

DEED OF AGREEMENT

BETWEEN

CIVIL AVIATION SAFETY AUTHORITY

AND

HANG GLIDING FEDERATION OF AUSTRALIA INCORPORATED

**REGARDING FUNDING FOR THE ACTIVITIES OF THE HANG GLIDING
FEDERATION OF AUSTRALIA INCORPORATED**

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PARTIES AND RECITALS

THIS DEED OF AGREEMENT is made on 2010

BETWEEN

The **CIVIL AVIATION SAFETY AUTHORITY** (ABN: 44 808 014 470), a body corporate established by the *Civil Aviation Act 1988*, and having its principal place of business at 16 Furzer Street, Phillip, ACT (**CASA**)

AND

The **HANG GLIDING FEDERATION OF AUSTRALIAN INCORPORATED** (ABN 15 276 389 269), an association incorporated under the *Associations Incorporations Act 1991* (NSW), and having its principal place of business at 4a/60 Keilor Place, Keilor Park, VIC (**Organisation**).

WHEREAS

- A The Organisation is an association of persons who engage in hang gliding, paragliding and weightshift microlight aviation activities (*Members aviation activities*).
- B The Organisation oversees the *Members aviation activities* (*Organisation oversight activities*).
- C CASA has exempted the *Members aviation activities* from the application of certain provisions of the *Civil Aviation Regulations 1988*, as set out in the *Civil Aviation Orders* section 95.08, 95.10 and 95.32 (*CASA regulatory exemptions*).
- D The *CASA regulatory exemptions* have been given on the following bases:
 - (1) the *Members aviation activities* are subject to the *Organisation oversight activities*;
 - (2) the *Organisation oversight activities* are carried out in accordance with operation/procedure manuals and processes approved by CASA (*CASA approved procedures*); and
 - (3) CASA must remain satisfied that the Organisation has suitable infrastructures in place to support fully the *Organisation oversight activities*.
- E CASA has, for a number of years now, provided the Organisation with funding to assist it in carrying out the *Organisation oversight activities*.
- F The Organisation has requested CASA, and CASA has agreed, to provide the Organisation with Funding, to assist the Organisation in meeting the costs of carrying out the Schedule Functions, in accordance with this Deed.

NOW IT IS HEREBY AGREED as follows:

1 Definitions and Interpretation

1.1 In this Deed, unless the contrary intention appears:

Auditor-General has the same meaning as the expression in the *Auditor-General Act 1997* (Cth) and includes any person authorised to carry out the functions of the Auditor-General under the Act.

Deed means this Deed of Agreement between CASA and the Organisation, as may be varied from time to time in accordance with clause 2.2, and includes the Schedule.

Director means the person for the time being holding, occupying or performing the duties of the office of Director of Aviation Safety and includes any other person designated in writing by that person to perform any function or to exercise any of the powers of the Director under this Deed.

Funding or *Funds* means the amount or amounts payable under this Deed for the functions as specified in paragraph 3 of the Schedule.

Material includes documents, equipment, software, goods, information and data stored by any means and any information about members of the Organisation.

Responsible Officer means the President of the Organisation or a person nominated by him/her.

Schedule means the schedule to this Deed

Schedule Functions means the tasks described in paragraph 2 of the Schedule.

Specified Personnel for the Schedule Functions means those persons named in paragraph 4 of the Schedule.

1.2 In this Deed, unless the contrary intention appears:

- (a) Words in the singular number include the plural and words in the plural number include the singular.
- (b) Words importing a gender include any other gender.
- (c) Words importing persons include a partnership and a body whether corporate or otherwise;
- (d) Clause headings are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference.

- (e) All references to clauses are clauses of this Deed.
- (f) Reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation as in force from time to time during the currency of this Deed.
- (g) Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (h) All references to dollars are to Australian dollars.

2 Entire Agreement and Variation

- 2.1 This Deed constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Deed.
- 2.2 The parties can agree to vary this Deed. To be legally binding any variation must be in writing and signed by both parties.

3 Period of this Deed

- 3.1 Subject to this Deed, the period of this Deed is the period specified in paragraph 1 of the Schedule.

4 Amount and Payment of the Funding

- 4.1 CASA will pay the Funding to the Organisation in the manner specified in paragraph 3 of the Schedule.
- 4.2 CASA will pay to the Organisation the amount set out in the Schedule, which is exclusive of GST, where *GST* has the same meaning as given in the *A New Tax System (Goods and Services Tax) Act 1999*.
- 4.3 If the Organisation is liable to pay GST on this transaction, the Organisation agrees to issue CASA with a tax invoice, where *tax invoice* has the same meaning as given in the *A New Tax System (Goods and Services Tax) Act 1999*, and CASA will pay the Organisation an additional amount to cover the GST.

5. Use of the Funding

- 5.1 The Organisation must ensure that the Schedule Functions are carried out in accordance with this Deed and with due diligence and competence and in an efficient and effective manner.
- 5.2 The Organisation must ensure that expenditure on the Schedule Functions is in accordance with the implementation plan of the Schedule Functions and

within the broad structure of the Schedule Functions budget set out in paragraph 2 of the Schedule or any approved revised budget, aims and development plan and approved by CASA.

- 5.3 The Funds must be used for the funding of the Schedule Functions and must not be used for any other purpose.

6 Negation of Employment Partnership and Agency

- 6.1 The Organisation and any officer, employee, agent and subcontractor of the Organisation are not, by virtue of this Deed, employees or agents of CASA.

- 6.2 The Organisation must not represent itself, and must ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of CASA, or as otherwise able to bind or represent CASA.

- 6.3 Nothing in this Deed will operate to create any relationship of employment, agency or partnership between the Organisation and CASA.

7 Specified Personnel

- 7.1 The Organisation will ensure that the Specified Personnel will conduct the Schedule Functions in a diligent and competent manner and will comply with this Deed.

8 Administration of the Funding

- 8.1 The Organisation must maintain adequate books and records relating to the Funding and the Schedule Functions, in sufficient detail to enable expenditure of the Funding and the Organisation's compliance with this Deed to be ascertained.

9 Auditing and Monitoring

- 9.1 The Organisation is responsible for monitoring the progress of the Schedule Functions and certifying to CASA as to the satisfactory progress of implementation of the Schedule Functions in each of the reports to be provided by the Organisation to CASA as mentioned in paragraph 5 of the Schedule Functions. If at any time, in the opinion of the Responsible Officer, the Schedule Functions are not being carried out with due diligence and competence and in an efficient and effective manner, or in accordance with this Deed, the Organisation must take all action necessary to minimise further expenditure in relation to the Schedule Functions and to inform CASA immediately.

- 9.2 CASA may conduct ad hoc on-site reviews in relation to financial and other reports to ensure that the terms of this Deed are being, or were met and that reports submitted to CASA are an accurate statement of compliance by the Organisation. Persons nominated by CASA to conduct these reviews are to be

given full access by the Organisation, if required, to all accounts, records, documents and premises in relation to the Schedule Functions and the administration of the Funding.

10 Access to Premises and Records

- 10.1 The Organisation must, at all reasonable times, give to an officer of CASA:
- (a) unhindered access to:
 - (i) the Organisation's employees;
 - (ii) premises occupied by the Organisation; and
 - (iii) Material; and/or
 - (b) reasonable assistance to:
 - (i) inspect the performance of the Schedule Functions;
 - (ii) locate and inspect Material; and
 - (iii) make copies of Material relevant to the Schedule Functions and remove those copies.
- 10.2 Upon receipt of reasonable notice from the Director, the Organisation must provide any information required by CASA for monitoring and evaluation purposes.
- 10.3 If a matter is being investigated which, in the opinion of the Director, or any person authorised in writing by the Director, may involve an actual or apprehended breach of the law, clause 10.4 (a) will not apply.
- 10.4 The access rights in clause 10.1 are subject to:
- (a) the provision of reasonable prior notice by CASA; and
 - (b) the Organisation's reasonable security procedures.
- 10.5 Nothing in clause 10.1 to 10.4 inclusive affects the obligation of each party to continue to perform its obligations under this Deed unless otherwise agreed between them.
- 10.6 The Auditor-General, or a delegate of the Auditor-General for the purpose of performing the Auditor-General's statutory functions, at reasonable times and on giving reasonable notice to the Organisation, may:
- (a) require the Organisation to provide records and information which are directly related to this Deed;

- (b) have access to the premises of the Organisation for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the Organisation which are directly related to this Deed; and
- (c) where relevant, inspect any CASA assets and CASA Material held on the premises of the Organisation.

10.7 This clause 10 survives the expiration or earlier termination of this Deed.

11 Reporting Requirements

11.1 The Organisation must submit the reports and statements at the time specified in paragraph 5 of the Schedule to CASA.

12 Recovery of Unspent Funds

12.1 Any unspent Funds may be recovered by CASA as a debt due to CASA.

13 Indemnity

13.1 Subject to this Deed, the Organisation will at all times indemnify and hold harmless CASA, its officers, employees and agents (in this clause referred to as *those indemnified*) from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by a wilful, unlawful or negligent act or omission of the Organisation, its employees, agents or subcontractors in connection with this Deed.

13.2 The Organisation's liability to indemnify CASA under clause 13.1 will be reduced proportionally to the extent that any act or omission of CASA or its employees or agents contributed to the loss or liability.

13.3 This clause 13 survives the expiration or earlier termination of this Deed.

14 Insurance

14.1 The Organisation agrees, for so long as any of its obligations remain in connection this Deed, including those which survive the expiration or termination of this Deed, to effect and maintain the insurance policies specified in paragraph 6 of the Schedule, and, upon request by CASA, to provide proof of currency of those insurance policies.

15 Termination

15.1 CASA may terminate this Deed if the Organisation fails, within 14 days after receipt of notice from CASA, to remedy any failure to perform or observe the terms and conditions of this Deed.

- 15.2 If CASA terminates this Deed CASA may recover from the Organisation, as a debt due to CASA, a proportion of the Funding which has been paid to the Organisation equal to the proportion of the Schedule Functions not completed, by reference to the time for completion of particular tasks in the development plan set out in paragraph 2 of the Schedule.

16 Compliance with Law

- 16.1 The Organisation will in carrying out its obligations under this Deed comply with the provisions of any relevant statutes, regulations, by-laws, and requirements of any Commonwealth, State, Territory or local authority.

17 Applicable Law

- 17.1 The Deed is governed by the laws for the time being in force in the Australian Capital Territory, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

18 Notice

- 18.1 A notice required to be given under this Deed must be in writing and signed by a person duly authorised by the sender, and hand delivered or sent by prepaid post or facsimile or email to the recipient at the recipient's address for notices specified in paragraph 7 of the Schedule, as varied from time to time by any notice given by the recipient to the sender.

IN WITNESS WHEREOF the parties have executed this Deed on the date first written above.

SIGNED for and on behalf of the)
Civil Aviation Safety Authority by)
John McCormick)
Director of Aviation Safety)
who, by signing, certifies that he has)
the authority to sign) _____
) (Signature)

in the presence of:)
)
)
-----) _____
) (Signature)

SIGNED for and on behalf of the)
Hang Gliding Federation of)
Australia Incorporated by)
-----)
-----)
[name and position title] who, by)
Signing certifies that he has the)
authority to sign) _____
) (Signature)

in the presence of:)
)
)
-----) _____
) (Signature)

SCHEDULE

1 Deed Period

This Deed commences on 1 July 2009 and ends on 30 June 2010, unless varied or terminated earlier.

2 Functions

(a) Description

- (i) *HGFA Operations Manual*
Assess the HGFA Operations Manual against CASA Self Administration Performance Standard – hanggliders (*Standard*) and determine the extent of conformity of the HGFA manual with the Standard. Provide CASA with a list of non conformances and a timetable for implementation to achieve conformance.
- (ii) *HGFA Industry Risk Profile – Risk Treatment Strategies*
Manage the HGFA Industry Risk Profile by implementing the risk treatment strategies nominated in the profile or develop acceptable alternate strategies. Advise CASA of the timetable for the implementation of these strategies. The HGFA Board is to regularly review the IRP. All HGFA board members and executive are to be familiar with the IRP and the roles and responsibilities for risk treatments.
- (iii) *Governance Structures*
Review and update the HGFA operations manual to put in place governance structures that will satisfy CASA that the HGFA board has the authority to implement organisational change to have HGFA conform to the Standard.
- (iv) *HGFA Board Access to Information*
Establish centralised processes that ensure the HGFA board has access to information to allow oversight of and accountability for surveillance, enforcement and safety assurance data and information.
- (v) *Accountable Manager*
Appoint an Accountable Manager as set out in the Standard.
- (vi) *Memorandum of Understanding (MoU) with RAA*
Establish a formal MoU with Recreational Aviation Australia for the management and oversight of weight shift aircraft.

(b) Implementation Plan

(i) *HGFA Operations Manual*

- (A) By 30 June 2010, provide a list of non-conformities regarding HGFA operations manual and the standard.
- (B) By 30 June 2010, provide to CASA for agreement a timetable to achieve conformity.

(ii) *HGFA Industry Risk Profile – Risk Treatment Strategies*

- (A) By 30 June 2010 advise CASA how the HGFA board and management will oversight and manage the risk profile.
- (B) By 30 June 2010, provide to CASA for agreement the HGFA risk treatment implementation plan.
- (C) By 30 June 2010, establish the agreed risk profile oversight and management process within HGFA board and management practices.

(iii) *Governance Structures*

- (A) By 30 June 2010, review the HGFA's current capability against the Standard and identify gaps regarding organisational competence and operational control arrangements.
- (B) By 30 June 2010 develop an action plan for each identified gap and submit to CASA for agreement. This is to nominate tasks, timelines and person responsible for ensuring completion of the tasks.
- (C) By 30 June 2010 provide CASA with a revised operations manual for CASA acceptance.
- (D) By 30 June 2010, implement agreed actions or processes.

(iv) *HGFA Board Access to Information*

- (A) By 30 June 2010 in conjunction with (iii) above develop an action plan for each identified gap and submit to CASA for agreement. This is to nominate tasks, timelines and person responsible for ensuring completion of the tasks.

(B) By 30 June 2010, implement agreed actions or processes.

(v) *Accountable Manager*

(A) By 30 June 2010, identify an Accountable Manager and forward this nomination to CASA for agreement.

(B) By 30 June 2010, appoint the agreed Accountable Manager.

(vi) *Memorandum of Understanding (MoU) with RAA*

(A) By 30 May 2010, submit to CASA for agreement, a proposed Memorandum of Understanding with Recreational Aviation Australia for the management and oversight of weight shift aircraft.

(B) By 30 June 2010, implement agreed actions or processes required under the Memorandum of Understanding.

(C) By 30 June 2010, review implemented activities or processes for effectiveness.

(c) Budget

\$64,975.45 (GST exclusive)

\$6,497.55 (GST)

3 Amount and Payment of Funding

(a) The amount payable to the Organisation is:

\$64,975.45 (GST exclusive)

\$6,497.55 (GST)

(b) The amount payable is to be paid in one lump sum at the commencement of this Deed.

4 Specified Personnel

Craig Worth

5 Reports

The Organisation will provide CASA with six monthly reports by 30 October 2009 and 30 April 2010.

6 Insurance Policies

- (a) Public liability insurance cover, with a limit of at least \$10 million in respect of each and every occurrence.
- (b) Professional indemnity insurance cover, with a limit of at least \$10 million in respect of each and every occurrence.
- (c) Workers' compensation insurance cover as required by law.

7 Recipient of and Address for NoticesFor CASA

Manager Future Technology and Sport Aviation

By Hand

Aviation House
16 Furzer Street
PHILLIP ACT 2606

By Post

GPO Box 2005
CANBERRA ACT 2601

By Facsimile

(02) 6217 1319

By Email

jim.coyne@casa.gov.au

For the Organisation

Rob Woodward
President

By Hand

4a/60 Keilor Place
Keilor Park VIC 3042

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4a/60 Keilor Place
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By Facsimile

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