6. Exclusions

The insurance must not exclude or limit the liability of the *insurer* except to the extent that any *claim* or related *defence costs* arise from the matters set out in this clause 6.

…

6. Cyber, infrastructure and Data Protection Law

The insurance may exclude, by way of an exclusion or endorsement, the liability of the *insurer* to indemnify any *inured* in respect of, or in any way in connection with:

(a) a *cyber act*
(b) a partial or total failure of any *computer system*
(c) the receipt or transmission of malware, malicious code or similar by the *insured* or any other party acting on behalf of the *insured*
(d) the failure or interruption of services relating to *core infrastructure*
(e) a breach of Data Protection Law

provided that any such exclusion or endorsement does not exclude or limit any liability of the *insurer* to indemnify any *insured* against:

(i) civil liability referred to in clause 1.1 (including the obligation to remedy a breach of the SRA Accounts Rules as described in the definition of *claim)*
(ii) *defence costs* referred to in clause 1.2 that would have been covered under the insurance even absent an event at 6(a) to 6(e) detailed above
(iii) any award by a regulatory authority referred to in clause 1.4

In addition, any such exclusion or endorsement should not exclude or limit any liability of the *insurer* to indemnify any *insured* against matters referred to at (i) (ii) and (iii) above in circumstances where automated technology has been utilised.

Amendment to current Defined Terms

Defence costs

means legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the *insurer* in:

a. defending any proceedings relating to a *claim*; or

b. conducting any proceedings for indemnity, contribution or recovery relating to a *claim*; or

c. investigating, reducing, avoiding or compromising any actual or potential *claim*; or

d. acting for any *insured* in connection with any investigation, inquiry or disciplinary proceeding (save in respect of any disciplinary proceeding under the authority of the SRA or the *Tribunal*),

and does not include any internal or overhead expenses of the *insured firm* or the *insurer* or the cost of any *insured's* time.

Additional Defined Terms to add to the glossary:

1. *Cyber Act* means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any *Computer System*.

2. *Computer System* means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

3. *Core infrastructure* means any service provided to the *insured* or any other party acting on behalf of the *insured* by an internet services provider, telecommunications provider, or cloud provider.

4. *Data Protection Law* means any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

Explanatory Note

1. The title of this clause is a stylistic proposal to explain what types of loss the clause discusses.

2. The definition of cyber act aligns with the definition in the International Underwriting Association's (IUA) model clause and is considered appropriate for the MTCs.

3. The definition of computer system aligns with the definition in the IUA model clause and is considered appropriate for the MTCs.

4. Core infrastructure is a proposed new definition within the MTCs, which utilises some language from the IUA model clause, but does depart in other aspects.

5. This is because our interpretation of the IUA model clause is that it 'writes back in' some (first party and third party) losses where the insured's own hardware/software/computer system experiences an issue. That may be appropriate for other PI policies but the drafting language differs in the MTCs. The only type of loss intended to be covered by the MTCs is loss flowing from events where civil liability also occurs. This is clarified in the draft cyber clause for the MTCs in the paragraph beginning: "provided that any such exclusion or endorsement…"

6. The definition of data protection law aligns with the definition in the IUA model clause and is considered appropriate for the MTCs. The RICS is currently consulting on language that refers to the GDPR and subsequent legislation enacted in the UK. We do not think is it strictly necessary to add this distinction.

7. The last paragraph of the proposed additional clause beginning “In addition, any such exclusion…” is designed to confirm the position in relation to events where third-party losses arise following the use of technology in the provision of advice. Examples could include Stamp Duty Land Tax calculators or auto-generated advice. We consider that, in circumstances where technology is utilised to provide advice that results in loss covered by the civil liability clause within the MTCs, then such losses should be covered by the PII policy. However, it will be helpful to clarify the position within the cyber clause to ensure that the MTCs align with the PRA’s and Lloyd’s’ expectations.

8. ‘Automated technology’ is purposefully not drafted as a new defined term, given the likelihood that technological processes such as chatbots and AI will develop over time. Absent a specific definition, parties (and ultimately a court) would look to use the ordinary meaning/dictionary definition of policy language when interpreting that phrase. We consider that ‘automated processes’ sufficiently covers use of the technologies currently in purview and allows for future development in this sphere.