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## Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 33
Rule 16.32

**DEFENCE TO FIFTH AMENDED STATEMENT OF CLAIM**

No. NSD177 of 2023

Federal Court of Australia

District Registry: New South Wales

Division: General

**GREENSILL BANK AG** and another set out in the Schedule

First Applicant

**INSURANCE AUSTRALIA LIMITED (ACN 000 016 722)** and others set out in the Schedule

Respondents

**PRELIMINARY MATTERS**

a. Headings used in this Defence are for convenience only. They do not form part of the Defence of the Fifth and Sixth Respondents.

b. Unless the context otherwise requires, the Fifth and Sixth Respondents adopt the defined terms used in the Applicants' Fifth Amended Statement of Claim filed 12 June 2025 (**SOC**), but do not admit any factual assertions contained in, or in any way implied by, any defined term used in the SOC.

c. The Fifth and Sixth Respondents have not responded to the particulars in the SOC. Nothing in this Defence should be taken to be an admission of any fact alleged in the particulars to the SOC.

d. This Defence responds to the SOC on behalf of the Fifth and Sixth Respondents (together, **Marsh**). In this Defence, the Fifth Respondent is referred to as **Marsh Pty Ltd** and the Sixth Respondent is referred to as **Marsh Limited**.

e. Marsh Limited and Marsh Pty Ltd have expressly reserved their rights in relation to the enforcement and application of the exclusive jurisdiction clause in the relevant Marsh Retainers, including in the English Proceedings (as defined in subparagraph 272Z(a) below) and in response to Greensill Bank's claims for interlocutory and permanent


Filed on behalf of (name & role of party) Marsh Pty Ltd and Marsh Limited, Fifth and Sixth Respondents
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injunctive and anti-anti-suit relief against Marsh in Australia in the terms pleaded in subparagraph 272AA(c) of this Defence.

f. By filing this Defence in accordance with the Court's orders, neither Marsh Limited nor Marsh Pty Ltd waive any rights in relation to the enforcement or application of the exclusive jurisdiction clause and continue to reserve those rights pending the resolution of the extant dispute between Marsh Limited and Greensill Bank concerning the effect of the exclusive jurisdiction clause in the Marsh Retainers.

## A PARTIES

1. Marsh admits paragraph 1 of the SOC.

2. Marsh admits paragraph 2 of the SOC.

3. In response to paragraph 3 of the SOC, Marsh:

   (a) admits subparagraphs 3(a) and (b); and

   (b) otherwise, does not know and therefore cannot admit the paragraph.

4. Marsh admits paragraph 4 of the SOC.

5. In response to paragraph 5 of the SOC, Marsh:

   (a) admits subparagraph 5(a);

   (b) admits subparagraph 5(b);

   (c) admits subparagraph 5(c);

   (d) as to subparagraph 5(d):

      i. admits that, between 1 August 2017 and 30 June 2019, BCC was an Authorised Representative of IAL; and

      ii. otherwise, does not know and therefore cannot admit the subparagraph;

   (e) as to subparagraph 5(e):

      i. admits that, at all material times from 1 August 2017, BCC was a representative of IAL as that term was defined in s 910A of the Corporations Act; and

      ii. otherwise, does not know and therefore cannot admit the subparagraph;

   (f) admits subparagraph 5(f); and

(g) otherwise, does not know and therefore cannot admit the paragraph.

6. In response to paragraph 6 of the SOC, Marsh:

(a) does not know and therefore cannot admit subparagraph 6(a);

(b) says that Mr Brereton held himself out as having the title "Head of Trade Credit" but otherwise does not know and therefore cannot admit subparagraph 6(b); and

(c) admits subparagraphs 6(c) to (h).

6A. Marsh admits paragraph 6A of the SOC.

6B. In response to paragraph 6B of the SOC, Marsh:

(a) admits subparagraph 6B(a);

(b) admits subparagraph 6B(b);

(c) as to subparagraph 6B(c):

i. repeats paragraphs 218B to 218D and subparagraph 6B(f) of this Defence; and

ii. otherwise, denies the subparagraph;

(d) as to subparagraph 6B(d):

i. relies upon Australian financial services licence no. 238983 for its full terms and effect; and

ii. otherwise, admits the subparagraph;

(e) admits subparagraph 6B(e);

(f) as to subparagraph 6B(f):

i. repeats paragraphs 218B to 218D of this Defence;

ii. says that, in the premises pleaded in paragraphs 218B to 218D of this Defence, Marsh Pty Ltd provided Services (as defined in the 2014 Marsh Retainer, 2015 Marsh Retainer, 2016 Marsh Retainer, 2017 Marsh Retainer, 2018 Marsh GCUK Retainer, 2018 Marsh GBAG Retainer, 2019 Marsh Retainer, 2020 Marsh Retainer and 2021 Marsh Retainer (collectively, the "**Marsh Retainers**", as defined in subparagraph 258(b) of this Defence)) to Greensill Bank as sub-agent of Marsh Limited pursuant to each of the Marsh Retainers; and

iii. otherwise, denies the subparagraph;

(g) admits subparagraph 6B(g):

(h) denies subparagraph 6B(h); and

(i) otherwise, denies the paragraph.

6C. In response to paragraph 6C of the SOC, Marsh:

(a) admits subparagraph 6C(a);

(b) admits subparagraph 6C(b);

(c) as to subparagraph 6C(c):

i. repeats paragraphs 218B to 218D and subparagraph 6C(d) of this Defence; and

ii. otherwise, denies the subparagraph;

(d) as to subparagraph 6C(d):

i. repeats paragraphs 218B to 218D of this Defence;

ii. says that, in the premises pleaded in paragraphs 218B to 218D of this Defence, Marsh Limited provided Services (as defined in each of the Marsh Retainers) to Greensill Bank pursuant to each of the Marsh Retainers; and

iii. otherwise, denies the subparagraph;

(e) as to subparagraph 6C(e):

i. repeats subparagraph 6C(d) of this Defence; and

ii. otherwise, denies the subparagraph;

(f) as to subparagraph 6C(f):

i. repeats subparagraph 6C(d) of this Defence; and

ii. otherwise, denies the subparagraph;

(g) denies subparagraph 6C(g); and

(h) otherwise, denies the paragraph.

## B AGENCY ARRANGEMENTS BETWEEN BCC AND IAL

### B.1 Agency arrangements between CGU and BCC

7. Marsh admits paragraph 7 of the SOC.

8. Marsh admits paragraph 8 of the SOC.

9. In response to paragraph 9 of the SOC, Marsh:

   (a) admits that CGU executed and provided the Authorisation Notice to BCC; and

   (b) otherwise, does not know and therefore cannot admit the paragraph.

10. In response to paragraph 10 of the SOC, Marsh:

   (a) repeats paragraphs 8 and 9 of this Defence;

   (b) refers to the terms of the CGU AAR Agreement and Authorisation Notice for their full force and effect; and

   (c) otherwise, admits the paragraph.

11. Marsh admits paragraph 11 of the SOC.

12. In response to paragraph 12 of the SOC, Marsh:

   (a) repeats paragraphs 8 to 10 of this Defence; and

   (b) otherwise, admits the paragraph.

13. In response to paragraph 13 of the SOC, Marsh:

   (a) refers to the terms of the CGU AAR Agreement for their full force and effect; and

   (b) otherwise, admits the paragraph.

14. Marsh admits paragraph 14 of the SOC.

15. In response to paragraph 15 of the SOC, Marsh:

   (a) repeats paragraphs 8 to 14 of this Defence; and

   (b) otherwise, admits the paragraph.

16. In response to paragraph 16 of the SOC, Marsh:

   (a) repeats paragraphs 8 and 9 of this Defence;

   (b) says that paragraph 16 of the SOC sets out the general effect of the clauses of the CGU AAR Agreement referred to in that paragraph;

   (c) refers to the terms of the CGU AAR Agreement for their full force and effect; and

   (d) otherwise, admits the paragraph.

17. In response to paragraph 17 of the SOC, Marsh:

(a) repeats paragraphs 8 and 9 of this Defence;

(b) says that paragraph 17 of the SOC sets out the general effect of the clauses of the CGU AAR Agreement referred to in that paragraph;

(c) refers to the terms of the CGU AAR Agreement for their full force and effect; and

(d) otherwise, admits the paragraph.

18. In response to paragraph 18 of the SOC, Marsh:

(a) repeats paragraphs 8 and 9 of this Defence;

(b) says that paragraph 18 of the SOC sets out the general effect of the clauses of the CGU AAR Agreement referred to in that paragraph;

(c) refers to the terms of the CGU AAR Agreement for their full force and effect; and

(d) otherwise, admits the paragraph.

19. In response to paragraph 19 of the SOC, Marsh:

(a) repeats paragraphs 8 and 9 of this Defence;

(b) says that paragraph 19 of the SOC sets out the general effect of the clauses of the CGU AAR Agreement referred to in that paragraph;

(c) refers to the terms of the CGU AAR Agreement for their full force and effect; and

(d) otherwise, admits the paragraph.

20. In response to paragraph 20 of the SOC, Marsh:

(a) repeats paragraphs 8 and 9 of this Defence;

(b) says that paragraph 20 of the SOC sets out the general effect of the clauses of the CGU AAR Agreement referred to in that paragraph;

(c) refers to the terms of the CGU AAR Agreement for their full force and effect; and

(d) otherwise, admits the paragraph.

21. In response to paragraph 21 of the SOC, Marsh:

(a) says that there is a document titled “BCC Trade Credit Pty Ltd Underwriting Guidelines” and marked Version 1.0 dated June 2016 (**UG 1.0**);

(b) says that paragraph 21 of the SOC sets out the general effect of the parts of the UG 1.0 referred to in that paragraph;

(c) refers to the terms of the CGU AAR Agreement and UG 1.0 for their full force and effect; and

(d) otherwise, denies the paragraph.

**B.2 Transfer of CGU's business to IAL**

22. Marsh admits paragraph 22 of the SOC.

23. Marsh admits paragraph 23 of the SOC.

**B.3 Agency agreements between BCC and IAL**

24. Marsh admits paragraph 24 of the SOC.

25. Marsh admits paragraph 25 of the SOC.

26. In response to paragraph 26 of the SOC, Marsh:

(a) repeats paragraphs 22 to 25 of this Defence; and

(b) otherwise, admits the paragraph.

27. Marsh does not know and therefore cannot admit paragraph 27 of the SOC.

28. In response to paragraph 28 of the SOC, Marsh:

(a) relies on the terms of the To Whom It May Concern Letter for their full force and effect; and

(b) otherwise, admits the paragraph.

29. In response to paragraph 29 of the SOC, Marsh:

(a) relies on the terms of the To Whom It May Concern Letter for its full force and effect; and

(b) otherwise, admits the paragraph.

30. Marsh admits paragraph 30 of the SOC.

31. In response to paragraph 31 of the SOC, Marsh:

(a) admits that there is a document titled “Underwriting Guidelines” which is marked Version 2.0 dated July 2018 (**UG 2.0**);

(b) says that paragraph 31 of the SOC sets out the general effect of the parts of the UG 2.0 referred to in that paragraph;

(c) refers to the terms of the UG 2.0 for their full force and effect; and

(d) otherwise, admits the paragraph.

32. In response to paragraph 32 of the SOC, Marsh:

(a) admits that there is a document titled "Underwriting Guidelines" which is marked Version 3.0 and dated February 2019 (**UG 3.0**);

(b) says that paragraph 32 of the SOC sets out the general effect of the parts of the UG 3.0 referred to in that paragraph;

(c) refers to the terms of the UG 3.0 for their full force and effect; and

(d) otherwise, does not know and therefore cannot admit the paragraph.

33. Marsh admits paragraph 33 of the SOC.

34. In response to paragraph 34 of the SOC, Marsh:

(a) says that paragraph 34 of the SOC sets out the general effect of the clauses of the IAL AAR Agreement referred to in that paragraph;

(b) refers to the terms of the IAL AAR Agreement for their full force and effect; and

(c) otherwise, admits the paragraph.

35. In response to paragraph 35 of the SOC, Marsh:

(a) repeats paragraphs 22 to 34 of this Defence; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

36. In response to paragraph 36 of the SOC, Marsh:

(a) repeats paragraphs 22 to 35 of this Defence;

(b) admits subparagraph 36(b); and

(c) otherwise, does not know and therefore cannot admit the paragraph.

**B.4 Agency arrangements between BCC, IAL and Tokio Marine**

37. In response to paragraph 37 of the SOC, Marsh:

(a) admits that there is a document titled "Policy and Claims Administration Outsourcing Deed" dated 9 April 2019 which appears to be an agreement between IAL, Tokio Marine and BCC (**PACAO**);

(b) refers to the terms of the PACAO for their full force and effect; and

(c) otherwise, admits the paragraph.

38. In response to paragraph 38 of the SOC, Marsh:

(a) repeats paragraph 37 of this Defence;

(b) says that paragraph 38 of the SOC sets out the general effect of the clauses of the PACAO referred to in that paragraph; and

(c) otherwise, admits the paragraph.

39. Marsh does not know and therefore cannot admit paragraph 39 of the SOC.

**B.5 BCC administered trade credit insurance policies as agent for IAL**

40. In response to paragraph 40 of the SOC, Marsh:

(a) admits that from around 1 August 2017 to a date unknown to Marsh, BCC periodically provided written bordereaux to IAL; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

41. Marsh does not know and therefore cannot admit paragraph 41 of the SOC.

42. In response to paragraph 42 of the SOC, Marsh:

(a) admits that, from around 1 August 2017, BCC collected premiums under policies of trade credit insurance for which IAL was named as the Insurer; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

43. In response to paragraph 43 of the SOC, Marsh:

(a) admits that, from around 1 August 2017, BCC remitted premiums to IAL in respect of policies of trade credit insurance for which IAL was named as the Insurer; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

44. In response to paragraph 44 of the SOC, Marsh:

(a) admits that, from around 1 August 2017, IAL paid commission to BCC on policies of trade credit insurance for which IAL was named as the Insurer; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

45. Marsh admits paragraph 45 of the SOC.

## C AGENCY ARRANGEMENTS BETWEEN GREG BRERETON, CGU AND IAL

### C.1 Agency arrangements between Greg Brereton and CGU

46. Marsh admits paragraph 46 of the SOC.

47. In response to paragraph 47 of the SOC, Marsh:

(a) refers to the terms of the Brereton CGU Authorisation for their full force and effect; and

(b) otherwise, admits the paragraph.

48. Marsh admits paragraph 48 of the SOC.

49. In response to paragraph 49 of the SOC, Marsh:

(a) repeats paragraphs 46 to 48 of this Defence;

(b) refers to the terms of the Brereton CGU Authorisation for their full force and effect; and

(c) otherwise, admits the paragraph.

50. In response to paragraph 50 of the SOC, Marsh:

(a) refers to the terms of the Brereton CGU Authorisation for their full force and effect; and

(b) otherwise, admits the paragraph.

51. In response to paragraph 51 of the SOC, Marsh:

(a) repeats paragraphs 14 and 46 to 50 of this Defence; and

(b) otherwise, admits the paragraph.

52. In response to paragraph 52 of the SOC, Marsh:

(a) repeats paragraph 21 of this Defence;

(b) says that paragraph 52 of the SOC sets out the general effect of certain statements contained in the UG 1.0;

(c) refers to the terms of the UG 1.0 for their full force and effect; and

(d) otherwise, denies the paragraph.

### C.2 Agency arrangements between Greg Brereton, IAL and IAGA

53. Marsh admits paragraph 53 of the SOC.

54. In response to paragraph 54 of the SOC, Marsh:

(a) says that, on 29 January 2016, Insurance Australia Group Limited became the ultimate holding company of IAGA (ABN 11 147 749 139) (which at that time was named Allied Global Underwriting Pty Ltd); and

(b) otherwise, admits the paragraph.

55. Marsh admits paragraph 55 of the SOC.

56. Marsh admits paragraph 56 of the SOC.

57. In response to paragraph 57 of the SOC, Marsh:

(a) refers to the terms of the Brereton IAGA Authorisation for their full force and effect; and

(b) otherwise, admits the paragraph.

58. Marsh does not know and therefore cannot admit paragraph 58 of the SOC.

59. In response to paragraph 59 of the SOC, Marsh:

(a) repeats paragraphs 55 to 58 of this Defence;

(b) refers to the terms of the Brereton IAGA Authorisation for their full force and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

60. In response to paragraph 60 of the SOC, Marsh:

(a) refers to the terms of the Brereton IAGA Authorisation for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

61. In response to paragraph 61 of the SOC, Marsh:

(a) admits that there is a document titled "Delegated Authority for Head of Trade Credit Effective 1st July 2018" which, on its face, appears to have been issued by BCC to Mr Brereton; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

62. In response to paragraph 62 of the SOC, Marsh:

(a) repeats paragraph 31 of this Defence;

(b) says that paragraph 62 of the SOC sets out the general effect of certain statements contained in the UG 2.0;

(c) refers to the terms of the UG 2.0 for their full force and effect; and

(d) otherwise, does not know and therefore cannot admit the paragraph.

63. Marsh does not know and therefore cannot admit paragraph 63 of the SOC.

64. In response to paragraph 64 of the SOC, Marsh:

(a) repeats paragraphs 22 to 23 and 46 to 63 of this Defence;

(b) admits that between 1 August 2017 and at least 30 June 2019, Mr Brereton was authorised to act as IAL's and IAGA's agent; and

(c) otherwise, admits the paragraph.

**DA REGULATORY REQUIREMENTS**

**DA1 Membership of the German Deposit Protection Fund**

64A. Marsh admits paragraph 64A of the SOC.

64B. Marsh admits paragraph 64B of the SOC.

64C. Marsh admits paragraph 64C of the SOC.

64D. Marsh does not know and therefore cannot admit paragraph 64D of the SOC.

64E. Marsh does not know and therefore cannot admit paragraph 64E of the SOC.

64F. Marsh does not know and therefore cannot admit paragraph 64F of the SOC.

64G. In response to paragraph 64G of the SOC, Marsh:

(a) admits that there is a letter from the PdB to NordFinanz Bank (as Greensill Bank was then known) dated on or about 18 December 2013;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

64H. In response to paragraph 64H of the SOC, Marsh:

(a) admits that there is a letter from the PdB to NordFinanz Bank (as Greensill Bank was then known) dated on or about 14 March 2014;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

64I. In response to paragraph 64I of the SOC, Marsh:

(a) admits that there is a letter from the PdB to NordFinanz Bank (as Greensill Bank was then known) dated on or about 1 December 2015;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

64J. In response to paragraph 64J of the SOC, Marsh:

(a) admits that there is a letter from Greensill Bank to the PdB dated on or about 1 December 2015;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

64K. In response to paragraph 64K of the SOC, Marsh:

(a) admits that there is a letter from the PdB to Greensill Bank dated on or about 3 March 2020;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

64L. In response to paragraph 64L of the SOC, Marsh:

(a) admits that there is a letter from Greensill Bank to the PdB dated on or about 5 March 2020;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

64M. In response to paragraph 64M of the SOC, Marsh:

(a) admits that there is a letter from the PdB to Greensill Bank dated on or about 1 April 2020;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

64N. In response to paragraph 64N of the SOC, Marsh:

(a) admits that there is a letter from Greensill Bank to the PdB dated on or about 3 April 2020;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

64O. In response to paragraph 64O of the SOC, Marsh:

(a) repeats paragraph 64M of this Defence;

(b) admits that there is a letter from the PdB to Greensill Bank dated on or about

4 November 2020;

(c) admits that there is a letter from Greensill Bank to the PdB dated on or about 5 November 2020;

(d) admits that there is a letter from the PdB to Greensill Bank dated on or about 2 February 2021;

(e) admits that there is a letter from Greensill Bank to the PdB dated on or about 11 February 2021;

(f) refers to the letters referred to in subparagraphs (b) to (e) above for their full terms and effect; and

(g) otherwise, does not know and therefore cannot admit the paragraph.

64P. Marsh does not know and therefore cannot admit paragraph 64P of the SOC.

64Q. Marsh does not know and therefore cannot admit paragraph 64Q of the SOC.

**DA2 Capital Requirements Regulation (EU) No. 575/2013**

***Capital Regulation Requirements***

64R. Marsh admits paragraph 64R of the SOC.

64S. Marsh admits paragraph 64S of the SOC.

64T. Marsh does not know and therefore cannot admit paragraph 64T of the SOC.

***Credit Risk Mitigation***

64U. Marsh does not know and therefore cannot admit paragraph 64U of the SOC.

64V. Marsh does not know and therefore cannot admit paragraph 64V of the SOC.

64W. In response to paragraph 64W of the SOC, Marsh:

(a) admits that there is a letter from BaFin to Greensill Bank dated on or about 13 June 2019;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

64X. Marsh does not know and therefore cannot admit paragraph 64X of the SOC.

64Y. Marsh does not know and therefore cannot admit paragraph 64Y of the SOC.

64Z. Marsh does not know and therefore cannot admit paragraph 64Z of the SOC.

## D POLICY 3690

### D.1 Entry into Policy 3690

65. [Not used]

66. Marsh admits paragraph 66 of the SOC.

66A. Marsh admits paragraph 66A of the SOC.

67. In response to paragraph 67 of the SOC, Marsh:

(a) admits that "Insured" is defined in Policy 3690 to mean GCPL and Greensill Bank;

(b) refers to the terms of Policy 3690 for their full force and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

68. Marsh admits paragraph 68 of the SOC.

69. Marsh admits paragraph 69 of the SOC.

70. Marsh admits paragraph 70 of the SOC.

71. Marsh admits paragraph 71 of the SOC.

72. Marsh admits paragraph 72 of the SOC.

### D.2 Key Terms of Policy 3690

73. In response to paragraph 73 of the SOC, Marsh:

(a) says that paragraph 73 of the SOC sets out the general effect of the terms of Policy 3690 referred to in that paragraph;

(b) relies on the terms of Policy 3690 for their full force and effect; and

(c) otherwise, admits the paragraph.

74. In response to paragraph 74 of the SOC, Marsh:

(a) says that paragraph 74 of the SOC sets out the general effect of the terms of Policy 3690 referred to in that paragraph;

(b) relies on the terms of Policy 3690 for their full force and effect; and

(c) otherwise, admits the paragraph.

75. In response to paragraph 75 of the SOC, Marsh:

(a) says that paragraph 75 of the SOC sets out the general effect of the terms of Policy 3690 referred to in that paragraph;

(b) relies on the terms of Policy 3690 for their full force and effect; and

(c) otherwise, admits the paragraph.

76. In response to paragraph 76 of the SOC, Marsh:

(a) says that paragraph 76 of the SOC sets out the general effect of the terms of Policy 3690 referred to in that paragraph;

(b) relies on the terms of Policy 3690 for their full force and effect; and

(c) otherwise, admits the paragraph.

77. In response to paragraph 77 of the SOC, Marsh:

(a) says that paragraph 77 of the SOC sets out the general effect of the terms of Policy 3690 referred to in that paragraph;

(b) relies on the terms of Policy 3690 for their full force and effect; and

(c) otherwise, admits the paragraph.

78. In response to paragraph 78 of the SOC, Marsh:

(a) says that paragraph 78 of the SOC sets out the general effect of the terms of Policy 3690 referred to in that paragraph;

(b) relies on the terms of Policy 3690 for their full force and effect; and

(c) otherwise, admits the paragraph.

79. In response to paragraph 79 of the SOC, Marsh:

(a) says that paragraph 79 of the SOC sets out the general effect of the terms of Policy 3690 referred to in that paragraph;

(b) relies on the terms of Policy 3690 for their full force and effect; and

(c) otherwise, admits the paragraph.

**D.3 BCC had authority to enter into Policy 3690**

**(A) Actual authority**

80. Marsh admits paragraph 80 of the SOC.

**(B) Ostensible authority**

*The Proposed Greensill Policy Structure and Proposed Greensill Policy Wording*

80A In response to paragraph 80A of the SOC, Marsh:

(a) admits that there is an email dated 15 September 2017 from Scott Newland of

BCC to Twain Abbott of IAL, copying Phuong Ly, Brad Robson, Emily Cook, and Andrew McKinnon of IAL (amongst others), with attachments;

(b) refers to that email and its attachments for their full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

80B. In response to paragraph 80B of the SOC, Marsh:

(a) repeats paragraph 80A of this Defence; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

80C. Marsh does not know and therefore cannot admit paragraph 80C of the SOC.

80D. Marsh does not know and therefore cannot admit paragraph 80D of the SOC.

80E. In response to paragraph 80E of the SOC, Marsh:

(a) says that the Proposed Greensill Policy Wording (as defined in paragraph 80C of the SOC) was prepared by GCUK and/or Lex Greensill on behalf of GCUK and Greensill Bank;

(b) says further that neither Marsh Limited nor Marsh Pty Ltd was involved in drafting the Proposed Greensill Policy Wording;

(c) says further that neither Marsh Limited nor Marsh Pty Ltd communicated directly with IAL or Scor Re in relation to the Proposed Greensill Policy Wording;

(d) says further that any negotiations regarding the Proposed Greensill Policy Wording in connection with the Liberty Onesteel Transaction (as defined in subparagraph 80B(a) of the SOC) were conducted between GCUK, Greensill Bank, Lex Greensill, BCC, IAL and Scor Re; and

(e) otherwise, denies the paragraph.

80F. Marsh does not know and therefore cannot admit paragraph 80F of the SOC.

*The 2017 LOS Policies*

80G. In response to paragraph 80G of the SOC, Marsh:

(a) says that, on or around 20 December 2017, Mr Brereton signed purported amendments to certain terms of the 2017 LOS Master Policy and 2017 LOS Parallel Policy; and

**Particulars**

Email from Greg Brereton to John Whelan and Lex

Greensill copied to Julian Macey-Dare, Edward Smith and others dated 20 December 2017, with attachments (AGB.0002.0001.0139, AGB.0002.0001.0140, AGB.0002.0001.0141).

(b) otherwise, admits the paragraph.

80H. Marsh admits paragraph 80H of the SOC.

80I. In response to paragraph 80I of the SOC, Marsh:

(a) relies on the terms of the 2017 LOS Master Policy and 2017 LOS Parallel Policy for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

80J. Marsh does not know and therefore cannot admit paragraph 80J of the SOC.

80K. Marsh does not know and therefore cannot admit paragraph 80K of the SOC.

80L. Marsh does not know and therefore cannot admit paragraph 80L of the SOC.

80M. In response to paragraph 80M of the SOC, Marsh:

(a) repeats paragraph 40 of this Defence; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

80N. Marsh does not know and therefore cannot admit paragraph 80N of the SOC.

80O. Marsh does not know and therefore cannot admit paragraph 80O of the SOC.

*2018 Excess Policies*

80P. Marsh admits paragraph 80P of the SOC.

80Q. Marsh admits paragraph 80Q of the SOC.

80R. In response to paragraph 80R of the SOC, Marsh:

(a) relies on the terms of the 2018 Excess Master Policy and 2018 Excess Parallel Policy for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

80S. Marsh does not know and therefore cannot admit paragraph 80S of the SOC.

80T. Marsh does not know and therefore cannot admit paragraph 80T of the SOC.

80U. Marsh does not know and therefore cannot admit paragraph 80U of the SOC.

80V. Marsh does not know and therefore cannot admit paragraph 80V of the SOC.

80W. Marsh does not know and therefore cannot admit paragraph 80W of the SOC.

80X. Marsh does not know and therefore cannot admit paragraph 80X of the SOC.

*Sub-Direct Policies*

80Y. Marsh admits paragraph 80Y of the SOC.

80Z. Marsh admits paragraph 80Z of the SOC.

80AA. In response to paragraph 80AA of the SOC, Marsh:

(a) relies on the terms of the Sub-Direct Master Policy and the Sub-Direct Parallel Policy for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

80AB. Marsh does not know and therefore cannot admit paragraph 80AB of the SOC.

80AC. Marsh does not know and therefore cannot admit paragraph 80AC of the SOC.

80AD. Marsh does not know and therefore cannot admit paragraph 80AD of the SOC.

80AE. Marsh does not know and therefore cannot admit paragraph 80AE of the SOC.

80AF. Marsh does not know and therefore cannot admit paragraph 80AF of the SOC.

80AG. Marsh does not know and therefore cannot admit paragraph 80AG of the SOC.

*2017 Standalone Policies*

80AH. Marsh admits paragraph 80AH of the SOC.

80AI. Marsh admits paragraph 80AI of the SOC.

80AJ. In response to paragraph 80AJ of the SOC, Marsh:

(a) relies on the terms of the 2017 Master Policy 3691 and 2017 Parallel Policy 3690 for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

80AK. Marsh does not know and therefore cannot admit paragraph 80AK of the SOC.

80AL. Marsh does not know and therefore cannot admit paragraph 80AL of the SOC.

80AM. Marsh does not know and therefore cannot admit paragraph 80AM of the SOC.

80AN. Marsh does not know and therefore cannot admit paragraph 80AN of the SOC.

80AO. Marsh does not know and therefore cannot admit paragraph 80AO of the SOC.

80AP. Marsh does not know and therefore cannot admit paragraph 80AP of the SOC.

*2018 LOS Policies*

80AQ. Marsh admits paragraph 80AQ of the SOC.

80AR. Marsh admits paragraph 80AR of the SOC.

80AS. In response to paragraph 80AS of the SOC, Marsh:

(a) relies on the terms of the 2018 LOS Master Policy and 2018 LOS Parallel Policy for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

80AT. Marsh does not know and therefore cannot admit paragraph 80AT of the SOC.

80AU. Marsh does not know and therefore cannot admit paragraph 80AU of the SOC.

80AV. Marsh does not know and therefore cannot admit paragraph 80AV of the SOC.

80AW. Marsh does not know and therefore cannot admit paragraph 80AW of the SOC.

80AX. Marsh does not know and therefore cannot admit paragraph 80AX of the SOC.

80AY. Marsh does not know and therefore cannot admit paragraph 80AY of the SOC.

*Nokia Policies*

80AZ. Marsh admits paragraph 80AZ of the SOC.

80BA. Marsh admits paragraph 80BA of the SOC.

80BB. In response to paragraph 80BB of the SOC, Marsh:

(a) relies on the terms of the Nokia Master Policy and Nokia Parallel Policy for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

80BC. Marsh does not know and therefore cannot admit paragraph 80BC of the SOC.

80BD. Marsh does not know and therefore cannot admit paragraph 80BD of the SOC.

80BE. Marsh does not know and therefore cannot admit paragraph 80BE of the SOC.

80BF. Marsh does not know and therefore cannot admit paragraph 80BF of the SOC.

80BG. Marsh does not know and therefore cannot admit paragraph 80BG of the SOC.

80BH. Marsh does not know and therefore cannot admit paragraph 80BH of the SOC.

*2019 Excess Policies*

80BI. Marsh admits paragraph 80BI of the SOC.

80BJ. Marsh admits paragraph 80BJ of the SOC.

80BK. In response to paragraph 80BK of the SOC, Marsh:

(a) relies on the terms of Policy 3087 and Policy 3088 for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

80BL. Marsh does not know and therefore cannot admit paragraph 80BL of the SOC.

80BM. Marsh does not know and therefore cannot admit paragraph 80BM of the SOC.

80BN. Marsh does not know and therefore cannot admit paragraph 80BN of the SOC.

80BO. Marsh does not know and therefore cannot admit paragraph 80BO of the SOC.

80BP. Marsh does not know and therefore cannot admit paragraph 80BP of the SOC.

80BQ. Marsh does not know and therefore cannot admit paragraph 80BQ of the SOC.

*2019 Standalone Policies*

80BR. Marsh does not know and therefore cannot admit paragraph 80BR of the SOC.

80BS. Marsh does not know and therefore cannot admit paragraph 80BS of the SOC.

81. In response to paragraph 81 of the SOC, Marsh:

(a) admits that entering into Policy 3690 on behalf of IAL was within BCC's ostensible authority;

(b) admits subparagraphs 81(a) to (d);

(c) does not know and therefore cannot admit subparagraph 81(e);

(d) admits subparagraph 81(f);

(e) does not know and therefore cannot admit subparagraph 81(g); and

(f) otherwise, does not know and therefore cannot admit the paragraph.

**(C) Statutory responsibility**

82. In response to paragraph 82 of the SOC, Marsh:

(a) admits subparagraphs 82(a) to (c);

(b) does not know and therefore cannot admit subparagraph 82(d); and

(c) otherwise, admits the paragraph.

**D.4 Greg Brereton had authority to enter into Policy 3690**

83. Marsh admits paragraph 83 of the SOC.

84. In response to paragraph 84 of the SOC, Marsh:

(a) admits that Mr Brereton had ostensible authority to execute Policy 3690 on behalf of IAL through its Corporate Authorised Representative BCC;

(b) as to subparagraph (a):

i. admits that IAL put Mr Brereton in a position, and allowed Mr Brereton, to represent to Greensill Bank that he had authority to execute Policy 3690 on behalf of IAL through its Corporate Authorised Representative BCC, by putting Mr Brereton in a position, and allowing Mr Brereton, to execute other policies of insurance with Greensill Bank on behalf of IAL through its Corporate Authorised Representative BCC; and

ii. otherwise, does not know and therefore cannot admit the subparagraph;

(c) admits subparagraph 84(b);

(d) does not know and therefore cannot admit subparagraph 84(c); and

(e) otherwise, admits the paragraph.

85. In response to paragraph 85 of the SOC, Marsh:

(a) admits subparagraphs 85(a) to (c);

(b) does not know and therefore cannot admit subparagraph 85(d); and

(c) otherwise, admits the paragraph.

**D.5 Endorsements 9, 17 and 18 to Policy 3690**

86. Marsh admits paragraph 86 of the SOC.

87. Marsh admits paragraph 87 of the SOC.

88. Marsh admits paragraph 88 of the SOC.

89. In response to paragraph 89 of the SOC, Marsh:

(a) admits that the paragraph sets out the general effect of certain terms of Endorsement 9;

(b) refers to the terms of Endorsement 9 and Policy 3690 for their full force and effect; and

(c) otherwise, admits the paragraph.

90. Marsh admits paragraph 90 of the SOC.

91. Marsh admits paragraph 91 of the SOC.

92. Marsh admits paragraph 92 of the SOC.

93. In response to paragraph 93 of the SOC, Marsh:

(a) refers to the terms of Endorsement 17 for their full force and effect; and

(b) otherwise, admits the paragraph.

94. Marsh admits paragraph 94 of the SOC.

95. Marsh admits paragraph 95 of the SOC.

96. Marsh admits paragraph 96 of the SOC.

97. In response to paragraph 97 of the SOC, Marsh:

(a) refers to the terms of Endorsement 18 for their full force and effect; and

(b) otherwise, admits the paragraph.

**D.6 BCC had authority to execute Endorsements 9, 17 and 18**

98. Marsh admits paragraph 98 of the SOC.

99. In response to paragraph 99 of the SOC, Marsh:

(a) admits subparagraphs 99(a) to (c);

(b) does not know and therefore cannot admit subparagraph 99(d); and

(c) otherwise, admits the paragraph.

**D.7 Greg Brereton had authority to execute Endorsements 9, 17 and 18**

100. Marsh admits paragraph 100 of the SOC.

101. In response to paragraph 101 of the SOC, Marsh:

(a) admits subparagraphs 101(a) to (c);

(b) does not know and therefore cannot admit subparagraph 101(d); and

(c) otherwise, admits the paragraph.

**D.8 Endorsement 23 to Policy 3690**

102. Marsh admits paragraph 102 of the SOC.

103. Marsh admits paragraph 103 of the SOC.

104. Marsh admits paragraph 104 of the SOC.

105. In response to paragraph 105 of the SOC, Marsh:

(a) admits that the paragraph sets out the general effect of certain terms of Endorsement 23;

(b) refers to the terms of Endorsement 23 for their full force and effect; and

(c) otherwise, admits the paragraph.

106. In response to paragraph 106 of the SOC, Marsh:

(a) refers to the terms of Endorsement 23 for their full force and effect; and

(b) otherwise, admits the paragraph.

**D.9 BCC had authority to execute Endorsement 23**

107. Marsh admits paragraph 107 of the SOC.

108. In response to paragraph 108 of the SOC, Marsh:

(a) admits subparagraphs 108(a) to (c);

(b) does not know and therefore cannot admit subparagraph 108(d); and

(c) otherwise, admits the paragraph.

108A. In response to paragraph 108A of the SOC, Marsh:

(a) repeats paragraph 108 of this Defence;

(b) admits subparagraphs 108A(a) to (c);

(c) does not know and therefore cannot admit subparagraph 108A(d); and

(d) otherwise, admits the paragraph.

**D.10 Greg Brereton had authority to execute Endorsement 23**

109. Marsh admits paragraph 109 of the SOC.

110. In response to paragraph 110 of the SOC, Marsh:

(a) admits subparagraphs 110(a) to (c);

(b) does not know and therefore cannot admit subparagraph 110(d); and

(c) otherwise, admits the paragraph.

110A. In response to paragraph 110A of the SOC, Marsh:

(a) repeats paragraph 110 of this Defence;

(b) admits subparagraphs 110A(a) to (c);

(c) does not know and therefore cannot admit subparagraph 110A(d); and

(d) otherwise, admits the paragraph.

## E THE SIMEC TRANSACTION

### E.1 Parties to the transaction

111. Marsh admits paragraph 111 of the SOC.

112. Marsh does not know and therefore cannot admit paragraph 112 of the SOC.

113. Marsh admits paragraph 113 of the SOC.

### E.2 Reinvoicing Facility

Customer Agreement

114. In response to paragraph 114 of the SOC, Marsh:

(a) admits that there is a document titled "Customer Agreement" and dated 4 October 2015, which, on its face, appears to have been executed for and on behalf of Simec Group Limited (**Simec**) and GCUK (**Simec Customer Agreement**);

(b) refers to the Simec Customer Agreement for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

115. In response to paragraph 115 of the SOC, Marsh:

(a) repeats paragraph 114 of this Defence;

(b) says that paragraph 115 of the SOC sets out the general effect of the terms of the Simec Customer Agreement referred to in that paragraph;

(c) refers to the terms of the Simec Customer Agreement for their full force and effect; and

(d) otherwise, does not know and therefore cannot admit the paragraph.

116. In response to paragraph 116 of the SOC, Marsh:

(a) admits that there is a letter with the subject heading "Designated Accounts for the purposes of the customer agreement dated 4th October 2015" and dated 22 March 2016, which, on its face, appears to have been executed for and on behalf of GCUK and Simec;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

Re-Invoicing Agreement

117. In response to paragraph 117 of the SOC, Marsh:

(a) admits that there is a document titled "Re-invoicing Service Agreement" and dated 27 October 2015, which, on its face, appears to have been executed for and on behalf of Bramid Outsource Limited (**Bramid**) and Simec (**Re-Invoicing Agreement**);

(b) refers to the terms of the Re-Invoicing Agreement for their full force and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

118. In response to paragraph 118 of the SOC, Marsh:

(a) repeats paragraph 117 of this Defence;

(b) says that paragraph 118 of the SOC sets out the general effect of the terms of the Re-Invoicing Agreement referred to in that paragraph;

(c) refers to the terms of the Re-Invoicing Agreement for their full force and effect; and

(d) otherwise, does not know and therefore cannot admit the paragraph.

Supplier Agreement

119. In response to paragraph 119 of the SOC, Marsh:

(a) admits that there is a document titled "Supplier Agreement" and dated 10 August 2016, which, on its face, appears to have been executed for and on behalf of GCUK and Bramid (**Supplier Agreement**);

(b) refers to the Supplier Agreement for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

120. In response to paragraph 120 of the SOC, Marsh:

(a) repeats paragraph 119 of this Defence;

(b) says that paragraph 120 of the SOC sets out the general effect of the terms of the Supplier Agreement referred to in that paragraph;

(c) refers to the terms of the Supplier Agreement for their full force and effect; and

(d) otherwise, does not know and therefore cannot admit the paragraph.

121. In response to paragraph 121 of the SOC, Marsh:

(a) repeats paragraph 119 of this Defence;

(b) refers to the terms of the Supplier Agreement for their full force and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

**E.3 GCUK purchase of Accounts Receivables related to Claim**

122. Marsh does not know and therefore cannot admit paragraph 122 of the SOC.

123. Marsh does not know and therefore cannot admit paragraph 123 of the SOC.

124. Marsh does not know and therefore cannot admit paragraph 124 of the SOC.

125A. Marsh does not know and therefore cannot admit paragraph 125A of the SOC.

125. Marsh does not know and therefore cannot admit paragraph 125 of the SOC.

126. Marsh does not know and therefore cannot admit paragraph 126 of the SOC.

127. Marsh does not know and therefore cannot admit paragraph 127 of the SOC.

128. Marsh does not know and therefore cannot admit paragraph 128 of the SOC.

**E.4 The Simec Notes**

129. Marsh admits paragraph 129 of the SOC.

130. Marsh does not know and therefore cannot admit paragraph 130 of the SOC.

131. In response to paragraph 131 of the SOC, Marsh:

(a) admits that there is a document titled "(Receivables Purchase Programmes)" and dated 26 October 2015 which, on its face, appears to have been executed for and on behalf of GCUK, Lagoon Park and Citibank (**Supply Chain Finance Trust Deed**);

(b) refers to the Supply Chain Finance Trust Deed for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

132. Marsh does not know and therefore cannot admit paragraph 132 of the SOC.

133. In response to paragraph 133 of the SOC, Marsh:

(a) repeats paragraph 131 of this Defence;

(b) says that paragraph 133 of the SOC sets out the general effect of the terms of the Supply Chain Finance Trust Deed referred to in that paragraph;

(c) refers to the terms of the Supply Chain Finance Trust Deed for their full force and effect; and

(d) otherwise, does not know and therefore cannot admit the paragraph.

134. Marsh does not know and therefore cannot admit paragraph 134 of the SOC.

135. In response to paragraph 135 of the SOC, Marsh:

(a) admits that there is a document which is titled "Lagoon Park: Master Trust Deed" dated 19 October 2015 which, on its face, appears to be an agreement between Lagoon Park Capital SA, Tmf Luxembourg SA and Citibank N.A., London Branch (**Lagoon Park Master Trust Deed**);

(b) refers to the terms of the Lagoon Park Master Trust Deed for their full force and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

136. In response to paragraph 136 of the SOC, Marsh:

(a) admits that there is a document titled "Amended and Restated Master Funded Participation Agreement" dated 26 November 2018, which, on its face, appears to have been signed for and on behalf of GCUK, Citibank N.A., London Branch, and Lagoon Park (**Amended and Restated Master Funded Participation Agreement**);

(b) refers to the terms of the Amended and Restated Master Funded Participation Agreement for their full force and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

137. In response to paragraph 137 of the SOC, Marsh:

(a) admits that there is a document which, on its face, is described as a "Base Memorandum" and is dated 30 November 2018 (**Base Memorandum**);

(b) refers to the terms of the Base Memorandum for their full force and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

138. Marsh does not know and therefore cannot admit paragraph 138 of the SOC.

139. Marsh does not know and therefore cannot admit paragraph 139 of the SOC.

140. Marsh does not know and therefore cannot admit paragraph 140 of the SOC.

141. Marsh does not know and therefore cannot admit paragraph 141 of the SOC.

142. Marsh does not know and therefore cannot admit paragraph 142 of the SOC.

143. In response to paragraph 143 of the SOC, Marsh:

(a) refers to the terms of Policy 3690 for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

144. In response to paragraph 144 of the SOC, Marsh:

(a) refers to the terms of Policy 3690 and Customer Endorsements 2, 2(i) and 2(ii) for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

**E.5 Insuring the Simec IPUs**

145. In response to paragraph 145 of the SOC, Marsh:

(a) admits that there is a document titled "Endorsement 1" and dated 13 March 2019 (**Debt Endorsement 1**);

(b) refers to the terms of Debt Endorsement 1 for their full force and effect; and

(c) otherwise, admits the paragraph.

146. Marsh admits paragraph 146 of the SOC.

146A. In response to paragraph 146A of the SOC, Marsh:

(a) admits subparagraphs 146A(a) to (c);

(b) does not know and therefore cannot admit subparagraph 146A(d); and

(c) otherwise, admits the paragraph.

147. Marsh admits paragraph 147 of the SOC.

148. Marsh admits paragraph 148 of the SOC.

148A. In response to paragraph 148A of the SOC, Marsh:

(a) admits subparagraphs 148A(a) to (c);

(b) does not know and therefore cannot admit subparagraph 148A(d); and

(c) otherwise, admits the paragraph.

149. In response to paragraph 149 of the SOC, Marsh:

(a) refers to the terms of Customer Endorsement 2 for their full force and effect; and

(b) otherwise, admits the paragraph.

150. Marsh admits paragraph 150 of the SOC.

151. Marsh admits paragraph 151 of the SOC.

151A. In response to paragraph 151A of the SOC, Marsh:

(a) admits subparagraphs 151A(a) to (c);

(b) does not know and therefore cannot admit subparagraph 151A(d); and

(c) otherwise, admits the paragraph.

152. In response to paragraph 152 of the SOC, Marsh:

(a) refers to the terms of Customer Endorsement 2(i) for their full force and effect; and

(b) otherwise, admits the paragraph.

153. Marsh admits paragraph 153 of the SOC.

154. Marsh admits paragraph 154 of the SOC.

154A. In response to paragraph 154A of the SOC, Marsh:

(a) admits subparagraphs 154A(a) to (c);

(b) does not know and therefore cannot admit subparagraph 154A(d); and

(c) otherwise, admits the paragraph.

154B. In response to paragraph 154B of the SOC, Marsh:

(a) admits subparagraphs 154B(a) to (c);

(b) does not know and therefore cannot admit subparagraph 154B(d); and

(c) otherwise, admits the paragraph.

155. In response to paragraph 155 of the SOC, Marsh:

(a) refers to the terms of Customer Endorsement 2(i) for their full force and effect; and

(b) otherwise, admits the paragraph.

156. Marsh does not know and therefore cannot admit paragraph 156 of the SOC.

157. Marsh does not know and therefore cannot admit paragraph 157 of the SOC.

**E.6 Default by Simec**

158. In response to paragraph 158 of the SOC, Marsh:

(a) admits that there is a letter from the administrators of GCUK to Simec dated 16 July 2021;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

159. In response to paragraph 159 of the SOC, Marsh:

(a) admits that there is a letter from the administrators of GCUK to Simec dated 21 July 2021;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

160. Marsh does not know and therefore cannot admit paragraph 160 of the SOC.

161. Marsh does not know and therefore cannot admit paragraph 161 of the SOC.

162. Marsh does not know and therefore cannot admit paragraph 162 of the SOC.

163. Marsh does not know and therefore cannot admit paragraph 163 of the SOC.

164. In response to paragraph 164 of the SOC, Marsh:

(a) admits that there is a letter from the administrators of GCUK to Simec dated 10 January 2022 which, on its face, appears to have been signed for and on behalf of GCUK;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

165. In response to paragraph 165 of the SOC, Marsh:

(a) admits that there is a letter from Credit Suisse Asset Management (Switzerland) Limited (**CSAM**) and Greensill Bank to Simec dated 10 January 2022 which, on its face, appears to have been signed for and on behalf of CSAM and signed by Dr Michael Frege in his capacity as insolvency administrator of Greensill Bank;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

166. In response to paragraph 166 of the SOC, Marsh:

(a) admits that there is a letter from Allen & Overy with the subject "Statutory Demand Pursuant to Section 178(1)(a) of the Companies (Winding-up and Miscellaneous Provisions) Ordinance, Chapter 32 of the Laws of Hong Kong" dated on or about 22 March 2022;

(b) refers to that letter for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

167. Marsh does not know and therefore cannot admit paragraph 167 of the SOC.

168. In response to paragraph 168 of the SOC, Marsh:

(d) repeats paragraphs 160 to 164, 166 and 167 of this Defence; and

(e) otherwise, does not know and therefore cannot admit the paragraph.

169. Marsh does not know and therefore cannot admit paragraph 169 of the SOC.

170. In response to paragraph 170 of the SOC, Marsh:

(a) refers to the terms of Policy 3690 for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

**E.7 Notification and claim by Greensill Bank under Policy 3690**

171. In response to paragraph 171 of the SOC, Marsh:

(a) admits that there are letters from the administrators of GCUK to BCC, for the attention of Toby Guy of BCC and copied to Edward Smith of Marsh and others, which bear the dates set out in paragraph 171 of the SOC;

(b) admits that the letters referred to in subparagraph 171(a) of this Defence were sent by email from GCUK to Marsh, for provision to BCC;

(c) refers to those letters and their covering emails for their full terms and effect; and

(d) otherwise, does not know and therefore cannot admit the paragraph.

172. In response to paragraph 172 of the SOC, Marsh:

(a) admits that there are letters from Greensill Bank addressed to BCC and marked for the attention of Mr Guy of Tokio Marine, copied to BCC and Marsh and dated 16 August 2021 and 30 August 2021;

(b) says that there is a letter from Greensill Bank addressed to BCC and marked for the attention of Mr Guy of Tokio Marine, copied to BCC and Marsh dated 6 September 2021 and sent on 7 September 2021;

(c) says that, on each occasion the letters at subparagraphs (a) and (b) were sent by email, they were sent to Tokio Marine and copied to BCC and Marsh;

(d) refers to those letters and their covering emails for their full terms and effect; and

(e) otherwise, does not know and therefore cannot admit the paragraph.

173. In response to paragraph 173 of the SOC, Marsh:

(a) admits that there is a document titled "Claim Form" dated 7 July 2022 (**Claim Form**);

(b) refers to the Claim Form for its full terms and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

174. In response to paragraph 174 of the SOC, Marsh:

(a) repeats paragraph 173 of this Defence;

(b) refers to the terms of the Claim Form for their full force and effect; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

175. Marsh does not know and therefore cannot admit paragraph 175 of the SOC.

176. Marsh does not know and therefore cannot admit paragraph 176 of the SOC.

177. Marsh does not know and therefore cannot admit paragraph 177 of the SOC.

178. Marsh does not know and therefore cannot admit paragraph 178 of the SOC.

## F CLAIMS

### F.1 Breach of Policy 3690 by Insurer

179. Marsh does not know and therefore cannot admit paragraph 179 of the SOC.

180. Marsh does not know and therefore cannot admit paragraph 180 of the SOC.

### F.1A Misleading or deceptive conduct by IAL

*The 2017 LOS Authority Representations*

180A. Marsh does not know and therefore cannot admit paragraph 180A of the SOC.

180B. Marsh does not know and therefore cannot admit paragraph 180B of the SOC.

180C. Marsh does not know and therefore cannot admit paragraph 180C of the SOC.

*2018 Excess Policy Representations*

180D. Marsh does not know and therefore cannot admit paragraph 180D of the SOC.

180E. Marsh does not know and therefore cannot admit paragraph 180E of the SOC.

180F. Marsh does not know and therefore cannot admit paragraph 180F of the SOC.

*Sub-Direct Policy Authority Representations*

180G. Marsh does not know and therefore cannot admit paragraph 180G of the SOC.

180H. Marsh does not know and therefore cannot admit paragraph 180H of the SOC.

180I. Marsh does not know and therefore cannot admit paragraph 180I of the SOC.

*2017 Standalone Policy Representations*

180J. Marsh does not know and therefore cannot admit paragraph 180J of the SOC.

180K. Marsh does not know and therefore cannot admit paragraph 180K of the SOC.

180L. Marsh does not know and therefore cannot admit paragraph 180L of the SOC.

*2018 LOS Policy Representations*

180M. Marsh does not know and therefore cannot admit paragraph 180M of the SOC.

180N. Marsh does not know and therefore cannot admit paragraph 180N of the SOC.

180O. Marsh does not know and therefore cannot admit paragraph 180O of the SOC.

*Nokia Policy Representations*

180P. Marsh does not know and therefore cannot admit paragraph 180P of the SOC.

180Q. Marsh does not know and therefore cannot admit paragraph 180Q of the SOC.

180R. Marsh does not know and therefore cannot admit paragraph 180R of the SOC.

*2019 Excess Policy Representations*

180S. Marsh does not know and therefore cannot admit paragraph 180S of the SOC.

180T. Marsh does not know and therefore cannot admit paragraph 180T of the SOC.

180U. Marsh does not know and therefore cannot admit paragraph 180U of the SOC.

*The 2019 Standalone Representations*

180V. Marsh does not know and therefore cannot admit paragraph 180V of the SOC.

180W. Marsh does not know and therefore cannot admit paragraph 180W of the SOC.

180X. Marsh does not know and therefore cannot admit paragraph 180X of the SOC.

*NMC Claim Payment Representations*

180Y. Marsh does not know and therefore cannot admit paragraph 180Y of the SOC.

180Z. Marsh does not know and therefore cannot admit paragraph 180Z of the SOC.

180AA. Marsh does not know and therefore cannot admit paragraph 180AA of the SOC.

180AB. Marsh does not know and therefore cannot admit paragraph 180AB of the SOC.

180AC. Marsh does not know and therefore cannot admit paragraph 180AC of the SOC.

*Misleading or Deceptive Conduct*

180AD. Marsh does not know and therefore cannot admit paragraph 180AD of the SOC.

180AE. Marsh does not know and therefore cannot admit paragraph 180AE of the SOC.

180AF. Marsh does not know and therefore cannot admit paragraph 180AF of the SOC.

180AG. Marsh does not know and therefore cannot admit paragraph 180AG of the SOC.

180AH. Marsh does not know and therefore cannot admit paragraph 180AH of the SOC.

*Causation and Loss*

180AI. Marsh does not know and therefore cannot admit paragraph 180AI of the SOC.

180AJ. Marsh does not know and therefore cannot admit paragraph 180AJ of the SOC.

180AK. Marsh does not know and therefore cannot admit paragraph 180AK of the SOC.

180AL. In response to paragraph 180AL of the SOC, Marsh:

(a) repeats paragraphs 180AI to 180AK of this Defence; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

180AM. Marsh does not know and therefore cannot admit paragraph 180AM of the SOC.

**F.2 Claims against BCC**

*Breach of Warranty of Authority*

181. Marsh does not know and therefore cannot admit paragraph 181 of the SOC.

182. Marsh does not know and therefore cannot admit paragraph 182 of the SOC.

183. Marsh does not know and therefore cannot admit paragraph 183 of the SOC.

184. Marsh does not know and therefore cannot admit paragraph 184 of the SOC.

185. Marsh does not know and therefore cannot admit paragraph 185 of the SOC.

185A. Marsh does not know and therefore cannot admit paragraph 185A of the SOC.

*Misleading or Deceptive Conduct*

186. Marsh does not know and therefore cannot admit paragraph 186 of the SOC.

187. Marsh does not know and therefore cannot admit paragraph 187 of the SOC.

188. Marsh does not know and therefore cannot admit paragraph 188 of the SOC.

189. Marsh does not know and therefore cannot admit paragraph 189 of the SOC.

190. Marsh does not know and therefore cannot admit paragraph 190 of the SOC.

191. Marsh does not know and therefore cannot admit paragraph 191 of the SOC.

192. Marsh does not know and therefore cannot admit paragraph 192 of the SOC.

193. Marsh does not know and therefore cannot admit paragraph 193 of the SOC.

194. Marsh does not know and therefore cannot admit paragraph 194 of the SOC.

194A. Marsh does not know and therefore cannot admit paragraph 194A of the SOC.

*Section 1041E Claim*

195. Marsh does not know and therefore cannot admit paragraph 195 of the SOC.

196. Marsh does not know and therefore cannot admit paragraph 196 of the SOC.

197. Marsh does not know and therefore cannot admit paragraph 197 of the SOC.

198. Marsh does not know and therefore cannot admit paragraph 198 of the SOC.

199. Marsh does not know and therefore cannot admit paragraph 199 of the SOC.

199A. Marsh does not know and therefore cannot admit paragraph 199A of the SOC.

**F.3 Claims against Greg Brereton**

*Breach of Warranty of Authority*

200. Marsh does not know and therefore cannot admit paragraph 200 of the SOC.

201. Marsh does not know and therefore cannot admit paragraph 201 of the SOC.

202. Marsh does not know and therefore cannot admit paragraph 202 of the SOC.

203. Marsh does not know and therefore cannot admit paragraph 203 of the SOC.

204. Marsh does not know and therefore cannot admit paragraph 204 of the SOC.

204A. Marsh does not know and therefore cannot admit paragraph 204A of the SOC.

*Misleading or Deceptive Conduct*.

205. Marsh does not know and therefore cannot admit paragraph 205 of the SOC.

206. Marsh does not know and therefore cannot admit paragraph 206 of the SOC.

207. Marsh does not know and therefore cannot admit paragraph 207 of the SOC.

208. Marsh does not know and therefore cannot admit paragraph 208 of the SOC.

209. Marsh does not know and therefore cannot admit paragraph 209 of the SOC.

210. Marsh does not know and therefore cannot admit paragraph 210 of the SOC.

211. Marsh does not know and therefore cannot admit paragraph 211 of the SOC.

212. Marsh does not know and therefore cannot admit paragraph 212 of the SOC.

213. Marsh does not know and therefore cannot admit paragraph 213 of the SOC.

213A. Marsh does not know and therefore cannot admit paragraph 213A of the SOC.

*Section 1041E Claim*

214. Marsh does not know and therefore cannot admit paragraph 214 of the SOC.

215. Marsh does not know and therefore cannot admit paragraph 215 of the SOC.

216. Marsh does not know and therefore cannot admit paragraph 216 of the SOC.

217. Marsh does not know and therefore cannot admit paragraph 217 of the SOC.

218. Marsh does not know and therefore cannot admit paragraph 218 of the SOC.

218A. Marsh does not know and therefore cannot admit paragraph 218A of the SOC.

**F.4 Claims against Marsh and Marsh Pty Ltd**

*Scope of claims against Marsh*

218B. In response to paragraph 218B of the SOC, Marsh:

(a) says that, on or around 23 June 2014, Marsh Limited and GCUK entered into a "Letter of Engagement" (**2014 Marsh Retainer**);

**Particulars**

Letter dated 20 June 2014 from Julian Macey-Dare of Marsh to GCUK (**2014 Letter of Engagement**) (MAR.0003.0001.0730).

(b) says further that the "Services" to be provided under the 2014 Marsh Retainer were:

i. set out in Appendix A to the 2014 Letter of Engagement, titled "Schedule of Services"; and

ii. described as applying "in respect of Greensill policies and also parallel policies arranged / placed in respect of Greensill Bank AG";

**Particulars**

Footnote 1 in Appendix A to the 2014 Letter of Engagement.

(c) says further that the 2014 Letter of Engagement, which Marsh relies upon for its full terms and effect, stated, under the section titled "How we are Paid":

"The standard market commission payable (by the insurer) to the Practice varies between 15% and 20% of gross premium. In consideration of the services set out in Appendix A, we will not take standard market commission, but a fee calculated as a brokerage equivalent 12% of net premium that is payable by you to all insurers, except AIG, under any policy (including parallel policies) arranged/placed by us (the "Relevant Percentage"), subject to a minimum annual fee to Marsh of USD 75,000";

**Particulars**

2014 Letter of Engagement, clause 2.

(d) says further that the 2014 Marsh Retainer expressly incorporated Marsh Limited's "Terms of Engagement" as in force from November 2013 (MAR.0003.0001.0024) (**2013 TOE**).

(e) says further that the 2013 TOE, which Marsh relies upon for its full terms and effect, stated that:

i. "These Terms of Engagement, together with any Letter of Engagement, represent the agreement between us and our client ('you') (the 'Engagement')";

ii. "By instructing us to carry out insurance broking or consulting activities on your behalf, you are giving your consent to the terms of the Engagement";

iii. under the section titled "Affiliates":

"Unless otherwise expressly stated in the Engagement, you agree to and accept the Engagement on your own behalf and on behalf of each of your Affiliates (but only where they are receiving, or are a beneficiary of the Services or any additional services). You shall ensure that each of your Affiliates will act on the basis that they are a party to and bound by the Engagement. All references in the Engagement to "you" (and derivatives of it) shall mean you and each of your Affiliates.

For the purpose of this Engagement "Affiliates" means, in relation to a company, its subsidiaries and subsidiary undertakings and any holding company it may have and all other subsidiaries and subsidiary undertakings of any such holding company (as such terms are defined in the Companies Act 2006). As it applies to you,

"Affiliate" shall also include your partners, co-venturers and/or other co-insureds to whom we or any of our Affiliates may assume a responsibility as a consequence of the provision of the Services or any additional services";

**Particulars**

2013 TOE, clauses 10.1 and 10.2.

iv. under the section titled "Our Services":

"We will provide the Services either ourselves or, where we consider this appropriate, through one or more of our Affiliates or sub-contractors";

**Particulars**

2013 TOE, clause 1.4.

v. under the section titled "Limitation of liability":

"The maximum aggregate liability of Marsh and Affiliates to you, in respect of all losses, costs and expenses arising under or in connection with the Engagement (which for the avoidance of doubt includes the provision of the Services or any additional services and any amendments, variations or additions to those services whether expressly or impliedly agreed) whether in contract, tort (including negligence), breach of duty or otherwise shall be limited in total to the amount set out in any Letter of Engagement (or, in the absence of any such amount being specified therein, to the amount of £7,500,000 for all claims made in any calendar year of the Engagement). For insurance broking services, £7,500,000";

**Particulars**

2013 TOE, clause 6.1.

vi. also under the section titled "Limitation of liability":

"Notwithstanding clause 6.1, Marsh and our Affiliates shall not be liable to you, whether in contract, tort (including negligence), breach of duty or otherwise, for any loss of profit or any special, indirect or consequential loss arising under or in connection with the Engagement";

**Particulars**

2013 TOE, clause 6.2.

vii. under the section titled "Governing law and jurisdiction":

"The Engagement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law and the English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with the Engagement and the parties submit to the exclusive jurisdiction of the English courts";

**Particulars**

2013 TOE, clause 12.

(f) says further that, for the purposes of cl 11 of the 2013 TOE:

i. Greensill Bank was an "affiliate" of GCUK; and

ii. Marsh Pty Ltd was an "affiliate" of Marsh Limited;

(g) says further that, as and from 23 June 2014, Greensill Bank, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, continued to instruct Marsh in relation to the Services identified in the 2014 Letter of Engagement;

(h) says further that, in the premises pleaded in subparagraphs (a) to (g) above:

i. GCUK entered into the 2014 Marsh Retainer for and on behalf of Greensill Bank;

ii. Marsh Limited provided Services (as defined in the 2014 Letter of Engagement) to Greensill Bank pursuant to the 2014 Marsh Retainer, including through Marsh Pty Ltd;

iii. Greensill Bank accepted the terms set out in the 2013 TOE, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, accepted the terms set out in the 2013 TOE; and

iv. the terms set out in the 2013 TOE governed the provision of Services by Marsh Limited and/or Marsh Pty Ltd under the 2014 Marsh Retainer;

(i) says that, on or around 26 March 2015, Marsh Limited and GCUK entered into a "Letter of Engagement" (**2015 Marsh Retainer**);

**Particulars**

Letter dated 26 March 2015 from Julian Macey-Dare of Marsh to GCUK (**2015 Letter of Engagement**) (MAR.0004.0001.0503).

(j) says further that the "Services" to be provided under the 2015 Marsh Retainer were set out in Appendix A to the 2015 Letter of Engagement, titled "Schedule of Services";

(k) says further that the 2015 Letter of Engagement, which Marsh relies upon for its full terms and effect, stated, under the section titled "How we are Paid":

> "The standard market commission payable (by the insurer) to the Practice varies between 15% and 20% of gross premium. In consideration of the services set out in Appendix A, we will not take standard market commission, but a fee calculated as a brokerage equivalent 12% of net premium that is payable by you to all insurers, except AIG, under any policy (including parallel policies) arranged/placed by us (the "Relevant Percentage"), subject to a minimum annual fee to Marsh of USD 75,000";

**Particulars**

2015 Letter of Engagement, clause 2.

(l) says further that the 2015 Marsh Retainer expressly incorporated the 2013 TOE;

(m) says further that the 2013 TOE, which Marsh relies upon for its full terms and effect, contained the terms set out in subparagraph (e) above;

(n) says further that, for the purposes of cl 11 of the 2013 TOE:

i. Greensill Bank was an "affiliate" of GCUK; and

ii. Marsh Pty Ltd was an "affiliate" of Marsh Limited;

(o) says further that, as and from 26 March 2015, Greensill Bank, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, continued to instruct Marsh in relation to the Services identified in the 2015 Letter of Engagement;

(p) says further that, in the premises pleaded in subparagraphs (i) to (o) above:

i. GCUK entered into the 2015 Marsh Retainer for and on behalf of Greensill Bank;

ii. Marsh Limited provided Services (as defined in the 2015 Letter of Engagement) to Greensill Bank pursuant to the 2015 Marsh Retainer, including through Marsh Pty Ltd;

iii. Greensill Bank accepted the terms set out in the 2013 TOE, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, accepted the terms set out in the 2013 TOE; and

iv. the terms set out in the 2013 TOE governed the provision of Services by Marsh Limited and/or Marsh Pty Ltd under the 2015 Marsh Retainer;

(q) says that, on or around 21 June 2016, Marsh Limited and GCUK entered into a "Letter of Engagement" (**2016 Marsh Retainer**);

**Particulars**

Letter dated 18 April 2016 from Julian Macey-Dare of Marsh Limited to Lex Greensill of GCUK, with attachments (**2016 Letter of Engagement**) (GCU.0001.0003.7200).

(r) says further that the "Services" to be provided under the 2016 Marsh Retainer were:

i. set out in Appendix A to the 2016 Letter of Engagement, titled "Schedule of Services"; and

ii. described as applying "in respect of Greensill policies and also parallel policies arranged / placed in respect of Greensill Bank AG";

**Particulars**

Footnote 1 in Appendix A to the 2016 Letter of Engagement.

(s) says further that the 2016 Letter of Engagement, which Marsh relies upon for its full terms and effect, stated, under the section titled "How we are Paid":

"The standard market commission payable (by the insurer) to the Practice varies between 15% and 20% of gross premium. In consideration of the services set out in Appendix A, we agree remuneration as follows:

…

iii) Where we place insurance for Greensill Capital and / or Greensill Bank AG as parallel policyholder on a standalone basis, Marsh will

be paid brokerage by insurers at standard market commission rates between 15% and 20% of gross premium. We will rebate to you all brokerage excess of 12% if applicable";

**Particulars**

2016 Letter of Engagement, clause 2.

(t) says further that the 2016 Marsh Retainer expressly incorporated Marsh Limited's "Terms of Engagement" as in force from October 2015 (MAR.0003.0001.0064) (**2015 TOE**).

(u) says further that the 2015 TOE, which Marsh relies upon for its full terms and effect, stated that:

i. "These Terms of Engagement, together with any Letter of Engagement or Statement of Work we send to you will form the agreement between us and you, our client (the 'Engagement'). …

References to 'you' and 'your' include each of your affiliates (as defined in clause 11.1)";

ii. "By instructing us, you are accepting the terms of the Engagement";

iii. under the section titled "Affiliates":

"You accept the Engagement on your own behalf and on behalf of each of your affiliates (where they are receiving, or are a beneficiary of the Services). You shall ensure that each of your affiliates will act on the basis that they are a party to and bound by the Engagement. All references in the Engagement to "you" (and derivatives of it) shall mean you and each of your affiliates.

For the purpose of this Engagement "affiliates" means, in relation to a company, its subsidiaries and subsidiary undertakings and any holding company it may have and all other subsidiaries and subsidiary undertakings of any such holding company (as such terms are defined in the Companies Act 2006). As it applies to you, "affiliate" shall also include your partners, co-venturers and/or other co-insureds to whom we or any of our affiliates may assume a responsibility as a consequence of the provision of the Services or any additional services";

**Particulars**

2015 TOE, clauses 11.1 and 11.2.

iv. under the section titled “Our Services”:

“We will provide the Services ourselves or, where appropriate, through one or more of our affiliates or subcontractors”;

**Particulars**

2015 TOE, clause 1.3.

v. under the section titled “Limit of our liability and indemnity”:

“The maximum aggregate liability of Marsh and our affiliates to you, howsoever arising, in connection with the Engagement shall be limited in total to either the amount set out in any Letter of Engagement or Statement of Work or, in the absence of any such amount being specified therein, to the amount of:

For insurance broking services, £7,500,000”;

**Particulars**

2015 TOE, clauses 7.1 and 7.1.1.

vi. also under the section titled “Limit of our Liability”:

“Notwithstanding clause 7.1, Marsh and our affiliates shall not be liable to you, for any loss of profit or any special, indirect or consequential loss howsoever arising under or in connection with the “Engagement”;

**Particulars**

2015 TOE, clause 7.2.

vii. also under the section titled “Limit of our Liability”:

“Our obligations to you are solely contractual in nature. We act as fiduciary for you to the extent required under English law but do not have any enhanced fiduciary or other duty to you”;

**Particulars**

2015 TOE, clause 7.8.

viii. under the section titled “Governing law and jurisdiction”:

“The Engagement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in

accordance with English law and the English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with the Engagement and the parties submit to the exclusive jurisdiction of the English courts";

**Particulars**

2015 TOE, clause 13.

(v) says further that, for the purposes of cl 11 of the 2015 TOE:

i. Greensill Bank was an "affiliate" of GCUK; and

ii. Marsh Pty Ltd was an "affiliate" of Marsh Limited;

(w) says further that, as and from 21 June 2016, Greensill Bank, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, continued to instruct Marsh in relation to the Services identified in the 2016 Letter of Engagement;

(x) says further that, in the premises pleaded in subparagraphs (q) to (w) above:

i. GCUK entered into the 2016 Marsh Retainer for and on behalf of Greensill Bank;

ii. Marsh Limited provided Services (as defined in the 2016 Letter of Engagement) to Greensill Bank pursuant to the 2016 Marsh Retainer, including through Marsh Pty Ltd;

iii. Greensill Bank accepted the terms set out in the 2015 TOE, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, accepted the terms set out in the 2015 TOE; and

iv. the terms set out in the 2015 TOE governed the provision of Services by Marsh Limited and/or Marsh Pty Ltd under the 2016 Marsh Retainer;

(y) says that, on or around 9 March 2017, Marsh Limited and GCUK entered into a "Letter of Engagement" (**2017 Marsh Retainer**);

**Particulars**

(I) Letter dated 3 March 2017 from Julian Macey-Dare of Marsh Limited to Lex Greensill of GCUK, with attachments (**2017 Letter of Engagement**) (MAR.0003.0001.0371).

(II) With effect from 15 June 2017, the terms of the 2017 Marsh Retainer were varied in accordance with a letter dated 15 June 2017 from Marsh Limited to GCUK, which was signed by Julian Macey-Dare of Marsh Limited and Jonathan Lane of GCUK (MAR.0003.0001.0812).

(z) says further that the "Services" to be provided under the 2017 Marsh Retainer were set out in Appendix A to the 2017 Letter of Engagement, titled "Schedule of Services";

(aa) says further that the 2017 Letter of Engagement, which Marsh relies upon for its full terms and effect, stated, under the section titled "How we are Paid":

"The standard market commission payable (by the insurer) to the Practice varies between 15% and 20% of gross premium. In consideration of the services set out in Appendix A, we agree remuneration as follows:

…

iii) Where we place insurance for Greensill Capital and / or Greensill Bank AG as parallel policyholder on a standalone basis, Marsh will be paid brokerage by insurers at standard market commission rates between 15% and 20% of gross premium. We will rebate to you all brokerage and agree a fee calculated as a brokerage equivalent of net premium payable for the policy period as outlined in point iv) below

iv) Premium up to USD 10,000,000 p.a. – a fee of 10% of premium payable

Premium excess USD 10,000,001 p.a. – a fee of 8% of premium payable";

**Particulars**

2017 Letter of Engagement, clause 2.

(bb) says further that the 2017 Marsh Retainer expressly incorporated Marsh Limited's "Terms of Engagement" as in force from May 2016 (MAR.0004.0001.0346) (**2016 TOE**);

(cc) says further that the 2016 TOE, which Marsh relies upon for its full terms and effect, stated that:

i. “These Terms of Engagement, together with any Letter of Engagement or Statement of Work we send to you will form the agreement between us and you, our client (the ‘Engagement’). …

References to ‘you’ and ‘your’ include each of your affiliates (as defined in clause 11.1)”;

ii. “By instructing us, you are accepting the terms of the Engagement”;

iii. under the section titled “Affiliates”:

“You accept the Engagement on your own behalf and on behalf of each of your affiliates (where they are receiving, or are a beneficiary of the Services). You shall ensure that each of your affiliates will act on the basis that they are a party to and bound by the Engagement. All references in the Engagement to “you” (and derivatives of it) shall mean you and each of your affiliates.

For the purpose of this Engagement “affiliates” means, in relation to a company, its subsidiaries and subsidiary undertakings and any holding company it may have and all other subsidiaries and subsidiary undertakings of any such holding company (as such terms are defined in the Companies Act 2006). In addition to the forgoing, in reference to Marsh the term “affiliates” shall include the Marsh and McLennan Company, Jeff Group plc and all of its subsidiaries. As the term applies to you, “affiliate” shall also include your partners, co-venturers and/or other co-insureds to whom we or any of our affiliates may assume a responsibility as a consequence of the provision of the Services or any additional services”;

**Particulars**

2016 TOE, clauses 11.1 and 11.2.

iv. under the section titled “Our Services”:

“We will be entitled to provide the Services ourselves or, where appropriate, through one or more of our affiliates or subcontractors”;

**Particulars**

2016 TOE, clause 1.3.

v. under the section titled “Limit of our Liability”:

“The maximum aggregate liability of Marsh and our affiliates to you, howsoever arising, in connection with the Engagement shall be limited in total to either the amount set out in any Letter of Engagement or Statement of Work or, in the absence of any such amount being specified therein: For insurance broking services, £7,500,000”;

**Particulars**

2016 TOE, clause 7.1.

vi. also under the section titled “Limit of our Liability”:

“Marsh and our affiliates shall not be liable to you in any circumstances, for any loss of profit or any special, indirect or consequential loss howsoever arising under or in connection with the “Engagement”;

**Particulars**

2016 TOE, clause 7.2.

vii. also under the section titled “Limit of our Liability”:

“Our obligations to you are solely contractual in nature. We act as fiduciary for you to the extent required under English law but do not have any enhanced fiduciary or other duty to you”;

**Particulars**

2016 TOE, clause 7.6.

viii. under the section titled “Governing law and jurisdiction”:

“The Engagement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law and any disputes related thereto shall be subject to the exclusive jurisdiction of the English courts”;

**Particulars**

2016 TOE, clause 13.

(dd) says further that, for the purposes of cl 11 of the 2016 TOE:

i. Greensill Bank was an “affiliate” of GCUK; and

ii. Marsh Pty Ltd was an "affiliate" of Marsh Limited;

(ee) says further that, as and from 9 March 2017, Greensill Bank, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, continued to instruct Marsh in relation to the Services identified in the 2017 Letter of Engagement;

(ff) says further that, in the premises pleaded in subparagraphs (y) to (ee) above:

i. GCUK entered into the 2017 Marsh Retainer for and on behalf of Greensill Bank;

ii. Marsh Limited provided Services (as defined in the 2017 Letter of Engagement) to Greensill Bank pursuant to the 2017 Marsh Retainer, including through Marsh Pty Ltd;

iii. Greensill Bank accepted the terms set out in the 2016 TOE, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, accepted the terms set out in the 2016 TOE; and

iv. the terms set out in the 2016 TOE governed the provision of Services by Marsh Limited and/or Marsh Pty Ltd under the 2017 Marsh Retainer;

(gg) says further that, on or around 29 March 2018, Marsh Limited and GCUK entered into a "Letter of Engagement" (**2018 Marsh GCUK Retainer**);

**Particulars**

Letter dated 27 March 2018 from Julian Macey-Dare of Marsh Limited to Lex Greensill of GCUK, with attachments (MAR.0004.0004.3108) (**2018 Marsh GCUK Letter of Engagement**).

(hh) says further that the "Services" to be provided under the 2018 Marsh Retainer were:

i. set out in Appendix A to the 2018 Marsh GCUK Letter of Engagement, titled "Schedule of Services"; and

ii. described as applying "in respect of Greensill policies and also parallel policies arranged / placed in respect of Greensill Bank AG";

**Particulars**

Footnote 1 in Appendix A to the 2018 Marsh GCUK Letter of

Engagement.

(ii) says further that the 2018 Marsh GCUK Retainer expressly incorporated Marsh Limited's "Terms of Engagement" as in force from September 2017 (MAR.0003.0001.2690) (**2017 TOE**);

(jj) says further that the 2017 TOE, which Marsh relies upon for its full terms and effect, contained identical terms to the terms of the 2016 TOE set out in subparagraph (cc) above, save that:

i. in cl 7.1 of the 2017 TOE, Marsh Limited's maximum aggregate liability for insurance broking services was £10,000,000; and

ii. cl 11.2 of the 2017 TOE stated:

> "For the purpose of this Engagement "affiliates" means, in relation to a company, its subsidiaries and subsidiary undertakings and any holding company it may have and all other subsidiaries and subsidiary undertakings of any such holding company (as such terms are defined in the Companies Act 2006). In addition to the forgoing, in reference to Marsh the term "affiliates" shall include the Marsh & McLennan Companies, Inc. and all of its subsidiaries. As the term applies to you, "affiliate" shall also include your partners, co-venturers and/or other co-insureds to whom we or any of our affiliates may assume a responsibility as a consequence of the provision of the Services or any additional services";

(kk) says further that, for the purposes of cl 11 of the 2017 TOE:

i. Greensill Bank was an "affiliate" of GCUK; and

ii. Marsh Pty Ltd was an "affiliate" of Marsh Limited;

(ll) says further that, as and from 29 March 2018, Greensill Bank, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, continued to instruct Marsh in relation to the Services identified in the 2018 Marsh GCUK Letter of Engagement;

(mm) says further that, in the premises pleaded in subparagraphs (gg) to (ll) above:

i. GCUK entered into the 2018 Marsh GCUK Retainer for and on behalf of Greensill Bank;

ii. Marsh Limited provided Services (as defined in the 2018 Marsh GCUK Letter of Engagement) to Greensill Bank pursuant to the 2018

Marsh GCUK Retainer, including through Marsh Pty Ltd;

iii. Greensill Bank accepted the terms set out in the 2017 TOE, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, accepted the terms set out in the 2017 TOE; and

iv. the terms set out in the 2017 TOE governed the provision of Services by Marsh Limited and/or Marsh Pty Ltd under the 2018 Marsh GCUK Retainer;

(nn) says further that, on or around 1 April 2019, Marsh Limited and GCUK entered into a "Letter of Engagement" (**2019 Marsh Retainer**);

**Particulars**

Letter dated 27 March 2019 from Julian Macey-Dare of Marsh Limited to Lex Greensill of GCUK, with attachments (GCU.0005.0008.3851) (**2019 Letter of Engagement**).

(oo) says further that the "Services" to be provided under the 2019 Marsh Retainer were:

i. set out in Appendix A to the 2019 Letter of Engagement, titled "Schedule of Services"; and

ii. described as applying "in respect of Greensill policies and also parallel policies arranged / placed in respect of Greensill Bank AG";

**Particulars**

Footnote 1 in Appendix A to the 2019 Letter of Engagement.

(pp) says further that the 2019 Marsh Retainer expressly incorporated the 2017 TOE;

(qq) says further that, for the purposes of cl 11 of the 2017 TOE:

i. Greensill Bank was an "affiliate" of GCUK; and

ii. Marsh Pty Ltd was an "affiliate" of Marsh Limited;

(rr) says further that, as and from 1 April 2019, Greensill Bank, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, continued to instruct Marsh in relation to the Services identified in the 2019 Letter of Engagement;

(ss) says further that, in the premises pleaded in subparagraphs (jj) and (nn) to (rr) above:

i. GCUK entered into the 2019 Marsh Retainer for and on behalf of Greensill Bank;

ii. Marsh Limited provided Services (as defined in the 2019 Letter of Engagement) to Greensill Bank pursuant to the 2019 Marsh Retainer, including through Marsh Pty Ltd;

iii. Greensill Bank accepted the terms set out in the 2017 TOE, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, accepted the terms set out in the 2017 TOE; and

iv. the terms set out in the 2017 TOE governed the provision of Services by Marsh Limited and/or Marsh Pty Ltd under the 2018 Marsh GCUK Retainer;

(tt) says that, on or around 8 October 2020, Marsh Limited and GCUK entered into a "Letter of Engagement" (**2020 Marsh Retainer**);

**Particulars**

Letter dated 1 March 2020 from Julian Macey-Dare of Marsh Limited to Lex Greensill of GCUK, with attachments (MAR.0004.0004.4954) (**2020 Letter of Engagement**).

(uu) says further that the "Services" to be provided under the 2020 Marsh Retainer were:

i. set out in Appendix A to the 2020 Letter of Engagement, titled "Schedule of Services"; and

ii. described as applying "in respect of Greensill policies and also parallel policies arranged / placed in respect of Greensill Bank AG";

**Particulars**

Footnote 1 in Appendix A to the 2020 Letter of Engagement.

(vv) says further that the 2020 Marsh Retainer expressly incorporated the 2017 TOE;

(ww) says further that, for the purposes of cl 11 of the 2017 TOE:

i. Greensill Bank was an "affiliate" of GCUK; and

ii. Marsh Pty Ltd was an "affiliate" of Marsh Limited;

(xx) says further that, as and from 8 October 2020, Greensill Bank, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank,

continued to instruct Marsh in relation to the Services identified in the 2020 Letter of Engagement;

(yy) says further that, in the premises pleaded in subparagraphs (jj) and (tt) to (xx) above:

i. GCUK entered into the 2020 Marsh Retainer for and on behalf of Greensill Bank;

ii. Marsh Limited provided Services (as defined in the 2020 Letter of Engagement) to Greensill Bank pursuant to the 2020 Marsh Retainer, including through Marsh Pty Ltd;

iii. Greensill Bank accepted the terms set out in the 2017 TOE, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, accepted the terms set out in the 2017 TOE; and

iv. the terms set out in the 2017 TOE governed the provision of Services by Marsh Limited and/or Marsh Pty Ltd under the 2020 Marsh Retainer;

(zz) says that, on or around 1 March 2021, Marsh Limited and GCUK entered into a "Letter of Engagement" (**2021 Marsh Retainer**);

**Particulars**

Letter dated 1 March 2021 from Julian Macey-Dare of Marsh Limited to Lex Greensill of GCUK, with attachments (GCU.0010.0017.6368) (**2021 Letter of Engagement**).

(aaa) says further that the "Services" to be provided under the 2021 Marsh Retainer were set out in Appendix A to the 2021 Letter of Engagement, titled "Schedule of Services";

(bbb) says further that the 2021 Letter of Engagement stated, under the section titled "Data Privacy":

"Once we have commenced work forming part of the Services we shall be deemed to have your implied acceptance of the terms of this Engagement";

(ccc) says further that the 2021 Marsh Retainer expressly incorporated the 2017 TOE;

(ddd) says further that, for the purposes of cl 11 of the 2017 TOE:

i. Greensill Bank was an "affiliate" of GCUK; and

ii. Marsh Pty Ltd was an "affiliate" of Marsh Limited;

(eee) says further that, as and from 1 March 2021, Greensill Bank, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, continued to instruct Marsh in relation to the Services identified in the 2021 Letter of Engagement;

(fff) says further that, in the premises pleaded in subparagraphs (ff) and (zz) to (eee) above:

i. GCUK entered into the 2021 Marsh Retainer for and on behalf of Greensill Bank;

ii. Marsh Limited provided Services (as defined in the 2021 Letter of Engagement) to Greensill Bank pursuant to the 2021 Marsh Retainer, including through Marsh Pty Ltd;

iii. Greensill Bank accepted the terms set out in the 2017 TOE, or alternatively GCUK and/or Lex Greensill on behalf of, or as agent for, Greensill Bank, accepted the terms set out in the 2017 TOE; and

iv. the terms set out in the 2017 TOE governed the provision of Services by Marsh Limited and/or Marsh Pty Ltd under the 2021 Marsh Retainer;

(ggg) relies upon each of the 2014 Marsh Retainer, 2015 Marsh Retainer, 2016 Marsh Retainer, 2017 Marsh Retainer, 2018 Marsh GCUK Retainer, 2019 Marsh Retainer, 2020 Marsh Retainer and 2021 Marsh Retainer for its full terms and effect; and

(hhh) otherwise, denies the paragraph.

218C. In response to paragraph 218C of the SOC, Marsh:

(a) says that, on or around 27 April 2018, Marsh Limited and Greensill Bank entered into a "Letter of Engagement" (**2018 Marsh GBAG Retainer**);

**Particulars**

Letter dated 18 April 2018 from Julian Macey-Dare of Marsh Limited to Danyon Lloyd of Greensill Bank, with attachments (MAR.0004.0001.2883) (**2018 Marsh GBAG Letter of Engagement**).

(b) says further that the "Services" to be provided under the 2018 Marsh GBAG Retainer were:

i. set out in Appendix A to the 2018 Marsh GBAG Letter of Engagement, titled "Schedule of Services"; and

ii. described as applying "in respect of Greensill policies and also parallel policies arranged / placed in respect of Greensill Bank AG";

**Particulars**

Footnote 1 in Appendix A to the 2018 Marsh GBAG Letter of Engagement.

(c) says further that the 2018 Marsh GBAG Retainer expressly incorporated the 2017 TOE;

(d) repeats subparagraph 218B(jj) of this Defence;

(e) says further that, for the purposes of cl 11 of the 2017 TOE:

i. GCUK was an "affiliate" of Greensill Bank; and

ii. Marsh Pty Ltd was an "affiliate" of Marsh Limited;

(f) says further that, in the premises pleaded in subparagraphs (a) to (e) above, Greensill Bank entered into the 2018 Marsh GBAG Retainer for and on behalf of GCUK;

(g) relies upon the 2018 Marsh GBAG Retainer for its full terms and effect; and

(h) otherwise, denies the paragraph.

218D. In response to paragraph 218D of the SOC, Marsh:

(a) says that the 2018 Marsh GBAG Retainer commenced on 1 March 2018 and continued for an exclusive period of 12 months;

**Particulars**

Clause 3.1 of the 2018 Marsh GBAG Letter of Engagement.

(b) relies upon the 2018 Marsh GBAG Retainer for its full terms and effect; and

(c) otherwise, denies the paragraph.

218E. In response to paragraph 218E of the SOC, Marsh:

(a) admits that the High Court of England and Wales made orders dated 11 December 2024 in proceeding CL-2024-000433;

(b) says that the Anti-Suit Order was amended by the High Court of England and Wales by orders dated 21 January 2025;

(c) refers to the Anti-Suit Order (as amended) for its full force and effect; and

(d) otherwise, denies the paragraph.

218F. In response to paragraph 218F of the SOC, Marsh:

(a) repeats paragraph 218E of this Defence; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

218G. Marsh does not know and therefore cannot admit paragraph 218G of the SOC.

*Provision of the Marsh Broking Services*

219. In response to paragraph 219 of the SOC, Marsh:

(a) repeats paragraphs 6B, 6C and 218B to 218D of this Defence; and

(b) otherwise, denies the paragraph.

220. In response to paragraph 220 of the SOC, Marsh:

(a) repeats paragraphs 6B, 6C and 218B to 218D of this Defence; and

(b) otherwise, denies the paragraph.

221. In response to paragraph 221 of the SOC, Marsh:

(a) repeats paragraphs 6B, 6C and 218B to 218D of this Defence; and

(b) otherwise, denies the paragraph.

*Prior conduct in respect of LOS Policy*

221A. In response to paragraph 221A of the SOC, Marsh:

(a) repeats subparagraphs 6B(f) and 6C(d) and paragraphs 80AE and 218B of this Defence;

(b) says that the Services provided by Marsh Limited and Marsh Pty Ltd pursuant to the 2017 Marsh Retainer included, among other things, placing the LOS Policy; and

(c) otherwise, denies the paragraph.

221B. In response to paragraph 221B of the SOC, Marsh:

(a) relies upon the terms of the 2017 LOS Parallel Policy and Policy 3690 for their full force and effect; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

221C. Marsh admits paragraph 221C of the SOC.

221D. Marsh denies paragraph 221D of the SOC.

221E. In response to paragraph 221E of the SOC, Marsh:

(a) repeats paragraph 221D of this Defence; and

(b) otherwise, denies the paragraph.

*Representations as to authority and validity*

222. [Not used]

223. [Not used]

224. [Not used]

225. [Not used]

226. [Not used]

227. In response to paragraph 227 of the SOC, Marsh:

(a) admits that, on 13 March 2019, Angus Ward of Marsh Limited sent an email to scf@greensill-bank.com, copied to Edward Smith, Paul Nash and Alexandre Weiss Bueno of Marsh;

(b) relies upon that email and its attachment for their full terms and effect; and

(c) otherwise, admits the paragraph.

228. Marsh admits paragraph 228 of the SOC.

229. In response to paragraph 229 of the SOC, Marsh:

(a) denies that any of the matters alleged in subparagraphs 229(a) and (b) were in fact the case;

(b) says that, at all material times prior to the execution of Policy 3690, neither Mr Ward, Marsh Limited nor Marsh Pty Ltd had knowledge of any of the matters alleged at subparagraphs 229(a) and (b) of the SOC; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

229A. Marsh admits paragraph 229A of the SOC.

229B. In response to paragraph 229B of the SOC, Marsh:

(a) denies that any of the matters alleged in subparagraphs 229B(a) to (d) were in fact the case;

(b) says that, at all material times prior to Greensill Bank's entry into Policy 3690, neither Marsh Limited nor Marsh Pty Ltd had knowledge of any of the matters

alleged at subparagraphs 229B(a) to (d) of the SOC; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

229C. In response to paragraph 229C of the SOC, Marsh:

(a) denies that any of the matters alleged in subparagraphs 229C(a) to (d) were in fact the case;

(b) says that, at all material times prior to Greensill Bank's entry into Policy 3690, neither Marsh Limited nor Marsh Pty Ltd had knowledge of any of the matters alleged at subparagraphs 229C(a) to (d) of the SOC; and

(c) otherwise, does not know and therefore cannot admit the paragraph.

230. In response to paragraph 230 of the SOC, Marsh:

(a) says that Customer Endorsement 2(ii) bore a stamp with the corporate seal of BCC and was otherwise not signed by Mr Brereton; and

(b) otherwise, admits the paragraph.

231. In response to paragraph 231 of the SOC, Marsh:

(c) repeats paragraph 230 of this Defence; and

(d) otherwise, admits the paragraph.

232. In response to paragraph 232 of the SOC, Marsh:

(a) repeats paragraph 230 of this Defence;

(b) denies that any of the matters alleged in subparagraphs 232(a) to (c) were in fact the case;

(c) says that, all material times prior to the execution of Endorsement 9, Endorsement 17, Endorsement 18, Endorsement 23, Debt Endorsement 1, Customer Endorsement 2, Customer Endorsement 2(i) and Customer Endorsement 2(ii), neither Marsh Limited nor Marsh Pty Ltd had knowledge of any of the matters alleged at subparagraphs 232(a) to (c) of the SOC; and

(d) otherwise, does not know and therefore cannot admit the paragraph.

232A. In response to paragraph 232A of the SOC, Marsh:

(a) repeats paragraphs 230 and 232 of this Defence;

(b) denies that any of the matters alleged in subparagraphs 232A(a) to (c) were in fact the case;

(c) says that, at all material times after 1 March 2019 and prior to the execution of Endorsement 9, Endorsement 17, Endorsement 18, Endorsement 23, Debt Endorsement 1, Customer Endorsement 2, Customer Endorsement 2(i) and Customer Endorsement 2(ii), Marsh Limited did not have knowledge of any of the matters alleged at subparagraphs 232A(a) to (c) of the SOC; and

(d) otherwise, does not know and therefore cannot admit the paragraph.

233. In response to paragraph 233 of the SOC, Marsh:

(a) repeats paragraph 230 of this Defence; and

(b) otherwise, admits the paragraph.

234. In response to paragraph 234 of the SOC, Marsh:

(a) repeats paragraph 230 of this Defence; and

(b) otherwise, admits the paragraph.

235. In response to paragraph 235 of the SOC, Marsh:

(a) repeats paragraph 233 of this Defence;

(b) denies that any of the matters alleged in subparagraphs 235(a) to (c) were in fact the case;

(c) says that, at the time of sending each of the emails referred to in paragraph 233 of the SOC, neither Marsh Limited nor Marsh Pty Ltd had knowledge of any of the matters alleged at subparagraphs 235(a) to (c) of the SOC; and

(d) otherwise, admits the paragraph.

236. In response to paragraph 236 of the SOC, Marsh:

(a) admits that there is an email dated 30 July 2019 from Markus Nünnerich of Greensill Bank to John Whelan of GCUK;

(b) refers to that email for its full terms and effect; and

(c) otherwise, admits the paragraph.

237. Marsh admits paragraph 237 of the SOC.

238. In response to paragraph 238 of the SOC, Marsh:

(a) admits that there is an email dated 6 August 2019 from Edward Smith of Marsh to John Whelan of GCUK;

(b) refers to that email for its full terms and effect; and

(c) otherwise, admits the paragraph.

239. In response to paragraph 239 of the SOC, Marsh:

(a) admits that there is an email dated 6 August 2019 from John Whelan of GCUK to Markus Nünnerich of Greensill Bank;

(b) admits that there is an email dated 6 August 2019 from Markus Nünnerich of Greensill Bank to Ann-Christin Rathjen and others of Greensill Bank;

(c) refers to those emails for their full terms and effect; and

(d) otherwise, admits the paragraph.

240. In response to paragraph 240 of the SOC, Marsh:

(a) repeats paragraph 238 of this Defence;

(b) denies that any of the matters alleged in subparagraphs 240(a) to (c) were in fact the case;

(c) says that, at the time of sending the email dated 6 August 2019 to John Whelan, neither Edward Smith, Marsh Limited nor Marsh Pty Ltd had knowledge of any of the matters alleged at subparagraphs 240(a) to (c) of the SOC; and

(d) otherwise, denies the paragraph.

Authority representations

241. In response to paragraph 241 of the SOC, Marsh:

(a) repeats paragraphs 218A to 218E and 227 to 240 of this Defence; and

(b) otherwise, denies the paragraph.

242. In response to paragraph 242 of the SOC, Marsh:

(a) denies that any of the matters alleged in subparagraphs 242(a) and (b) were in fact the case;

(b) says that, at all material times, neither Marsh Limited nor Marsh Pty Ltd had knowledge that:

i. BCC did not have authority to execute Policy 3690 or any endorsements to Policy 3690 on behalf of IAL as its Corporate Authorised Representative; or

ii. Brereton did not have authority to execute Policy 3690 or any endorsements to Policy 3690 on behalf of BCC as the Corporate

Authorised Representative of IAL;

(c) further or in the alternative, says that, by no later than 4 August 2020, Greensill Bank was aware that BCC and/or TMNF were investigating whether BCC and Brereton had had authority to enter into Policy 3690 and that BCC and/or TMNF had reserved their rights in relation to any liability under Policy 3690; and

**Particulars**

On 4 August 2020, Mr Guy sent an email to Mr Greensill, Greensill Bank, Mr Berkemeier, and Mr Smith providing a letter which was addressed to Mr Greensill, Mr Nünnerich, and the Company Secretary of GCUK (MAR.0006.0001.5021, MAR.0006.0001.5022). That letter relevantly stated that:

a. an investigation into the dealings between Greg Brereton and GCUK is continuing and that based on the investigation undertaken to date, it is the understanding of BCC and TMNF that Greg Brereton had during the period June 2019 to July 2020 signed numerous documents entitled Comprehensive Trade Credit insurance Policy with GCUK (defined in the letter as the 'Documents Under Investigation');

b. nothing contained in the letter or any earlier correspondence should be construed as an admission by BCC that it is necessarily on risk in relation to the Documents Under Investigation; and

c. upon BCC completing its investigation, it would be in a position to inform GCUK as to its position in relation to the documents signed by Greg Brereton during the period June 2019 to July 2020;

(d) otherwise, denies the paragraph.

243. Marsh denies paragraph 243 of the SOC.

243A. Marsh denies paragraph 243A of the SOC.

244. Marsh denies paragraph 244 of the SOC.

245. Marsh denies paragraph 245 of the SOC.

Validity representations

246. In response to paragraph 246 of the SOC, Marsh:

(a) repeats paragraph 241 of this Defence; and

(b) otherwise, denies the paragraph.

247. In response to paragraph 247 of the SOC, Marsh:

(a) denies that it was in fact the case that Policy 3690 or any endorsements to Policy 3690 were not, or may not be, valid, effective, binding and enforceable against IAL;

(b) says that, at all material times, neither Marsh Limited nor Marsh Pty Ltd had knowledge that Policy 3690 or any endorsements to Policy 3690 were not valid, effective, binding and enforceable against IAL; and

(c) otherwise, denies the paragraph.

248A. In response to paragraph 248A of the SOC, Marsh:

(a) denies that it was in fact the case that Policy 3690 or any endorsements to Policy 3690 were not, or may not be, valid, effective, binding and enforceable against IAL;

(b) says that, at all material times on and from 1 March 2019, neither Marsh Limited nor Marsh Pty Ltd had knowledge that Policy 3690 or any endorsements to Policy 3690 were not valid, effective, binding and enforceable against IAL; and

(c) otherwise, denies the paragraph.

248. Marsh denies paragraph 248 of the SOC.

248A. Marsh denies paragraph 248A of the SOC.

249. Marsh denies paragraph 249 of the SOC.

250. Marsh denies paragraph 250 of the SOC.

251. In response to paragraph 251 of the SOC, Marsh:

(a) says that the paragraph does not contain an allegation of material fact against

Marsh Limited or Marsh Pty Ltd; and

(b) otherwise, denies the paragraph.

**(A) Authority claims**

252. In response to paragraph 252 of the SOC, Marsh:

(a) does not know and therefore cannot admit subparagraphs 252(a) to (c);

(b) as to subparagraph 252(d):

i. says that, in or around late 2016, Marsh Pty Ltd set up BCC as an approved underwriting agent in Marsh Pty Ltd's billing system; and

ii. otherwise, denies the subparagraph;

(c) denies subparagraph 252(e);

(d) as to subparagraph 252(g):

i. repeats paragraph 80E of this Defence; and

ii. otherwise, denies the subparagraph;

(e) as to subparagraph 252(h):

i. repeats subparagraph 252(d) of this Defence; and

ii. otherwise, denies the subparagraph;

(f) denies subparagraph 252(ja);

(g) denies subparagraph 252(jb);

(h) denies subparagraph 252(k);

(i) denies subparagraph 252(l);

(j) denies subparagraph 264(m); and

(k) otherwise, denies the paragraph.

Misleading or deceptive conduct

253. In response to paragraph 253 of the SOC, Marsh:

(a) repeats paragraphs 243 and 243A of this Defence;

(b) says that if the Marsh Authority Representations and/or Marsh Pty Ltd Authority Representations were made (which is denied), they were representations of opinion for which Marsh Limited and Marsh Pty Ltd had reasonable grounds; and

**Particulars**

(I) On 14 December 2017, in response to a query from an employee of Marsh Pty Ltd regarding BCC's authority to enter into policies of trade credit insurance on behalf of IAL, BCC provided to Marsh Pty Ltd's employee a copy of the To Whom It May Concern Letter and a letter on CGU letterhead dated 21 December 2016 which confirmed BCC was authorised to arrange insurance and act as an agent for CGU Insurance Limited in relation to Trade Credit Insurance. See email dated 14 December 2017 from Ewan Berkemeier of Marsh to Greg Brereton and Scott Newland of BCC (MAR.0003.0001.1818) and email dated 14 December 2017 from Greg Brereton of BCC to Ewan Berkemeier of Marsh and attachments (MAR.0003.0001.1822, MAR.0003.0001.1823 and MAR.0003.0001.1824).

(II) Mr Brereton was held out by BCC (through consistently allowing him to describe himself as such) as its Head of Trade Credit. Mr Newland, an Executive Director of BCC, and Mr Toby Guy, then an Executive Director of BCC, were also involved in communications between August and December 2017 concerning the approval of the Greensill wording and reporting on his discussions with IAL's reinsurers both in relation to the wording and limits.

(III) On or about 13 February 2019, representatives of BCC advised representatives of Marsh and GCUK that:

a. BCC had authority from IAL to write policies of trade credit insurance that provided for coverage up to a maximum limit of AUD 75

million per individual Customer and for a maximum policy period of three years;

b. IAL would be responsible for paying claims;

c. Marsh and GCUK could assume that, if BCC agreed to issue insurance exceeding the limit of AUD 75 million per Customer, BCC had obtained all necessary approvals from the Insurer; and

d. in advance of the meeting, and in a response to an agenda item which requested "Docs showing your backing", Mr Brereton sent another copy of the To Whom It May Concern Letter.

See email dated 2 February 2019 from Ewan Berkemeier of Marsh to Greg Brereton of BCC and others (MAR.0002.0001.1324), email dated 12 February 2019 from Greg Brereton of BCC to Ewan Berkemeier of Marsh, copying Scott Newland of BCC, and attachment (MAR.0006.0001.1850 and MAR.0006.0001.1854) and handwritten notes of Edward Smith of Marsh recording 13 February 2019 meeting (MAR.0004.0005.0660).

(IV) on 15 April 2019, representatives of BCC informed Marsh that in relation to the acquisition of BCC by Tokio Marine:

a. all new, renewal or mid-term policy adjustments processed under the current arrangements will remain in place through to the natural expiry of each policy;

b. any arrangements in place (under IAL paper) will survive until expiry; and

c. if a policy had a term of 12 months but there was an expectation of a 24-month term,

Marsh should speak with Brereton.

See email dated 15 April 2019 from Toby Guy of BCC to Ewan Berkemeier of Marsh copying others and attachments (MAR.0003.0002.2042, MAR.0003.0002.2043 and MAR.0003.0002.2044);

(V) on or about 17 July 2019, Mr Brereton advised representatives of Marsh and Marsh Pty Ltd that new BCC stamps/seals had been issued and BCC stamps in use previously had been disposed of by BCC but were required for policies issued prior to 1 July 2019, such that Mr Brereton would obtain and use a version of the previous BCC stamps in relation to such policies.

See email dated 17 July 2019 from Greg Brereton to Edward Smith, copied to Ewan Berkemeier and Angus Ward (MAR.0003.0002.5299).

(VI) on or about 14 October 2019, representatives of BCC advised representatives of Marsh and GCUK that:

a. IAL remained on risk with respect to policies of trade credit insurance that had been issued by BCC as the agent of IAL; and

b. IAL was aware that new Customers could be added to existing policies of insurance issued by BCC and that insurance limits relating to existing Customers could be increased.

See handwritten notes of Edward Smith of Marsh recording 14 October 2019 meeting (MAR.0004.0005.0661 and MAR.0004.0002.8773).

(VII) Furthermore, the long course of dealing between BCC and IAL, the number and premium volume

of risks being underwritten through BCC, IAL's acceptance of that premium, the reasonable expectation that there would have been in existence regular reporting and auditing requirements as between BCC and IAL whereby IAL was able to monitor and supervise BCC's underwriting practices, and the absence of any complaint or issue raised by IAL with Marsh in that regard.

(VIII) Further particulars may be provided following discovery and the service of evidence.

(c) otherwise, denies the paragraph.

254. In response to paragraph 254 of the SOC, Marsh:

(a) repeats paragraph 253 of this Defence; and

(b) otherwise, denies the paragraph.

255. In response to paragraph 255 of the SOC, Marsh:

(a) repeats paragraph 253 of this Defence; and

(b) otherwise, denies the paragraph.

255A. Marsh denies paragraph 255A of the SOC.

256. Marsh denies paragraph 256 of the SOC.

Negligence

257. In response to paragraph 257 of the SOC, Marsh:

(a) says that, in the period from on or around 1 March 2019 to on or around 13 March 2019, Marsh was aware that Greensill Bank was a prospective insured under Policy 3690;

(b) repeats paragraph 67 of this Defence; and

(c) otherwise, denies the paragraph.

258. In response to paragraph 258 of the SOC, Marsh:

(a) repeats paragraphs 6B, 6C, 218B and 218C of this Defence;

(b) says that, by reason of the matters pleaded in subparagraphs 6B(f), 6C(d), 218B(d), 218B(e)(vi), 218B(l), 218B(m), 218B(t), 218B(u)(vii), 218B(bb),

218B(cc)(vii), 218B(ii), 218B(jj), 218B(pp), 218B(vv), 218B(ccc), 218C(a) and 218C(c), any duty of care that Marsh Limited and/or Marsh Pty Ltd owed to Greensill Bank in connection with the performance of the 2014 Marsh Retainer, 2015 Marsh Retainer, 2016 Marsh Retainer, 2017 Marsh Retainer, 2018 Marsh GCUK Retainer, 2018 Marsh GBAG Retainer, 2019 Marsh Retainer, 2020 Marsh Retainer and 2021 Marsh Retainer (collectively, the **Marsh Retainers**) was excluded under the terms of the Marsh Retainers;

(c) says further that the wording of Policy 3690 was prepared by GCUK and/or Lex Greensill on behalf of GCUK and Greensill Bank;

(d) says further that any negotiations regarding the wording for Policy 3690 in connection with the Simec transaction (as set out in section E of the SOC) were conducted between GCUK, Greensill Bank, Lex Greensill, and BCC;

(e) says further that the Services that Marsh Limited provided to Greensill Bank pursuant to the Marsh Retainers (including any Services that Marsh Limited provided through Marsh Pty Ltd) or otherwise did not include negotiating the material terms of Policy 3690, or the Endorsements to that Policy, with IAL or any reinsurer;

**Particulars**

(I) At all material times prior to the execution of Policy 3690, Greensill Bank, and/or GCUK or Lex Greensill or others on behalf of Greensill Bank, instructed Marsh that any policies of trade credit insurance placed with BCC or any other insurer were to adopt the structure and wording of policies of insurance that were based on those previously prepared by GCUK in consultation with AIG Trade Finance Ltd.

(II) From at least 10 October 2017, GCUK, from time to time, communicated directly with BCC regarding policies of insurance to be placed with BCC and did not include Marsh on those communications.

(III) Further particulars may be provided following disclosure and evidence.

(f) says further that, by reason of, *inter alia,* the matters set out in subparagraph 258(c) above, the remuneration payable to Marsh Limited under the Marsh Retainers was discounted from Marsh Limited's standard rates and market commission;

**Particulars**

(I) Clause 2 of the 2014 Letter of Engagement.

(II) Clause 2 of the 2015 Letter of Engagement.

(III) Clause 2 of the 2016 Letter of Engagement.

(IV) Clause 2 of the 2017 Letter of Engagement.

(V) Clause 2 of the 2018 Marsh GCUK Letter of Engagement.

(VI) Clause 2 of the 2018 Marsh GBAG Letter of Engagement.

(VII) Clause 2 of the 2019 Letter of Engagement.

(VIII) Clause 2 of the 2020 Letter of Engagement.

(g) further or in the alternative, says that, in the premises pleaded in subparagraphs 258(c) and (d) above, if Marsh Limited and/or Marsh Pty Ltd owed a duty of care to Greensill Bank in connection with the performance of the Marsh Retainers (which is denied), the scope of that duty did not include doing, or providing advice to Greensill Bank in relation to, the things alleged in subparagraphs 258(ab) and (b) of the SOC; and

(h) otherwise, denies the paragraph.

259. Marsh denies paragraph 259 of the SOC.

260. Marsh denies paragraph 260 of the SOC.

261. Marsh denies paragraph 261 of the SOC.

Negligent Misstatement

261A. In response to paragraph 261A of the SOC, Marsh:

(a) says that the paragraph does not contain an allegation of material fact against Marsh Limited or Marsh Pty Ltd; and

(b) otherwise, denies the paragraph.

261B. In response to paragraph 261B of the SOC, Marsh:

(a) repeats paragraph 258 of this Defence; and

(b) otherwise, denies the paragraph.

261C. Marsh denies paragraph 261C of the SOC.

261D. Marsh denies paragraph 261D of the SOC.

**(B) Validity Claims**

262. In response to paragraph 262 of the SOC, Marsh:

(a) says that:

i. paragraph 262 of the SOC sets out the general effect of certain allegations pleaded in IAL's Defence (which are denied); and

ii. does not contain an allegation of material fact against Marsh Limited or Marsh Pty Ltd; and

(b) otherwise, denies the paragraph.

263. In response to paragraph 263 of the SOC, Marsh:

(a) says that the paragraph does not contain an allegation of material fact against Marsh Limited or Marsh Pty Ltd; and

(b) otherwise, denies the paragraph.

264. In response to paragraph 264 of the SOC, Marsh:

(a) repeats paragraph 262 of this Defence;

(b) says that the paragraph does not contain an allegation of material fact against Marsh Limited or Marsh Pty Ltd; and

(c) otherwise, denies the paragraph.

Misleading or deceptive conduct

265. In response to paragraph 265 of the SOC, Marsh:

(a) repeats paragraphs 248 and 249A of this Defence;

(b) says that if the Marsh Validity Representations and/or Marsh Pty Ltd Validity Representations were made (which is denied), they were representations of opinion for which Marsh Limited and Marsh Pty Ltd had reasonable grounds; and

**Particulars**

(I) On 15 August 2019, Mr Brereton provided to

Marsh a signed letter on BCC letterhead which was addressed to Greensill Bank. That letter relevantly listed a number of policies (including Policy 3690) "where in each case we have issued an Endorsement in the form found in the Schedule to this letter". The letter then set out "our understanding of the contractual arrangement set out in each Claims Endorsement" (MAR.0002.0001.2146 and MAR.0002.0001.2147).

(II) On or about 14 October 2019, representatives of BCC advised representatives of Marsh and GCUK that:

a. IAL remained on risk with respect to policies of trade credit insurance that had been issued by BCC as the agent of IAL; and

b. IAL was aware that new Customers could be added to existing policies of insurance issued by BCC and that insurance limits relating to existing Customers could be increased.

See handwritten notes of Edward Smith of Marsh recording 14 October 2019 meeting (MAR.0004.0005.0661 and MAR.0004.0002.8773).

(III) On or around 9 January 2020, Mr Brereton provided to Marsh a signed letter dated 18 December 2019 on BCC letterhead which was addressed to Greensill Bank. That letter relevantly listed a number of policies, including Policy 3690. The letter then set out "our understanding of the contractual arrangement set out in each Claims Endorsement" (GBA.0004.0004.7527 and GBA.0004.0004.7528).

(IV) On 8 March 2020, Mr Brereton provided a letter to

Mr Steinruck of BdB which relevantly stated: "We are pleased to confirm the following commitments have been in place on the dates referred to", and "confirm receipt of all premium payable under each of the relevant policies…". The policy numbers listed included "BCC TB-03690" (AGB.0002.0002.3270, and AGB.0002.0002.3271).

(V) IAL accepted substantial premia payments in respect of Policy 3690.

(VI) Furthermore, given the long course of dealing between BCC and IAL, the number and premium volume of risks being underwritten through BCC, IAL's acceptance of that premium, the reasonable expectation that there would have been in existence regular reporting and auditing requirements as between BCC and IAL whereby IAL was able to monitor and supervise BCC's underwriting practices, and the absence of any complaint or issue raised by IAL with Marsh in that regard.

(VII) Further particulars may be provided following discovery and the service of evidence.

(c) otherwise, denies the paragraph.

266. In response to paragraph 266 of the SOC, Marsh:

(a) repeats paragraph 265 of this Defence; and

(b) otherwise, denies the paragraph.

267. In response to paragraph 267 of the SOC, Marsh:

(a) repeats paragraph 265 of this Defence; and

(b) otherwise, denies the paragraph.

268. Marsh denies paragraph 268 of the SOC.

Negligence

269. In response to paragraph 269 of the SOC, Marsh:

(a) repeats paragraphs 257 to 258 of this Defence; and

(b) otherwise, denies the paragraph.

270. In response to paragraph 270 of the SOC, Marsh:

(a) repeats paragraphs 258 and 264 of this Defence; and

(b) otherwise, denies the paragraph.

271. Marsh denies paragraph 271 of the SOC.

272. Marsh denies paragraph 272 of the SOC.

Negligent misstatement

272A. In response to paragraph 272A of the SOC, Marsh:

(a) repeats paragraphs 257 to 258 of this Defence; and

(b) otherwise, denies the paragraph.

272B. In response to paragraph 272B of the SOC, Marsh:

(a) repeats paragraphs 258 and 264 of this Defence; and

(b) otherwise, denies the paragraph.

272C. Marsh denies paragraph 272C of the SOC.

272D. Marsh denies paragraph 272D of the SOC.

**(B2) GCPL Policy Inclusion Claims**

272E. In response to paragraph 272E of the SOC, Marsh:

(a) says that:

i. paragraph 272E of the SOC sets out the general effect of certain allegations pleaded in IAL's and BCC's Defences (which Marsh does not know and therefore cannot admit); and

ii. does not contain an allegation of material fact against Marsh Limited or Marsh Pty Ltd; and

(b) otherwise, does not know and therefore cannot admit the paragraph.

272F. In response to paragraph 272F of the SOC, Marsh:

(a) says that the paragraph does not contain an allegation of material fact against Marsh Limited or Marsh Pty Ltd; and

(b) otherwise, denies the paragraph.

272G. In response to paragraph 272G of the SOC, Marsh:

(a) admits that there is an email dated 5 September 2017 from Lex Greensill to John Whelan of GCUK;

(b) refers to that email for its full terms and effect; and

(c) otherwise, admits the paragraph.

272H. In response to paragraph 272H of the SOC, Marsh:

(a) says that there is an email dated 6 September 2017 from John Whelan of GCUK to Brereton;

(b) refers to that email for its full terms and effect; and

(c) otherwise, admits the paragraph.

272I. In response to paragraph 272I, Marsh:

(a) repeats subparagraph 272R of this Defence;

(b) denies that Marsh Limited or Marsh Pty Ltd had an obligation to do any of the things alleged in subparagraphs 272I(a) to (c) of the SOC; and

(c) otherwise, denies the paragraph.

272J. Marsh denies paragraph 272J of the SOC.

272K. In response to paragraph 272K of the SOC, Marsh:

(a) repeats paragraph 272J of this Defence; and

(b) otherwise, denies the paragraph.

272L. In response to paragraph 272L of the SOC, Marsh:

(a) repeats paragraphs 272J and 272K of this Defence; and

(b) otherwise, denies the paragraph.

272M. In response to paragraph 272M of the SOC, Marsh:

(a) repeats paragraphs 6B, 6C, 218B, 218C and 272J to 272L of this Defence;

(b) says that, by reason of the matters pleaded in subparagraphs 6B(f), 6C(d), 218B(d), 218B(e)(vi), 218B(l), 218B(m), 218B(t), 218B(u)(vii), 218B(bb), 218B(cc)(vii), 218B(ii), 218B(jj), 218B(pp), 218B(vv), 218B(ccc), 218C(a) and 218C(c) of this Defence, any duty of care that Marsh Limited and/or Marsh Pty Ltd owed to Greensill Bank in connection with the performance of the Marsh Retainers was excluded under the terms of the Marsh Retainers;

(c) further or in the alternative:

i. repeats subparagraphs 258(c) and (d) of this Defence; and

ii. says that, in the premises pleaded in subparagraphs 258(c) and (d) of this Defence, if Marsh Limited and/or Marsh Pty Ltd owed a duty of care to Greensill Bank in connection with the performance of the Marsh Retainers (which is denied), the scope of that duty did not include doing, or providing advice to Greensill Bank in relation to, the things alleged in subparagraphs 272M(a) and (b) of the SOC; and

(d) otherwise, denies the paragraph.

*Misleading or deceptive conduct*

272N. In response to paragraph 272N of the SOC, Marsh:

(a) repeats paragraph 272I of this Defence;

(b) says that, at the time Greensill Bank entered into Policy 3690 and the Endorsements pleaded in paragraphs 243 and 243A of the SOC, neither Marsh Limited nor Marsh Pty Ltd had knowledge of the matters alleged at subparagraphs 272N(a) and (b) of the SOC;

(c) denies that Marsh Limited or Marsh Pty Ltd had any obligation to inform Greensill Bank of any of the matters alleged in subparagraphs 272N(a) and (b) of the SOC; and

(d) otherwise, denies the paragraph.

272O. In response to paragraph 272O of the SOC, Marsh:

(a) repeats paragraph 272M of this Defence; and

(b) otherwise, denies the paragraph.

272P. Marsh denies paragraph 272P of the SOC.

272Q. In response to paragraph 272Q of the SOC, Marsh:

(a) repeats paragraphs 272I, 272N and 272O of this Defence;

(b) says that if the Marsh Insulation Representations were made (which is denied), they were representations of opinion for which Marsh Limited and Marsh Pty Ltd had reasonable grounds; and

**Particulars**

(l) Marsh repeats subparagraph 295(d) of this

Defence.

(II) Under the terms of the Marsh Retainers, Greensill Bank and/or GCPL had an obligation to disclose to Marsh whether either or both of Greensill Bank and GCPL had made any misrepresentations or non-disclosures in respect of the customers and the risks to be covered under Policy 3690.

(III) Marsh relied upon Greensill Bank and/or GCPL to disclose whether either or both of Greensill Bank and GCPL had made any misrepresentations or non-disclosures in respect of the customers and the risks to be covered under Policy 3690.

(IV) Neither Greensill Bank nor GCPL informed Marsh, at any time, that either or both of Greensill Bank and GCPL had made any misrepresentations or non-disclosures in respect of the customers and the risks to be covered under Policy 3690, or that there was a risk that such misrepresentations or non-disclosures might be made.

(V) Further particulars may be provided following discovery and the service of evidence.

(c) otherwise, denies the paragraph.

272R. In response to paragraph 272R of the SOC, Marsh:

(a) says that, at the time that Greensill Bank entered into Policy 3690, it was aware that:

i. BCC would not issue or enter into any policy of insurance, including Policy 3690, unless at least one of the named insureds under the policy was an entity domiciled in Australia; and

ii. by reason of the matters pleaded in (i) above, it was a material term of Policy 3690 that GCPL be named as an Insured under that Policy;

**Particulars**

(I) Email dated 5 September 2017 from Lex

Greensill to John Whelan of GCUK, copied to others (AGB.0002.0009.0656).

(II) Email dated 14 December 2017 from Mr Brereton to John Whelan of GCUK and Lex Greensill, copied to others (AGB.0002.0001.0083).

(III) Emails dated 14 December 2017 between John Whelan of GCUK and Danyon Lloyd of Greensill Bank (GBA.0004.0034.2574).

(IV) Further particulars may be provided following disclosure and evidence.

(b) says further that, in the premises pleaded in subparagraph 272R(a) above:

i. even if the Marsh Insulation Representations were made (which is denied); and/or

ii. even if Marsh had done the things alleged in paragraph 272I of the SOC,

Greensill Bank would still have entered into Policy 3690 and/or acquired any of the Simec Notes; and

(c) otherwise, denies the paragraph.

272S. Marsh denies paragraph 272S of the SOC.

272T. Marsh denies paragraph 272T of the SOC.

272U. Marsh denies paragraph 272U of the SOC.

272V. In response to paragraph 272V of the SOC, Marsh:

(a) says that, if the Marsh Insulation Representations were made (which is denied), and if BCC and/or IAL establish the matters pleaded at paragraph 219 and Annexure A to BCC's Defence to the SOC filed 16 May 2025 (**BCC Simec Defence**) and/or subparagraph 180C(p)(i)(C) and Annexure A to the IAL's Amended Defence filed on 20 December 2024 (**IAL Simec Defence**), with the consequence that Policy 3690 and endorsements thereto are liable to be avoided, then:

i. the inclusion of GCPL as a named Insured under Policy 3690; and/or

ii. the making of the Marsh Insulation Representations,

did not cause Greensill Bank to suffer the loss or damage pleaded at paragraph 272V of the SOC, or at all; and

(b) otherwise, denies the paragraph.

*Negligence*

272W. In response to paragraph 272W of the SOC, Marsh:

(a) repeats paragraph 272M of this Defence; and

(b) otherwise, denies the paragraph.

272X. Marsh denies paragraph 272X of the SOC.

272Y. Marsh denies paragraph 272Y of the SOC.

**(B3) Marsh Injunctive Relief**

*Background of the English Proceedings and amendments to these proceedings*

272Z. In response to paragraph 272Z of the SOC, Marsh:

(a) admits that on 29 July 2024, Marsh Limited and Marsh Pty Ltd commenced proceedings in the High Court of England and Wales bearing claim number CL-2024-000433 (**English Proceedings**);

(b) says that subparagraphs 272Z(a) and (b) of the SOC set out the general effect of some of the claims made by Marsh in the English Proceedings;

(c) relies on the documents filed, and submissions made, by Marsh in the English Proceedings for their full force and effect; and

(d) otherwise, admits the paragraph.

272AA. In response to paragraph 272AA of the SOC, Marsh:

(a) repeats paragraphs 218B, 218C and 272Z of this Defence;

(b) relies upon each of the Marsh Retainers for its full terms and effect;

(c) says that:

i. at all material times, Marsh Limited and Marsh Pty Ltd have expressly reserved their rights in relation to the enforcement and application of the Exclusive Jurisdiction Clause in the relevant Marsh Retainers, including in the English Proceedings and in response to Greensill Bank's claims for interlocutory and permanent injunctive and anti-anti-

suit relief against Marsh in Australia;

ii. Marsh Limited and Marsh Pty Ltd continue to reserve their rights in the manner referred to in (i) above, do not waive their rights in respect of those matters, and maintain that the Exclusive Jurisdiction Clause applies to the claims that are pleaded against Marsh in the SOC; and

iii. in the premises pleaded in (i) and (ii) above, nothing in this Defence is intended to waive, or has the effect of waiving, Marsh Limited's and Marsh Pty Ltd's rights in relation to the enforcement and application of the Exclusive Jurisdiction Clause; and

(d) otherwise, admits the paragraph.

272AB. In response to paragraph 272AB of the SOC, Marsh:

(a) admits that the High Court of England and Wales made orders on 30 July 2024 in the English Proceedings (**English Interim Orders**);

(b) relies on the English Interim Orders for their full terms and effect; and

(c) otherwise, admits the paragraph.

272AC. In response to paragraph 272AC of the SOC, Marsh:

(a) repeats paragraph 272AB of this Defence; and

(b) otherwise, admits the paragraph.

272AD. Marsh admits paragraph 272AD of the SOC.

272AE. In response to paragraph 272AE of the SOC, Marsh:

(a) admits that the Federal Court of Australia made orders on 11 October 2024;

(b) refers to those orders for their full terms and effect; and

(c) otherwise, admits the paragraph.

272AF. Marsh admits paragraph 272AF of the SOC.

272AG. In response to paragraph 272AG of the SOC, Marsh:

(a) admits that the Federal Court of Australia made orders on 18 October 2024;

(b) refers to those orders for their full terms and effect; and

(c) otherwise, admits the paragraph.

272AH. Marsh admits paragraph 272AH of the SOC.

272AI. In response to paragraph 272AI of the SOC, Marsh:

(a) admits that the Federal Court of Australia made orders on 4 November 2024;

(b) refers to those orders for their full terms and effect;

(c) repeats subparagraph 272AA(c) of this Defence; and

(d) otherwise, admits the paragraph.

272AJ. Marsh admits paragraph 272AJ of the SOC.

272AK. In response to paragraph 272AK of the SOC, Marsh:

(a) admits that the High Court of England and Wales made an order on 11 December 2024 in the English Proceedings (**English Anti-Suit Order**);

(b) relies on the English Anti-Suit Order for its full terms and effect; and

(c) otherwise, admits the paragraph.

272AL. In response to paragraph 272AL of the SOC, Marsh:

(a) repeats subparagraph 272AA(c) of this Defence; and

(b) otherwise, admits the paragraph.

272AM. Marsh admits paragraph 272AM of the SOC.

272AN. In response to paragraph 272AN of the SOC, Marsh:

(a) admits that, on 16 April 2025, Marsh Limited and Marsh Pty Ltd filed an amended claim form in the English Proceedings (**Amended Claim**);

(b) relies on the Amended Claim for its full terms and effect; and

(c) otherwise, admits the paragraph.

272AO. In response to paragraph 272AO of the SOC, Marsh:

(a) repeats paragraph 272AN of this Defence; and

(b) otherwise, denies the paragraph.

272AP. In response to paragraph 272AP of the SOC, Marsh:

(a) admits that the High Court of England and Wales made orders on 21 May 2025 in the English Proceedings;

(b) refers to those orders for their full terms and effect; and

(c) otherwise, admits the paragraph.

272AQ. Marsh admits paragraph 272AQ of the SOC.

*The purpose and effect of the English Proceedings*

272AR. Marsh denies paragraph 272AR of the SOC.

272AS. Marsh denies paragraph 272AS of the SOC.

272AT. Marsh denies paragraph 272AT of the SOC.

272AU. Marsh denies paragraph 272AU of the SOC.

272AV. Marsh denies paragraph 272AV of the SOC.

272AW. Marsh denies paragraph 272AW of the SOC.

*Injunctive relief and this Court's powers*

272AX. In response to paragraph 272AX of the SOC, Marsh:

(a) repeats paragraphs 272AR to 272AW of this Defence; and

(b) otherwise, denies the paragraph.

272AY. In response to paragraph 272AR of the SOC, Marsh:

(a) repeats paragraphs 272AR to 272AW of this Defence; and

(b) otherwise, denies the paragraph.

272AZ. Marsh denies paragraph 272AZ of the SOC.

272BA. Marsh denies paragraph 272BA of the SOC.

272BB. Marsh denies paragraph 272BB of the SOC.

**(C) Breach of financial services licensee obligations**

273. In response to paragraph 273 of the SOC, Marsh:

(a) refers to s 912A of the Corporations Act for its full force and effect; and

(b) otherwise, denies the paragraph.

274. In response to paragraph 274 of the SOC, Marsh:

(a) repeats paragraph 273 of this Defence; and

(b) otherwise, denies the paragraph.

275. Marsh denies paragraph 275 of the SOC.

276. Marsh denies paragraph 276 of the SOC.

277. Marsh denies paragraph 277 of the SOC.

278. In response to paragraph 278 of the SOC, Marsh:

(a) says that, even if Marsh Limited and/or Marsh Pty Ltd contravened s 912A of

the Corporations Act (which is denied), there is no basis on which Marsh Limited or Marsh Pty Ltd could be ordered to pay damages or penalties under the Corporations Act by reason of any such contravention; and

(b) otherwise, denies the paragraph.

## G FURTHER DEFENCES

### G.1 Proportionate liability

279. In further answer to paragraphs 218B to 278 of the SOC, Marsh says that, if Marsh Limited and/or Marsh Pty Ltd is liable to Greensill Bank (which is denied), then, without admission and for the purposes of this Defence only insofar as it relates to the reduction of any liability which Marsh Limited or Marsh Pty Ltd may be found to have to Greensill Bank for any loss so as to reflect the proportion of loss the Court considers just having regard to the responsibility of any other persons or entities for that loss:

(a) Greensill Bank's claims against Marsh Limited and Marsh Pty Ltd for misleading or deceptive conduct in contravention of s 18 of the Australian Consumer Law, s 12DA of the ASIC Act and s 1041H of the Corporations Act (as pleaded in paragraphs 253 to 256, 265 to 268 and 272N to 272V of the SOC) are each an "apportionable claim" within the meaning of s 87CB(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**), s 12GP of the ASIC Act and s 1041L of the Corporations Act; and

(b) Greensill Bank's claims against Marsh Limited and Marsh Pty Ltd for negligent misstatement and negligence (as pleaded in paragraphs 257 to 261, 269 to 272D, and 272W to 272Y of the SOC) are each an "apportionable claim" within the meaning of s 34 of the *Civil Liability Act 2002* (NSW) (**CLA**).

***BCC and Brereton***

280. Marsh repeats paragraph 279 of this Defence.

281. In further answer to paragraphs 218B to 278 of the SOC, Marsh says that, if Marsh Limited and/or Marsh Pty Ltd is liable to Greensill Bank (which is denied), then, without admission and for the purposes of this Defence only insofar as it relates to the reduction of any liability which Marsh Limited or Marsh Pty Ltd may be found to have to Greensill Bank for any loss so as to reflect the proportion of loss the Court considers just having regard to the responsibility of any other persons or entities for that loss:

(a) Marsh relies upon and repeats the allegations pleaded against each of BCC and Brereton in paragraphs 181 to 218A of the SOC;

(b) further or in the alternative:

i. by its conduct in issuing and/or entering into Policy 3690 and the Endorsements to that Policy referred to at paragraph 181 of the SOC, BCC represented that it had reasonable grounds for making each of the BCC Authority Representations pleaded at paragraph 186 of the SOC (each a **BCC Reasonable Grounds Representation**);

ii. the BCC Reasonable Grounds Representations were made in trade or commerce;

iii. the BCC Reasonable Grounds Representations were continuing representations and not withdrawn or corrected at any material time;

iv. the conduct of BCC in making the BCC Reasonable Grounds Representations was conduct:

A. in relation to a financial service within the meaning of s 1041H of the Corporations Act;

B. in trade or commerce within the meaning of s 18 of the Australian Consumer Law; and/or

C. in trade or commerce and in relation to financial services within the meaning of s 12DA of the ASIC Act;

v. if it is established that:

A. BCC was not authorised to make an agreement on the terms of Policy 3690 and each of the Endorsements referred to at paragraph 181 of the SOC on behalf of IAL as its agent; and, or alternatively

B. Brereton was not authorised to execute or send (as the case may be) Policy 3690 and each of the Endorsements referred to at paragraph 181 of the SOC on behalf of BCC,

then BCC did not take sufficient steps:

C. to ensure, supervise and/or monitor compliance with its authority limits or guidelines (including by officers and staff); and/or

D. to ensure that its officers and staff were aware of and understood its authority limits and guidelines;

vi. in the premises, by making one or more of the BCC Reasonable

Grounds Representations, BCC:

A. engaged in conduct that was misleading or deceptive, or likely to mislead or deceive;

B. contravened s 1041H of the Corporations Act, s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act; and

vii. but for the BCC Reasonable Grounds Representations (or one or more of them), Greensill Bank would not have acquired the Simec Notes;

(c) further or in the alternative:

i. by his conduct in entering into Policy 3690 and the Endorsements to that Policy referred to at paragraph 181 of the SOC, Brereton represented that he had reasonable grounds for making each of the Brereton Authority Representations pleaded at paragraph 205 of the SOC (each a **Brereton Reasonable Grounds Representation**);

ii. the Brereton Reasonable Grounds Representations were made in trade or commerce;

iii. the Brereton Reasonable Grounds Representations were continuing representations and not withdrawn or corrected at any material time;

iv. the conduct of Brereton in making the Brereton Reasonable Grounds Representations was conduct:

A. in relation to a financial service within the meaning of s 1041H of the Corporations Act;

B. in trade or commerce within the meaning of s 18 of the Australian Consumer Law; and/or

C. in trade or commerce and in relation to financial services within the meaning of s 12DA of the ASIC Act;

v. if it is established that:

A. BCC was not authorised to make an agreement on the terms of Policy 3690 and each of the Endorsements referred to at paragraph 181 of the SOC on behalf of IAL as its agent; and, or alternatively

B. Brereton was not authorised to execute or send (as the case may

be) Policy 3690 and each of the Endorsements referred to at paragraph 181 of the SOC on behalf of BCC,

then Brereton did not take sufficient steps:

C. to ensure compliance with authority limits or guidelines; and/or

D. to understand the authority limits and guidelines agreed between BCC and IAL and the ability of BCC to write risks outside those guidelines;

vi. in the premises, by making one or more of the Brereton Reasonable Grounds Representations, Brereton:

A. engaged in conduct that was misleading or deceptive, or likely to mislead or deceive;

B. contravened s 1041H of the Corporations Act, s 18 of the Australian Consumer Law and/or s 12DA of the ASIC Act; and

vii. but for the Brereton Reasonable Grounds Representations (or one or more of them), Greensill Bank would not have acquired the Simec Notes;

(d) further or in the alternative:

i. at all material times, BCC owed a duty to Greensill Bank to take reasonable steps to avoid Greensill Bank suffering loss or damage in the form of:

A. the non-payment of indemnity under Policy 3690; and/or

B. delayed payment of indemnity under Policy 3690;

(**Risk of Harm**).

ii. in the circumstances, a reasonable person in the position of BCC would have taken the precaution against the Risk of Harm for the purposes of s 5B(1)(c) of the CLA of:

A. ensuring, supervising and/or monitoring compliance with its authority limits or guidelines (including by officers and staff);

B. ensuring that its officers and staff were aware of and understood its authority limits and guidelines; and, or alternatively

C. reporting accurately to its principal insurer, including by providing bordereaux with complete and accurate information in respect of

policies and endorsements;

iii. BCC failed to take such reasonable precautions;

iv. in failing to take reasonable precautions, BCC breached the duty of care it owed to Greensill Bank;

v. if it is established that BCC and/or Brereton did not have actual authority to enter into Policy 3690 and the Endorsements to that Policy identified in paragraph 103 of the SOC, and that this caused loss to Greensill Bank, then but for BCC's breaches, Policy 3690 would not have been concluded and/or Greensill Bank would not have acquired the Simec Notes;

(e) further or in the alternative:

i. Brereton knew, or ought to have known, of the Risk of Harm pleaded in subparagraph 281(d) above;

ii. at all material times, Brereton owed a duty to Greensill Bank to take reasonable steps to avoid Greensill Bank suffering the loss or damage referred to in subparagraph 281(d) above;

iii. in the circumstances, a reasonable person in the position of Brereton would have taken the precaution against the Risk of Harm for the purposes of s 5B(1)(c) of the CLA of:

A. ensuring compliance with authority limits or guidelines; and/or

B. understanding the authority limits and guidelines agreed between BCC and its principal insurer, and the ability of BCC to write risks outside those guidelines;

iv. Brereton failed to take such reasonable precautions;

v. in failing to take reasonable precautions, Brereton breached the duty of care he owed to Greensill Bank;

vi. if it is established that BCC and/or Brereton did not have actual authority to enter into Policy 3690 and the Endorsements to that Policy identified in paragraph 103 of the SOC, and that this caused loss to Greensill Bank, then but for Brereton's breaches, Policy 3690 would not have been concluded and/or Greensill Bank would not have acquired the Simec Notes;

(f) in the circumstances pleaded in subparagraphs 281(a) to 281(e) herein, each

of BCC and Brereton is a "concurrent wrongdoer" within the meaning of s 87CB(3) of the Competition and Consumer Act, s 12GP(3) of the ASIC Act, s 34 of the CLA and s 1041L of the Corporations Act; and

(g) Marsh Limited's and/or Marsh Pty Ltd's liability (if any) to Greensill Bank is, by that reason, limited by s 87CD of the Competition and Consumer Act, s 12GR of the ASIC Act, s 35 of the CLA and s 1041N of the Corporations Act to an amount reflecting that proportion of the damage or loss claimed by Greensill Bank that the Court considers is just having regard to the extent of Marsh Limited's and/or Marsh Pty Ltd's responsibility for that damage and loss.

***IAL***

282. Marsh repeats paragraph 279 of this Defence

283. In further answer to paragraphs 218A to 278 of the SOC, Marsh says that, if Marsh Limited and/or Marsh Pty Ltd is liable to Greensill Bank (which is denied), then, without admission and for the purposes of this Defence only insofar as it relates to the reduction of any liability which Marsh Limited or Marsh Pty Ltd may be found to have to Greensill Bank for any loss so as to reflect the proportion of loss the Court considers just having regard to the responsibility of any other persons or entities for that loss:

(a) Marsh relies upon and repeats the allegations pleaded against IAL in paragraphs 179 to 180AM of the SOC;

(b) further or in the alternative:

i. at all material times, IAL owed a duty to Greensill Bank to take reasonable steps to avoid Greensill Bank suffering the loss or damage referred to in subparagraph 281(d) above;

ii. in the circumstances, a reasonable person in the position of IAL would have taken the precaution against the Risk of Harm (as pleaded in subparagraph 281(d)(i) above) for the purposes of s 5B(1)(c) of the CLA of adequately supervising and monitoring BCC and/or Brereton with respect to Policy 3690 and each of the Endorsements referred to at paragraph 181 of the SOC, including as to:

A. whether BCC and Brereton were acting within the scope of the authority granted to them;

B. whether BCC and Brereton were purporting to enter into Policy 3690 and each of the Endorsements referred to at paragraph 181 of the SOC; and

C. whether BCC was providing bordereaux to IAL that contained complete and accurate information in respect of Policy 3690 and each of the Endorsements referred to at paragraph 181 of the SOC;

iii. IAL failed to take such reasonable precautions;

iv. in failing to take reasonable precautions, IAL breached the duty of care it owed to Greensill Bank;

v. if it is established that BCC and/or Brereton did not have actual authority to enter into Policy 3690 and the Endorsements to that Policy identified in paragraph 181 of the SOC, and that this caused loss to Greensill Bank, then but for IAL's breaches, Policy 3690 would not have been concluded and/or Greensill Bank would not have purchased the Simec Notes;

(c) further or in the alternative, Marsh:

i. relies upon and repeats the allegations pleaded against BCC and Brereton in paragraph 212 of this Defence;

ii. says that BCC and Brereton were representatives of IAL; and

iii. says further that IAL is responsible for the conduct that is alleged against its representatives and is liable to Greensill Bank in respect of any loss or damage suffered as a result of BCC's and Brereton's conduct;

**Particulars**

IAL's liability arises by operation of ss 917B and 917E of the Corporations Act.

iv. further or alternatively, the conduct alleged against BCC and Brereton in paragraph 212 of this Defence was the conduct of IAL, so as to make IAL jointly liable with BCC and Brereton for that conduct;

**Particulars**

IAL's liability arises by operation of ss 917B and 917E of the Corporations Act and/or by operation of the general law.

(d) in the circumstances pleaded in paragraphs 282 to 283(c) herein, IAL is a "concurrent wrongdoer" within the meaning of s 87CB(3) of the Competition and Consumer Act, s 12GP(3) of the ASIC Act, s 34 of the CLA and s 1041L

of the Corporations Act; and

(e) Marsh Limited's and/or Marsh Pty Ltd's liability (if any) to Greensill Bank is, by that reason, limited by s 87CD of the Competition and Consumer Act, s 12GR of the ASIC Act, s 35 of the CLA and s 1041N of the Corporations Act to an amount reflecting that proportion of the damage or loss claimed by Greensill Bank that the Court considers is just having regard to the extent of Marsh Limited's and/or Marsh Pty Ltd's responsibility for that damage and loss.

***TMNF***

284. Marsh repeats paragraph 279 of this Defence.

285. In further answer to paragraphs 218A to 258 of the SOC, Marsh says that, if Marsh Limited and/or Marsh Pty Ltd is liable to Greensill Bank (which is denied), then, without admission and for the purposes of this Defence only insofar as it relates to the reduction of any liability which Marsh Limited or Marsh Pty Ltd may be found to have to Greensill Bank for any loss so as to reflect the proportion of loss the Court considers just having regard to the responsibility of any other persons or entities for that loss:

(a) Marsh relies upon and repeats the allegations pleaded against TMNF in paragraphs 108A, 110A, 154B, 185A(f), 194A(f), 199A(f), 204A(f), 213A(f) and 218A(f) of the SOC;

(b) Marsh further relies upon and repeats the allegations pleaded against TMNF in paragraph 180C(x) of the IAL Simec Defence (other than that the words "BCC and/or Brereton" in the chapeau to (ii)(A) should be replaced with "Marsh");

(c) further or in the alternative:

i. at all material times, TMNF owed a duty to Greensill Bank to take reasonable steps to avoid Greensill Bank suffering the loss or damage referred to in subparagraph 281(d) above;

ii. in the circumstances, a reasonable person in the position of TMNF would have taken the precaution against the Risk of Harm (as pleaded in subparagraph 281(d)(i) above) for the purposes of s 5B(1)(c) of the CLA of adequately supervising and monitoring BCC and/or Brereton with respect to Policy 3690 and each of the Endorsements referred to at paragraph 181 of the SOC, including as to:

A. whether BCC and Brereton were acting within the scope of the authority granted to them;

B. whether BCC and Brereton were purporting to enter into Policy 3690 and each of the Endorsements referred to at paragraph 181 of the SOC; and

C. whether BCC was providing bordereaux to IAL that contained complete and accurate information in respect of Policy 3690 and each of the Endorsements referred to at paragraph 181 of the SOC;

iii. TMNF failed to take such reasonable precautions;

iv. in failing to take reasonable precautions, TMNF breached the duty of care it owed to Greensill Bank;

v. if it is established that BCC and/or Brereton did not have actual authority to enter into Policy 3690 and each of the the Endorsements to that Policy identified in paragraph 181 of the SOC, and that this caused loss to Greensill Bank, then but for TMNF's breaches, Policy 3690 would not have been concluded and/or Greensill Bank would not have and acquired the Simec Notes;

(d) further or in the alternative, Marsh:

i. relies upon and repeats the allegations pleaded against BCC and Brereton in paragraph 281 of this Defence;

ii. says that BCC and Brereton were representatives of TMNF; and

iii. says further that TMNF is responsible for the conduct that is alleged against its representatives and is liable to Greensill Bank in respect of any loss or damage suffered as a result of BCC's and Brereton's conduct;

**Particulars**

TMNF's liability arises by operation of ss 917B and 917E of the Corporations Act.

iv. further or alternatively, the conduct alleged against BCC and Brereton in paragraph 281 of this Defence was the conduct of TMNF, so as to make TMNF jointly liable with BCC and Brereton for that conduct;

**Particulars**

TMNF's liability arises by operation of ss 917B and 917E of

the Corporations Act and/or by operation of the general law.

(e) in the circumstances pleaded in paragraphs 284 to 285(d) herein, TMNF is a "concurrent wrongdoer" within the meaning of s 87CB(3) of the Competition and Consumer Act, s 12GP(3) of the ASIC Act, s 34 of the CLA and s 1041L of the Corporations Act; and

(f) Marsh Limited's and/or Marsh Pty Ltd's liability (if any) to Greensill Bank is, by that reason, limited by s 87CD of the Competition and Consumer Act, s 12GR of the ASIC Act, s 35 of the CLA and s 1041N of the Corporations Act to an amount reflecting that proportion of the damage or loss claimed by Greensill Bank that the Court considers is just having regard to the extent of Marsh Limited's and/or Marsh Pty Ltd's responsibility for that damage and loss.

***GCUK and GCPL***

286. Marsh repeats paragraph 279 of this Defence.

287. In further answer to paragraphs 218A to 278 of the SOC, Marsh says that, if Marsh Limited and/or Marsh Pty Ltd is liable to Greensill Bank (which is denied), then, without admission and for the purposes of this Defence only insofar as it relates to the reduction of any liability which Marsh Limited or Marsh Pty Ltd may be found to have to Greensill Bank for any loss so as to reflect the proportion of loss the Court considers just having regard to the responsibility of any other persons or entities for that loss:

(a) Marsh relies upon and repeats the allegations pleaded against GCUK and GCPL in subparagraphs 180C(r) and (s) of the IAL Simec Defence (other than that the words "BCC and/or Brereton" in the chapeau to subparagraphs 180C(r)(ii) and 180C(s)(ii) should be replaced with "Marsh") and paragraph 194AA of the BCC Simec Defence;

(b) further or in the alternative, to the extent that BCC and/or IAL establish the matters pleaded at paragraph 219 and Annexure A to the BCC Simec Defence and/or subparagraph 180C(p)(i)(C) and Annexure A to the IAL Simec Defence, with the consequence that Policy 3690 and endorsements thereto are liable to be avoided, then:

i. at all material times, GCUK and/or GCPL owed or assumed a duty to Greensill Bank:

A. to exercise reasonable skill and care to conduct their business in a manner which would not compromise the ability of Greensill Bank to obtain an indemnity under policies of insurance obtained for the

Simec Transaction (as set out in section E of the SOC); and, or alternatively

B. to exercise reasonable care and skill to ensure that Greensill Bank's ability to recover under Policy 3690 was insulated from any misrepresentations or non-disclosures in respect of the customers and risks to be covered under that policy;

ii. in the circumstances, a reasonable person in the position of GCUK and/or GCPL would have taken precautions against the risk of Greensill Bank suffering loss or damage arising from non-payment or delayed payment of insurance proceeds by:

A. not adopting a corporate structure and business model which, in the context of obtaining Policy 3690, exposed Greensill Bank to such loss or damage (or the risk of such loss or damage);

B. not engaging in conduct which, in the context of obtaining Policy 3690, exposed Greensill Bank to such loss or damage (or the risk of such loss or damage); and, or alternatively

C. advising Greensill Bank if it had knowledge or engaged in conduct which would have the result (or risked having the result) that Greensill Bank's ability to recover under Policy 3690 was not insulated from any misrepresentations or non-disclosures in respect of the customers and risks to be covered under that Policy;

iii. GCUK and GCPL breached these duties, in the circumstances of the parallel policy structure, by adopting a corporate structure and business model which had the features pleaded in paragraphs 4 to 26 of Annexure A to the IAL Simec Defence, including such as to permit:

A. the interdependence on GCUK and Greensill Bank as pleaded in paragraph [8] of Annexure A to the IAL Simec Defence;

B. the common directorships and senior management as pleaded in paragraphs [9]-[12] of Annexure A to the IAL Simec Defence;

C. the practices pleaded in paragraphs [15]-[18] of Annexure A to the IAL Simec Defence;

D. the attribution of conduct and knowledge to GCPL as pleaded in paragraphs [20]-[22] of Annexure A to the IAL Simec Defence; and

E. the attribution of conduct and knowledge to Greensill Bank as pleaded in paragraphs [23]-[26] of Annexure A to the IAL Simec Defence; and, or alternatively by reason of the matters pleaded in Annexure A to the IAL Simec Defence and Annexure A to the BCC Simec Defence;

(c) in the circumstances pleaded in paragraphs 217 to 218(b) herein, each of GCUK and GCPL is a "concurrent wrongdoer" within the meaning of s 87CB(3) of the Competition and Consumer Act, s 12GP(3) of the ASIC Act, s 34 of the CLA and s 1041L of the Corporations Act; and

(d) Marsh Limited's and/or Marsh Pty Ltd's liability (if any) to Greensill Bank is, by that reason, limited by s 87CD of the Competition and Consumer Act, s 12GR of the ASIC Act, s 35 of the CLA and s 1041N of the Corporations Act to an amount reflecting that proportion of the damage or loss claimed by Greensill Bank that the Court considers is just having regard to the extent of Marsh Limited's and/or Marsh Pty Ltd's responsibility for that damage and loss.

***Lex Greensill***

288. Marsh repeats paragraph 279 of this Defence.

289. In further answer to paragraphs 218B to 278 of the SOC, Marsh says that, if Marsh Limited and/or Marsh Pty Ltd is liable to Greensill Bank (which is denied), then, without admission and for the purposes of this Defence only insofar as it relates to the reduction of any liability which Marsh Limited or Marsh Pty Ltd may be found to have to Greensill Bank for any loss so as to reflect the proportion of loss the Court considers just having regard to the responsibility of any other persons or entities for that loss:

(a) Marsh relies upon and repeats the allegations pleaded against Lex Greensill in subparagraph 180C(t) of the IAL Simec Defence (other than that the words "BCC and/or Brereton" in the chapeau to subparagraph 180C(t)(ii) should be replaced with "Marsh") and subparagraph 194AA(e) of the BCC Simec Defence;

(b) in the circumstances pleaded in paragraphs 288 to 289(a) herein, Lex Greensill is a "concurrent wrongdoer" within the meaning of s 87CB(3) of the Competition and Consumer Act, s 12GP(3) of the ASIC Act, s 34 of the CLA and s 1041L of the Corporations Act; and

(c) Marsh Limited's and/or Marsh Pty Ltd's liability (if any) to Greensill Bank is, by that reason, limited by s 87CD of the Competition and Consumer Act, s 12GR

of the ASIC Act, s 35 of the CLA and s 1041N of the Corporations Act to an amount reflecting that proportion of the damage or loss claimed by Greensill Bank that the Court considers is just having regard to the extent of Marsh Limited's and/or Marsh Pty Ltd's responsibility for that damage and loss.

***Administrators***

290. Marsh repeats paragraph 279 of this Defence.

291. In further answer to paragraphs 218B to 278 of the SOC, Marsh says that, if Marsh Limited and/or Marsh Pty Ltd is liable to Greensill Bank (which is denied), then, without admission and for the purposes of this Defence only insofar as it relates to the reduction of any liability which Marsh Limited or Marsh Pty Ltd may be found to have to Greensill Bank for any loss so as to reflect the proportion of loss the Court considers just having regard to the responsibility of any other persons or entities for that loss:

(a) Marsh relies upon and repeats the allegations pleaded against TMMA and The Bond and Credit Company Pty Ltd (**Bond**) (together, the **Administrators**) in subparagraph 180C(y) of the IAL Simec Defence (other than that the words "BCC and/or Brereton" in the chapeau to subparagraph 180C(y)(ii) should be replaced with "Marsh");

(b) in the circumstances pleaded in paragraphs 290 to 291(a) herein, each of the Administrators is a "concurrent wrongdoer" within the meaning of s 87CB(3) of the Competition and Consumer Act, s 12GP(3) of the ASIC Act, s 34 of the CLA and s 1041L of the Corporations Act; and

(c) Marsh Limited's and/or Marsh Pty Ltd's liability (if any) to Greensill Bank is, by that reason, limited by s 87CD of the Competition and Consumer Act, s 12GR of the ASIC Act, s 35 of the CLA and s 1041N of the Corporations Act to an amount reflecting that proportion of the damage or loss claimed by Greensill Bank that the Court considers is just having regard to the extent of Marsh Limited's and/or Marsh Pty Ltd's responsibility for that damage and loss.

***Lagoon Park***

292. Marsh repeats paragraph 279 of this Defence.

293. In further answer to paragraphs 218B to 278 of the SOC, Marsh says that, if Marsh Limited and/or Marsh Pty Ltd is liable to Greensill Bank (which is denied), then, without admission and for the purposes of this Defence only insofar as it relates to the reduction of any liability which Marsh Limited or Marsh Pty Ltd may be found to have to Greensill Bank for any loss so as to reflect the proportion of loss the Court considers

just having regard to the responsibility of any other persons or entities for that loss:

(a) Marsh relies upon and repeats the allegations pleaded against Lagoon Park in subparagraph 180C(v) of the IAL Simec Defence (other than that the words "BCC and/or Brereton" in subparagraph 102E(v)(iii) should be replaced with "Marsh");

(b) in the circumstances pleaded in paragraphs 292 to 293(a) herein, Lagoon Park is a "concurrent wrongdoer" within the meaning of s 87CB(3) of the Competition and Consumer Act, s 12GP(3) of the ASIC Act, s 34 of the CLA and s 1041L of the Corporations Act; and

(c) Marsh Limited's and/or Marsh Pty Ltd's liability (if any) to Greensill Bank is, by that reason, limited by s 87CD of the Competition and Consumer Act, s 12GR of the ASIC Act, s 35 of the CLA and s 1041N of the Corporations Act to an amount reflecting that proportion of the damage or loss claimed by Greensill Bank that the Court considers is just having regard to the extent of Marsh Limited's and/or Marsh Pty Ltd's responsibility for that damage and loss.

***Simec***

294. Marsh repeats paragraph 279 of this Defence.

295. In further answer to paragraphs 218B to 278 of the SOC, Marsh says that, if Marsh Limited and/or Marsh Pty Ltd is liable to Greensill Bank (which is denied), then, without admission and for the purposes of this Defence only insofar as it relates to the reduction of any liability which Marsh Limited or Marsh Pty Ltd may be found to have to Greensill Bank for any loss so as to reflect the proportion of loss the Court considers just having regard to the responsibility of any other persons or entities for that loss:

(a) Marsh relies upon and repeats the allegations pleaded against Simec in subparagraph 180C(q) of the IAL Simec Defence (other than that the words "BCC and/or Brereton" in subparagraph 180C(q)(iii) should be replaced with "Marsh") and subparagraph 194AA(c) of the BCC Simec Defence;

(b) in the circumstances pleaded in paragraphs 294 to 295(a) herein, Simec is a "concurrent wrongdoer" within the meaning of s 87CB(3) of the Competition and Consumer Act, s 12GP(3) of the ASIC Act, s 34 of the CLA and s 1041L of the Corporations Act; and

(c) Marsh Limited's and/or Marsh Pty Ltd's liability (if any) to Greensill Bank is, by that reason, limited by s 87CD of the Competition and Consumer Act, s 12GR

of the ASIC Act, s 35 of the CLA and s 1041N of the Corporations Act to an amount reflecting that proportion of the damage or loss claimed by Greensill Bank that the Court considers is just having regard to the extent of Marsh Limited's and/or Marsh Pty Ltd's responsibility for that damage and loss.

***Additional wrongdoers***

296. Marsh says further that in relation to paragraphs 279 to 295 in this Defence:

(a) Marsh was not a party to the transactions the subject of the claims made in the SOC (including Policy 3690 and the endorsements thereto and the various underlying transactional documents said to have given effect to the Simec Transaction (as set out in section E of the SOC)) which gave rise to the alleged loss and damage in respect of which Greensill Bank sues;

(b) Marsh does not know the circumstances in which the alleged loss arose, the identities of those who caused or contributed to the alleged loss and the role and culpability of those who did so; and

(c) Marsh intends to pursue compulsory production and, following discovery, compulsory production and the development of evidence in this proceeding:

i. it may become apparent that there are additional persons relevantly meeting the description of "concurrent wrongdoer"; and

ii. it may become necessary to supplement or vary the matters alleged in paragraphs 279 to 295 herein.

**Contributory negligence**

297. In further answer to paragraphs 218B to 278 of the SOC, Marsh says that, if Marsh Limited and/or Marsh Pty Ltd is liable to Greensill Bank (which is denied), then, without admission and for the purposes of this Defence only:

(a) Marsh relies upon and repeats the allegations pleaded against Greensill Bank in subparagraph 180C(p) of the IAL Simec Defence;

(b) further or in the alternative, Marsh repeats paragraph 272R of this Defence;

(c) further or in the alternative, to the extent that BCC and/or IAL establish the matters pleaded at paragraph 219 and Annexure A to the BCC Simec Defence and/or subparagraph 180C(p)(i)(C) and Annexure A to the IAL Simec Defence, with the consequence that Policy 3690 and endorsements thereto are liable to be avoided, then:

i. in the circumstances, a reasonable person in the position of Greensill

Bank would have taken precautions against the risk of Greensill Bank suffering loss or damage arising from non-payment or delayed payment of insurance proceeds by taking the steps pleaded in subparagraphs 288(b)(ii)(A)-(B) of this Defence;

ii. in the circumstances of the parallel policy structure, Greensill Bank adopted a corporate structure and business model which had the features pleaded in paragraphs 4 to 26 of Annexure A to the IAL Simec Defence, including such as to permit:

A. the interdependence on GCUK and Greensill Bank as pleaded in paragraph [8] of Annexure A to the IAL Simec Defence;

B. the common directorships and senior management as pleaded in paragraphs [9]-[12] of Annexure A to the IAL Simec Defence;

C. the practices pleaded in paragraphs [15]-[18] of Annexure A to the IAL Simec Defence;

D. the attribution of conduct and knowledge to GCPL as pleaded in paragraphs [20]-[22] of Annexure A to the IAL Simec Defence; and

E. the attribution of conduct and knowledge to Greensill Bank as pleaded in paragraphs [23]-[26] of Annexure A to the IAL Simec Defence; and, or alternatively by reason of the matters pleaded in Annexure A to the IAL Simec Defence and Annexure A to the BCC Simec Defence;

(d) in the circumstances pleaded in subparagraphs 297(a) to (c) above, the loss or damage the subject of Greensill Bank's claims (if any) was wholly or partly a result of Greensill Bank's own failure to take reasonable care, with the result that:

i. pursuant to s 1041I(1B) of the Corporations Act, s 12GF(1B) of the ASIC Act and s 137B of the Competition and Consumer Act; and/or

ii. pursuant to s 1 of the *Law Reform (Contributory Negligence) Act 1945* (UK); and/or

iii. pursuant to Part 1A, Division 8 of the CLA; and/or

iv. by the operation of the general law, including in equity,

the damages payable by Marsh Limited and/or Marsh Pty Ltd (if any) should be reduced to the extent to which the Court thinks just and equitable having

regard to Greensill Bank's share in the responsibility for the alleged loss and damage.

**Limitation of Liability**

298. Marsh repeats paragraphs 6B, 6C and 218B to 218D of this Defence.

299. If Marsh Limited and/or Marsh Pty Ltd is liable to Greensill Bank (which is denied), then, pursuant to the terms of the Marsh Retainers, Greensill Bank's claims arise out of:

(a) the "Engagement" as defined in the 2014 Letter of Engagement, 2015 Letter of Engagement, 2016 Letter of Engagement, 2017 Letter of Engagement, 2018 Marsh GCUK Letter of Engagement, 2018 Marsh GBAG Letter of Engagement, 2019 Letter of Engagement, 2020 Letter of Engagement and 2021 Letter of Engagement; and/or

(b) the "Services" that Marsh Limited provided pursuant to the Marsh Retainers (including through Marsh Pty Ltd).

300. In the premises pleaded in paragraphs 298 to 299 above, the maximum amount of any liability of Marsh Limited or Marsh Pty Ltd is limited to:

(a) £7,500,000 in respect of any Services provided pursuant to the 2014 Marsh Retainer, 2015 Marsh Retainer, 2016 Marsh Retainer or 2017 Marsh Retainer; and

(b) £10,000,000 in respect of any Services provided pursuant to the 2018 Marsh GCUK Retainer, 2018 Marsh GBAG Retainer, 2019 Marsh Retainer, 2020 Marsh Retainer or 2021 Marsh Retainer.

**Breach of obligation to disclose information to Marsh**

301. Marsh repeats paragraphs 6B, 6C and 218B to 218D of this Defence.

302. Each of the 2013 TOE, 2015 TOE, 2016 TOE and 2017 TOE stated the following, under the section titled "Your obligations":

(a) in the 2013 TOE:

> "You are responsible for the accuracy and completeness of all the information you provide to us and/or insurers. We shall have no liability for any errors, deficiencies or omissions in any services, including the placement of insurance on your behalf, arising from any inaccurate or incomplete information provided by you to us and/or insurers. You understand and acknowledge that failure to provide all necessary

information to insurers could result in an insurer refusing to pay a claim and/or cancelling any insurance policy in full or in part.

If you do not comply with your duties then insurers may have a remedy e.g. if you are a business insured then insurers may be able to void the policy from inception and treat it as if it never existed; if you are a "consumer" insured, insurers may be able to reduce your claim payment, apply additional terms or even void your policy completely.";

**Particulars**

Clauses 4.1.5 and 4.1.6 of the 2013 TOE.

(b) in the 2015 TOE:

"You are responsible for the accuracy and completeness of all the information you provide to us and to insurers. We will not be liable for any errors, deficiencies or omissions in any Services, including the placement of insurance on your behalf, arising from any inaccurate or incomplete information provided by you. If you fail to give an insurer all the information they need, this could result in them refusing to pay a claim or cancelling an insurance policy in full (or in part).

If you do not comply with your duties then insurers may be able to;

- (if you are a business) treat your policy as if it never existed";

**Particulars**

Clauses 4.1.5 and 4.1.6 of the 2015 TOE.

(c) in the 2016 and 2017 TOE:

"Your attention is drawn to the accompanying Important Information document and Duty of Disclosure and Fair Presentation document which set out a number of your obligations. In addition, the below sets out further obligations which apply to all Services. …

You shall provide us with all relevant information in relation to your business to enable us to provide the Services. Such information must be provided in a format which allows us to provide a clear presentation to insurers. We can rely on any information provided to us by you and/or your outgoing insurance broker".

**Particulars**

Clauses 4.1 and 4.1.1 of the 2016 TOE and 2017 TOE. See also clauses 1.1 and 1.4 of the document titled "The Duty of Disclosure and Fair Presentation" enclosed with the 2016 TOE and 2017 TOE.

303. If the matters pleaded against Greensill Bank in paragraph 219 and Annexure A to the BCC Simec Defence and/or subparagraph 180C(p)(i)(C) and Annexure A to the IAL Simec Defence are established:

(a) Greensill Bank breached clause 4.1.5 of the 2013 TOE, 2015 TOE, 2016 TOE and 2017 TOE pleaded in paragraph 233 above; and

(b) in the premises, and pursuant to clause 4.1.5 of the 2013 TOE, 2015 TOE, 2016 TOE and 2017 TOE, Marsh Limited and Marsh Pty Ltd are not liable to Greensill Bank for the loss and damage claimed in paragraphs 253, 261, 261D, 268, 272, 272V, 272Y and 278 of the SOC (which are denied), or at all.

Date: 27 June 2025



Signed by Lucas Wilk
Solicitor for the Fifth and Sixth Respondents

This pleading was prepared by Imtiaz Ahmed SC and Rico Jedrzejczyk of counsel.

**Certificate of lawyer**

I Lucas Wilk certify to the Court that, in relation to the defence filed on behalf of the Fifth and Sixth Respondents, the factual and legal material available to me at present provides a proper basis for:

(a) each allegation in the pleading; and

(b) each denial in the pleading; and

(c) each non admission in the pleading.

Date: 27 June 2025

Signed by Lucas Wilk
Lawyer for the Fifth and Sixth Respondents

**SCHEDULE**

Michael Frege in his capacity as Insolvency Administrator for Greensill Bank AG
**Second Applicant**

BCC Trade Credit Pty Ltd
**Second Respondent**

Greg Brereton
**Third Respondent**

Tokio Marine & Nichido Fire Insurance Co Ltd
**Fourth Respondent**

Marsh Pty Ltd
**Fifth Respondent**

Marsh Limited
**Sixth Respondent**