Deed of Variation No 2

BETWEEN THE HEALTH ADMINISTRATION CORPORATION
AND
TOLL HELICOPTERS (NSW) PTY LTD

FOR

NSW HEALTH MEDICAL RETRIEVAL - HELICOPTER SERVICES IN THE SOUTHERN REGION FOR THE AMBULANCE SERVICE OF NSW

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Our reference 130/13647/80149353

Between

The Secretary of the NSW Ministry of Health CONSTITUTED AS THE Health Administration Corporation under section 9 of the *Health Administration Act* 1982 (NSW), (hereinafter referred to as **NSW Ambulance**) located at State Headquarters, Balmain Road, Rozelle NSW 2039, and using the postal address of Locked Bag 105, Rozelle NSW AUSTRALIA 2039

AND

Toll Helicopters (NSW) Pty Ltd ABN 88 123 180 441 of Level 7, 380 St Kilda Road, Melbourne, Victoria 3004 (the **Operator**)

RECITALS:

A. NSW Ambulance and the Operator entered into a contract for the provision of helicopter services in the Southern Region for the Ambulance Service of New South Wales on or about 16 December 2014.

B. The Parties wish to vary the Contract as provided for in this Deed.

C. In particular, the Parties wish to vary the Contract to replace Schedule 4 of the Contract in accordance with clause 19.14 of the Contract.

1. Definitions and Interpretation

1.1 Definitions

In this deed:

"**Contract**" means the contract executed on 16 December 2014 between the Parties for the provision of helicopter services in the Southern Region for the Ambulance Service of New South Wales (Contract No HAG 13/63);

"**Deed**" means this deed of variation; and

"**Effective Date**" means the date of Contract commencement that being 10 January, 2017, and

unless the contrary intention appears, all the capitalised terms used in this Deed have their respective meanings as defined in clause 1.1 of the Contract.

1.2 Interpretation

Clause 1.2 of the Contract applies in the interpretation of this Deed.

1.3 General

(a) If any amendment made by this Deed would be invalid apart from this clause, the amendment is not made.

(b) The Operator represents and warrants that it has the authority to enter into the Deed and further represents and warrants that no limitations or restrictions on the Operator entering into and meeting all of its obligations under the Deed and the Contract.

2. Commencement

This Deed takes effect on and from the date it is signed by the Party last to sign the Deed (the **Effective Date**).

3. Variation

(a) The Parties agree that, as at and from the Effective Date, the terms and conditions of the Contract are varied as set out in this Deed.

(b) For the purposes of clause 3 of this Deed, the terms and conditions of the Contract are amended, from the Effective Date, as follows:

(i) Schedule 4 of the Contract is deleted and replaced with the new Schedule 4 as attached to this Deed at **Attachment 1**.

4. Affirmation of Contract

(a) The Parties affirm in all other respects the terms and conditions in the Contract as varied by this Deed.

(b) The Parties acknowledge and agree that the Contract as varied by this Deed is and continues to be in full force and effect.

(c) Nothing in this Deed affects or reduces in any way any rights that NSW Ambulance may have in relation to the performance of the Contract prior to the Effective Date.

5. Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Deed:

(a) must be in writing;

(b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

(i) **NSW Ambulance**

Name: [redacted]

Address: [redacted]

Phone: [redacted]

Fax: [redacted]

For the attention of: [redacted]

(ii) **The Operator**

Name: [redacted]

Address: [redacted]

Phone:	[redacted]
Fax:	[redacted]
For the attention of:	[redacted]
With a copy to:	
Name:	[redacted]
Address:	[redacted]
Fax:	[redacted]
For the attention of:	[redacted]

(c) must be signed by the party making it (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

(d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 5(b); and

(e) is taken to be received by the addressee:

(i) (in the case of prepaid post) on the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;

(ii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the machine from which it was sent; and

(iii) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day which is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day, where "**working day**" means a day that:

(iv) is not a Saturday, Sunday or public holiday and is a day on which banks are open for business generally, in the place to where the addressee is located; and

(v) does not fall during the period commencing on the Monday before 24 December in any given year and ending on the Friday following 1 January of the following year.

6. Governing law and jurisdiction

6.1 Governing law

This Deed is governed by and must be construed according to the laws of New South Wales.

6.2 Jurisdiction

Each party irrevocably:

(a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Deed; and

(b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within inconvenient forum, if that venue falls within clause 6.2(a).

7. Miscellaneous

7.1 Entire agreement

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.

7.2 Further acts and documents

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.

7.3 Waiver

(a) 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.

(b) 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.

(c) No waiver of a breach of any 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.

7.4 Consents

A consent required under this Deed from NSW Ambulance may be given or withheld, or may be given subject to any conditions, as NSW Ambulance (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

7.5 Amendments

This Deed may only be varied by a document signed by or on behalf of each party.

7.6 Expenses

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.

7.7 Severance

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

(a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or

(b) the legality, validity or unenforceability under the law of any other jurisdiction of that or any other provision of this Deed.

7.8 No representation or reliance

(a) 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.

(b) 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.

7.9 Counterparts

This Deed may be executed 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.

Executed as a deed.

SIGNED, SEALED AND DELIVERED for and on behalf of the **HEALTH ADMINISTRATION CORPORATION ABN 45 100 538 161**, by [redacted] but not as to incur any personal liability:	)))))	in the presence of:
Signature		Signature of Witness
Date		Name of Witness [*In Block Letters*]

Executed by **Toll Helicopters (NSW) Pty Ltd** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director	Signature of company secretary/director
Full name of director	Full name of company secretary/director

Date

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