

The Trust Company (RE Services) Limited

## Governance Deed Poll

in favour of SYD Securityholders

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This Deed Poll is made on

22 November

2013

**Parties**

- 1 **The Trust Company (RE Services) Limited** (ACN 003 278 831) of Level 15, 20 Bond Street, Sydney NSW 2000 (*The Trust Company*).

In favour of the **SYD Securityholders**

**Recitals**

- A Sydney Airport is a double-stapled structure comprising a listed Australian trust (SAT1) and a listed company (SAL) (**SYD**). Investors in SYD hold a double-stapled security comprising an ordinary unit in SAT1 and an ordinary share in SAL (**SYD Stapled Security**). Investors in SYD are referred to in this deed poll as **SYD Securityholders**.
- B The RE is the responsible entity of SAT1 and a wholly-owned subsidiary of The Trust Company.
- C The Trust Company wishes to undertake, for the benefit of SYD Securityholders, to exercise certain of its rights as the sole shareholder of the RE in the manner set out in this deed poll.

**It is declared** as follows.

**1 Definitions and Interpretation****1.1 Definitions**

In this deed poll the following definitions apply unless the context otherwise requires.

**ASX** means ASX Limited (ACN 008 624 691) trading as Australian Securities Exchange.

**Board Composition Criteria** has the meaning set out in **Schedule 1**.

**Business Day** means any day upon which banks are open for business in Sydney, other than a Saturday, Sunday or public holiday in Sydney.

**Corporations Act** means the *Corporations Act* 2001(Cth).

**Eligible Nominee** means a person eligible to be nominated as an RE Director in accordance with clause 4.1.

**General Meeting** means any general meeting of SYD Securityholders.

**Independent Director** means a person meeting the definition of an independent director set out in paragraph 2 of **Schedule 1**.

**Listing Rules** means the listing rules published by the ASX from time to time.

**Nominee of The Trust Company** means a person who is a director, secretary or employee of The Trust Company or any of its related bodies corporate (as defined in the Corporations Act).

**Official List** has the same meaning as in the Listing Rules.

**RE** means The Trust Company (Sydney Airport) Limited (ACN 115 967 087).

**RE Board** means the board of the RE.

**RE Director** means a director of the RE.

**RE Shares** means all the ordinary shares in the RE.

**SAL** means Sydney Airport Limited (ACN 165 056 360).

**SAT1** means Sydney Airport Trust 1 constituted under the SAT1 Constitution.

**SAT1 Constitution** means the trust deed establishing SAT1 dated 13 July 2001 (as may be amended from time to time).

**Scheduled Director Vacancy** means a director vacancy in relation to the RE Board that arises in accordance with the scheduled director election requirements under the RE constitution or under clauses 4.2(c) and 4.2(d).

**SYD Securityholders** means the registered holders of SYD Stapled Securities.

**SYD Stapled Security** means a stapled security of SYD consisting of one ordinary unit in SAT1 and one ordinary share in SAL.

**Start Date** means the day on which the Australian Securities and Investments Commission alters the record of registration of SAT1 to name the RE as the responsible entity of SAT1.

**The Trust Company group** means The Trust Company and any related body corporate (as that term is defined in the Corporations Act) of The Trust Company.

## 1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise.

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after *includes, including, for example,* or similar expression does not limit what else might be included.
- (c) Nothing in this deed poll is to be interpreted against a party solely on the ground that the party put forward this deed poll or a relevant part of it.
- (d) The singular includes the plural, and the converse also applies.
- (e) A gender includes all genders.
- (f) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (g) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (h) A reference to a clause is a reference to a clause of this deed poll.
- (i) A reference to a party to this deed poll or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (j) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this deed poll or that other agreement or document.
- (k) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (l) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (m) A reference to *dollars* or *\$* or *A\$* is to Australian currency.
- (n) A reference to time is the time in Sydney, Australia.

- (o) A reference to *conduct* includes an omission, statement or undertaking, whether or not in writing.

## **2 Benefit of Deed Poll**

This deed poll is made for the benefit of SYD Securityholders who may enforce the terms of this deed poll against The Trust Company in respect of the covenants made and undertakings given by it.

## **3 Term of Deed Poll**

This deed poll is irrevocable and comes into full force and effect on the Start Date, and continues until terminated under clause 5.

## **4 Undertakings by The Trust Company in respect of the appointment of RE Directors**

### **4.1 Nomination process**

In connection with any Scheduled Director Vacancy in respect of the RE Board:

- (a) the RE Board may nominate a candidate to fill that vacancy if the candidate would be an Independent Director if they were appointed as an RE Director;
- (b) The Trust Company may nominate a candidate to fill that vacancy; and
- (c) nominations of candidates will also be accepted from:
  - (i) SYD Securityholders holding at least 5% of the votes that may be cast on a resolution in relation to that person's appointment as director; or
  - (ii) at least 100 SYD Securityholders who are entitled to vote at a meeting of SYD Securityholders,provided that:
  - (iii) such nominations are submitted in writing to the RE in a form prescribed by the RE no more than 90 Business Days and no less than 35 Business Days before the General Meeting to which that Scheduled Director Vacancy relates; and
  - (iv) it is apparent from the nomination form that each candidate would be an Independent Director if they were appointed as an RE Director.

### **4.2 Appointment of the RE Directors**

- (a) In respect of a General Meeting to which a Scheduled Director Vacancy relates:
  - (i) The Trust Company must use its reasonable endeavours to procure that the RE lists each Eligible Nominee to fill each applicable Scheduled Director Vacancy in the notice of meeting in connection with the applicable General Meeting. An Eligible Nominee may be nominated for more than one Scheduled Director Vacancy; and
  - (ii) SYD Securityholders will be given the opportunity to vote for the Eligible Nominees for each Scheduled Director Vacancy.
- (b) The Trust Company will exercise its right to appoint directors to the RE Board by appointing the Eligible Nominee for each Scheduled Director Vacancy who received the highest number of votes at the General Meeting unless that appointment, if made, would in The Trust Company's reasonable opinion cause the RE Board to fail to comply with the relevant Board Composition Criteria (in which case The Trust Company will appoint the

Eligible Nominee who received the highest number of votes and whose appointment would in The Trust Company's reasonable opinion not cause the Board to fail to comply with the relevant Board Composition Criteria).

- (c) If at any time:
- (i) there is a vacancy on the RE Board that remains unfilled after The Trust Company has followed the procedures set out in this clause 4.2; or
  - (ii) there are any casual vacancies on the RE Board,
- then:
- (iii) in the case where the unfilled vacancy or casual vacancy occurs at a time where there is no RE Director who is a Nominee of The Trust Company, then The Trust Company may, in its discretion appoint a person to fill that vacancy in accordance with the constitution of the RE; and
  - (iv) in any other case the RE Board may, in its discretion, appoint a person to fill that vacancy in accordance with the constitution of the RE provided that the person would be an Independent Director if they were appointed as an RE director.
- (d)
- (i) A person appointed by The Trust Company under clause 4.2(c)(iii) may hold office until the next annual General Meeting or the next annual General Meeting after the expiry of the three year period commencing on the Start Date (whichever is last to occur) and is eligible to be an Eligible Nominee at that meeting.
  - (ii) An Independent Director appointed by the RE Board under clause 4.2(c)(iv), may hold office only until the next annual General Meeting and is eligible to be an Eligible Nominee at that meeting.
- (e) The Trust Company must use its reasonable endeavours to procure that, at all times, a majority of the RE Directors qualify as Independent Directors, it being acknowledged for the avoidance of doubt that an RE Director who is a Nominee of The Trust Company does not qualify as an Independent Director and is not required to so qualify.

## 5 Termination

### 5.1 Automatic termination

This deed poll automatically terminates if:

- (a) The Trust Company ceases to hold more than 50% of the RE Shares;
- (b) SYD Securityholders pass an ordinary resolution of SYD Securityholders at a General Meeting approving the termination of this deed poll, in which case termination takes effect at close of that General Meeting or on any later date specific in the resolution;
- (c) SYD ceases to be admitted to the Official List of ASX or the SYD Stapled Securities cease to be traded and quoted on the ASX for more than 20 consecutive Business Days; or
- (d) the RE ceases for any reason to be the responsible entity of SAT1.

### 5.2 Effect of termination

Following termination under clause 5.1, without prejudice to any other rights, powers or remedies available to The Trust Company or SYD Securityholders, the obligations of The Trust Company under this deed poll will immediately cease.

## 6 Notices

Any notice, demand or other communication (a **Notice**) to The Trust Company in respect of this deed poll:

(a) must be in legible writing and in English addressed as shown below:

Address: Level 15, 20 Bond Street  
Sydney NSW 2000

Attention: Company Secretary

Email: [DLom@thetrustcompany.com.au](mailto:DLom@thetrustcompany.com.au) and  
[JOconnell@thetrustcompany.com.au](mailto:JOconnell@thetrustcompany.com.au)

(b) is regarded as being given by the sender and received by the addressee:

- (i) if by delivery in person, when delivered to the addressee;
- (ii) if by post, 3 Business Days from and including the date of postage or 10 Business Days if addressed to an address outside Australia; or
- (iii) in the case of email, the earlier of:
  - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
  - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
  - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day; and
- (iv) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

In this clause 6 a reference to an addressee includes a reference to an addressee's officers, agents or employees.

## 7 General

### 7.1 Variation

This deed poll may only be amended by The Trust Company to the extent that:

- (a) such amendments are approved by an ordinary resolution of SYD Securityholders at a General Meeting; or
- (b) the RE Board reasonably believes that such amendments are in the best interests of SYD Securityholders as a whole,

provided that no amendment shall be made unless:

- (c) reasonable particulars of the proposed amendments are first provided to The Trust Company within a reasonable period before:

- (i) the despatch of the notice of meeting convening the General Meeting at which the amendments are to be approved by SYD Securityholders under paragraph (a); or
- (ii) the proposed effective date for the operation of the amendments in the case of an amendment to which paragraph (b) applies,  
(as the case may be); and
- (d) The Trust Company confirms in writing to the RE that it approves of the proposed amendments (acting reasonably in the consideration of such amendments).

## **7.2 Cumulative rights**

The rights, powers and remedies of The Trust Company and each SYD Securityholder under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

## **7.3 Governing law and jurisdiction**

This deed poll is governed by the laws of New South Wales.

## **7.4 Compliance with law**

Nothing in this deed requires any party to take any action or refrain from taking any action that is contrary to any applicable law, Listing Rule or the constitution of any of The Trust Company, the RE, SAT1 or SAL.

## **7.5 No Waiver**

If a SYD Securityholder does not exercise a right arising from a breach of this deed poll at a given time, it may, unless it has waived that right in writing, exercise the right at a later point in time.



## Schedule 1

### Board Composition Criteria

In evaluating the Board Composition Criteria, The Trust Company will take into account all members of the RE Board (not just RE Directors appointed in accordance with this deed).

#### 1 RE Board

- At least two directors must be resident in Australia.
- At least 51% of the directors must be Independent Directors.
- No RE Director may serve concurrently as a director of the RE and SAL.
- No director may be appointed to the RE Board if their appointment would be inconsistent with, or would otherwise result in the RE no longer complying with, the requirements of its Australian financial services licence.
- All RE Directors must promptly provide any supporting documentation to the RE relating to their appointment as a director, including such information as is required to satisfy the 'good fame and character' requirement set out in Listing Rule 1.1.

#### 2 Independent Directors

An *Independent Director* is a director of the RE who is not a member of management of SYD (ie, a non-executive director), who qualifies as an external director in accordance with Chapter 5C of the Corporations Act, and who meets the following criteria:

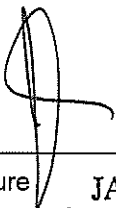
The person:

- (a) must not be a director, officer or employee of any entity in The Trust Company group;
- (b) must not be a substantial securityholder of The Trust Company or SYD or a body holding more than 5% of the voting securities of The Trust Company or SYD;
- (c) must not be an officer of, or otherwise associated directly or indirectly with, a substantial shareholder of the RE, or a person holding more than 5% of the voting securities of The Trust Company or SYD;
- (d) must not, within the last two years, have been:
  - (i) employed in an executive capacity by the RE or an entity in The Trust Company group;
  - (ii) employed in an executive capacity by SYD or an entity in the SYD group; or
  - (iii) a director of any such entity after ceasing to hold any such employment;
- (e) must not be a principal or employee of a material professional adviser or consultant to SYD;
- (f) must not be a material supplier or customer of SYD or The Trust Company, or an officer of or otherwise associated directly or indirectly with, a material supplier or customer;
- (g) must not, other than as a director of the RE, or as a director of another The Trust Company group-related responsible entity or special purpose vehicle, have any contractual relationship with SYD or The Trust Company group;
- (h) must not be a director of more than two The Trust Company group-related responsible entities or special purpose vehicles; and


- (i) must have no other interest or relationship that could interfere with the director's ability to act in the best interests of the RE and the members of SAT1 and be independent of management of The Trust Company group.

**Executed and delivered as a Deed Poll in Sydney**


**Signed Sealed and Delivered for The Trust Company (RE Services) Limited** by its attorneys under power of attorney in the presence of:

  
\_\_\_\_\_  
Witness Signature **JAGLAL**


\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Witness Signature **JAGLAL**

\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Attorney Signature **RUPERT SMOKER**

\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Attorney Signature **Senior Client Service Manager  
Responsible Entity Services**

**DAVID LOM**  
\_\_\_\_\_  
Print Name