

I am against this citywide WiFi program. You should not do it. Swiss reinsurance put out an industry report classifying the microwaves from wireless transmitters as a high risk agent. With your citywide WiFi-citylinkla program you are covering this city with a high risk agent. You are risking our health. What do you think Swiss reinsurance and the insurance companies that will not insure against wireless health effects know that you do not know. I have submitted the swiss reinsurance report for you to look at yourself and an industry expert report that states that our city the lessee will be liable not the wireless companies when people sue because this wireless radiation is making them very sick. You are opening this city up for tremendous liability. You could be sued for the harm you are allowing now that you know what this wireless radiation does to people. This is a great injustice the lies the industry is telling and the innocent people who are being harmed. Please do not do this citywide WiFi program it and these other wireless programs are a big mistake.



# A&E

## INSURANCE FOR ARCHITECTS & ENGINEERS

### ProSurance™ A&E

### Policy Document

### Contents

Preamble	1
Insuring Clauses	1
How Much We Will Pay	3
Your Deductible	3
Definitions	3
Exclusions	6
General Conditions	8
Statutory Conditions	10
Privacy Notice	12
Ontario Commercial Liability Notice	12
Complaints Procedure	12
Subscription Notice	13



CFC Underwriting Limited  
85 Gracechurch Street  
London EC3V 0AA  
United Kingdom  
T: +44 (0) 207 220 8500  
F: +44 (0) 207 220 8501  
E: [enquiries@cfcunderwriting.com](mailto:enquiries@cfcunderwriting.com)  
W: [www.cfcunderwriting.com](http://www.cfcunderwriting.com)

## PREAMBLE

This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide, subject always to **our** receipt of the Premium. This Policy consists of and must be read together with the Declarations and any Endorsements. This Policy is not complete unless it is signed and a Declarations page is attached.

The Sections of this policy are identified by **BLUE LINES** across the page with **WHITE UPPER CASE PRINT**. Clause headings in blue **UPPER CASE PRINT** are for information only and do not form part of the cover given by this Policy. Other terms in **bold lower case print** are defined terms and have a special meaning as set forth in the **DEFINITIONS** section and elsewhere. Words stated in the singular shall include the plural and vice versa. However, this protocol does not apply to the **STATUTORY CONDITIONS** and subsequent Sections.

**IMPORTANT: INSURING CLAUSES 1 and 2** provide cover on a claims made basis. Under these **INSURING CLAUSES** a **claim** must be first made against the company named as the Insured in the Declarations or any **subsidiary** during the **period of the policy** and notified to **us** during the **period of the policy** to be covered.

In consideration of the Premium and in reliance upon the information that **you** have provided to **us** prior to commencement of this insurance and which is deemed to form the basis of this insurance:

## INSURING CLAUSES

### INSURING CLAUSE 1: ERRORS & OMISSIONS

#### SECTION A: PROFESSIONAL LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' **costs and expenses**) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of any:

- negligent act, error or omission, negligent misstatement or negligent misrepresentation;
- breach of any contractual term implied by law concerning necessary quality, safety or fitness, or **your** duty to use reasonable care and skill;
- breach of warranty of authority, breach of duty, breach of trust, breach of confidence, misuse of information or breach of privacy;
- libel, slander or defamation;
- dishonesty of **your** directors, partners, officers or **employees** provided that **we** maintain all rights of subrogation to recover such legal **costs and expenses** from any director, partner, officer or **employee** if they are found guilty of such a dishonest act; or
- other act, error or omission giving rise to civil liability to **your** clients but not any breach of contract save as specified above;

committed by **you** or on **your** behalf in the course of **your business activities**. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION B: BREACH OF CONTRACT

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' **costs and expenses**) as a result of any **claim** by a **client** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of any **breach of client contract**. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION C: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' **costs and expenses**) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of **your** infringement of any **intellectual property right** in the course of **your business activities**. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION D: POLLUTION LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' **costs and expenses**) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of:

- pollution or contamination of the atmosphere, or of any water, land, buildings or other property;

- any enforcement action in connection with the containment, clean-up, removal or treatment of such pollution or contamination.

**We** will also pay **costs and expenses** on **your** behalf.

#### SECTION E: LOSS OF DOCUMENTS

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' **costs and expenses**) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of destruction of, damage to, loss or mislaying of **your documents** or **documents** in **your** care, custody or control. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION F: COMPUTER VIRUS AND HACKING ATTACK

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' **costs and expenses**) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** as a direct result of:

- any **third parties'** financial losses arising directly from a **hacking attack** or **virus** that has emanated from or passed through **your** computer systems, or
- any **third parties'** financial losses arising directly from their inability to access **your** computer systems in the way in which **you** have authorised them to as a direct result of **your** computer systems' failure or impairment due to a **hacking attack** or **virus**, or
- any **third parties'** financial losses arising directly from the loss or theft of **your** data or data for which **you** are responsible or held to be responsible arising directly from a **hacking attack** or **virus**.

**We** will also pay **costs and expenses** on **your** behalf.

#### SECTION G: LOSS MITIGATION

**We** agree to pay any reasonable costs necessarily incurred by **you** with **our** prior written consent in respect of measures taken by **you** for the sole purpose of avoiding or mitigating a **claim** or potential **claim** for which **you** would be entitled to indemnity under **INSURING CLAUSE 1** of this Policy had such measures not been taken.

#### SECTION H: PAYMENT OF WITHHELD FEES

**We** agree to pay **your withheld fees** with **our** prior written consent in the event that **your client** brings or threatens to bring a **claim** against **you** that would be covered under **INSURING CLAUSE 1**, **SECTIONS A** or **B** for an amount greater than **your withheld fees** if **you** attempt to recover the **withheld fees** from them. Prior to payment of **your withheld fees** **you** must obtain written confirmation from **your client** that they will not bring a **claim** against **you** if **you** agree not to pursue them for **your withheld fees** and provide it to **us**.

#### ALL SECTIONS

**We** will not make any payment on **your** behalf under any **SECTION** of

this **INSURING CLAUSE** in respect of any **claim** arising directly or indirectly out of **injury** or **damage**:

- a) from **products** or **workmanship**; or
- b) that did not occur directly as a result of **your business activities**.

### INSURING CLAUSE 2: EMPLOYEE BENEFITS LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' **costs and expenses**) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of any negligent act, error or omission committed by **you** or on **your** behalf in the **administration of your employee benefit program**. **We** will also pay **costs and expenses** on **your** behalf.

Furthermore, **we** agree to pay on **your** behalf any **costs and expenses** necessarily incurred with **our** prior written consent in respect of measures taken by **you** with the object of avoiding or mitigating a **claim** for which **you** would be entitled to indemnity hereunder had such measures not been taken.

### INSURING CLAUSE 3: THIRD PARTY LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' **costs and expenses**) as a result of any **claim** arising out of accidental **injury** or **damage** occurring during the **period of the policy** in the course of **your business activities**. **We** will also pay **costs and expenses** on **your** behalf.

However, **we** will not make any payment on **your** behalf under this **INSURING CLAUSE** in respect of any **claim**:

- a) which is covered under **INSURING CLAUSE 1**, or would be covered under **INSURING CLAUSE 1** but for the exhaustion of the **limit of liability** or **aggregate limit of liability** of **INSURING CLAUSE 1**;
- b) arising directly or indirectly out of any product.

### INSURING CLAUSE 4: PRODUCTS LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' **costs and expenses**) as a result of any **claim** arising out of accidental **injury** or **damage** occurring during the **period of the policy** in the course of **your business activities** in connection with any product. **We** will also pay **costs and expenses** on **your** behalf.

However, **we** will not make any payment on **your** behalf under this **INSURING CLAUSE** in respect of any **claim** which is covered under **INSURING CLAUSE 1**, or would be covered under **INSURING CLAUSE 1** but for the exhaustion of the **limit of liability** or **aggregate limit of liability** of **INSURING CLAUSE 1**.

### INSURING CLAUSE 5: TENANTS' LEGAL LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' **costs and expenses**) as a result of any **claim** arising out of accidental **damage** to premises leased to, hired by, on loan to or held in trust by **you** or otherwise in **your** care, custody or control occurring during the **period of the policy** in the course of **your business activities**. **We** will also pay **costs and expenses** on **your** behalf.

However, **we** will not make any payment on **your** behalf under this **INSURING CLAUSE** in respect of any **claim**:

- a) which is covered under **INSURING CLAUSE 1**, or would be covered under **INSURING CLAUSE 1** but for the exhaustion of the **limit of liability** or **aggregate limit of liability** of **INSURING CLAUSE 1**;
- b) arising directly or indirectly out of any product.

### INSURING CLAUSE 6: MEDICAL EXPENSES

**We** agree to pay **medical expenses** for **injury** caused by an accident occurring during the **period of the policy**:

- a) on premises **you** own or rent;
  - a) on ways next to premises **you** own or rent; or
  - b) because of **your business activities**;
- provided that:
- c) the injured person, at the time of the accident, is not entitled to benefits under any workers compensation or disability benefits law or similar law; and
  - d) the **medical expenses** are incurred and notified to **us** within one year of the date of the accident; and
  - e) the injured person submits to examination, at **our** expense, by physicians of **our** choice as often as **we** reasonably require.

**We** will make these payments regardless of fault.

### INSURING CLAUSE 7: COMMERCIAL PROPERTY

**We** agree to reimburse **you** up to the **amount insured** shown in the Declarations for:

- a) the cost of repairing **damage** occurring during the **period of the policy** to **your office** buildings, including landlord's fixtures and fittings, walls, gates and fences, yards, car parks and pavements, piping, ducting, cables, wires and associated control gear and accessories on the premises and extending to the public mains but only to the extent of **your** responsibility;
- b) **damage** occurring during the **period of the policy** to **contents of every description** contained in **your office**;
- c) **damage** occurring during the **period of the policy** to **contents of every description** kept at the home of **your** directors, officers, partners or **employees** in the course of **your business activities**;
- d) **damage** occurring during the **period of the policy** to **contents of every description** temporarily elsewhere, including while in transit;
- e) the necessary and reasonable costs **you** incur following **damage** occurring during the **period of the policy** to glass which belongs to **you** or for which **you** are legally responsible for:
  - i) temporary boarding up;
  - ii) repair of window frames or removal or replacement of fixtures and fittings in the course of replacing the glass;
  - iii) replacement lettering or other ornamental work and alarm foil on glass;
- f) **damage** occurring during the **period of the policy** to **money** held in the course of **your business activities**:
  - g) in the **office** during business hours, in transit or in a Bank Night Safe;
  - h) in the **office** outside business hours in a locked safe;
  - i) at the home of **your** directors, officers, partners or **employees**;
  - j) **damage** occurring during the **period of the policy** to the personal belongings of **your employees** or visitors to the **office** provided they are not covered under any other insurance;
- k) the reasonable cost of compiling the **documents**, books of account, drawings, card index systems or other records including film, tape, disc, drum, cell or other magnetic recording or storage media for electronic data processing that **you** need to continue **your business activities** if these items have been lost or distorted as a direct result of **damage** covered under this **INSURING CLAUSE**;
- l) the costs **you** incur to replace locks and keys necessary to maintain the security of **your office** or safes following theft of keys involving force and violence occurring during the **period of the policy**;
- m) the amount of any rent for the **office** which **you** are legally obliged to pay for any period during which the **office** or any part of it is unusable as a result of **damage** covered under this **INSURING CLAUSE**.

**We** also agree to pay:

- a) **costs and expenses** on **your** behalf;
- b) compensation as shown in the Declarations if any of **your** directors, officers, partners or **employees** who are aged between 16 and 70 on the Inception Date shown in the Declarations suffers an **injury** in the course of **your business activities** in a robbery or attempted robbery and suffers:
  - i) death, **permanent total disablement**, **loss of a limb** or **loss of sight** as a direct result of the **injury** within one year of the date of its occurrence;
  - ii) **temporary total disablement**. The compensation for **temporary total disablement** will be the amount shown in the Declarations per week, for a maximum of 104 weeks.

However, **we** will not pay compensation under more than one heading in the Declarations for the same **injury**.

### INSURING CLAUSE 8: BUSINESS INTERRUPTION

**We** agree to reimburse **you** up to the **amount insured** shown in the Declarations for **your loss of income**, extra expense, **loss of research and development expenditure**, **project delay costs** and **accounts receivable** resulting solely and directly from an interruption to **your business activities** caused by:

- a) **insured damage** to **your office** or **contents of every description** or to any other property used by **you** at **your office**;
- b) **insured damage** to property in the vicinity of **your office** which prevents or hinders **your** access to **your office**;
- c) **insured damage** at the premises of one of **your** suppliers, other than a supplier of water, gas, electricity or telephone services;



- d) failure in the supply of water, gas, electricity, or telephone services to **your office** for more than 24 consecutive hours caused by **insured damage** to any property;
- e) **your** inability to use **your office** due to restrictions imposed by a public authority following:
  - i) a murder or suicide;
  - ii) an occurrence of a notifiable human disease;
  - iii) **injury** traceable to food or drink consumed at **your office**;
  - iv) vermin or pests at **your office**.

## HOW MUCH WE WILL PAY

The maximum amount payable by **us** for all **claims, losses, damage, costs and expenses** and **medical expenses** shall not exceed the amounts shown in the Declarations in respect of each **INSURING CLAUSE** unless limited below.

However, solely with respect to any claims under this Policy that shall and must be governed by Quebec law on the scope of our liability, we agree to pay costs and expenses in addition to the Limits of Liability stated in the Declarations.

Where more than one **claim** or **loss** arises from the same original cause or single source or event all such **claims** or **losses** shall be deemed to be one **claim** or **loss** and only one **limit of liability** shall be payable in respect of the **aggregate** of all such **claims** or **losses**.

Where cover is provided under multiple **SECTIONS** of **INSURING CLAUSE I** only one Limit of Liability shall be payable in respect of that **claim**.

In respect of **INSURING CLAUSES I** to **5** we may at any time pay to **you** in connection with any **claim** the amount of the **aggregate limit of liability** or **limit of liability** (after deduction of any amounts already paid). Upon such payment being made we shall relinquish the conduct and control of and be under no further liability in connection with such **claim** except for the payment of **costs and expenses** incurred prior to the date of such payment (unless the **aggregate limit of liability** or **limit of liability** is stated to be inclusive of **costs and expenses**).

In respect of **INSURING CLAUSE 7** only:

- a) At our option, we will pay for any **damaged** property on the following basis:
  - i) for the **office**, the cost of rebuilding or replacing the **damaged** property;

- ii) for **contents of every description**, the cost of repair or replacement as new.
- b) If, at the time the **damage** occurs, the **amount insured** is less than 85% of the total value of the **office** or **contents of every description** insured, the amount we will pay will be reduced in the same proportion as the **amount insured** bears to the total value of the **office** or **contents of every description** insured.
- c) The **amount insured** for the **office** and **contents of every description** will be adjusted monthly in line with any increase in nationally published indices. We will not reduce the **amount insured** without **your** consent.

In respect of **INSURING CLAUSE 8** the amount we will pay will be:

- a) the difference between **your** actual **income** during the **indemnity period** and the **income** it is estimated **you** would have earned during that period or, if this is **your** first trading year, the difference between **your income** during the **indemnity period** and during the period immediately prior to the **loss**, less any savings resulting from the reduced **costs and expenses** you pay out of **your income** during the **indemnity period**; and
- b) any additional **costs and expenses**;
- c) any **project delay costs** during the **indemnity period**, including the total value of any milestone payments that were due in the **indemnity period** but will no longer be received by **you** either during the **indemnity period** or at any point in the future due to permanent termination of the project;
- d) any **research and development expenditure** irrevocably lost during the **indemnity period**; and
- e) any **accounts receivable**, provided **you** keep a record of all amounts owed to **you** and keep a copy of the record away from **your office**.

## YOUR DEDUCTIBLE

We shall only be liable for that part of each and every **claim, loss** or **medical expenses** (which for the purpose of this clause shall be deemed to include all **costs and expenses** incurred) which exceeds the amount of the Deductible stated in the Declarations. Where more than one **claim, loss** or **medical expenses** arises from the same original cause or single source or event all such **claims, losses** or **medical expenses** shall be deemed to be one **claim, loss** or **medical expenses** and only one

Deductible will apply.

If any expenditure is incurred by **us** which by virtue of this clause is **your** responsibility then **you** shall reimburse such amount to **us** on our request or where possible we will deduct such amount from any payment we make to **you**.

## DEFINITIONS

### 1. "Accounts receivable"

means:

- a) all sums due to **you** from customers, provided **you** are unable to effect collection thereof as the direct result of **insured damage** to records of accounts receivable;
- b) interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such **insured damage**;
- c) collection expense in excess of normal collection cost and made necessary because of **insured damage**.

### 2. "Administration"

means:

- a) counseling **employees**, including their dependants and beneficiaries, with respect to **your employee benefit program**;
- b) handling records in connection with **your employee benefit program**;
- c) effecting enrolment or termination of any **employee's** participation in a plan included in **your employee benefit program**;

- d) interpreting **your employee benefit program**.

### 3. "Aggregate limit of liability"

means the maximum amount payable as stated in the Declarations by **us** in respect of all **claims**, or in respect of all accidents giving rise to **medical expenses**.

### 4. "Amount insured"

means the maximum amount payable by **us** as shown in the Declarations in respect of each of **INSURING CLAUSES 7** and **8**. The amount applies to each incident of **loss** or **damage** occurring during the **period of the policy** provided always that after the first incident of **loss** or **damage** **you** comply with our recommendations to prevent any further incidents of **loss** or **damage**.

### 5. "Breach of client contract"

means **your** unintentional breach of a written contract relating to the performance of **your business activities** for a **client**.

### 6. "Business activities"

means:

- a) in respect of **INSURING CLAUSE I**, the **business activities** as stated in the Declarations.
- b) in respect of all other **INSURING CLAUSES**, the **business activities** as stated in the Declarations and shall include, for the purpose of those **business activities**:
  - i) the ownership, repair and maintenance of **your** property;
  - ii) provision and management of canteen, social, sports and welfare organisations for the benefit of **your** directors, officers, partners or **employees** and medical, fire fighting, and security services;
  - iii) attendance at conferences and tradeshows as either an exhibitor or visitor.

7. **“Claim”**

means a demand received by **you** for **money** or services, including the service of suit or institution of arbitration proceedings. “Claim” shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).

8. **“Client”**

means any third party with whom **you** have a written or implied contract in place for the supply of **your business activities** in return for a fee.

9. **“Contents of every description”**

means the contents of **your office** used in connection with **your business activities** which are owned by **you** or for which **you** are legally responsible, including:

- a) computer and ancillary equipment (including monitors, keyboards, printers and software), television and video equipment, photographic, photocopying, surveying and telecommunications equipment;
- b) **documents**, briefs, manuscripts, plans, business books, computers systems records and programs;
- c) goods held in trust, stock and samples;
- d) wines, spirits and tobacco kept for entertainment purposes;
- e) works of art or precious metals;
- f) fixed glass in windows, doors and fanlights, glass showcases, glass shelves, mirrors and sanitary fixtures and fittings;
- g) heating oil for the **office** contained in fixed tanks in the open at the address shown in the Declarations;
- h) tenant’s improvements, decorations, fixtures and fittings including, if attached to the building, external signs, aerials and satellite dishes;
- i) pipes, ducting, cables, wires and associated control equipment at the address shown in the Declarations and extending to the public mains.

“Contents of every description” does not include **money** or the personal belongings of **your employees** or visitors to the **office**.

10. **“Costs and expenses”**

means:

- a) in respect of **INSURING CLAUSES I (SECTIONS A to F only)** and 2,
  - i) **your legal costs and expenses** in the defence or settlement of any **claim** made against **you**, and
  - ii) **your legal costs and expenses** in the defence of any criminal claim made against **you**, provided that **we** maintain all rights of subrogation to recover such legal **costs and expenses** from any director, officer, partner or **employee** if they are found guilty of such a criminal act, and
  - iii) the cost of bonds to release attachments but without any obligation to furnish these bonds, and
  - iv) interest on that part of any judgment **we** pay that accrues after entry of the judgment and before **we** have paid, offered to pay, or deposited in court the part of the judgment that is within the **limit of liability**.
- b) in respect of **INSURING CLAUSES 3 to 5**,
  - i) **your legal costs and expenses** in the defence or settlement of any **claim** made against **you**, and
  - ii) the cost of bonds to release attachments but without any obligation to furnish these bonds, and

- iii) interest on that part of any judgment **we** pay that accrues after entry of the judgment and before **we** have paid, offered to pay, or deposited in court the part of the judgment that is within the **limit of liability**.
- c) in respect of **INSURING CLAUSES 7 and 8**, the **costs and expenses** incurred by **you** or on **your** behalf in establishing that **you** have sustained a **loss or damage** and the quantum of such **loss or damage** or the **costs and expenses** incurred by **you** or on **your** behalf in mitigating any such **loss or damage**.
- d) in respect of **INSURING CLAUSE 7** only, the necessary and reasonable **costs and expenses you** incur to remove debris from the premises or the area immediately adjacent, following **damage** covered under this **INSURING CLAUSE**.

Subject to all **costs and expenses** being incurred with the Claims Managers’ written consent (such consent not to be unreasonably withheld).

If **costs and expenses** are shown in the Declarations to be in addition to the **aggregate limit of liability** or **limit of liability** in respect of any of **INSURING CLAUSES 1 to 5**, and if a payment in excess of the amount of indemnity available hereunder has to be made to dispose of any **claim** or number of **claims**, **our** liability for such **costs and expenses** shall be such proportion thereof as the amount of indemnity available hereunder bears to the amount required to dispose of such **claim** or **claims**.

**Costs and expenses** are always included in the **amount insured** in respect of **INSURING CLAUSES 7 and 8**.

11. **“Damage/damaged”**

means direct physical damage to, or destruction of, or loss of possession of, or loss of use of, tangible property. In respect of **INSURING CLAUSES 1, 3 and 4** **damage** does not include damage to or destruction of, or loss of possession of, or loss of use of, or corruption of, data.

12. **“Documents”**

means deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms, computer programmes or information stored, written or punched into card or tape or magnetic discs or tapes or any other data media and documents of any nature whatsoever, whether written, printed or reproduced by any other method (other than bearer bonds, coupons, banks notes, currency notes and negotiable instruments).

13. **“Employee”**

means any person employed by the company named as the Insured in the Declarations, or any **subsidiary**. Employee does not include any director, officer or partner of the company named as the Insured in the Declarations, or any **subsidiary**.

14. **“Employee benefit program”**

means group automobile insurance, group homeowners insurance, group life insurance, group dental insurance, group health insurance, profit sharing plans, pension plans, early retirement offerings, employee investment subscription plans, Workers’ Compensation, Unemployment Insurance, Social Security, Disability Benefit Insurance, travel, savings or vacation plans or any similar benefit programs.

15. **“Extra expense”**

means the necessary and reasonable extra **costs and expenses you** incur in order to continue **your business activities** during the **indemnity period**.

16. **“Hacking attack”**

means any malicious or unauthorised electronic attack including but not limited to any fraudulent electronic signature, brute force attack, phishing, denial of service attack, that has been initiated by any **third parties** or by any **employees** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of computer systems, software and ancillary equipment.

17. **“Income”**

means **your** total income from **your business activities**.

18. **“Indemnity period”**  
means the period beginning at the date of the **damage**, or the date the restriction is imposed, and lasting for the period during which **your income** or expenditure is affected as a result of such **damage** or restriction, but for no longer than the number of months shown in the Declarations.
19. **“Injury”**  
means:  
a) in respect of **INSURING CLAUSE I** death, bodily **injury**, mental **injury**, illness or disease;  
b) in respect of all other **INSURING CLAUSES**:  
i) death, bodily **injury**, mental **injury**, illness, disease, shock, mental anguish or humiliation; and  
ii) false arrest, detention or imprisonment; and  
iii) malicious prosecution; and  
iv) wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies.
20. **“Insured damage”**  
means **damage** to property provided that:  
a) the **damage** is covered under **INSURING CLAUSE 7**; or  
b) an insurer has paid the claim, or has agreed to pay the claim, under any other insurance covering such **damage**.
21. **“Intellectual property right”**  
means any **intellectual property right** including but not limited to trademarks, trade secrets, broadcasting rights, domain names, metatags and copyrights but does not include patents.
22. **“Limit of liability”**  
means the maximum amount payable by **us** as stated in the Declarations in respect of each **claim** or **loss**, or in respect of each accident giving rise to **medical expenses**.
23. **“Loss of a limb”**  
means loss by physical separation of a hand at or above the wrist, of a foot at or above the ankle, and includes total and irrecoverable loss of use of a hand, arm or leg.
24. **“Loss of sight”**  
means total and irrecoverable loss of sight.
25. **“Loss”**  
means direct financial loss sustained by **you**.
26. **“Money”**  
means cash, bank and currency notes, cheques, travellers’ cheques, postal orders, **money** orders, crossed bankers’ drafts, current postage stamps, savings stamps and certificates, trading stamps, gift tokens, customer redemption vouchers, company sales vouchers, credit card counterfoils, travellers tickets and contents of franking machines, all belonging to **you**.
27. **“Medical expenses”**  
means reasonable expenses for:  
a) first aid administered at the time of an accident;  
b) necessary medical, surgical, x ray and dental services, including prosthetic devices;  
c) necessary ambulance, hospital, professional nursing and funeral services.
28. **“Office”**  
means the **office** space (including any outbuildings) **you** occupy at the address shown in the Declarations as more fully described in the application form.
29. **“Period of the policy”**  
means the period between the Inception Date shown in the Declarations and the Expiry Date shown in the Declarations or until the Policy is cancelled in accordance with **GENERAL CONDITION 10** of this Policy.
30. **“Permanent total disablement”**  
means disablement which entirely prevents the injured person from attending to any business or occupation for which he is reasonably suited by training, education or experience for 24 calendar months and at the expiry of that period being beyond hope of improvement.
31. **“Project delay costs”**  
means any additional **costs and expenses** incurred by **you** as a direct result of a delay to a project, including the interest charges incurred from any reasonable loan required as a result of a delayed milestone payment.
32. **“Product”**  
means any tangible property (including containers, packaging, labelling or instructions, but explicitly excluding any software, data, or source code) after it has left **your** custody or control which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered, processed, cleaned, renovated or repaired by **you** or on **your** behalf in the course of **your business activities**.
33. **“Research and development expenditure”**  
means **your** expenditure on research and development less the cost of reusable materials consumed for the purposes of the research and development.
34. **“Subsidiary”**  
means any company which the company named as the Insured in the Declarations controls through:  
a) holding 50% or more of the voting rights, or  
b) having the right to appoint or remove 50% or more of its board of directors; or  
c) controlling alone, pursuant to a written agreement with other shareholders or members, 50% or more of the voting rights therein.
35. **“Temporary total disablement”**  
means disablement which entirely prevents the injured person from attending to his business or occupation.
36. **“Third party”**  
means any person or company who is not a director, officer, partner or **employee** of the company named as the Insured in the Declarations, or any **subsidiary**.
37. **“Virus”**  
means any malicious software code including but not limited to any logic bomb, Trojan horse or worm that has been introduced by any **third parties** or by any **employees** and that is designed to **damage**, destroy, corrupt, overload, circumvent or impair the functionality of computer systems, software and ancillary equipment.
38. **“We/our/us”**  
means the Underwriters named in the Declarations.
39. **“Withheld fees”**  
means any contractually due fee that **your client** refuses to pay **you**, but excludes any part of the fee that represents **your** profit or mark-up or liability for taxes.
40. **“Workmanship”**  
means any physical **workmanship** in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by **you**.
41. **“Wrongful act”**  
means any act or event the subject of **INSURING CLAUSE I** of this Policy for which **you** have purchased coverage.
42. **“You/your”**  
means:  
a) the company named as the Insured in the Declarations, or any **subsidiary**, and  
b) any past, present or future **employee**, trainee, director, officer or partner of the company named as the Insured in the Declarations or any **subsidiary**.

## EXCLUSIONS

## We will not

- a) make any payment on **your** behalf for any **claim**, or
- b) incur any **costs and expenses**, or
- c) reimburse **you** for any **loss, damage**, legal expenses, fees or costs sustained by **you**, or
- d) pay any **medical expenses**:

## EXCLUSIONS RELATING TO OTHER INSURANCES:

1. **Marine and aviation**  
arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any aircraft, hovercraft, offshore installation, rig, platform or watercraft.
2. **Auto**  
arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any motor vehicle or trailer other than **injury or damage**:
  - a) caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
  - b) occurring beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;
  - c) arising out of the use of any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking;

provided always that **we** will not make any payment on **your** behalf or incur any **costs and expenses** in respect of any legal liability for which compulsory insurance or security is required by legislation or for which a government or other authority has accepted responsibility.
3. **Project-specific insurance**  
arising out of any projects for which **you** have purchased project specific insurance.
4. **Product guarantee**  
for costs incurred in the repair, alteration, reinstatement, inspection, reconditioning or replacement of any product or part thereof and any financial **loss** consequent upon the necessity for such repair, alteration, reinstatement, inspection, reconditioning or replacement, other than in respect of **INSURING CLAUSE I** when **you** are legally obliged to pay these sums to a **client**.
5. **Product recall**  
arising directly or indirectly from the recall of any product or part thereof except for **claims** made under **INSURING CLAUSE I** where **you** are legally liable for these costs to a third party as the direct result of a **wrongful act** committed or alleged to have been committed by **you**.
6. **Employment practices**  
arising out of or resulting from any employer-**employee** relations, policies, practices, acts, omissions, any actual or alleged refusal to employ any person, or misconduct with respect to **employees**.
7. **Employers' liability**  
arising directly or indirectly out of **injury** to **your** directors, officers, partners or **employees**.  
  
However, this **EXCLUSION** shall not apply to **employees** on whose behalf contributions are required to be made by **you** under the provisions of any Workers' Compensation Law in respect of whom liability has been denied by any Workers' Compensation authority.
8. **Directors' and Officers'**  
arising out of any personal liability incurred by **your** directors or officers when they are acting in that capacity or managing **you**, or arising from any statement, representation or information regarding **your** business contained within any accounts, reports or financial statements.

9. **Double insurance**

for which **you** are entitled to indemnity under any other insurance except for:

- a) any additional sum which is payable over and above such other insurance, or
- b) any contribution that **we** are obliged to make by law and that contribution shall be in proportion to the respective limits of liability or **amounts insured** of the Policies.

## EXCLUSIONS RELATING TO THE CONDUCT OF YOUR BUSINESS:

10. **Benefit laws**  
arising directly or indirectly out of **your** failure to comply with the mandatory provisions of any law concerning workers compensation, unemployment insurance, social security, disability benefits or pension benefits.
11. **Circumstances known at inception**  
arising out of any circumstances or occurrences which could give rise to a **claim, loss or damage** under this Policy or any accidents giving rise to **medical expenses** of which **you** are aware, or ought reasonably to be aware, prior to the Inception Date of this Policy, whether notified under any other insurance or not.
12. **Computer failure**  
in respect of **INSURING CLAUSES 7 and 8** only, arising directly or indirectly from **loss** or distortion of **your** data or **damage** to **your** electrical or mechanical plant resulting from a failure of **your** computer or ancillary equipment (including monitors, keyboards, printers or software), television or video equipment, photographic, photocopying, surveying or telecommunications equipment. However, **we** will reimburse **you** up to the **amount insured** for **damage** occurring during the **period of the policy** to **your office** computer and ancillary equipment, but only if **your office** computer and ancillary equipment is subject to a manufacturer's guarantee or a maintenance contract providing free parts and labour in the event of a breakdown.
13. **Contractual fines and penalties**  
for fines and penalties arising from **your** breach of contract, including any liquidated damages, service credits or associated penalties arising from **your** failure to perform under a service level agreement
14. **Employee benefit program advice**  
arising directly or indirectly from:
  - a) advice given to any person to participate or not to participate in any plan included in your employee benefit program;
  - b) the failure of any investment to perform as represented by you.
15. **ERISA**  
arising out of or resulting from **your** acts related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974, or any amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act.
16. **Failure to ensure feasibility of contracts**  
arising from any contract where before entering into or amending the contract **you** failed to take reasonable steps to ensure that **you** could fulfil all **your** obligations in accordance with the terms of the contract.
17. **Faulty workmanship**  
arising from **damage** to **your** property or **office** caused directly or indirectly by misuse, inadequate or inappropriate maintenance, faulty **workmanship**, defective design, the use of faulty materials or whilst being cleaned, worked on or maintained.
18. **Hazardous devices**  
arising directly or indirectly from any product which with **your** knowledge is intended for incorporation into the structure,



machinery or controls of any aircraft, other aerial device, military vehicle, hovercraft, waterborne craft or any medical equipment.

19. **Legal Action**

where action for damages is brought in a court of law outside the territories specified in the Declarations, or where action is brought in a court of law within those territories to enforce a foreign judgement whether by way of reciprocal agreement or otherwise.

20. **Limiting recovery rights**

arising directly or indirectly out of **your** failure to take reasonable steps to ensure that **our** rights of recovery against any third party are not unduly restricted or financially limited by a specific term in any contract or agreement.

21. **Patents**

arising out of the actual or alleged infringement of any patent or inducing the infringement of any patent.

22. **Retroactive Date**

in respect of **INSURING CLAUSES 1 and 2** only, arising out of any actual or alleged **wrongful act** or negligent act, error or omission committed before the date specified as the Retroactive Date in the Declarations.

23. **RICO**

for or arising out of any actual or alleged violation of the Organised Crime Control Act of 1970 (commonly known as the Racketeer Influenced and Corrupt Organisation Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal, state or local law, whether such law is statutory, regulatory or common law.

24. **SEC**

for or arising out of the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, or any similar state or federal law, or any amendment to the above laws or any violation of any order, ruling or regulation issued pursuant to the above laws.

25. **Unjust enrichment**

in respect of **INSURING CLAUSE 1** only, for that part of any **claim** that results in **you** being in a better financial position as a direct result of **your wrongful act** than **you** would have been if **you** had not committed the **wrongful act**.

26. **Water ingress (applicable to British Columbia only)**

arising out of, or relating directly or indirectly to, in whole or in part, the **infiltration of precipitation** into the **building envelope** of a building located in the Province of British Columbia, or into a **multi-unit building** located in the Province of British Columbia.

For the purposes of this exclusion the following definitions are added to the Policy:

**Multi-unit building** means a building containing more than one unit, whether that unit is used for residential, industrial or any other purpose.

**Building envelope** means the assemblies, components, and materials of a building which are intended to separate and protect the interior space of a building from the adverse effects of exterior climactic conditions.

**Infiltration of precipitation** means, but is not limited to, the actual, alleged, threatened, or possible infiltration, migration, presence, accumulation, condensation or dispersal of water or moisture on, in, or into the **building envelope**.

27. **Wilful or dishonest acts of directors**

in respect of **INSURING CLAUSES 1 and 2** only, arising out of any wilful, malicious, reckless or dishonest act or omission by any director, partner or officer of the company named as the Insured in the Declarations or any **subsidiary**, unless such person had already ceased to be a director, partner or officer of the company named as the Insured in the Declarations and all **subsidiaries** at the time of their first wilful, malicious, reckless or dishonest act or omission, or unless specifically covered under **INSURING CLAUSE 1 SECTION A (e)**. **We** will not provide any cover for any director, partner or

officer of the company named as the Insured in the Declarations or any **subsidiary** who commits, condones or ignores any dishonesty.

**GENERAL INSURANCE EXCLUSIONS:**

28. **Antitrust**

for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising unless insurable under the applicable law.

29. **Asbestos**

arising from or contributed to by the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or **products** containing asbestos, or asbestos fibres or dust, unless arising directly from a **wrongful act** committed by **you**:

- a) on or after 1st January 1990, or
- b) on or after the date specified as the Retroactive Date in the Declarations,
- c) whichever is the later, in the course of **your business activities**.

30. **Associated companies**

- a) in respect of any **claim** made by any company firm or partnership in which the company named as the Insured in the Declarations has an executive or financial interest, unless such **claim** emanates from an independent **third party**; or
- b) in respect of any **claim** made by any company firm partnership or individual which has an executive or financial interest in the company named as the Insured in the Declarations or any **subsidiary**, unless such **claim** emanates from an independent **third party**; or
- c) arising out of or resulting from any of **your** activities as a trustee, partner, officer, director or **employee** of any **employee** trust, charitable organization, corporation, company or business other than that of the company named as the Insured in the Declarations or any **subsidiary**; or
- d) in respect of any **claim** made by or on behalf of the company named as the Insured in the Declarations or any **subsidiary**.

31. **Earthquake**

in respect of **INSURING CLAUSES 7 and 8** only, caused by earthquake, except for:

- a) ensuing **loss** or **damage** which results directly from fire, explosion, smoke or leakage from fire protective equipment; or
- b) ensuing **damage** to **contents of every description** while in transit.

32. **Electromagnetic fields**

directly or indirectly arising out of, resulting from or contributed to by electromagnetic fields, electromagnetic radiation, electromagnetism, radio waves or noise.

33. **Flood**

in respect of **INSURING CLAUSES 7 and 8** only, caused by flood, including waves, tides, tidal waves, or the rising of, the breaking out, or the overflow, of any body of water whether natural or manmade, but this **EXCLUSION** does not apply to:

- a) ensuing **loss** or **damage** which results directly from fire, explosion, smoke or leakage from fire protective equipment; or
- b) ensuing **damage** to **contents of every description** while in transit.

34. **Fines**

for fines, penalties, civil or criminal sanctions and for punitive, multiple or exemplary damages unless insurable under the applicable law.

35. **Insolvency**

arising out of or relating directly or indirectly from **your** insolvency or bankruptcy, or the insolvency or bankruptcy of any third party. Furthermore, no coverage is provided under **INSURING CLAUSE 8** if **you** become insolvent or bankrupt.

36. **Land or water**

arising directly or indirectly from **damage** to land or water within or

below the boundaries of any land or premises presently or at any time previously owned or leased by **you** or otherwise in **your** care, custody or control.

### 37. Miscellaneous property exclusions

in respect of **INSURING CLAUSES 7** and **8** only, arising directly or indirectly from:

- a) wear and tear, inherent defect, rot, vermin or infestation, or any gradually operating cause;
- b) dryness or humidity, being exposed to light or extreme temperatures, unless the **damage** is caused by storm or fire;
- c) coastal or river erosion;
- d) theft from an unattended vehicle unless the item is out of sight;
- e) frost, other than **damage** due to water leaking from burst pipes forming part of the permanent internal plumbing provided the **office** is occupied and in use;
- f) arising directly or indirectly from unexplained **loss** or disappearance or inventory shortage of **your** property;
- g) a **hacking attack** or **virus**.

### 38. Nuclear

arising directly or indirectly from or contributed to by :

- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### 39. Pollution

arising directly or indirectly out of :

- a) pollution or contamination of the atmosphere, or of any water, land, buildings or other property;
- b) any enforcement action in connection with the containment, clean-up, removal or treatment of such pollution or contamination;

but this **EXCLUSION** shall not apply in respect of :

- i) **INSURING CLAUSE I, SECTION D**; or
- ii) **INSURING CLAUSES 7** and **8** to the backing up of sewers, sumps, septic tanks or drains.

### 40. Toxic mould / fungus

arising directly or indirectly from any **loss, injury, damage, costs** or **expenses**, including, but not limited to, losses, **damage, costs** or **expenses** related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- a) any **fungus, mould, mildew** or yeast, or
- b) any **spore** or toxins created or produced by or emanating from such **fungus, mould, mildew** or yeast, or
- c) any substance, vapour, gas, or other emission or organic or inorganic body or substance produced by or arising out of any **fungus, mould, mildew** or yeast, or
- d) any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbours, nurtures, or acts as a medium for any **fungus, mould, mildew, yeast** or **spore** or

toxins emanating therefrom,

regardless of any other cause, event, material, product or building component that contributed concurrently or in any sequence to that **loss, injury, damage, cost** or **expense**.

However, this **EXCLUSION** shall not apply in respect of **INSURING CLAUSE I** where the **loss, injury, damage, costs** or **expenses** arose directly from a **wrongful act** committed by **you** in the course of **your business activities**.

For the purposes of this **EXCLUSION** the following definitions are added to the Policy:

**Fungus** includes, but is not limited to, any plants or organisms belonging to the major group Fungi, lacking chlorophyll, and including **moulds, rusts, mildews, smuts** and **mushrooms**.

**Mould** includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and **fungi** that produced moulds.

**Spore** means any dormant or reproductive body produced by or arising from or emanating out of any **fungus, mould, mildew, plants, organisms** or **microorganisms**.

### 41. Trade Debt

arising out of or in connection with any trading losses or trading liabilities incurred by any business managed or carried on by **you**, or any **loss of your profit** arising from the **loss** of any **client, account** or **business**.

### 42. War and terrorism

directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the **claim, loss, damage, costs and expenses** or **medical expenses**:

- a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b) any **act of terrorism**.

For the purpose of this **EXCLUSION** an **act of terrorism** means an act, including but not limited to the use of force or violence or the threat thereof, of any person or groups of persons, whether acting alone or on behalf of or in connection with any organisations or governments, committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear.

This **EXCLUSION** also excludes **claims, losses, damage, costs and expenses** or **medical expenses** of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to a) or b) above.

This **EXCLUSION** does not apply to any **claim** or **loss** arising directly from a **hacking attack** or **virus**.

## GENERAL CONDITIONS

### 1. What you must do in the event of a claim or loss

Should any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any **subsidiary** become aware of any **claim, loss** or **damage** or of any situation that could give rise to a **claim** or **loss** or should an allegation, complaint or **claim** be made or intimated against **you**, the following obligations must be complied with by **you**:

- a) **You** must not admit liability for or settle or make or promise any payment in respect of any **claim, loss** or **damage** which may be covered under this Policy. Neither must **you** incur any **costs** or **expenses** in connection with such a **claim, loss** or **damage** without **our** written consent. However, **you** should arrange for any urgent repairs following **damage** covered under **INSURING CLAUSE 7** to be done immediately. Before any other repair

work begins **we** have the right to inspect **your damaged** property. **We** will notify **you** if **we** intend to do this.

- b) The Claims Managers, as specified in the Declarations, must be notified as soon as is reasonably possible if during the **period of the policy**:

- i) **you** suffer any **loss** or **damage** that could be covered by this Policy or any allegation, complaint or **claim** is made or intimated against **you**, whether verbal or made in writing.
- ii) any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any **subsidiary** become aware of the intention of any person to make a complaint allegation or **claim** against **you**, whether verbal or in writing. Once notice has been

made to us, we will regard any subsequent claim that may arise as notified under this Policy.

- iii) you become aware of an action of yours that could give rise to a loss, allegation, complaint or claim being made or intimated against you. Once notice has been made we will regard any subsequent claim that may arise as notified under this Policy.
- iv) you discover reasonable cause for suspicion of fraud or dishonesty whether this could give rise to a claim under this Policy or not and we shall not be liable under this Policy for any claim or loss sustained in consequence of any fraudulent or dishonest act or omission committed after the date of such discovery.

We have nominated the Claims Managers to accept notice on our behalf.

Due to the nature of the coverage offered by this Policy, any unreasonable delay by any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any subsidiary in notifying the Claims Managers of (i), (ii), (iii) or (iv) above could lead to the size of the claim, loss or damage increasing or to our rights being restricted. We shall not be liable for that portion of any claim that is due to any unreasonable delay in any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any subsidiary notifying the Claims Managers of any claim, loss or damage in accordance with this **GENERAL CONDITION**.

- c) We will expect you to provide us with full and accurate information about any matter that you notify to us under your obligations set out above. Once notice has been made you must give the Claims Managers all the assistance and information that is reasonably required. You must follow their advice and do anything that they reasonably require you to do to avoid, minimise, settle or defend any claim, loss or damage.

If you think a crime has been committed you must report it to the appropriate law enforcement authorities. You must also permit the Claims Managers and any other parties that are appointed by the Claims Managers to notify the appropriate law enforcement authorities of any claim, loss or damage where this action is deemed necessary, and you must comply with the advice given by such authorities.

If any of your computer or ancillary equipment is lost or stolen while it is temporarily removed from the office, we will not make any payment unless you report the loss to the police within 48 hours after you become aware of it.

## 2. Continuous cover

If you have neglected, through error or oversight only, to report a claim made against you during the period of a previous renewal of this Policy issued to you by us, then provided that you have maintained uninterrupted insurance of the same type with us since the expiry of that earlier Policy, then, notwithstanding **EXCLUSION II**, we will permit the matter to be reported under this Policy and will indemnify you, provided that:

- a) the indemnity will be subject to the applicable aggregate limit of liability or limit of liability of the earlier Policy under which the matter should have been reported or the aggregate limit of liability or limit of liability of the current Policy, whichever is the lower;
- b) we may reduce the indemnity entitlement by the monetary equivalent of any prejudice which has been suffered as a result of the delayed notification;
- c) the indemnity will be subject in addition, to all of the terms, **CONDITIONS, DEFINITIONS** and **EXCLUSIONS**, other than the aggregate limit of liability or limit of liability, contained in this current Policy.

## 3. Fraudulent claims

If you notify us of any claim knowing that claim to be false or fraudulent in any way, we shall have no responsibility to pay that claim

or any other claims under this insurance and the Policy will be treated as if it had not been effected.

## 4. Agreement to pay claims

We have the right and duty to take control of and conduct in your name the investigation settlement or defence of any claim. We shall also pay on your behalf costs and expenses incurred with our prior written consent (subject to the Limits of Liability and applicable Deductible shown in the Declarations) provided that we shall not

- a) pay for the costs and expenses of any part of a claim that is not covered by this Policy.
- b) incur any costs and expenses in the defence of any claim unless there is a reasonable prospect of success, taking into account the commercial considerations of the costs of defence.

We shall always endeavour to settle any claim through negotiation, mediation or some other form of alternative dispute resolution and shall pay on your behalf the amount so agreed by us and the claimant. If we cannot settle by such means, we shall pay the amount which you are found liable to pay either in court or through arbitration proceedings, subject always to the limit of liability shown in the Declarations.

If you refuse to consent to a settlement that we recommend and that the claimant will accept, you must then defend, investigate or settle the claim at your own expense. As a consequence of your refusal, our liability for any claim shall not be more than the amount that we could have settled the claim for had you consented, plus any costs and expenses incurred prior to the date of such refusal.

## 5. Innocent non-disclosure

We will not seek to avoid the Policy or reject any claim on the grounds of non-disclosure or misrepresentation except where the non-disclosure or misrepresentation was reckless or fraudulent or you failed to conduct a full inquiry prior to providing the information that forms the basis of this insurance. In the event that we seek to avoid the Policy or reject any claim on this basis the burden of proving otherwise rests solely with you.

## 6. Your duty to advise us of changes

If you become aware that any of the information that you have given us in the Application Form or elsewhere in connection with your application for this insurance has materially changed then you must advise us as soon as is practicable. In this event, we reserve the right to amend the terms, conditions or premium of the Policy.

## 7. Risk management conditions

If we attach any additional conditions to your Policy regarding any risk survey or risk management timetable or any other similar conditions then it is your responsibility to ensure that these conditions are complied with by the deadlines shown in the conditions.

## 8. Our rights of recovery

If any payment is made under this Policy in respect of a claim, loss or damage and there is available to us any of your rights of recovery against any other party then we maintain all such rights of recovery. We shall not exercise these rights against any past, present or future employee, director, officer or partner of the company named as the Insured in the Declarations or any subsidiary, unless such payment is in respect of any wilful, malicious or dishonest acts or omissions. You must do nothing to impair any rights of recovery. At our request you will bring proceedings or transfer those rights to us and help us to enforce them. Any recoveries shall be applied as follows:

- a) first, to us up to the amount of our payment on your behalf including costs and expenses;
- b) then to you as recovery of your Deductible or other amounts paid as compensation or costs and expenses.

## 9. Waiver of subrogation

Notwithstanding **GENERAL CONDITION 8** above we agree to waive our rights of subrogation against a responsible third party client of yours but only if you and your client have entered into a contract that contains a provision requiring us to do this.

#### 10. Cancellation

This Policy may be cancelled:

- a) by **you** at any time on request; or
- b) by **us** if **we** give **you** 30 days written notice, or
- c) by **us** if **we** give **you** 15 days written notice, should any amount in default not be paid within 15 days of the due date shown in the Debit Note that accompanies this Policy.

If **you** give **us** notice of cancellation in accordance with a) above, the earned Premium shall be computed at pro rata to the number of days that the Policy is in effect subject to a minimum amount of 30% of the Premium.

If **we** give **you** notice of cancellation in accordance with b) or c) above, the Premium shall be computed at pro rata to the number of days that the Policy is in effect.

The Policy Administration Fee shall be deemed fully earned upon inception of the Policy.

#### 11. Prior subsidiaries

In respect of **INSURING CLAUSE 1** only, should an entity cease to be a **subsidiary** after the Inception Date of this Policy, cover in respect of such entity shall continue as if it was still a **subsidiary**, until the termination of this Policy, but only in respect of any **claim** or **loss** that arises out of any act, error or omission committed by that entity prior to the date that it ceased to be a **subsidiary**.

#### 12. Mergers and acquisitions

During the **period of the policy**, if the company named as the Insured in the Declarations or any **subsidiary**

- a) purchases assets or acquires liabilities from another entity in an amount greater than 10% of the assets of the company named as the Insured in the Declarations as listed in its most recent financial statement; or
- b) acquires another entity whose annual revenues are more than 10% of the annual revenues of the company named as the Insured in the Declarations for their last completed financial year;

then **you** shall have no coverage under this Policy for any **claim**, **loss** or **damage** that arises directly or indirectly out of the purchased or acquired entity unless the company named as the Insured in the Declarations gives **us** written notice prior to the purchase or acquisition, obtains **our** written consent to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by **us**.

If during the **period of the policy** the company named as the Insured in the Declarations consolidates or merges with or is acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage under this Policy, and the company named as the Insured in the Declarations has agreed to any additional premium and terms of coverage required by **us**.

#### 13. Extended reporting period

In respect of **INSURING CLAUSES 1** and **2** only, an Extended Reporting Period of 60 days following the Expiry Date as shown in the Declarations shall be automatically granted hereunder at no additional premium. Such Extended Reporting Period shall cover **claims** first made and reported to **us** during this 60 day Extended Reporting Period but only in respect of any act, error or omission committed prior to the date of cancellation or non-renewal, and subject to all other terms, conditions and exclusions of the policy. No **claim** shall be accepted by **us** in this 60 day Extended Reporting Period if **you** are entitled to indemnity under any other insurance, or would have been entitled to indemnity under such insurance but

for the exhaustion thereof.

#### 14. Optional extended reporting period

In respect of **INSURING CLAUSES 1** and **2** only, in the event of:

- a) cancellation or non-renewal of this Policy by **us**, or
- b) cancellation or non-renewal of this Policy by **you** because **you** have ceased to trade as the direct result of the retirement or death of all of **your** directors, officers or partners;

then **you** shall have the right, upon payment of the Optional Extended Reporting Period Premium shown in the Declarations in full and not proportionally or otherwise in part, to have issued an endorsement providing a 365 day Optional Extended Reporting Period from the cancellation or non-renewal date. Such Optional Extended Reporting Period shall cover **claims** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during this Optional Extended Reporting Period but only in respect of any **claim** arising out of any act, error or omission committed prior to the date of cancellation or non-renewal, and subject to all other terms, conditions and exclusions of the policy.

In order for **you** to invoke the Optional Extended Reporting Period option, the payment of the Optional Extended Reporting Period Premium shown in the Declarations for this Optional Extended Reporting Period must be paid to **us** within 15 days of the date of the non-renewal or cancellation.

At the commencement of this Optional Extended Reporting Period the entire premium shall be deemed earned and in the event that **you** terminate the Optional Extended Reporting Period for any reason prior to its natural expiration, **we** will not be liable to return any premium paid.

The right to the Extended Reporting Period or the Optional Extended Reporting Period shall not be available to **you** where:

- a) Cancellation or non-renewal by **us** is due to non-payment of premium, or
- b) Cancellation or non-renewal by **us** is due to **your** failure to pay such amounts in excess of the applicable **Limit of Liability** or within the amount of the applicable Deductible as is required by this Policy in the payment of **claims**.

At the renewal of this Policy, **our** quotation of different premium, Deductible or **Limit of Liability** or changes in policy language shall not constitute non-renewal by **us** for the purposes of granting this Optional Extended Reporting Period.

In no event shall the granting of the Extended Reporting Period or the Optional Extended Reporting Period increase **our Limit of Liability**, including **costs and expenses**, as shown in the Declarations.

#### 15. Choice of law

This Policy shall be interpreted under, governed by and construed in all respects in accordance with the law of the jurisdiction of the place of registration of the company named as the Insured in the Declarations and for this purpose, we and you agree to submit to the exclusive jurisdiction of the courts within the territorial limits and jurisdiction of the place of registration of the company named as the Insured in the Declarations.

In any action to enforce our obligations under this Policy we can be designated or named as "Lloyd's Underwriters" and such designation shall be binding on Lloyd's Underwriters liable under this Policy as if we had each been individually named as defendant. Service of such proceedings may validly be made upon the Attorney In Fact in Canada for Lloyd's Underwriters, whose address for such service is 1155, rue Metcalfe, Suite 2220, Montreal, Quebec, H3B 2V6.

## STATUTORY CONDITIONS

#### 1. Misrepresentation

If a person applying for insurance falsely describes the property to the prejudice of the Insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known

to the Insurer in order to enable it to judge of the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.



**2. Property of others**

Unless otherwise specifically stated in the contract, the Insurer is not liable for loss or damage to property owned by any person other than the Insured, unless the interest of the Insured therein is stated in the contract.

**3. Change of interest**

The Insurer is liable for loss or damage occurring after an authorized assignment under the Bankruptcy Act or change of title by succession, by operation of law, or by death.

**4. Material change**

Any change material to the risk and within the control and knowledge of the Insured avoids the contract as to the part affected thereby, unless the change is promptly notified in writing to the Insurer or its local agent; and the Insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the Insured in writing that, if he desires the contract to continue in force, he must within fifteen (15) days of the receipt of the notice, pay to the Insurer an additional premium; and in default of such payment the contract is no longer in force and the Insurer shall return the unearned portion, if any, of the premium paid.

**5. Termination**

1. This contract may be terminated:
  - a) by the Insurer giving to the Insured fifteen (15) days' notice of termination by registered mail or five (5) days' written notice of termination personally delivered;
  - b) by the Insured at any time on request.
2. Where this contract is terminated by the Insurer:
  - a) the Insurer shall refund the excess of premium actually paid by the Insured over the pro rata premium for the expired time, but in no event, shall the pro rata premium for the expired time be less than any minimum retained premium specified; and
  - b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.
3. Where this contract is terminated by the Insured, the Insurer shall refund as soon as practicable the excess of the premium actually paid by the Insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time, be deemed to be less than any minimum retained premium specified.
4. The refund may be made by money, postal or express company money order or cheque payable at par.
5. The fifteen (15) days mentioned in clause (1) (a) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

**6. Requirements after loss**

1. Upon the occurrence of any loss of or damage to the insured property, the Insured shall, if the loss or damage is covered by the contract, in addition to observing the requirements of Conditions 9, 10 and 11:
  - a) forthwith give notice thereof in writing to the Insurer;
  - b) deliver as soon as practicable to the Insurer a proof of loss verified by a statutory declaration,
    - i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed,
    - ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the Insured knows or believes,
    - iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the Insured,
    - iv) showing the amount of other insurance and the names of other Insurers,
    - v) showing the interest of the Insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property,

vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract,

vii) showing the place where the property insured was at the time of loss,

c) if required give a complete inventory of undamaged property and showing in detail quantities, cost, actual cash value;

d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other contract.

2. The evidence furnished under Clauses 1 (c) and (d) of this condition shall not be considered proofs of loss within the meaning of Statutory Conditions 12 and 13.

**7. Fraud**

Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, vitiates the claim of the person making the declaration.

**8. Who may give notice and proof**

Notice of loss may be given, and proof of loss may be made, by the agent of the Insured named in the contract in case of absence or inability of the Insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the Insured refuses to do so, by a person to whom any part of the insurance money is payable.

**9. Salvage**

1. The Insured in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to any such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto.
2. The Insurer shall contribute pro rata towards any reasonable and proper expenses in connection with steps taken by the Insured and required under subparagraph 1 of this condition according to the respective interests of the parties.

**10. Entry, control, abandonment**

After loss or damage to insured property, the Insurer has an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and after the Insured has secured the property, a further right of access and entry sufficient to enable them to make appraisal or particular estimate of the loss or damage, but the Insurer is not entitled to the control or possession of the insured property, and without the consent of the Insurer there can be no abandonment to it of insured property.

**11. Appraisal**

In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under the Insurance Act before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specified demand therefor is made in writing and until after proof of loss has been delivered.

**12. When loss payable**

The loss is payable within sixty (60) days after completion of the proof of loss, unless the contract provides for a shorter period.

**13. Replacement**

1. The Insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within thirty days after receipt of the proofs of loss.
2. In that event the Insurer shall commence to so repair, rebuild or replace the property within forty-five (45) days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.

**14. Action**

Every action or proceeding against the Insurer for the recovery of any claim under or by virtue of this contract is absolutely barred unless commenced within one year next after the loss or damage

occurs.

**15. Notice**

Any written notice to the Insurer may be delivered at, or sent by registered mail to, the chief agent or head office of the Insurer in the

## PRIVACY NOTICE

By purchasing insurance from certain Underwriters at Lloyd's, London ("Lloyd's"), a customer provides Lloyd's with his or her consent to the collection, use and disclosure of personal information, including that previously collected, for the following purposes:

- the communication with Lloyd's policyholders
- the underwriting of policies
- the evaluation of claims
- the detection and prevention of fraud
- the analysis of business results
- purposes required or authorised by law

For the purposes identified, personal information may be disclosed to Lloyd's related or affiliated organisations or companies, their agents/mandataries, and to certain non-related or unaffiliated organisations or companies.

Further information about Lloyd's personal information protection policy may be obtained from the customer's broker or by contacting Lloyd's on 514 861 8361 or through [info@lloyds.ca](mailto:info@lloyds.ca).

## ONTARIO COMMERCIAL LIABILITY NOTICE

**Notice to Insureds:**

Pursuant to the **Freedom Of Information And Protection Of Privacy Act, R.S.O. 1990, c.F31 (as amended)**

**Important**

The notice below applies to insurance contracts containing non-automobile legal liability coverages in provinces where statistical data relating to such contracts must be reported to the Superintendent of Insurance.

**Legal authority for collection**

Insurance Act, R.S.O. 1990, c.I.8, section 101(1).

**Principal purpose for which personal information is intended to be used**  
**Information collected by insurers from insureds or supplied to insurers**  
**pertaining to the attached document will be used:**

- to compile aggregate statistical data to be used in monitoring trends in the insurance industry;

- to develop statistical exhibits to be used in monitoring the insurance industry;
- to respond to requests for customized statistical information on the insurance industry;
- to respond to inquiries on statistical information made to Office of the Superintendent of Insurance; and
- to use and disclose such information for purposes which are consistent with the previous clauses.

**The Public Official who can answer questions about the collection is:**

Manager, Statistical Services  
 Financial Services Commission of Ontario  
 5160 Yonge Street, 17th Floor  
 Box 85  
 North York, Ontario M2N 6L9  
 Telephone: (416) 250-7250  
 Fax: (416) 590-7070

FOI (11/1999)

## COMPLAINTS PROCEDURE

If you have a complaint with any aspect of your Lloyd's insurance, please refer to the broker/agent who arranged your policy for you.

OR

You may contact the General Insurance OmbudService (GIO) who will contact Lloyd's on your behalf. The GIO can be reached at:

**GIO - Atlantic Provinces**

(902) 429-2730  
 Toll-free: 1-800-565-7189  
 Website: [www.gio-scad.org](http://www.gio-scad.org)

**GIO - British Columbia & Yukon**

(604) 684-3635  
 Toll-free: 1-877-772-3777  
 Website: [www.gio-scad.org](http://www.gio-scad.org)

**GIO - Ontario**

(416) 362-9528  
 Toll-free: 1-800-387-2880  
 Website: [www.gio-scad.org](http://www.gio-scad.org)

**GIO - Prairies, Northwest Territories & Nunavut**

(780) 423-2212  
 Toll-free: 1-800-377-6378  
 Website: [www.gio-scad.org](http://www.gio-scad.org)

**Province of Québec**

GIO  
 (514) 288-6015

Toll-free: 1-800-361-5131  
 Website: [www.gio-scad.org](http://www.gio-scad.org)

OR

**Autorité des marchés financiers (l'Autorité)**

Québec City (418) 525-0311  
 Montréal (514) 395-0311  
 Toll-free: 1-866-526-0311  
 E-mail: [Renseignements-consommateur@lautorite.qc.ca](mailto:Renseignements-consommateur@lautorite.qc.ca)

**GIO - Alberta**

(780) 421-8181  
 Toll-free: 1-888-421-4212  
 Website: [www.gio-scad.org](http://www.gio-scad.org)

For more information or to submit the facts of your insurance-related dispute, please visit the GIO website at [www.gio-scad.org](http://www.gio-scad.org).

Should you be dissatisfied with the outcome of your broker's resolution or with the GIO's / l'Autorité's assistance, please submit your written complaint to:

**Lloyd's Canada Inc.**

Broker Management Services  
 1155 rue Metcalfe, Suite 2220  
 Montreal, Quebec H3B 2V6  
 Tel: 1-877-4LLOYDS  
 Fax: (514) 861-0470  
 E-mail: [lineage@lloyds.ca](mailto:lineage@lloyds.ca)

Your written complaint will be forwarded to Lloyd's Complaints Department in London which ensures that Lloyd's Underwriters and their representatives deal with claims and complaints in an acceptable manner. It acts as an impartial mediator. When undertaking a review this Department takes account of general legal principles, good insurance practice, and whether all events surrounding a given case have been considered fairly.

If you are dissatisfied with Lloyd's final letter, you may ask the GIO to arrange for mediation. Mediation is not available until Lloyd's has issued its final letter of position on your complaint.

In Québec you may also avail yourself of the services of l'Autorité who will study your file and may recommend mediation, if it deems this action appropriate and if both parties agree to it.

GIO - Alberta can be contacted where a policyholder is not satisfied with the basis on which a premium for basic coverage for a private passenger vehicle was determined, or considers that an insurer, directly or indirectly, has taken an adverse contractual action with respect to insurance for basic coverage.

## SUBSCRIPTION NOTICE

IN CONSIDERATION OF THE INSURED having paid or agreed to pay each of the INSURERS named in the List of Subscribing Companies forming part hereof, or to INSURERS whose names are substituted therefor or added thereto by endorsement, hereinafter called "THE INSURERS", the Premium set against its name in the List of Subscribing Companies (attached hereto),

THE INSURERS SEVERALLY AND NOT JOINTLY agree, each for the Sum(s) Insured or Percentage(s) and for the Coverage(s) Insured set against its name in the List of Subscribing Companies, and subject always to the terms and conditions of this Policy, that if a loss occurs for which insurance is provided by this Policy at any time while it is in force, they will indemnify the INSURED against the loss so caused; the liability of each insurer individually for such loss being limited to that proportion of the loss payable according to the terms and conditions of this Policy which the Sum Insured or the amount corresponding to the Percentage set against its name in the List of Subscribing Companies, or such other sum or percentage as may be substituted therefor by endorsement, bears to

the total of the sums insured or of the amounts corresponding to the percentages of the sums insured respectively set out against the coverage concerned on the Declarations page(s).

Wherever in this Policy, or in any endorsement attached hereto, reference is made to "The Company", "The Insurer", "This Company", "we", "us", or "our", reference shall be deemed to be made to each of the Insurers severally.

This policy is made and accepted subject to the foregoing provisions, and to the other provisions, stipulations and conditions contained herein, which are hereby specially referred to and made a part of this Policy, as well as such other provisions, agreements or conditions as may be endorsed hereon or added hereto.

IN WITNESS WHEREOF THE INSURERS through their representative(s) duly authorized by them for this purpose have executed and signed this Policy.

# A&E



## INSURANCE FOR ARCHITECTS & ENGINEERS



CFC Underwriting Limited  
85 Gracechurch Street  
London EC3V 0AA  
United Kingdom  
T: +44 (0) 207 220 8500  
F: +44 (0) 207 220 8501  
E: [enquiries@cfcunderwriting.com](mailto:enquiries@cfcunderwriting.com)  
W: [www.cfcunderwriting.com](http://www.cfcunderwriting.com)



# Hidden Insurance Risk Lurks in Property Leases

By Gloria Vogel, CFA | August 21, 2013

## The RF Radiation Risk Factor

In February 2013, AM Best classified RF (radio frequency) radiation from wireless antennas as an “Emerging Technology-Based Risk.” This was based, in part, on an estimated 250,000 workers per year who may be over-exposed to RF radiation from the 600,000 governmental and commercial RF radiating antenna systems across the nation.



The FCC recognizes RF radiation from transmitting antennas as a human health hazard, as a single RF transmitting antenna can emit hundreds of times more RF radiation than a cell phone. RF radiation hazards from transmitting antennas can cause thermal and non-thermal or cognitive/psychological injuries. Non-thermal or cognitive/psychological injuries do not necessarily have a physical manifestation. Cognitive/psychological RF injuries include memory loss, mood disorders, sleep disorders, and impaired or diminished cognitive function.

RF radiation injuries should be of concern to insurers, especially since their exposure to the risk is hidden within the lease contracts between the commercial wireless service providers (CWSPs) and landlords who lease space to those CWSPs for antenna systems.

### The Property Leases:

Landlords who lease space to the CWSPs are completely unaware of the potential for injury from RF transmitting antennas and that they will be held liable for such injuries. Typical site leases include a mutual indemnification clause, which would appear to protect the landlords from personal injuries that may be caused by the CWSPs' antennas. However to enforce the indemnity provision, the landlords must demonstrate that the primary cause of injury was the fault of the CWSPs.

CWSPs will take the position that it was the landlords who permitted access to the RF hazard area near the antennas, which was the proximate cause of the injury; or, that injury could have been prevented by the landlords controlling access to the RF hazard areas. So, in reality, the lease language indemnity provision merely buys the landlords and their insurers a lawsuit against well-financed CWSPs with a litany of possible legal defenses.

### **Who Has Liability for RF injuries?**

The CWSPs employ hundreds of RF engineers and are the technical experts on anything involving RF radiation and its ability to cause injury to humans. Accordingly, prior to the lease being signed, the CWSPs have a “Duty to Warn” the unsuspecting landlords, and their insurers, of the RF radiation hazards associated with the lessee’s equipment.

By not divulging pertinent [RF hazard](#) information in the leases, the CWSPs may be attempting to use the 1996 Telecom Act as a shield in not warning the landlords. The Act precludes any discussion of RF radiation at municipal siting hearings. However, there is nothing contained in the language that enjoins the CWSPs from not informing the landlords of the hazards associated with RF radiation in the lease agreements they unilaterally create. Their actions are based solely on a business decision that has been used by other industries in the past...never mention the physical harm to humans that the product produces.

A landlord with full knowledge of their financial exposure to the liability assumed with the lease would likely either demand a greater monthly fee, or would decline permission to site on their property. It stands to reason that no business person would trade hundreds of thousands or more in attorney and legal fees associated with an RF injury, for a few thousand dollars of rental income per month.

### **Legal Recourse**

Once a lease has been executed without proper disclosure, “Fraud in the Inducement” can be alleged by the landlord asserting that the CWSP concealed material facts associated with the hazards of their operations/equipment. The CWSP will have known at the time of negotiating the contract that by not disclosing those material facts, the landlord might be more inclined to sign the lease. Additionally, theories of “Intentional and Negligent Misrepresentation of Material Facts” may be brought against the CWSP.

Finally, there will be insistence that the CWSP has a “Non-Delegable Duty” to ensure full compliance with the FCC RF human exposure standard. Federal law, 47 CFR 1.130, establishes the FCC licensee’s (CWSP) duty regarding RF safety, which cannot be transferred to the landlord.

### **Lack of Claims Doesn’t Mean Lack of Claimants**

The insurers should not rely on the lack of RF injury claims to proclaim there isn’t a significant RF injury problem with workers being exposed to RF radiation on a daily basis. The lack of claims is the result of injured parties being unaware that they were over-exposed to RF radiation. Just one plaintiff’s attorney with an aggressive media campaign can quickly alter this

lack of knowledge. As the population of workers becomes aware of the hidden RF hazards and their potential for exposure, claims will likely be filed by the thousands, and long term litigation will result, in similar manner to the way asbestos evolved.



*Gloria Vogel is senior vice president at N.Y.-based Drexel Hamilton, a service disabled veteran broker-dealer. She also teaches finance and metrics to graduate students as an adjunct professor at NYU-SCPS. Previously, Vogel was a contributing author on [www.seekingalpha.com](http://www.seekingalpha.com). She worked at Swiss Re and was an All-Star equity research insurance analyst at several major investment banks, including Lehman Brothers and Bear Stearns.*

*Source: <http://www.claimsjournal.com/news/national/2013/08/21/235352.htm>*