

SAFA WAIVER – VICTORIA (“THE WAIVER”)

**SPORTS AVIATION FEDERATION OF AUSTRALIA (“SAFA”) AND HANG GLIDING
FEDERATION OF AUSTRALIA (“HGFA”)**

(COLLECTIVELY “THE SUPPLIER”)

**PARTICIPANT (MEMBER) NAME AS IDENTIFIED IN THE SAFA ONLINE
MEMBERSHIP APPLICATION:**

(“THE PARTICIPANT”)

**YOU MUST NOT PARTICIPATE IN ANY SAFA ADMINISTERED AVIATION
ACTIVITIES WITHOUT READING, ACKNOWLEDGING AND ACCEPTING THIS
WAIVER AND PAYING YOUR MEMBERSHIP FEES AT THE TIME YOU
ACKNOWLEDGE AND ACCEPT THIS WAIVER.**

1. PURPOSE OF THE WAIVER

- 1.1 The Supplier, including their directors, employees, instructors, agents, operators, suppliers, contractors, insurers, re-insurers, owners and / or occupiers of any type of property (including real property) is a supplier of recreational activities and services in trade and commerce as defined in Section 139A of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) hereinafter referred to as the *Australian Consumer Law* and Section 22 of the *Australian Consumer Law and Fair Trading Act 2012* (Victoria).
- 1.2 The recreational activities and services to which this Waiver applies includes (but is not limited to) hang gliding, powered hang gliding, paragliding, powered paragliding, and weightshift microlighting, solely or in combination with any other recreational service or activity (collectively referred to as “**the Recreational Activities**”).
- 1.3 The Supplier is also the governing body which regulates and administrates the supply of Recreational Activities by its associated, authorised and / or licenced instructors, Flight Training Facilities (FTF), agents, operators, suppliers and / or contractors (“**Regional Affiliates**”).
- 1.4 The Recreational Activities being regulated and / or administrated by the Supplier are dangerous and involve obvious, inherent and significant risks of physical harm and psychological harm such as personal injury, bodily injury, mental injury, nervous shock and death.
- 1.5 The purpose of this Waiver is to limit the liability of the Supplier for any physical harm and psychological harm such as personal injury, bodily injury, mental injury, nervous shock and death to the Participant arising from or in any way connected to the Recreational Activities being regulated and / or administrated by the Supplier.
- 1.6 By executing this Waiver, the Participant acknowledges that they have read, understood and accept the terms and conditions contained in this Waiver including (but not limited to) the Warning under the *Australian Consumer Law and Fair Trading Act 2012* (Victoria) form (section 2 below), the Risk Warning and Acknowledgment form (section 3 below) and the Release, Indemnity and Assumption of Risk form (section 4 below).
- 1.7 The Participant agrees that their participation in the Recreational Activities is strictly subject to the Disclosure of Medical Conditions and Declaration of Fitness form which has been completed as part of the Supplier’s membership process and that form has been incorporated into this Waiver as if its terms and conditions were set out herein.

1.8 The Participant also acknowledges and confirms that they have made known to the Supplier the purpose for which the Recreational Activities are being acquired by and supplied to the Participant by any Regional Affiliate in accordance with the *Australian Consumer Law and Fair Trading Act 2012* (Victoria)(section 2 below).

2. THE WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012 (VICTORIA)

2.1 Under the *Australian Consumer Law and Fair Trading Act 2012* (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the Supplier named on this form is required to ensure that the recreational services it supplies to you—

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result you have made known to the supplier.

2.2 Under Section 22 of the *Australian Consumer Law and Fair Trading Act 2012* (Victoria), the Supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the Supplier under the *Australian Consumer Law and Fair Trading Act 2012* (Victoria) if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

2.3 **NOTE:** The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. "Gross" *negligence*, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See Regulation 5 and Section 23(3)(b) of the *Australian Consumer Law and Fair Trading Act 2012* (Victoria) and Section 22(3)(b) of the *Australian Consumer Law and Fair Trading Act 2012* (Victoria).

I, the Participant, acknowledge that I have read, understood and accept the Risk Warning and Acknowledgment form and that I am electronically executing this document by selecting the check box.

If you want to know what rights you have in relation to this document, you should seek independent legal advice

3. RISK WARNING AND ACKNOWLEDGMENT

3.1 Your participation in the Recreational Activities being regulated and / or administered by the Supplier involves obvious, inherent and significant risks of physical harm (including death) and psychological harm. Some of the risks of the Recreational Activities include (but are not limited to):

- (a) loss of control of an aircraft or equipment;
- (b) failure of an aircraft or equipment;
- (c) uncontrolled descent from substantial heights;
- (d) collision with surroundings, the ground or other persons;
- (e) personal misjudgement; and
- (f) hazardous, unpredictable, changeable and adverse weather conditions.

3.2 Prior to undertaking any Recreational Activities, you should ensure that you are aware of all of the risks involved including those risks associated with any health condition you may suffer from.

3.3 By signing this Risk Warning and Acknowledgment form, you acknowledge, agree and understand that:

- (a) participation in the Recreational Activities being regulated and / or administered by the Supplier involves obvious, inherent and significant risks as defined by Part X, Division 4, Section 53 of the *Wrongs Act (Vic)*;
- (b) you agree to undertake those risks voluntarily as defined by Part X, Division 4, Section 54 of the *Wrongs Act (Vic)*; and
- (c) the Supplier will not be liable for any personal injury or death suffered by you arising from or in any way connected to the materialisation of any obvious, inherent and significant risk to the fullest extent permissible under Part X, Division 4, Section 54 of the *Wrongs Act (Vic)*.

3.4 By signing this Risk Warning and Acknowledgment form, you acknowledge, agree and understand that the liability of the Supplier to you in relation to any Recreational Activities as that term is defined in the *Australian Consumer Law* and the *Australian Consumer Law and Fair Trading Act 2012 (Victoria)* for any:

- (a) death;
- (b) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- (c) the contraction, aggravation or acceleration of a disease;
- (d) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs:
 - (i) that is or may be harmful or disadvantageous to you or the community; or
 - (ii) that may result in harm or disadvantage to you or the community,

that may be suffered by you resulting from the Recreational Activities being regulated and / or administered by the Supplier is excluded.

- 3.5 By signing this Risk Warning and Acknowledgment form, you acknowledge, agree and understand that the Supplier's liability for any personal injury or death suffered by you has been excluded to the fullest extent permissible under Section 22 of the *Australian Consumer Law and Fair Trading Act 2012* (Victoria)(section 2 above) and paragraphs 3.3 and 3.4 above.
- 3.6 By signing this Risk Warning and Acknowledgment form, you also acknowledge, agree and understand that liability being excluded to the fullest extent permissible under Section 22 of the *Australian Consumer Law and Fair Trading Act 2012* (Victoria) (Section 2 above) and paragraphs 3.3 and 3.4 above means that compensation may not be payable for any personal injury or death sustained by you or to any third party consumer from the Recreational Activities being regulated and / or administered by the Supplier.

I, the Participant, acknowledge that I have read, understood and accept the Risk Warning and Acknowledgment form and that I am electronically executing this document by selecting the check box.

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4. RELEASE, INDEMNITY AND ASSUMPTION OF RISK

- 4.1 I, the Participant, acknowledge the Warning Under the *Australian Consumer Law and Fair Trading Act 2012* (Victoria) form (section 2 above) and the Risk Warning and Acknowledgment form (section 3 above) and that participation in the Recreational Activities is entirely at my own risk and that I may withdraw from participating in the Recreational Activities at any time.
- 4.2 I, the Participant, fully accept and assume all liability for the risks associated with the Recreational Activities being regulated and / or administered by the Supplier including the significant risks of physical harm and psychological harm such as personal injury, bodily injury, mental injury, nervous shock and death arising from the Recreational Activities now and in the future.
- 4.3 I, the Participant, waive any claims that I have now or may have in the future against the Supplier including their directors, employees, instructors, agents, operators, suppliers, contractors, insurers, re-insurers, owners and / or occupiers of any type of property (including real property) and release, indemnify and hold the Supplier harmless from any liability in connection with the Recreational Activities being regulated and / or administered by the Supplier regardless of whether that liability is based in:
- (a) negligence for breach of duty of care or failure to exercise reasonable care and skill;
 - (b) breach of contract or breach of any express or implied warranty, obligation, term or contractual duty of care; or
 - (c) breach of any statute, or statutory warranty or implied term.
- 4.4 I, the Participant, acknowledge that by executing the Warning Under the *Australian Consumer Law and Fair Trading Act 2012* (Victoria) form (section 2 above), the Risk Warning and Acknowledgment form (section 3 above) and this Release, Indemnity and Assumption of Risk form, I have agreed that any or all of the consumer guarantees

under Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law* in relation to the Recreational Activities being regulated and / or administered by the Supplier are excluded in respect of liability for personal injury and death. In the case of where a consumer guarantee cannot be excluded, the Supplier's liability shall be limited to the costs paid for membership to the Supplier for my participation in the Recreational Activities.

- 4.5 I, the Participant, agree that, as a pre-requisite to participating in the Recreational Activities, I am required to and shall become a member of the Supplier.
- 4.6 I, the Participant, agree that as a member of the Supplier I will undertake to comply with and in any event agree that:
- (a) I will be bound by the Supplier's Code of Conduct and Ethics and the Supplier's Constitution and Rules which can be found on the Supplier's website;
 - (b) I will comply and be bound by all signs or other directions of the Supplier or its Regional Affiliates during the provision of the Recreational Activities;
 - (c) the Supplier and all members of the Supplier (including any Regional Affiliates) will be entitled to the benefits, exclusions and limitations of this Release, Indemnity and Assumption of Risk form as if they are parties hereto;
 - (d) I will not commence or make any claim or take proceedings in any jurisdiction against the Supplier or any Regional Affiliate as a result of participating in the Recreational Activities now or in the future; and
 - (e) the Supplier or any Regional Affiliate may cancel or suspend my access to the Recreational Activities in its absolute discretion for non-compliance with these conditions or for reckless or careless conduct.
- 4.7 No exclusion, restriction or modification of liability in this Release, Indemnity and Assumption of Risk form should be read to limit liability for anything other than for physical harm and psychological harm such as personal injury, bodily injury, mental injury, nervous shock and death. If any provision in this Release, Indemnity and Assumption of Risk form purports to have the effect of excluding, restricting or modifying liability for anything other than for physical harm and psychological harm such as personal injury, bodily injury, mental injury, nervous shock and death, it shall be read down to exclude, restrict or modify liability only in respect of physical harm and psychological harm such as personal injury, bodily injury, mental injury, nervous shock and death.
- 4.8 If any part of this Release, Indemnity and Assumption of Risk form shall be contrary to law or void, in whole or in part, it shall be read down to the extent necessary in the relevant jurisdiction for its validity but otherwise shall operate to the full extent permitted by law in each and every jurisdiction.
- 4.9 I, the Participant, fully understand that the purpose of this Release, Indemnity and Assumption of Risk form is to exclude to the maximum extent permitted by law all liability for physical harm and psychological harm such as personal injury, bodily injury, mental injury, nervous shock and death. I, the Participant, agree that this Release, Indemnity and Assumption of Risk form must be interpreted to achieve that purpose, and in any dispute, must be interpreted against me and in favour of the Supplier.
- 4.10 I, the Participant, acknowledge and understand that personal accident and life insurance is obtainable and that I waive any subrogated claim or any other claim through me by any insurer in my name or on my behalf.

- 4.11 I, the Participant, acknowledge and agree that this Release, Indemnity and Assumption of Risk form shall be governed by the laws of the State of Victoria in the event of any action arising out of or in connection with my participation in the Recreational Activities, any liability on the part of the Supplier shall be extinguished if not commenced within one (1) year of the date that the Recreational Activities were provided.
- 4.12 For the purposes of the *Privacy Act 1988* (Commonwealth), I agree that any information concerning me may be used and / or disclosed by the Supplier or at the Supplier's direction as the Supplier thinks appropriate.

I, the Participant, acknowledge that I have read, understood and accept the Risk Warning and Acknowledgment form and that I am electronically executing this document by selecting the check box.

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