



Deed of Variation No 2

**BETWEEN THE HEALTH ADMINISTRATION
CORPORATION
AND
NORTHERN NEW SOUTH WALES HELICOPTER
RESCUE SERVICE PTY LTD**

FOR

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

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(ACW:LW)

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Our reference 80149828

Between

Director General of the Department of Health constituted as the Health Administration Corporation ABN 45 100 538 161 under section 9 of the *Health Administration Act 1982* (NSW), (hereinafter referred to as **NSW Ambulance**) located at State Headquarters, Level 2 Sydney Ambulance Centre, 27 Garden Street, Eveleigh NSW 2015, and using the postal address of PO Box 530, Alexandria NSW 1435

AND

Northern New South Wales Helicopter Rescue Service Pty Ltd ABN 44 168 479 687 of 1 Bavin Road, District Park, Broadmeadow 2292 (the **Operator**)

RECITALS:

- A. NSW Ambulance and the Operator entered into a contract for the provision of helicopter services in the Northern Region for the Ambulance Service of New South Wales on or about 16 December 2014.
- B. The Parties varied the Contract under Deed of Variation No 1 with effective date of 22 December 2014.
- C. With effect on and from 3 November 2016, the Operator changed its name from Northern NSW Helicopter Rescue Service Pty Ltd to Northern New South Wales Helicopter Rescue Service Pty Ltd.
- D. The Parties now wish to vary the Contract as provided for in this Deed.
- E. In particular, the Parties wish to vary the Contract to: allow for a "Conditional" Certificate of Readiness for Handover to be issued under the Contract; and to vary Schedule 4 to the Contract.

1. Definitions and Interpretation

1.1 Definitions

In this Deed, all the capitalised terms used in this Deed have their respective meanings as defined in clause 1.1 of the Contract, except for the following definitions:

"Contract" means the contract executed on or about 16 December 2014 between the Parties for the provision of helicopter services in the Northern Region for the Ambulance Service of New South Wales (Contract No HAC 13/63).

"Deed" means this Deed of Variation No 2.

"Deed of Variation No 1" means the first deed of variation to the Contract as described in Recitals clause B.

"Effective Date" means the date this Deed is signed by the last party to sign this Deed.

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) The following new definition is added to clause 1.1 of the Contract:

Conditional Certificate of Readiness for Handover means the certificate described in clause 4.4(b)(ii).
- (c) 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) Clauses 4.4 and 4.5 of the Contract are deleted and replaced with the following:

4.4 Certificate of Readiness for Handover

- (a) When the Operator is of the opinion that it has satisfied the requirements for Readiness for Handover at a particular nominated Base, the Operator must in writing request the NSW Ambulance Representative to issue a Certificate of Readiness for Handover for that Base.
- (b) Within 20 Business Days after receiving each request, the NSW Ambulance Representative must for each nominated Base:
 - (i) if satisfied that Readiness for Handover has been achieved for that Base, give the Operator a Certificate of Readiness for Handover at that Base stating the Date of Actual Handover for that Base; or
 - (ii) if satisfied that Readiness for Handover has been substantially achieved for that Base, give the Operator a Conditional Certificate of Readiness for Handover stating the Date of Actual Handover for that Base. A Conditional Certificate of Readiness for Handover must identify in writing any issues identified by NSW Ambulance (acting reasonably); or
 - (iii) if not satisfied that Readiness for Handover for that Base has been achieved, give the Operator a written notice so advising and providing reasons why Readiness for Handover for that Base has not been achieved.
- (c) If the NSW Ambulance Representative issues a Conditional Certificate of Readiness for Handover under clause 4.4(b)(ii), the Parties will work together in good faith to resolve any issues identified in a Conditional Certificate of Readiness for Handover,

but this does not alter the rights of the Parties under the Contract relating to those issues.

- (d) If the NSW Ambulance Representative issues a notice under clause 4.4(b)(iii), the Operator must proceed to achieve Readiness for Handover at the specified Base and thereafter when it considers it has achieved Readiness for Handover of that Base, give the NSW Ambulance Representative written notice to that effect, after which this clause 4.4 will reapply.

4.5 Effect of Certificate of Readiness for Handover

A Certificate of Readiness for Handover or Conditional Certificate of Readiness for Handover will not:

- (a) constitute approval by NSW Ambulance of the Operator's performance of its obligations under this Contract; or
 - (b) prejudice any rights or powers of NSW Ambulance.
- (ii) Schedule 4 to the Contract is deleted and replaced with the new Schedule 4 as attached to this Deed at **Attachment 1**, which contains amendments to address the following items:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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 the Parties 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]

- (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 in an 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.

Attachment 1 - Schedule 4

Schedule 4 - [REDACTED]

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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 Northern New South Wales
Helicopter Rescue Service 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