

DEED OF SETTLEMENT

BHI Class Action dated 8 September 2022

**Gordon
Legal**

IT'S PERSONAL

Parties

Parties to this Deed are listed in Schedule A.

PART A: RECITALS

- A. Nerita Somers, Adel Hassanein, Matthew Lamont and Felix Ouldano (together, the Plaintiffs) commenced Supreme Court Proceeding S ECI 2020 01535 Somers & Ors v Box Hill Institute (**BHI**) on 26 March 2020. The Proceedings is a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) (**Act**) and the Plaintiffs commenced the Proceedings on their own behalf and on behalf of the Group Members.
- B. BHI issued a third party notice against Gobel Aviation Pty Ltd (**Soar Aviation**), on 29 June 2020. An amended third party notice was filed on 11 September 2020.
- C. The Plaintiffs filed an Amended Statement of Claim on 3 August 2020, joining Soar Aviation as the second defendant in the Proceedings.
- D. On or about 30 December 2020, Soar Aviation entered into voluntary administration and Mr Brendan Richards and Mr James Stewart of KPMG were appointed as voluntary administrators. On 11 February 2021, Soar Aviation entered into liquidation and Mr Richards and Mr Stewart were appointed as the liquidators.
- E. BHI denies all allegations made against it in the Proceedings.
- F. The Plaintiffs and BHI have agreed to settle the Proceedings and to seek approval from the Court of that settlement on the terms and conditions set out in this Deed. Gordon Legal Pty Ltd has agreed to be a party to and bound by this Deed.
- G. The Settlement recorded in the Deed is subject to approval by the Court.

PART B: INTERPRETATION

1. DEFINITIONS

- 1.1 In this Deed, unless the context indicates otherwise, a term in bold type in this clause 1.1 has the meaning shown opposite it:

Administration Costs Sum	means the amount as approved by the Court to be payable to the Scheme Administrator for the costs of administration of the Settlement Scheme, including the costs incurred in performance of the functions of the Review Panel and in distributing settlement
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	amounts to all individual Eligible Claimants, incurred in accordance with this Deed and the Settlement Scheme.
Admitted	means a Group Member who is enrolled in the CPL Diploma as at the date of lodging a Notice of Claim.
BHI or Box Hill Institute	means Box Hill Institute (ABN 76 268 630 462), the First Defendant in the Proceedings.
BHI Related Parties	means the present and former directors, officers, employees, partners, servants, contractors, insurers and agents of BHI and the related bodies corporate of BHI within the meaning given in the <i>Corporations Act 2001</i> (Cth).
Business Day	means any day other than a Saturday, a Sunday or a public holiday in the State of Victoria.
Claims Assessment Principles	means the process by which the Scheme Administrator applies the Claims Assessment Principles as set out in paragraph 4 of Annexure A of this Deed (Settlement Scheme).
Compensation Sum	means the Resolution Sum less the Legal Costs Sum and less the Administration Costs Sum.
Court	means the Supreme Court of Victoria.
CPL Diploma	means the Diploma of Aviation (Commercial Pilot Licence – Aeroplane).
Deed	means this Settlement Deed and includes any Annexure to this Deed.
DESE	means the Department of Education, Skills and Employment of the Commonwealth.
DESE Claims	means any application made by or on behalf of a Group Member in respect of the CPL Diploma under Schedule 1A to the <i>Higher Education Support Act 2003</i> (Cth), or Division 3 of Part 6 of the <i>VET Student Loans Act 2016</i> (Cth), or both.
Determination	means a finding or decision of the Review Panel.
Eligible Claimant	means a person who has not opted out of the Proceedings and who lodges a Notice of Claim with the Scheme Administrator within thirty five (35) days of the date the Notice of Proposed Settlement is approved by the Court, and in respect of whom the Scheme Administrator is satisfied of the criteria set out in Eligibility Criteria set out in the Settlement Scheme.
Eligibility Criteria	means the eligibility criteria set out in paragraph 3 of the Settlement Scheme.
Gordon Legal	means Gordon Legal Pty Ltd (ABN 19 624 972 836), the solicitors for the Plaintiffs and those Group Members who have signed a Conditional Legal Costs Agreement with Gordon Legal.

Group Member	has the meaning defined in paragraph 1 of the Amended Statement of Claim filed by Nerita Somers, Adel Hassanein, Matthew Lamont and Felix Ouldandov on 3 August 2020 in the Proceedings.
Group Member Claim	means, within the scope of clauses 5.1(a) and (b) of the Deed, any claim, complaint, demand, action, suit or proceeding for damages, debt, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy, whether by original claim, cross claim or otherwise whether arising at common law, in equity, under statute or otherwise wherever arising, whether known or unknown at the time of execution of this Deed and/or whether or not presently in contemplation of the Parties or Group Members, made by or on behalf of a Group Member, except any claim for damages for personal injuries (as distinct from the claims for damages for distress, inconvenience and vexation that were made in the Proceedings).
Legal Costs Sum	means the amount approved by the Court representing the legal costs and disbursements incurred by the Plaintiffs (which will be sought on a solicitor and own client basis) incurred on their own behalf and on behalf of all Group Members in the Proceedings in the course of the Proceedings, including in respect of commencement of the Proceedings and up to and including the date of approval of the proposed Settlement Scheme by the Court.
Notice of Claim	means a document in substantially the same form as set out at Annexure C of this Deed that has been filed by or on behalf of a Group Member giving notice to the Scheme Administrator of their intention to make a claim under the Settlement Scheme.
Notice of Decision	means a document in substantially the same form as set out at Annexure G of this Deed that has been prepared by the Scheme Administrator in accordance with paragraphs 4.16, 4.17 and/or 4.25 of the Settlement Scheme as the case may be or, in the event that an application for Review is made pursuant to paragraph 5.1 of the Settlement Scheme, prepared by the Review Panel and which sets out the assessment of an Eligible Claimant's claim.
Passed	means a Group Member who has graduated from the course, having met the complete requirements of a CPL Diploma and have had a CPL Diploma conferred to them.
Notice of Proposed Settlement	means a notice in substantially the same form as set out at Annexure B of this Deed.
Proceedings	means S ECI 2020 01535, filed in the Supreme Court of Victoria on 26 March 2020 and commenced by Writ and Statement of Claim, including as subsequently amended.
Reconsideration Process	means the process set out at paragraphs 4.18 – 4.25 of the Settlement Scheme.
Relevant Period	means the period between 6 December 2015 and 26 March 2020.

Resolution Sum	means the Resolution Sum as defined in clause 4.1 of this Deed.
Review Panel	means a panel constituted by one member selected from a number (to be determined) of independent barrister(s) who are members of the Victorian Bar agreed between the Scheme Administrator and Box Hill Institute from time to time, as set out in Part E of this Deed.
Scheme Administrator	means Gordon Legal.
Scheme Commencement Date	means five (5) working days from the date the Settlement Scheme is approved by the Court, or such other date as ordered by the Court.
Scheme End Date	means the date on which the Scheme Administrator administers the final distribution of the Resolution Sum.
Settlement Scheme	means the scheme as set out in Annexure A to this Deed.
VET Student Loan Debt	means any debt incurred by a student enrolled in the CPL Diploma, who obtained a VET Student Loan and/or VET FEE-HELP.
Withdrawn	means a Group Member who has not graduated from the Course and who has exited, withdrawn and/or been removed from the CPL Diploma.

2. INTERPRETATION

2.1 In this Deed, unless the contrary intention appears:

- a. words importing gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other party of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
- i. a covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally;
- j. a reference to any deed, agreement, license, document or other instrument (including this Deed) includes a reference to that deed, agreement, license, document or other instrument as renewed, extended, novated, varied or substituted from time to time;
- k. where the day on or by which any act, matter or thing is to be done under or pursuant to this agreement is not a Business Day, the act, matter or thing must be done on the next Business Day;

- l. references to clauses are references to clauses of this Deed unless expressly stated otherwise; and
- m. references to an Annexure or Schedule are references to an Annexure or Schedule of this Deed unless expressly stated otherwise.

3. CONSTRUCTION

- 3.1 For guidance on construction of this Deed:
 - a. this Deed records the entire agreement between the parties in relation to its subject matter;
 - b. as far as possible all provisions of this Deed will be construed so as not to be void or otherwise unenforceable;
 - c. if anything in this Deed is void or otherwise unenforceable then it will be severed, and the rest of the Deed remains in force;
 - d. a provision of this Deed will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

4. COMMENCEMENT

PART C: TERMS OF SETTLEMENT

- 4.1 Subject to Court approval, and without admission of liability by BHI, the Plaintiffs on their own behalf and on behalf of all Group Members and BHI agree to resolve the Proceedings in consideration of:
 - (a) payment by BHI of a sum of \$33 million (**Resolution Sum**); and
 - (b) the releases set out in clause 5 of this Deed,subject to and in accordance with the terms of this Deed and the Settlement Scheme.
- 4.2 The Resolution Sum will be paid by BHI or on its behalf to Gordon Legal's trust account no later than 14 days after the expiration of any period within which an appeal of the Approval Order must be commenced without an appeal being commenced. Any interest which accrues on the Resolution Sum once that sum is paid by BHI will be treated as if it were part of the Resolution Sum.
- 4.3 In the event that the terms of this Deed and the proposed Settlement Scheme are not approved by the Court, or its approval is subsequently the subject of a successful appeal, unless the parties agree in writing that this Deed will continue then this Deed shall be void and of no continuing effect.
- 4.4 The Parties agree that they will not publish any communication or media release or make any statement including to the media or on any form of social media in connection with the settlement of the Proceedings before the approval hearing of the settlement, except for the agreed statement in Annexure H which is to be published on Gordon Legal's website within 24 hours of execution of this Deed, and except for any communication which is reasonably necessary to facilitate the settlement approval process or the Settlement Scheme.
- 4.5 The Parties will not make, publish, post or otherwise disseminate or communicate (whether verbally, in writing or otherwise) any disparaging or derogatory statement about another Party or the Course, or encourage, assist or authorise any other person to make such a statement.

PART D: PRINCIPLES OF SETTLEMENT SCHEME

4.6 The principles of the Settlement Scheme are as follows:

- (a) Notification of the Settlement Scheme will include informing all Group Members of their right to:
 - (i) seek to be reinstated as a Group Member or to extend the time by which they may Opt Out of the Proceedings;
 - (ii) file a notice of intention to make a claim under the Settlement Scheme (**Notice of Claim**); or
 - (iii) take no step to file a Notice of Claim.
- (b) A Group Member who filed an Opt Out Notice in accordance with Annexure D by 18 November 2020, or is given an extension of time to opt out under s 33J(3) of the *Supreme Court Act 1986* (Vic), and has done so within time as extended, will not be bound by the terms of the Settlement Scheme.
- (c) A Group Member who either files a Notice of Claim or takes no step will be bound by the terms of the Settlement Scheme, including the relevant release provisions set out in clause 5 of this Deed.
- (d) Settlement payments will be assessed and be paid in accordance with the Claims Assessment Principles set out in the Settlement Scheme.

PART E: APPOINTMENT, ROLE & FUNCTIONS OF SCHEME ADMINISTRATOR

4.7 The Settlement Scheme will provide for the appointment of Gordon Legal to act as Scheme Administrator of the Settlement Scheme.

4.8 The functions of the Scheme Administrator will be to:

- (a) Do all things necessary or desirable to administer the Settlement Scheme including receiving and collating any Notice of Claim pursuant to the Settlement Scheme;
- (b) Assessing and deciding whether a Group Member is an Eligible Claimant, pursuant to the terms of the Settlement Scheme;
- (c) Assessing and deciding whether an Eligible Claimant is entitled to any and if so what amount of settlement payment, including interest pursuant to the terms of the Settlement Scheme, to be paid from the Compensation Sum;
- (d) Notifying a Group Member and Eligible Claimant of its decisions in relation to (b) and (c) above as soon as practicable but no later than 12 months from the date of commencement of the Settlement Scheme;
- (e) Reconsidering and deciding an application for reconsideration of an Eligible Claimant's amount of settlement payment;
- (f) Establish and administer a panel of independent barrister(s) to review decisions made by it on application by a Group Member (**Review Panel**), including collating and providing to the Review Panel material relevant to its consideration of any application for review;

- (g) Calculating the total value of all Notices of Decision made pursuant to the Settlement Scheme and in the event that the total value of all registered Notices of Decision exceed the Compensation Sum, determining the amount by which the settlement amounts of all Eligible Claimants should be reduced by an amount that is proportionate to the amount their claim bears to the Compensation Sum; and
- (h) Facilitating payment by BHI of the Resolution Sum and any refund to BHI in accordance with this Deed.

4.9 The criteria to be applied and process to be followed by the Scheme Administrator in deciding the eligibility of a Group Member to make a claim, the principles to be applied in assessing the Group Member's claim and deciding the settlement amount in respect of that claim, registering the settlement amount as the Notice of Decision for that Group Member and ascertaining the amount to be paid to the Group Member subject to the scale back clause at clause 4.27 (below), will be as set out in the Settlement Scheme.

PART F: APPOINTMENT, ROLES & FUNCTION OF REVIEW PANEL

4.10 The Settlement Scheme will provide for the appointment of a Review Panel, constituted by one member selected from a number (to be determined) of independent barrister(s) who are members of the Victorian Bar agreed between the Scheme Administrator and BHI from time to time. The functions of the Review Panel will be to:

- (a) Consider and determine, in accordance with and by application of the Settlement Scheme, any application for review of a decision made by the Scheme Administrator in relation to the eligibility of a Group Member who has filed a Notice of Claim.
- (b) Consider and determine, in accordance with the Settlement Scheme, any application for review by an Eligible Claimant of the Eligible Claimant's settlement amount as determined by the Scheme Administrator.
- (c) If an application for review of a decision of the Scheme Administrator is made, then the Notice of Claim, decision of the Scheme Administrator, any supporting evidence relied upon by the Scheme Administrator in making its decision and the application for review will all be provided to BHI by the Scheme Administrator so BHI is able to provide any relevant information to the Scheme Administrator and to the Review Panel for its consideration.
- (d) In considering any application for review of a decision of the Scheme Administrator the Review Panel will give consideration to any relevant material filed on behalf of the Group Member, Eligible Claimant, BHI or the Scheme Administrator, and will make a determination to either affirm the decision of the Scheme Administrator or overturn that decision and replace it with its own decision. No appeal or right of review will be available from a decision of the Review Panel and its determinations will be final and binding on all parties.

PART G: OVERVIEW OF CLAIMS PROCESS

- 4.11 By no later than 24 hours following the Court's approval of the Notice of Proposed Settlement, BHI will provide the Scheme Administrator with a list in electronic form, containing the name, student reference number, address, email address and phone number, for each Group Member.
- 4.12 By no later than 72 hours following the Court's approval of the Notice of Proposed Settlement, notice in substantially the form and contentment set out in Annexure B (**Notice**) in conjunction with the Notices set out in Annexures D, E and F shall be given to Group Members by the Scheme Administrator causing:
- (a) the Notice to be sent by email to each Group Member's last known email address as provided by BHI, and also any different email address that a Group Member has provided to Gordon Legal in the course of the Proceedings.
 - (b) In the event that the email transmission to a Group Member is unsuccessful, the Scheme Administrator shall contact that Group Member by telephone for the purpose of identifying a current email address maintained by the Group Member, and shall cause the Notice to be sent to that email address.
- 4.13 By no later than 5.00pm thirty-five (35) days following the Court's approval of the Notice of Proposed Settlement, any Group Member who intends to participate in the Settlement Scheme must complete a Notice of Claim. This can be done either by completing the Notice of Claim on the website portal established by the Scheme Administrator, or by emailing the Notice of Claim to bhisoar@gordonlegal.com.au or by providing a Notice of Claim to the Scheme Administrator at its registered address being Level 22, 181 William Street Melbourne 3000.
- 4.14 The Scheme Administrator will assess the eligibility of each Group Member who files a Notice of Claim in accordance with the Eligibility Criteria described at paragraph 3 of the Settlement Scheme.
- 4.15 Each Notice of Claim filed will be provided to BHI within twenty-eight (28) days of the Notice of Claim being received by the Scheme Administrator, at which time the Scheme Administrator will also notify the Group Member and BHI as to whether it considers that the Group Member has satisfied the Eligibility Criteria.
- 4.16 The Scheme Administrator will assess the claim of each Eligible Claimant in accordance with the Claims Assessment Principles set out at paragraph 4 in the Settlement Scheme. The Scheme Administrator will then notify the Eligible Claimant of its assessment and inform the Eligible Claimant that they can either accept the outcome of that assessment or elect to have his or her claim reconsidered by the Scheme Administrator in accordance with the Reconsideration Process set out in the Settlement Scheme.
- 4.17 The Scheme Administrator will issue a Notice of Decision to each Eligible Claimant whose claim it has assessed or reconsidered.
- 4.18 Following any reconsideration of a Notice of Decision, each Eligible Claimant will have twenty-eight (28) days after receipt of a Notice of Decision issued by the Scheme Administrator to seek a review of the decision by the Review Panel in accordance with paragraphs 5.1 to 5.6 of the Settlement Scheme.
- 4.19 The Scheme Administrator may, in its absolute discretion, extend the time by which an Eligible Claimant is required by the Deed or Settlement Scheme to complete any step in the claims process if it is reasonably satisfied that the Eligible Claimant has not completed the step because of exceptional circumstances. In deciding whether or not to exercise its discretion, the Scheme Administrator must

have regard to whether allowing an extension of time would result in any delay to the distribution of settlement payments to Eligible Claimants.

PART H: OTHER MATTERS

- 4.20 The parties agree to use all reasonable endeavours to establish a process for the Plaintiffs to apply for Court approval of the proposed Settlement Scheme, and to take all steps necessary to ensure that the approval process is successfully completed as soon as practicable after execution of this Deed by the Parties.
- 4.21 If this Deed is terminated, the Deed will be treated as if it had never been executed save that this clause and clause 4.22 shall survive.
- 4.22 If this Deed is terminated and the Resolution Sum has been paid, the Resolution Sum, together with any interest that has accrued on the Resolution Sum (net of any institutional fees or other transaction costs), shall be returned forthwith to BHI.
- 4.23 This Deed may not be adduced in evidence or otherwise referred to or relied upon in any proceeding other than a proceeding for the enforcement of the terms of this Deed.
- 4.24 The amounts to be paid by BHI pursuant to this Deed are inclusive of any GST.
- 4.25 The Scheme Administrator will be responsible for:
- (a) making all payments due to each Eligible Claimant from the Compensation Sum;
 - (b) paying the Legal Costs Sum to Gordon Legal;
 - (c) paying the Administration Costs Sum to the providers of the relevant administration services, including the members of the Review Panel; and
 - (d) making any payment in accordance with clause 4.28.
- 4.26 Once all eligible claims are assessed, including after any decisions are made by the Review Panel, the Scheme Administrator will calculate the total value of all eligible claims as assessed, decided and/or determined by adding the value of all registered Notices of Decision.
- 4.27 In the event that amount so calculated by the Scheme Administrator is more than the Compensation Sum the amount otherwise determined to be payable to each Eligible Claimant will be reduced in proportion to the amount their claim bears to the Compensation Sum.
- 4.28 In the event that the amount so calculated by the Scheme Administrator is less than the Compensation Sum then the amount of the difference between that lower amount and the Compensation Sum shall be paid by the Scheme Administrator to BHI, or at the direction of BHI, within 28 days of completion of the calculation by the Scheme Administrator.
- 4.29 Having completed the calculations required by clauses 4.26 and, as required, either 4.27 or 4.28, the Scheme Administrator shall file a confidential report with the Court and serve a copy on BHI confirming:
- (a) completion of the assessment process under the Settlement Scheme;
 - (b) the total amount of the assessed settlement payments in the Notices of Decision that have been issued;
 - (c) the assessed settlement payments in the Notices of Decision for each Eligible Claimant;

- (d) if applicable, the amount assessed as payable to each Eligible Claimant pursuant to clause 4.27 of this Deed; and
- (e) all other matters pertaining to the discharge of the Settlement Scheme and for the dismissal of the Proceedings.

4.30 Within fourteen (14) days of the final payment to Eligible Claimants being made, the Scheme Administrator shall provide a final report to the Court and BHI accounting for the distribution of the Compensation Sum and for orders to be made dismissing the Proceedings.

5. RELEASE

- 5.1 Subject to Court approval, the Plaintiffs on their own behalf and as representatives on behalf of all Group Members in the Proceedings, release and hold harmless BHI and the BHI Related Parties in respect of all Group Member Claims:
- (a) made in the Proceedings; or
 - (b) arising from, in connection with, in respect of or related to:
 - (i) the subject matter of the Proceedings;
 - (ii) all DESE Claims; and
 - (iii) the Proceedings including, without limitation, the administration of the Settlement Scheme and the costs of, and incidental to, the Proceedings.
- 5.2 The releases given in clause 5.1 in favour of persons not a Party to this Deed are directly enforceable by each of those persons, and this Deed operates as a deed poll in favour of those persons.
- 5.3 For the avoidance of doubt, clause 5.1(b) above is intended to add to the scope of (rather than in any way to derogate from) the release provided for by clause 5.1(a) above.
- 5.4 Subject to Court approval, the Plaintiffs on their own behalf and as representatives on behalf of all Group Members agree that the Group Members:
- (a) will, by operation of this Deed and the Court approved settlement, withdraw all DESE Claims lodged with DESE and, within 7 days of Court approval of the proposed Settlement Scheme, notify DESE of same;
 - (b) will not make any DESE claims in the future;
 - (c) shall indemnify BHI for any amount which it becomes liable to pay to the Commonwealth or DESE in respect of, or as a result of, any DESE Claim made by or on behalf of a Group Member.
- 5.5 All Group Member Claims shall be fully finalised in accordance with and under the terms of this Deed and the Settlement Scheme, which may be raised as a complete defence to any Group Member Claim.
- 5.6 Each released party and Group Member may plead this Deed as a bar to any released Group Member Claim by any other party bound to this Deed (including by any Group Member), or by any related bodies corporate, related parties, or successor in interest to any Party bound by this Deed.
- 5.7 BHI may rely on this Deed, and provide a copy of it to the Commonwealth or DESE, as evidence that a Group Member has waived their rights to make any application in respect of the CPL Diploma under

Schedule 1A to the *Higher Education Support Act 2003* (Cth), or Division 3 of Part 6 of the *VET Student Loans Act 2016* (Cth), or both.

- 5.8 For the avoidance of doubt, clause 5 does not operate to release any party from the performance of its obligations under this Deed nor otherwise affect the rights of any party or Group Member to enforce this Deed, the Approval Order, the Settlement Scheme or any related or incidental matters necessary to give effect to this Deed, the Approval Order and the Settlement Scheme.

6. GENERAL

- 6.1 This Deed is governed by and must be construed according to the law applying in the State of Victoria.
- 6.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed.
- 6.3 This Deed may only be varied by a Deed executed by or on behalf of all parties to this Deed.
- 6.4 Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed.
- 6.5 A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- 6.6 No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.
- 6.7 Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Deed.
- 6.8 This Deed may be executed, either by electronic or handwritten signature, in any number of counterparts, and by the parties on separate counterparts. Each counterpart constitutes the Deed of each party who has executed and delivered that counterpart. The Deed can be witnessed via audio visual link in accordance with section 12 of the *Electronic Transactions (Victoria) Act 2000* (Vic).
- 6.9 Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.
- 6.10 Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.
- 6.11 Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.
- 6.12 To the extent permitted by law, in relation to its subject matter, this Deed
- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

(b) supersedes any prior written or other agreement of the parties.

6.13 Any Notice must be in writing and delivered by hand, sent by pre-paid post, or sent by email to a party at the address or email address for that party set out in Annexure A to this Deed.

6.14 A Notice is taken to have been given and received as follows:

- (a) a Notice sent by post is taken to be given and received on the second business day following the date of postage;
- (b) a Notice sent by hand is taken to be given and received at the time of delivery and receipt, unless it is delivered other than on a business day or after 4.00pm on a business day, in which case it is deemed to have been received at 9.00am on the next business day;
- (c) a Notice sent by email is taken to be received on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system indicating that the email was sent to the email address for the party as set out in Schedule A), but if the email is received other than on a business day or after 5.00pm on a business day (addressee's time), it is deemed to have been received at 9.00am on the next business day.

EXECUTED as a Deed

Signatures

<p>SIGNED, SEALED AND DELIVERED by Nerita Somers</p> <p>DATE: 08-09-2022</p> <p>In the presence of: Anastasia Palmer Hughes</p>	<p>DocuSigned by:</p> <p><u>Nerita Somers</u></p> <p>2F6AA2FD305D40F...</p> <p>Signature</p> <p>DocuSigned by:</p> <p><u>Anastasia Palmer Hughes</u></p> <p>A43333A44F044E3...</p> <p>Signature:</p> <p>Witness Name: Anastasia Palmer Hughes</p> <p>Witness Address: Level 22/ 181 William Street, Melbourne VIC 3000</p> <p>The requirements for witnessing by audio-visual link under section 12 of the <i>Electronic Transactions (Victoria) Act 2000</i> have been met.</p>
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<p>SIGNED, SEALED AND DELIVERED by Adel Hassanein</p> <p>DATE: 08-09-2022</p> <p>In the presence of: Anastasia Palmer Hughes</p>	<p>DocuSigned by:  103D2D1210004BC... Signature</p> <p>DocuSigned by:  A43355AA4F644E3... Signature:</p> <p>Witness Name: Anastasia Palmer Hughes</p> <p>Witness Address: Level 22/ 181 William Street, Melbourne VIC 3000</p> <p>The requirements for witnessing by audio-visual link under section 12 of the <i>Electronic Transactions (Victoria) Act 2000</i> have been met.</p>
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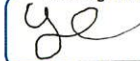
<p>SIGNED, SEALED AND DELIVERED by Matthew Lamont</p> <p>DATE: 08-09-2022</p> <p>In the presence of: Anastasia Palmer Hughes</p>	<p>DocuSigned by:  74080F35013447A... Signature</p> <p>DocuSigned by:  A43355AA4F644E3... Signature:</p> <p>Witness Name: Anastasia Palmer Hughes</p> <p>Witness Address: Level 22/ 181 William Street, Melbourne VIC 3000</p> <p>The requirements for witnessing by audio-visual link under section 12 of the <i>Electronic Transactions (Victoria) Act 2000</i> have been met.</p>
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SIGNED, SEALED AND
DELIVERED by Felix Ouldanov

DATE: 08-09-2022


In the presence of: Anastasia
Palmer Hughes

DocuSigned by:



21AD214911BE43E...
Signature

DocuSigned by:



A43355AA4F644E3...
Signature:

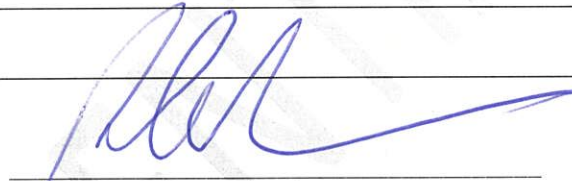
Witness Name: Anastasia Palmer Hughes

Witness Address: Level 22/ 181 William Street,
Melbourne VIC 3000

The requirements for witnessing by audio-visual link under section
12 of the *Electronic Transactions (Victoria) Act 2000* have been
met.

EXECUTED as a DEED by and
on behalf of Gordon Legal
Pty Ltd (ABN 19 624 972 836)

DATED the 9th day of
September 2022


(Sign above the line)

Director

Name: Peter Gordon



(Sign above the line)

~~Director~~/Secretary

Name: Brad Tinning

EXECUTED as a DEED by and
on behalf of Box Hill Institute
(ABN 76 268 630 462)

DATED the 12th day of
September 2022

In the presence of:



(Sign above the line)

Name: Tracey Cooper

Title: Board Chair



Signature:

Witness Name: Grant Radford

Witness Address: 23 Goldsbrough Drive
Officer, Victoria

The requirements for witnessing by audio-visual link under
section 12 of the *Electronic Transactions (Victoria) Act 2000*
have been met.

Schedule A

Nerita Somers

AND

Adel Hassanein

AND

Matthew Lamont

AND

Felix Ouldanov

AND

Gordon Legal Pty Ltd (ABN 19 624 972 836)

AND

Box Hill Institute (ABN 76 268 630 462)

CONFIDENTIAL

Annexure A

BOX HILL INSTITUTE SETTLEMENT SCHEME

1. DEFINITIONS

- 1.1 Capitalised terms in this Annexure have the same meaning given to those terms as in the Deed of Settlement.

2. PREAMBLE

- 2.1 The Settlement Scheme will be operative from the Scheme Commencement Date and shall continue to operate until the Scheme End Date.
- 2.2 At the Scheme End Date, the Scheme Administrator will retain all data, documents and Information in relation to the operation of the Settlement Scheme for a period of seven (7) years after which time it will be destroyed.

3. ELIGIBILITY CRITERIA

- 3.1 A Group Member will be an Eligible Claimant if (and only if) the Scheme Administrator is satisfied on the balance of probability that:
- (a) first, the Group Member was enrolled in the CPL Diploma during the Relevant Period; and
 - (b) second, the Group Member incurred fees either as an upfront payment or as a VET FEE-HELP or a VET Student Loan (together, **Student Loans**); and
 - (c) third:
 - i. the Group Member did not successfully complete a CPL; or
 - ii. the Group Member did successfully complete a CPL but did so in the following circumstances;
 - i. in a longer time than was represented by BHI;
 - ii. with an additional number of flight hours than was represented by BHI; and/or
 - iii. without the ancillary qualifications it was represented by BHI that they would receive; and
 - (d) fourth, the Notice of Claim was filed within the time set out in the Settlement Scheme or in accordance with any Court approved notice issued to the Group Member.
- 3.2 For the purposes of satisfying itself of the matters set out at paragraphs 3.1(a)-(d):
- a. the Scheme Administrator will accept that the Notice of Claim has been filed by or on behalf a Group Member if the person is listed in the list provided by BHI pursuant to clause 4.11 of this Deed. In the event that a Notice of Claim is filed by or on behalf of a person who is not listed in the list provided by BHI pursuant to clause 4.11 of this Deed, the Scheme Administrator will determine that the person is not a Group Member and therefore is not an Eligible Claimant;
 - b. the Scheme Administrator will accept that the information contained in the Notice of Claim in relation to the incurring of fees or Student Loans and their completion status of the CPL as evidence of those matters.

- 3.3 In the event that a Group Member files a Notice of Claim, the Scheme Administrator must notify BHI of that Notice of Claim and of its decision as to the Group Member's eligibility pursuant to paragraph 3.1(a) to (d) herein.

4. CLAIMS ASSESSMENT PRINCIPLES AND PROCESS

- 4.1 The Scheme Administrator will assess the settlement payment, to which each Eligible Claimant is entitled, by applying the Claims Assessment Principles set out in paragraphs 4.2 to 4.11 and in accordance with the Claims Assessment Process set out in paragraphs 4.12 to 4.25.

Claims Assessment Principles

- 4.2 The Scheme Administrator will assess the loss and damage of an Eligible Claimant who is Withdrawn with consideration of categories 1 to 15 of Schedule 1.
- 4.3 The Scheme Administrator will assess the loss and damage of an Eligible Claimant who is Passed or Admitted with consideration of only categories 3 to 14 of Schedule 1.
- 4.4 Before deciding the settlement payment amount relevant to each Eligible Claimant's claim the Scheme Administrator will reduce the amount it assesses as the Eligible Claimants entitlement by application of the following factors in order to discount the sum so arrived at, in order to take into account the vicissitudes and risks of litigation, including the following:
- (a) Apply a discount based on the status of the Eligible Claimant as being Withdrawn, Passed or Admitted.
 - (b) Apply a discount depending on whether the Eligible Claimant provides any or both of:
 - (i) any documentary evidence in relation to those matters; or
 - (ii) any corroborative evidence from a Group Member, former student of the CPL Diploma or person related to the delivery of the CPL Diploma Course who is prepared to execute a statutory declaration in relation to the subject matter of the Eligible Claimant's claim.
 - (c) The following factors must also be considered by the Scheme Administrator in deciding what discount to apply to an Eligible Claimant's claim:
 - (i) Whether the Eligible Claimant regularly attended theory classes;
 - (ii) Whether the Eligible Claimant regularly attended flight training;
 - (iii) Whether the Eligible Claimant obtained a flying qualification while studying at BHI and the level of qualification they achieved including:
 - an RPC;
 - an RPC with Navigation Endorsement;
 - an RPL;
 - a PPL; or
 - a CPL
 - (iv) If the Eligible Claimant is Withdrawn, the period of their enrolment;
 - (v) Whether the Eligible Claimant was provided with feedback on the progress of their learning;
 - (vi) Whether the Eligible Claimant had continuity with their Flight Instructors;

- (vii) Whether the Eligible Claimant was given the adequate flight training in aeroplanes that had the characteristics necessary to give them the experience required to pass the flight test prescribed in the CASA CPL Licence Requirements;
- (viii) Whether the Eligible Claimant was regularly provided with pre-flight and post-flight briefings;
- (ix) Whether the Eligible Claimant's flight training sessions were regularly cancelled for reasons other than weather related operational reasons;
- (x) Whether the Eligible Claimant was able to undertake flight training sessions with the required frequency to retain skills
- (xi) Whether BHI represented to the Eligible Claimant they would receive an RPL, PPL and CPL or an RPC, RPC with Navigational Endorsement and CPL; and
- (xii) The representations made to the Eligible Claimant by BHI about the CPL Diploma Course.

4.5 The minimum discount that the Scheme Administrator will apply to a claim is 10%.

4.6 The maximum discount that the Scheme Administrator will apply to a claim is 40%, except to the extent that:

- a. the claim contains loss and damage which is not compensable in the circumstances in which it has been claimed which part or parts shall not be compensated;
- b. the Scheme Administrator is satisfied that either no evidence or insufficient evidence has been provided for any category or categories of loss or damage claimed;

in which case the Scheme Administrator may apply a discount of up to 100% for that category or those categories.

4.7 The Scheme Administrator will assess the Eligible Claimant's claim taking into account all of the matters set out in paragraphs 4.2 to 4.6 and make a decision as to the settlement amount which the Eligible Claimant is entitled to subject to the other provisions of the Settlement Scheme and will cause a Notice of Decision to be registered.

4.8 In applying the Claims Assessment Principles, the Scheme Administrator will only consider those categories of loss and damage which have been determined to be Eligible Categories of Loss and Damage.

4.9 In determining whether loss and damage is an Eligible Category of Loss and Damage, the Scheme Administrator will have reference to the list of categories and the types of documents set out in Schedule 1.

4.10 In determining the general damages (if any) to which the Eligible Claimant is entitled in respect of distress, inconvenience and/or vexation, the Scheme Administrator will consider the individual circumstances of the Eligible Claimant's claim and determine that Eligible Claimant's entitlement to receive general damages for inconvenience, distress and/or vexation and assess the amount (if any)

of general damages for that Eligible Claimant having regard to and applying ordinary common law principles.

- 4.11 At the conclusion of the Claims Assessment Process set out below, or any reconsideration of its initial decision by the Scheme Administrator or any review of the Scheme Administrator's decision(s) by the Review Panel, the Scheme Administrator will cause a Notice of Decision to be registered in respect of the Eligible Claimant's Notice of Claim, which will specify the identity of the Eligible Claimant and the amount of settlement payment that Eligible Claimant is entitled to claim (including any by way of interest) from the Compensation Sum, save for any amount deducted by reason of the operation of clause 4.27 of the Deed of Settlement.

Claims Assessment Process

- 4.12 The Scheme Administrator will administer to each Eligible Claimant a questionnaire concerning:
- (a) the categories of loss and damage suffered by the Eligible Claimant as a result of BHI's breaches;
 - (b) any information which verifies those categories of loss and damage;
 - (c) any corroborative evidence from another Group Member or former student of the CPL Diploma or person associated with the delivery of the CPL Diploma Course who is able and prepared to execute a statutory declaration in relation to the subject matter of the Eligible Claimant's claim; and
 - (d) any documentary evidence in relation to the Eligible Claimant's claim.
- 4.13 If the Scheme Administrator considers, acting reasonably that it requires additional information to make a decision in respect of the amount which should be calculated as the Eligible Claimants settlement amount, it may request any such information from the Eligible Claimant who must provide that information within fourteen (14) days of the request being made, failing which the Scheme Administrator will make its decision on the basis of an inference that the requested information would not have assisted the Eligible Claimant's claim.
- 4.14 Within ninety (90) days of the Eligible Claimant completing the questionnaire and/or providing any additional information (as applicable), the Scheme Administrator will consider all of the material provided by the Eligible Claimant and will produce a statement setting out their claim in the form of a statutory declaration to be signed and returned to the Scheme Administrator within 14 days of it being provided. This includes any relevant amendments made by the Eligible Claimant.
- 4.15 The Scheme Administrator will assess all of the material provided by the Eligible Claimant and if it is satisfied on the balance of probabilities that the loss and damage suffered by the Eligible Claimant was caused by the alleged breaches of BHI the Scheme Administrator will take that loss and damage into consideration when assessing the Eligible Claimant's claim.
- 4.16 If the Scheme Administrator is satisfied on the balance of probabilities of the matters set out above, the Scheme Administrator will cause a Notice of Decision to be registered.
- 4.17 If an Eligible Claimant does not complete the questionnaire within ninety (90) days of the date that it was administered by the Scheme Administrator, the Scheme Administrator will cause a Notice of Decision to be registered for a nil amount.

Reconsideration Process

- 4.18 An Eligible Claimant may either accept the assessment (in which case the assessment is binding), or request that the Scheme Administrator reconsider the claim pursuant to the Reconsideration Process.
- 4.19 If an Eligible Claimant elects not to accept the decision of the Scheme Administrator in relation to the assessment of their claim, the Scheme Administrator will reconsider its assessment of the claim.
- 4.20 An Eligible Claimant may only make one application for reconsideration.
- 4.21 The Eligible Claimant may submit such additional relevant information, documents, statements in the form of statutory declarations or other material **(Additional Information)** as he or she considers relevant to the assessment of their claim and the amount of settlement payment to which he or she should be entitled pursuant to the terms.
- 4.22 Any Additional Information to be relied upon by the Eligible Claimant must be provided to the Scheme Administrator no later than fourteen (14) days after he or she provides the Scheme Administrator with their request for reconsideration.
- 4.23 The Scheme Administrator may request that the Eligible Claimant provide such other or further evidence as it deems relevant to its reconsideration of the claim within 7 days of receiving the Eligible Claimants Additional Information.
- 4.24 If the Eligible Claimant does not provide the further information requested under paragraph 4.23 above (if any) the Scheme Administrator is entitled to assume that the information requested would not have been of any assistance to the Eligible Claimant in satisfying the Claims Assessment Principles.
- 4.25 Within fourteen (14) days of receiving the Additional Information (or if relevant the further information requested under paragraph 4.23) the Scheme Administrator must provide a notice of reconsideration of its decision to the Eligible Claimant.

5 REVIEW PROCESS

- 5.1 The Eligible Claimant may within twenty-eight (28) days of receiving a notice of reconsideration of a decision of the Scheme Administrator apply to the Scheme Administrator for it to refer its claim to a Review Panel for a review of the Scheme Administrator's reconsideration of its decision in respect of the application of the Claims Assessment Process to the Eligible Claimant's claim and/or the Notice of Decision registered by the Scheme Administrator in respect of that Eligible Claimant's claim.
- 5.2 In the event that an Eligible Claimant elects to have their claim reviewed by the Review Panel, the Scheme Administrator must notify BHI of:
 - (a) the Notice of Claim;
 - (b) all evidence and supporting documents provided to the Scheme Administrator in the course of it making its assessment; and

- (c) any further evidence that the Group Member indicates that they will seek to rely upon.
- 5.3 Within 60 days of the Eligible Claimant notifying the Scheme Administrator of its election to have the claim assessed pursuant to the Review Process the Scheme Administrator will submit to the Review Panel a Review Assessment Brief, which will contain:
 - (a) a statutory declaration from the claimant which addresses the matters referred to above in paragraphs 4.4-4.15;
 - (b) any other records the claimant seeks to rely upon; and
 - (c) claimant's summary of evidence and submission in support.
- 5.4 Within fourteen (14) days of receiving the material from the Scheme Administrator, if the Review Panel acting reasonably considers that it requires further information to make a determination in respect of an assessment of an Eligible Claimant's claim, it may request any such further information from:
 - (a) the Eligible Claimant; or
 - (b) any person who has produced a statement referred to in 4.12(c) above; or
 - (c) BHI.
- 5.5 Within thirty (30) days of receiving the Review Assessment Brief, the Review Panel shall determine whether the Eligible Claimant has proved on the balance of probabilities that the Eligible Claimant was entitled to an amount of settlement payment.
- 5.6 The determination of the Review Panel is final and binding with no right of further review.
- 5.7 Subject to clauses 4.26 and 4.27 of the Deed, the Scheme Administrator will adopt the Notice of Decision issued by the Review Panel as the settlement payment amount to which the Eligible Claimant is entitled for the purposes of registering that Eligible Claimant's Notice of Decision.

6 IMMUNITIES OF THE SCHEME ADMINISTRATOR

- 6.1 Upon final distribution of the Resolution Sum in accordance with this Scheme, the Scheme Administrator shall have no further liability in respect of the Resolution Sum, and the implementation of this Scheme will be at an end.
- 6.2 Without limiting any other provision for immunity in this Scheme, the Scheme Administrator and its servants and agents in discharging any function or exercising any power or discretion conferred by this Scheme shall not be liable for any loss to Group Members arising by reason of any mistake or omission made in good faith or of any other matter or thing except wilful and individual fraud and wrongdoing on the part of the Scheme Administrator or its servants and agents who are sought to be made liable. For the avoidance of doubt, these immunities survive the conclusion of this Scheme.

SCHEDULE 1 – ELIGIBLE CATEGORIES OF LOSS AND DAMAGE

To be used as a guide for the Scheme Administrator's assessment of whether claimed costs as 'Eligible Categories of loss and damage'

Category of loss and damages		Supporting Documents
1.	Fees paid to BHI (Withdrawn Eligible Claimants Only)	<ul style="list-style-type: none"> - Bank statements - Tax invoices - Receipts
2.	VET student loan (Withdrawn Eligible Claimants Only)	<ul style="list-style-type: none"> - HELP balance (from ATO) - VET student loan balance (from ATO) - FEE-HELP assisted units summary (from Dep of Education, myUniAssist) - Authenticated VET transcript (from the student identifiers registrar, from records held in the National VET Provider Collection)
3.	Fees paid to Soar (overflowed hours)	<ul style="list-style-type: none"> - Bank statements - Credit card statements - Tax Invoices - Receipts
4.	External flying lessons	<ul style="list-style-type: none"> - Bank statements - Credit card statements - Tax Invoices - Receipts
5.	External ground theory lessons	<ul style="list-style-type: none"> - Bank statements - Credit card statements - Tax Invoices - Receipts
6.	Gap fee payments	<ul style="list-style-type: none"> - Bank statements - Credit card statements - Tax Invoices - Receipts
7.	Subsequent enrolments	<ul style="list-style-type: none"> - Flight training invoices - Flight training reporting
8.	Medicals, Assessments and Tests	<ul style="list-style-type: none"> - Bank statements - Credit card statements - Tax Invoices - Receipts
9.	Associated expenses (EG: Planning kits, memberships, security)	<ul style="list-style-type: none"> - Tax returns - Bank statements - Credit card statements - Tax Invoices - Receipts
10.	Travel or Accommodation Costs	<ul style="list-style-type: none"> - Tax Invoices - Receipts - Citylink Statements - Travel schedule and statutory declaration
11.	Textbooks/Manuals	<ul style="list-style-type: none"> - Tax Invoices - Receipts - Bank statements

12.	Other Loans – Paid	- Credit card statements
13.	Other Loans – to be paid	- Credit card statements
14.	Past loss of earnings	- Tax returns - Bank statements - Pay slips - Statement from employer
15.	General damages (Withdrawn Eligible Claimants Only)	- Any documents relevant to the assessment of general damages, including any documents relevant to any of the following matters: the Eligible Claimant's reasons for enrolling in the Course, whether the Eligible Claimant completed the Course, the length of enrolment in the Course, the Eligible Claimant's personal circumstances when they were enrolled in the Course, the Eligible Claimant's experience in the Course, any impact on the Eligible Claimant as a result of their enrolment in the Course, the Eligible Claimant's familiarity with the aviation industry prior to starting the Course, their English proficiency when they enrolled in the Course and what they relied upon prior to enrolling in the Course.

Annexure B – Notice Issued to the Group Member by the Scheme Administrator

NOTICE OF PROPOSED SETTLEMENT

SUPREME COURT OF VICTORIA

BHI Student Pilot Class Action

THIS NOTICE IS IMPORTANT
PLEASE READ IT CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

1. WHAT IS THIS NOTICE?

- 1.1. The parties to the Box Hill Institute Student Pilot Class Action (**the Class Action**) have agreed to resolve the case without a trial. This is called a 'settlement'. The settlement will only take effect if it is approved by the Court.
- 1.2. The Supreme Court has ordered that this notice be sent to all Group Members, and you have been identified as a Group Member. The purpose of this notice is to explain the proposed settlement, how the proposed settlement terms apply to Group Members generally, and what options you can take in relation to the proposed settlement.
- 1.3. It is important that you read the notice carefully because it contains information about:
- (a) what you need to do if you wish to **register** to participate in the proposed settlement of the Class Action;
 - (b) what you need to do if you wish to remove yourself from the Class Action and the proposed settlement (this is called '**Opt Out**'); and
 - (c) what you need to do if you wish to **object** to the proposed settlement.
- 1.4. If there is anything in this notice which you do not understand, you should contact Gordon Legal whose contact details are at paragraph 11.1 of the notice, or alternatively seek your own legal advice. **Please do not contact the Court with inquiries regarding this notice.**

Filed on behalf of:	Nerita Somers and ors (the Plaintiffs)		
Prepared by:	Andrew Grech		
Law firm:	Gordon Legal		
Tel:	(03) 9603 3000	Fax:	(03) 9603 3050
Email:	agrech@gordonlegal.com.au		
Address for service:	Level 22, 181 William Street, Melbourne VIC 3000		

2. THE CLASS ACTION

- 2.1. The Class Action has been commenced by Nerita Somers and other Representative Plaintiff Student Pilots (**the Plaintiffs**) on their own behalf and on behalf of all persons who are “Group Members” as defined in the proceedings (see section 8 of this notice). The Class Action was lodged in the Supreme Court on 26 March 2020 against Box Hill Institute. Gobel Aviation Pty Ltd (trading as Soar Advanced Flight Training) (**Soar**) was added as a second defendant on 22 July 2020. The Plaintiffs are legally represented by Gordon Legal.
- 2.2. The Plaintiffs allege in the statement of claim in the Proceedings that:
- (a) Box Hill Institute breached its contract to deliver the CPL diploma course with due care and skill to enable the plaintiffs and group members to obtain their commercial pilots licence (CPL) through the Civil Aviation Safety Authority (CASA) within 2 years studying part time or 14 months full time as represented;
 - (b) Box Hill Institute breached its duty of care to put in place proper systems to monitor the delivery of the CPL Diploma course to ensure that the course materials, theoretical training and practical training was appropriate to enable the plaintiffs and group members to meet the objectives of the CPL Diploma course within the represented time frames;
 - (c) Box Hill Institute breached its statutory guarantee to deliver the CPL Diploma Course with due care and skill in breach of s 60 of the *Australian Consumer Law* (Victoria);
 - (d) Box Hill Institute breached its statutory guarantee to deliver the CPL Diploma Course in a manner which was fit for purpose in breach of s 61 of the *Australian Consumer Law* (Victoria);
 - (e) Box Hill Institute engaged in unconscionable conduct through the manner in which it billed the plaintiffs and group members for theoretical and practical training throughout the CPL Diploma course; and
 - (f) Box Hill Institute engaged in misleading and deceptive conduct by misrepresenting to the plaintiffs and group members that the CPL Diploma course had been designed to enable the plaintiffs and group members to obtain their CPL through CASA within 2 years of part time study or 14 months of full time study.

- 2.3 The Plaintiffs make similar allegations against Soar. Soar was subsequently placed into liquidation, having entered into voluntary administration on 29 December 2020.
- 2.4 The Plaintiffs claim, on behalf of themselves and the group members, common law damages and damages pursuant to sections 236 and 267(3)(b) and section 267(4) of the *Australian Consumer Law* (Victoria).
- 2.5 The Defendants have denied each of the breaches and contraventions alleged by the Plaintiffs.

3. THE SETTLEMENT

- 3.1. The Plaintiffs and Box Hill Institute have agreed to settle the Proceedings and are asking the Supreme Court to approve the terms of the settlement so that it can take effect. The key terms of the settlement with Box Hill Institute are that Box Hill Institute will pay \$33 million (**Resolution Sum**), from which legal costs that the Plaintiffs incurred in the commencement and conduct of the Proceedings (as approved by the Court) will be deducted and an amount in respect of the costs of administration and distribution of the Resolution Sum to the Plaintiffs and Group Members (also as approved by the Court) will be deducted and [If contradictor/costs referee appointed] the costs of a Costs Referee [and Costs Contradictor] will also be deducted from the Resolution Sum. The balance of the \$33 million after those amounts are deducted will represent the compensation payment to the Plaintiffs and Group Members (to be distributed according to the process described below). In addition, a small amount (not exceeding \$70,000 in total) will be proposed to be deducted from the Resolution Sum to compensate the Plaintiffs for the reimbursement of their time and out-of-pocket expenses in performing their role as representatives of Group Members in the conduct of the Proceedings. In return, the Plaintiffs and Group Members will give Box Hill Institute releases in relation to the subject matter of the Proceedings (other than for damages for personal injury, with the exception of the claims for distress, inconvenience and vexation that are made in the Proceedings) and agree not to make or pursue any claims with the Commonwealth Department of Education, Skills and Employment against Box Hill Institute in respect of any VET FEE-HELP or VET Student Loans they have taken out (and indemnify Box Hill Institute in respect of any claim they may have already made or might make in the future). The specific details are the subject of a deed between the Plaintiffs and Box Hill Institute, a copy of which you can obtain via the details below.

3.2. The settlement has been agreed between the Plaintiffs and Box Hill Institute and approval will be sought on the basis that it is without any admission by Box Hill Institute as to the occurrence of the alleged breaches and contraventions or that they are in any way liable or under an obligation to do so, but instead, for the purpose of avoiding ongoing and costly litigation.

3.3. In addition to the settlement with Box Hill Institute, a settlement has been agreed with Soar, also subject to court approval, which involves the claim against Soar being dismissed, with \$15,000 being paid to Soar's liquidator for part of its legal costs, pursuant to a previous order of the Court, and which the Plaintiffs will ask the Court for approval to pay from the Settlement Sum. These costs were associated with the Plaintiffs obtaining information from Soar's liquidators to test what assets Soar might have had to contribute to a settlement. Having obtained that information, the Plaintiffs now consider that pursuing Soar further is pointless because Soar is extremely unlikely to have any assets to enable it to pay compensation.

4. Settlement Payment Process

4.1. Under the settlement, the Scheme Administrator will assess, and where a claim is successfully established, pay the claims of Group Members in accordance with the Settlement Payment Process.

4.2. In order to assess a Group Member's claims Gordon Legal will put in place and rely on a Settlement Payment Process that has been specifically designed to efficiently decide Group Members claims. The process involves the Scheme Administrator assessing the claim of each Group Member in accordance with the Claims Assessment Process. The Claims Assessment Process is performed by reference to:

- (a) The Scheme Administrator first being satisfied that a Group Member is an "Eligible Claimant", being someone who:
 - a. enrolled in the CPL Diploma during the period between 6 December 2015 and 26 March 2020;
 - b. incurred fees either as an upfront payment or as a VET FEE-HELP or VET Student Loan;
 - c. did not successfully complete the CPL Diploma or, alternatively, did complete the CPL Diploma but (1) in a longer time than what was represented, (2) with an additional number of flight hours than what was

represented and/or (3) without the ancillary qualifications that it was represented they would receive; and

- d. files a Notice of Claim (see Option A in section 7 of this notice for further details);
 - (b) Whether the Eligible Claimant was withdrawn from the CPL Diploma, is still enrolled in the CPL Diploma or who has graduated from the course, having met the complete requirements of a CPL Diploma and have had a CPL Diploma conferred to them;
 - (c) Whether the Eligible Claimant suffered loss and damage;
 - (d) The categories of loss and damage suffered by the Eligible Claimant;
 - (e) What caused the loss and damage suffered by the Eligible Claimant; and
 - (f) The extent to which the Eligible Claimant has produced to the Scheme Administrator the evidence of the loss and damage they have suffered.
- 4.3. The Scheme Administrator will issue a Notice of Decision to each Eligible Claimant whose claim it has assessed.
- 4.4. Group Members who receive a decision on their claim under the Settlement Payment Process may have their claim reconsidered by the Scheme Administrator or may have their claim reviewed by a Review Panel comprised of a barrister or barristers selected by the Plaintiffs and Box Hill Institute.
- 4.5. For Group Members who participate in the proposed settlement, the features of the proposed settlement described above will replace the rights that are ordinarily available for a current or former student of the CPL Diploma making a claim against Box Hill Institute arising from or related to the subject matter of the class action. This means that participating Group Members will not be able to commence legal proceedings in relation to their claim against Box Hill Institute. The parties consider that this is a fair compromise for participating Group Members because, in exchange for giving up this right, Group Members have the opportunity to have their claim assessed through the settlement payment process, where they can either accept the decision of the Scheme Administrator, ask the Scheme Administrator to reconsider its decision or seek a review of the Scheme Administrator's reconsideration of its decision by a Review Panel which will finally determine the Group Members claim.

5. LEGAL AND SCHEME ADMINISTRATION COSTS

- 5.1. If the proposed settlement is approved, the settlement sum payable by Box Hill Institute is an amount that is inclusive of an amount in respect of the legal costs incurred for and on behalf of the Plaintiffs and Group Members in respect of the commencement and conduct of the Proceedings. This amount for Legal Costs is estimated by Gordon Legal to be an amount not exceeding \$5,455,000 to be deducted from the Settlement Sum, subject to the approval of the Court.
- 5.2. If the proposed settlement is approved, the settlement sum payable by Box Hill Institute is an amount that is also inclusive of an amount in respect of the administration and distribution costs incurred by the Scheme Administrator. This amount for Scheme Administration costs is estimated by Gordon Legal to be an amount not exceeding \$4,826,200, to be deducted from the Settlement Sum, subject to the approval of the Court.

6. THE PROCESS FOR APPROVAL OF THE SETTLEMENT

- 6.1. The settlement is subject to the approval of the Supreme Court. The Court will only approve the proposed settlement if it decides that it is fair and reasonable and in the interests of the Group Members as a whole.
- 6.2. [If contradictor/costs referee appointed]. In order to assist it to determine if the proposed settlement is fair and reasonable and in the interests of the Group Members as a whole, the Court has appointed a barrister to act as a Contradictor. The Contradictor's role is to represent the interests of Group Members in the settlement approval application. The Court has appointed a Costs Referee in relation to the reasonableness of the legal costs.
- 6.3. In deciding the approval hearing the Court will receive and consider submissions from the Plaintiffs, Box Hill Institute, the Contradictor [if applicable], and the report of the Costs Referee [if applicable]. The Court will also consider any objections filed by Group Members. Information about how to object to the proposed settlement is at section 7 of this notice.
- 6.4. The Court is holding a hearing for it to determine the application for approval of the proposed settlement on [date] at the Supreme Court of Victoria in Melbourne, located at 210 William Street, Melbourne VIC 3000.

7. WHAT OPTIONS ARE AVAILABLE FOR GROUP MEMBERS?

- 7.1. There are four options that Group Members may choose to take in relation to the proposed settlement. The option that you take will affect if and how you can receive a

financial benefit in relation to your claim. The four options, and the consequences of each option, are set out below.

Option A: register to participate in the proposed settlement

- Group Members who wish to participate in the proposed settlement must register their claim by going to <https://www.bhiclassaction.com.au>. All claims must be registered by the Group Member with the Scheme Administrator by 5.00pm on 19 October 2022.
- You will be eligible to receive a settlement payment if the Scheme Administrator decides that you are an Eligible Claimant and it or the Review Panel issues a Notice of Decision in relation to your Notice of Claim as set out in the Deed of Settlement.
- Group Members who register to participate by providing a Notice of Claim to the Scheme Administrator will have their claim finally determined through the settlement and will not be able to commence legal proceedings in relation to their claim.

Option B: Opt Out of the Class Action

- The deadline to Opt Out of the Class Action expired on 18 November 2020.
- If you have already Opted Out, the Court has a discretionary power to reinstate you as a Group Member in the Class Action under s 33J(6) of the *Supreme Court Act 1986* (Vic) on such terms as the Court thinks fit upon an application of a Group Member. You will need to make such an application to the Supreme Court if you wish to be reinstated as a Group Member and seek to receive any payment under the proposed settlement by 5.00pm on 19 October 2022.
- The Court also has a discretionary power to permit a Group Member to Opt Out late under s 33J(3) of the *Supreme Court Act 1986* (Vic) on the application of a Group Member. You will need to make such an application if you wish to Opt Out but have not already done so by 5.00pm on 19 October 2022 by completing an Opt Out Notice

which is available from <https://www.bhiclassaction.com.au> and providing the Opt Out Notice to the Supreme Court.

- Group Members who Opt Out of the Class Action will not be bound by the outcome of the Class Action, and will not be entitled to receive any settlement payment that might result from the proposed settlement.
- Group Members who Opt Out of the Class Actions may still be able to pursue their claim against Box Hill Institute.

Option C: object to the proposed settlement

- Group Members have the right to make submissions to the Court as to whether or not the proposed settlement should be approved and take effect. If you do not wish for the proposed settlement to go ahead, you can object to the settlement by filling in the objection notice, which is available from <https://www.bhiclassaction.com.au/> and following the process at **Option C** of this notice.
- The Court will consider any objections filed by Group Members when it considers whether to approve the proposed settlement at the hearing on [date] at the Supreme Court in Melbourne, commencing at 10.15am.
- Group Members may object to the settlement even if they have registered pursuant to Option A above, but not if they have opted out pursuant to Option B above.
- Any Notice of Objection must be filed with the Court by no later than 5.00pm on 19 October 2022 and any written submissions or evidence in support of any Notice of Objection must be provided to the Court by 5.00pm on 3 November 2022.

Option D: do nothing

- Group Members who neither register to participate in the proposed settlement nor Opt Out will remain as Group Members in the Class Action, but will not, unless the Court determines otherwise, be entitled to participate in the proposed settlement. This means that a Group Member who does not register a claim will not be able to have their claim assessed through the settlement payment process.
- Group Members who do nothing will also be bound by the proposed settlement. This means that a Group Member who does not register or Opt Out will not be able to have

their claim against Box Hill Institute assessed, either as part of the proposed settlement or otherwise.

8. WHO IS A GROUP MEMBER?

- 8.1. You are a Group Member if you enrolled with Box Hill Institute to study a Diploma of Aviation (Commercial Pilot Licence – Aviation) (**CPL Diploma**) between 6 December 2015 and 26 March 2020.
- 8.2. If you are unsure whether you are a group member, you should contact Gordon Legal on (03) 9603 3000 or email bhisoar@gordonlegal.com.au or seek your own legal advice.

9. COPIES OF THE RELEVANT DOCUMENTS

- 9.1. Copies of relevant documents, including the statement of claim, defences and the settlement deed with Box Hill Institute may be obtained by:
 - (a) downloading them from Gordon Legal's website (www.gordonlegal.com.au);
 - (b) inspecting them between 9:00 a.m. and 5:00 p.m. at one of the offices of Gordon Legal, contact details for which are available from (www.gordonlegal.com.au) or by calling (03) 9603 3000; or
 - (c) by contacting a Registry of the Supreme Court of Victoria and paying the appropriate inspection fee.

10. FURTHER INFORMATION

- 10.1. If there is anything of which you are unsure, you should check Gordon Legal's website for more information. You can also call Gordon Legal on (03) 9603 3000 or email bhisoar@gordonlegal.com.au or seek your own legal advice.

Annexure C – Notice of Claim

The Notice of Claim process will be conducted via an online form. The below is a list of questions that will appear on the online form

Salutation

First Name

Last Name

Date of Birth

**Street Address
or postal box**

Suburb

State

Country

Postcode

Phone

Mobile

Email

Declaration

<i>(mark "x" as applicable)</i>	
	I declare that I was enrolled in the CPL Diploma course at Box Hill Institute between 6 December 2015 and 26 March 2020.
	I declare that I am lodging this Notice of Claim on behalf of a person who was enrolled in the CPL Diploma course at Box Hill Institute between 6 December 2015 and 26 March 2020 and who has signed a Conditional Legal Costs Agreement with Gordon Legal.
	I declare that I am lodging this Notice of Claim on behalf of a person who was enrolled in the CPL Diploma course at Box Hill Institute between 6 December 2015 and 26 March 2020, and that I have the legal authority to do so by reason of that person's legal incapacity or that person's death.

Signed by [Insert Name]:

(if relevant) on behalf of :

On [Insert Date]

Annexure D – Opt-out Notice

Rule 18A.04

Form 18AB

NOTICE OF OPTING OUT BY A GROUP MEMBER

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

No. S ECI 2020 01535

BETWEEN:

NERITA SOMERS and others

First Plaintiff

And

BOX HILL INSTITUTE

First Defendant

And

**GOBEL AVIATION PTY LTD (trading as Soar
Advanced Flight Training)**

Second Defendant

To: The Prothonotary, Supreme Court of Victoria Registry,
Level 2, 436 Lonsdale Street, Melbourne VIC 3000

Gordon Legal
Level 22, 181 William Street
Melbourne VIC 3000

Lander & Rogers
Level 15, 477 Collins Street
Melbourne VIC 3000

I, *[print name]*,
a group member in the above group proceeding, give notice under section 33J(2) of
the **Supreme Court Act 1986** that I am opting out of this proceeding.

Date:	
Signature of group member or the group member's solicitor:	
Address of group member:	

Please return this notice by 19 October 2022 to:
The Group Proceedings Coordinator

By mail:
Supreme Court of Victoria Registry,
Level 2, 436 Lonsdale Street,
Melbourne VIC 3000

Or by email:
cldgroupproceedings@supcourt.vic.gov.au

Annexure E – Notice of Objection to Proposed Settlement

Nerita Somers and Others v Box Hill Institute and another (S ECI 2020 1535)

NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

The person identified below:

1. is a group member in the Proceedings; and
2. wishes to object to the proposed settlement of the Proceedings.

The group member's contact details are as follows:

Name of group member:

Telephone number:

Postal address:

Email address:

Signed:

If nominating a contact person who is not the named group member, please state the contact's name and relationship to the group member:

The group member has read the "Notes for Objectors" below: Yes / No (circle one)

Notes for Objectors:

Pursuant to Order [order number] the Court's Orders made on [date], Objectors must complete and deliver a Notice of Objection to the Supreme Court, by 4:00 pm on [date]. The Notice of Objection can be provided to the Court -

By mail:

Supreme Court of Victoria Registry,
Level 2, 436 Lonsdale Street,
Melbourne VIC 3000

Or by email:

cldgroupproceedings@supcourt.vic.gov.au

Pursuant to Order [order number] the Court's Orders made on [date], written submissions (not exceeding 2 pages in length) and any affidavit evidence the Objector wishes to rely on in support of their objection to the proposed settlement must be delivered to the Court by 4:00pm on [date].

Annexure F – Notice of Reinstatement of Group Member

Nerita Somers and Others v Box Hill Institute and another (S ECI 2020 1535)

NOTICE OF REINSTATEMENT OF GROUP MEMBER

The person identified below:

1. was identified as a Group Member in the Proceedings;
2. signed and returned an Opt-Out Notice to the Supreme Court; and
3. wishes to be reinstated as a Group member in the Proceedings.

I, *[print name]*, seek to be reinstated as a group member in the above group proceeding.

Date:	
Signature:	
Address:	
Telephone number:	
Email address:	

Please return this notice by 19 October 2022 to:
The Group Proceedings Coordinator

By mail:
Supreme Court of Victoria Registry,
Level 2, 436 Lonsdale Street,
Melbourne VIC 3000

Or by email:
cldgroupproceedings@supcourt.vic.gov.au

Annexure G – Notice of Decision

[date]

Dear [insert name],

Box Hill Institute Student Pilot Class Action — Notice of Decision

1. This Notice of Decision notifies you of the outcome of your Notice of Claim lodged with the Scheme Administrator of the BHI Student Pilot Class Action Settlement Scheme on [date].
2. Based on the information you have provided, you have been assessed as an Eligible Claimant. Your claim has been assessed in accordance with the Settlement Scheme in the amount of [insert lump sum settlement amount].

Assessment by the Scheme Administrator

[The Scheme Administrator will provide an explanation for how the lump sum settlement amount was assessed. To the extent necessary and required, the explanation may include information as to any of the following matters: the Eligible Claimant's Course Status, the Eligible Claimant's period of enrolment, the documentary evidence provided in support of the claim, the Eligible Claimant's theory class attendance, the Eligible Claimant's flight training attendance and the flight instruction they received, the qualification obtained by the Eligible Claimant, the representations made by BHI in relation to the Course and the qualification that the Eligible Claimant would obtain, and the assessment made for general damages for distress, inconvenience and/or vexation.]

Next Steps

3. You may either accept the assessed settlement amount (in which case the assessment is binding) or lodge a request with the Scheme Administrator for a reconsideration of your claim.
4. If you accept the settlement amount, you do not need to do anything. Your settlement amount will be paid to your nominated bank account.
5. If you wish to request a reconsideration of your claim, you must do so within 28 days of receiving this Notice. You may submit additional relevant information, documents, and statement in the form of statutory declarations or other material to the Scheme Administrator Claimant Hub that you consider relevant to the assessment of your claim and the amount of settlement payment to which you should be entitled.

If you have any questions regarding this Notice, please contact the Scheme Administrator on 03 9603 3000 or bhisoar@gordonlegal.com.au.

Yours faithfully,



Scheme Administrator
BHI Student Pilot Class Action

Annexure H – Agreed Statement

Nerita Somers, Adel Hassanein, Matthew Lamont and Felix Ouldandov (together, the Plaintiffs) commenced Supreme Court Proceeding S ECI 2020 01535 on 26 March 2020 against Box Hill Institute (Proceedings). The Proceedings is a representative proceeding pursuant to Part 4A of the Supreme Court Act 1986 (Vic) (Act) and the Plaintiffs commenced the Proceedings on their own behalf and on behalf of the Group Members, being those students who enrolled in the Diploma of Aviation (Commercial Pilot Licence - Aeroplane) Course between 6 December 2015 and 26 March 2020.

The Plaintiffs and Box Hill Institute have agreed to resolve the Proceedings. Box Hill Institute makes no admissions as to liability or the allegations made. The proposed settlement is subject to Court approval. The Court has listed the Proceedings for a preliminary hearing of the settlement approval application on 14 September 2022, at which time it is expected that details of the proposed settlement will be provided to the Court and Group Members. At this time, the terms of the proposed settlement are confidential and the parties will not be making further public comment.