. Any business activity performed or any dishonesty committed before the retrodate.

YOUR OBLIGATIONS TO US

It is important that **you** understand **you** have a number of obligations to **us** which arise before **we** agree to insure **you**. **You** also have a number of obligations to **us** during the **policy period**; when performing **your** business activities; and if a problem arises, each of which is a condition precedent to **our** liability to make payment.

BEFORE WE AGREE TO INSURE YOU

The information given to **us** before **we** agree to insure **you** must be complete, accurate and not misleading. Because of its importance, the proposal and all other information, written, verbal or otherwise which **you**, or anyone on **your** behalf, provide are incorporated into and form the basis of this policy.

All facts and matters material to **our** consideration of **your** proposal must be disclosed. Otherwise **we** are entitled to treat this policy as if it had never existed.

DURING THE POLICY PERIOD

Mergers or change in ownership

You must tell **us** promptly if **you** materially change **your** business activities, take over, undertake or propose to undertake any merger with another business or a third party or if any party acquires **your** business or control of **your** business. **We** will only provide cover under this policy for such a change if **we** have given **our** written approval and **you** have paid any additional premium.

Payment of the premium

We will not make any payment under this policy unless **you** have paid the premium by the agreed date.

WHEN PERFORMING YOUR BUSINESS ACTIVITIES

We will not make any payment which is otherwise covered by this policy which directly arises from:

Entering into onerous contracts

any failure to take reasonable steps before entering into a contract, or extending the scope of an existing contract, to ensure that either **you** could provide the required level and quality of **deliverables** or services for the quoted price using the resources available to **you** or the contract was capable of being performed in accordance with all its terms and any representations made by **you** or on **your** behalf.

Onerous contractual terms

your agreement in **your** contract either to use more than reasonable care and skill or to provide something more than reasonably fit for its intended purpose or to have a greater financial responsibility for any claim covered by this policy than would otherwise be the case at law. This does not apply to intellectual property claims where an indemnity is given in **your** contract with a client for **your** software infringing the intellectual property rights of another.

Consequential losses

any liability **you** have for loss of turnover, sales, revenue or profits, or for indirect, consequential or special loss where **you** have failed to limit these in **your** contract with a client where it was reasonable for **you** to have done so.

Back ups

your failure to take reasonable steps to make back-up copies of any file, data, program or web pages at regular intervals which are kept off-site.

IF A PROBLEM ARISES

Notification

You must notify **us** in accordance with the provisions set out in **WHAT YOU MUST NOTIFY AND WHEN**.

Your dealings with others

We will not make any payment under this policy if **you**, when dealing with **your** client or a third party, admit that **you** are liable for what has happened or propose or agree a figure in settlement, unless **you** have **our** prior written consent. **You** must also not reveal the amount of cover available under this insurance, unless **you** had to give these details in negotiating a contract with **your** client or have **our** prior written consent.

Providing us with information and assistance

You must provide **us** with full and accurate information about any claim or problem likely to give rise to a claim or any loss or problem likely to give rise to a loss or other matter which **you** have notified under this policy. If **you**, or anyone on **your** behalf, tries to deceive **us** by deliberately giving **us** false, incomplete or misleading information then this policy will be treated as if it had never existed.

If **we** have accepted notice of any claim or problem likely to give rise to a claim or any loss or problem likely to give rise to a loss or other matter **you** have notified, then **you** must at **your** expense give **us**, or anyone appointed by **us**, all the assistance and information which **we** reasonably require, and **you** must do anything which **we** reasonably request to avoid, minimize, settle or defend any claim or loss. This includes **you** following any legal advice **we** obtain (including any advice to settle a claim) and **you** paying the **excess** when requested by **us**

We will not make any payment under this policy unless **you** comply with these obligations.

GENERAL MATTERS

DEFINITIONS

Phrases and words which appear in bold in this policy have the meaning which is given to them in the **schedule** or as defined below. Any headings are given for ease of identification only. The following words have a special meaning:

We/us/our	The Iffco Tokio General Insurance Company at 4th & 5th Floors, Plot No. 3, Sector 29, Gurgaon, 122001 India
You/your	The Insured in the schedule which includes any person who was, is or, during the policy period , becomes your partner or director or senior manager in actual control of your operations.
Hacker	Anyone, including an employee of yours , who specifically and maliciously targets you and gains unauthorized access to your website, intranet, network, computer system or data you hold electronically via the internet or other external electronic link, solely by circumventing electronically the security systems in place to protect against such unauthorized access. A hacker does not include: a) Any director or partner of yours ; b) anyone who gains unauthorized access directly from within either any computer, computer system or network of yours . This does not apply to an employee of yours .
Deliverables	Any software, hardware, firmware, and associated network cabling.
Business Activity	The business specified in the schedule

CHOICE OF LAW

This policy, including its construction, application and validity, is governed by the laws of India.

GENERAL MATTERS

ARBITRATION

- a) Any dispute or difference between the parties arising out of or in respect of this policy shall be referred to a sole arbitrator or, in the case of disagreement as to the identity of the sole arbitrator, to 3 arbitrators, one each to be appointed by **you** and **us** and the third arbitrator to be nominated by the two arbitrators so appointed. The Arbitration proceedings shall be governed by the Arbitration and Conciliation Act 1996.
- b) The seat of the arbitration shall be India and the arbitration proceedings shall be in the English language.
- c) The tribunal shall decide the costs of the arbitration proceedings. It is a condition precedent to any right of action or suit upon this policy that an arbitral award shall be first obtained.
- d) If this arbitration clause is held to be invalid in whole or in part, then all disputes shall be referred to the exclusive jurisdiction of the Indian Courts.

You and **we** are the only parties to this policy. No other person has any rights to enforce any term of this policy but this does not affect any right or remedy of a third party which exists under any applicable law in force.

CANCELLATION

The policy will be cancelled if **you** or **we** give the other 60 days' written notice.

We will return a pro-rata amount of premium unless **we** have accepted any notification of any claim or loss before the cancellation takes effect.