

COMPANY ANNOUNCEMENT**5 October 2018****PROPOSED CAPITAL RETURN AND DELISTING****Key Highlights**

- Phileo shareholders to vote on a proposed capital return and subsequent delisting of Phileo. Shareholder meetings scheduled to be held in December 2018.
- Capital return to be implemented by a selective reduction of capital whereby shares held by participating shareholders will be cancelled for \$12.66 cash per share.
- A material portion of the \$12.66 cash payable per cancelled share may be able to be delivered as a dividend, a significant portion of which is expected to be franked (subject to receipt of ATO class ruling).
- Subject to meeting certain tax law conditions, eligible Australian tax resident shareholders such as an individual or a complying superannuation fund may be entitled to a refundable tax offset with respect to the franking credit attached to the franked component of the dividend (ATO class ruling being sought).
- Mr Rudy Koh (the major shareholder and Managing Director of Phileo), together with certain other shareholders who have expressed an intention to 'opt-out', will not participate in the capital return – they will remain shareholders in what would be an unlisted, privatised entity controlled by Mr Koh.
- All other shareholders will have an equal opportunity to elect to 'opt-out' and thereby retain their Phileo shares.
- Independent Directors unanimously recommend that Phileo shareholders vote in favour of the capital return and delisting, in the absence of a superior proposal and subject to an independent expert's conclusion.
- Strong level of participation in capital return by Independent Directors in respect of their own Phileo shareholdings.

Overview

Phileo Australia Limited (**Phileo**) today announces that it has entered into an implementation deed (**Implementation Deed**) with Mr Rudy Koh, the major shareholder and Managing Director of Phileo, for a proposed transaction which comprises a selective capital reduction and subsequent delisting of Phileo from ASX (**Proposed Transaction**).

The Proposed Transaction requires the approval of Phileo shareholders which will be sought at three consecutive meetings to be held on the same day in December 2018. Notices of those meetings, an explanatory statement and other supporting materials in respect of the Proposed Transaction are expected to be sent to Phileo shareholders in mid-November 2018.

The Proposed Transaction involves:

- Phileo undertaking a selective capital reduction under which a maximum of 10.50 million Phileo shares will be cancelled in exchange for \$12.66 cash per share; and
- the removal of Phileo from the official list of ASX.

Mr Koh, as the proponent of the Proposed Transaction, will not participate in the selective capital reduction. He will therefore retain all of the 10,348,814 Phileo shares he currently owns or controls (representing 35.78% of Phileo's currently issued share capital). If the Proposed Transaction is approved and implemented and if the maximum of 10.50 million shares potentially available for cancellation are cancelled, Mr Koh's proportionate percentage shareholding would increase to 56.16% of Phileo's reduced issued share capital.

All other Phileo shareholders will be given the choice of:

- participating in the selective capital reduction and therefore exiting their investment in Phileo for a consideration of \$12.66 cash for each cancelled share;
- electing to opt-out of the selective capital reduction and therefore retaining their investment in Phileo and remaining a shareholder alongside Mr Koh in an unlisted, privatised Phileo that would be controlled by Mr Koh; or
- for eligible Phileo shareholders, as described below, electing to opt-out of the selective capital reduction for part of their shareholding (and to therefore retain that part of their shareholding) and to participate in the selective capital reduction for the balance of their shareholding.

Independent Directors' recommendation

The Independent Directors (being Mr Graham Homes, Mr Alfred Sung, Mr Andrew Hang and Mr Michael Loke) have carefully considered the potential advantages and disadvantages of the Proposed Transaction, with the benefit of external valuation, taxation and legal advice. The Independent Directors unanimously recommend that shareholders vote in favour of the Proposed Transaction, subject to:

- no superior proposal emerging prior to the shareholder meetings; and
- an independent expert concluding that the Proposed Transaction is fair and reasonable to Phileo shareholders as a whole (or at least reasonable).¹

Subject to those same qualifications, each Independent Director intends to vote all Phileo shares he owns or controls in favour of the Proposed Transaction. The reasons for the Independent Directors' recommendation and voting intention are set out later in this announcement.

¹ The Independent Directors have engaged Ernst & Young Transaction Advisory Services to prepare the independent expert's report, a copy of which will accompany the explanatory statement to be sent to shareholders ahead of the shareholder meetings.

Commenting on the Proposed Transaction, Phileo's Chairman Graham Homes said:

"On behalf of the Independent Directors, we are pleased to submit what we consider is an attractive liquidity opportunity for shareholders, in the context of Phileo's 31 year history as an ASX listed entity, its long-standing highly concentrated ownership structure, Phileo's current pipeline of projects and its future prospects. Phileo's future is bright, with a valuable and strong property portfolio, but also uncertain due to company specific and broader industry risks. The Proposed Transaction has been structured in a way that gives shareholders the opportunity to exit their Phileo investment at an attractive price or to retain it, having regard to their own investment horizon, risk profile and tax circumstances. This flexibility and equality of opportunity are key features of the Proposed Transaction."

Background to the Proposed Transaction

Following the receipt of proceeds from the sale of various properties (most notably Wyndham Vale), there has been a significant increase in Phileo's cash reserves since 31 December 2017. Shareholders have expressed an interest in these sale proceeds being distributed to them. As previously announced, Phileo has been exploring opportunities to return capital to shareholders in the most effective manner.

In December 2017, the Board established an Independent Committee to oversee and evaluate capital return opportunities. The Independent Committee comprises three members:

- Mr Michael Schoenfeld (independent consultant to the Board and Chairman of the Independent Committee);
- Mr Graham Homes (Chairman of Phileo and independent non-executive director); and
- Mr Tejas Gandhi (Group Financial Controller of Phileo).

On 12 July 2018, Phileo received a confidential, non-binding and indicative proposal from Mr Koh. The Independent Committee evaluated that proposal with the benefit of external valuation, taxation and legal advice. Following negotiations between the Independent Committee and Mr Koh, a revised and improved proposal was received from Mr Koh on 11 September 2018. This revised and improved proposal, which included an increase in the consideration to be offered to shareholders under the selective capital reduction and certain structural changes, was subsequently recommended by the Independent Committee to the Phileo Board, excluding Mr Koh (**Independent Directors**).

The above process has now culminated in Phileo entering into the Implementation Deed with Mr Koh to formalise the terms and conditions of the Proposed Transaction and to provide a framework for submitting it to shareholders for their approval.

Key features of the selective capital reduction

Consideration

Phileo is proposing a selective capital reduction under which a maximum of 10.50 million shares would be cancelled in exchange for \$12.66 cash per cancelled share (**Consideration**).

A material component of the Consideration may be able to be delivered by way of a dividend, a significant portion of which is expected to be franked (subject to receipt of ATO class ruling). In those circumstances, eligible Australian resident shareholders (such as individuals and complying superannuation funds) participating in the selective capital reduction may be in a position to access a refundable tax offset. The ability to access this refundable tax offset will depend on each shareholder's individual tax circumstances and profile.

Phileo has engaged Deloitte Private Pty Ltd (**Deloitte**) to apply to the ATO for a class ruling confirming (among other matters) that part of the Consideration can be lawfully characterised as a frankable dividend for income tax purposes and that the attached franking credits represent a potential tax offset to those eligible shareholders, and where relevant, a potential refundable tax offset. The class ruling will also address the relevant capital gains tax consequences arising from the Consideration received for the cancellation of Phileo shares. It is not expected that the class ruling will be received prior to the shareholder meetings scheduled for December 2018 to vote on the Proposed Transaction. Deloitte is also preparing a general outline of the taxation implications of the Proposed Transaction for Australian resident shareholders for inclusion in the explanatory statement to be sent to shareholders.

Participation

As noted earlier, Mr Koh, as the proponent of the Proposed Transaction, will not participate in the selective capital reduction. Accordingly, if the selective capital reduction is approved and implemented, he will continue to control the 10,348,814 shares that he currently does. However, assuming all 10.50 million shares potentially available for cancellation are cancelled, Mr Koh's proportionate percentage shareholding would increase from 35.78% to 56.16% of Phileo's reduced issued share capital.

All other Phileo shareholders will have the choice of:

- participating in the selective capital reduction and exiting their entire investment in Phileo, for \$12.66 cash for each share cancelled (**Exiting Shareholders**);
- electing to opt-out of the selective capital reduction entirely and remaining a shareholder alongside Mr Koh in an unlisted, privatised Phileo that would be controlled by Mr Koh (**Continuing Shareholders**) – this alternative is open to all Phileo shareholders regardless of the size of their current shareholding; or
- depending on the number of shares they currently hold, electing to opt-out of the selective capital reduction for a portion of their shareholding only and therefore continuing to remain a Phileo shareholder alongside Mr Koh in an unlisted, privatised Phileo that would be controlled by Mr Koh, but holding fewer shares than they currently do (**Partially Exiting Shareholders**).

A shareholder may only elect to partially opt-out of the Proposed Transaction if they would continue to hold at least 10,000 shares after the selective capital reduction is implemented. If a shareholder would hold less than 10,000 shares after implementation, they may only elect to opt-out for their entire shareholding.

Unless a shareholder positively elects to opt-out of the selective capital reduction, in part or in full, they will be treated as participating in respect of their entire shareholding, if they remain a shareholder on the record date to determine entitlements to participate in the selective capital reduction.

Opt-out process

Any Phileo shareholder wanting to opt-out of the selective capital reduction (in full or in part) will be required to complete and return an election form before the date of the shareholder meetings to vote on the Proposed Transaction. The election form will be included as part of the notices of meetings and explanatory materials to be sent to shareholders ahead of the meetings to vote on the Proposed Transaction.

Phileo shareholders who elect to opt-out of the selective capital reduction in full will retain the same number of shares after the Proposed Transaction is implemented, however, their proportionate percentage shareholding will increase as a result of the cancellation of shares attributable to the Exiting Shareholders and the Partially Exiting Shareholders.

Maximum number of shares to be cancelled

The maximum number of shares available for cancellation under the Proposed Transaction has been set at 10.50 million to ensure Phileo will retain sufficient internal financial capacity to continue to operate its business and pay its creditors, after paying the Consideration to Exiting Shareholders and Partially Exiting Shareholders. The maximum cost to Phileo if all 10.50 million shares are cancelled is approximately \$132.90 million. This will be funded primarily from Phileo's existing cash reserves (including the proceeds received to date from the sale of the Wyndham Vale site) and, if required, a further debt facility of \$27.20 million from National Australia Bank.

A total cost of \$132.90 million to implement the selective capital reduction (excluding transaction costs) represents an outflow that both Mr Koh, as the proponent of the Proposed Transaction, and the Independent Directors respectively believe is prudent to ensure that Phileo's ability to continue to pay its creditors is not materially prejudiced (this being a statutory requirement for any reduction of capital).

Shareholder intentions

As the maximum number of shares available for cancellation has been set at 10.50 million, it was necessary for the Independent Directors to determine with sufficient certainty prior to entering into the Implementation Deed that there would be enough shares available for cancellation among Phileo shareholders (excluding Mr Koh). In particular, with a maximum of 10.50 million shares available for cancellation, and with Phileo having a total of 28.93 million shares on issue (of which Mr Koh owns or controls 10,348,814 shares), opt-out elections were required from shareholders holding at least 8.08 million shares (excluding those owned or controlled by Mr Koh). This is the number of opt-outs required to ensure all other Phileo shareholders would have the opportunity to participate in the selective capital reduction for their entire shareholding.

To that end, prior to entering into the Implementation Deed, the Chair of the Independent Committee confidentially canvassed shareholders with a holding above 1.0 million shares to assess their reaction to the Proposed Transaction generally (which at that point was still a preliminary, non-binding indicative proposal), and to ascertain whether they would be minded to participate in the selective capital reduction or to opt out (in full or in part).

As a result of this confidential pre-announcement canvassing process, three shareholders holding 8.25 million shares in aggregate have expressed a current intention to opt-out of the selective capital reduction and to be a Continuing Shareholder or a Partially Exiting Shareholder. Other shareholders who were confidentially canvassed expressed a current intention to participate in full and to be an Exiting Shareholder. For further details of these current intentions from major shareholders, please refer to **Annexure A** to this announcement.

Delisting

The Independent Directors have formed the view that, if the selective capital reduction is approved and implemented, a continued listing on ASX would have limited benefits for Phileo and the Continuing Shareholders, having regard to the ongoing costs and compliance burden associated with remaining as a listed entity. These costs are substantial and are impacting on shareholder value, with limited benefit to shareholders, particularly when Phileo is such a closely-held company. One of the advantages of being a listed company is the ability to access debt and equity capital markets. However, the Independent Directors note that Phileo has not raised equity capital on ASX or accessed public debt markets since it was listed on ASX 31 years ago.

It is therefore proposed that, subject to the necessary shareholder approval being obtained, Phileo will be delisted from ASX following implementation of the selective capital reduction.

ASX has provided in-principle confirmation that it will support Phileo's delisting, subject to Phileo shareholders approving the delisting at the shareholder meeting.

Reasons for Independent Directors' recommendation

As noted above, subject to no superior proposal emerging prior to the shareholder meetings and to the conclusion of the independent expert, the Independent Directors unanimously recommend that shareholders vote in favour of the resolutions to approve the Proposed Transaction. The reasons for this recommendation are as follows:

- The Proposed Transaction represents an opportunity for Exiting Shareholders to realise the value of their Phileo shares at an attractive price, noting that Phileo's shares have been characterised by deep illiquidity and low daily trading volumes for many years.
- To the extent that part of the Consideration is able to be delivered to Exiting Shareholders by way of a franked dividend, eligible Australian resident shareholders may have access to a tax offset (noting that this will depend on each individual Exiting Shareholders' tax circumstances and profile). The tax offset is potentially a refundable tax offset where the Exiting Shareholder is, for example, an Australian resident individual or Australian resident complying superannuation fund, and certain tax law conditions are satisfied.
- It is unlikely that a superior proposal (or indeed an alternative proposal) will emerge.
- Alternative proposals to return capital to shareholders, such as an equal return of capital or a declaration of a special dividend, have been assessed as either inferior or not feasible.
- The Proposed Transaction is structurally fair, as it gives all shareholders, irrespective of the size of their shareholding, an equal opportunity to retain their Phileo shares if they wish to maintain an investment in Phileo alongside Mr Koh as the proponent of the Proposed Transaction.

Advantages and disadvantages of Proposed Transaction

The key advantages and disadvantages of the Proposed Transaction will differ as between Exiting Shareholders and Continuing Shareholders. Set out below are some key advantages and disadvantages that shareholders across both groups should consider.²

For **Exiting Shareholders**, the **key advantages** of the Proposed Transaction include the following:

- The consideration of \$12.66 per cancelled share represents an opportunity for Exiting Shareholders to realise attractive value for their entire parcel of Phileo shares.
- This liquidity opportunity is unlikely to be available in the absence of the Proposed Transaction. Trading in Phileo shares is likely to remain illiquid, meaning that a full exit via an on-market sale is not viable, noting also that any sale of a sizeable portion of shares on ASX would likely result in a substantial reduction in Phileo's share price. In addition, a superior proposal from a third party is considered unlikely due to Mr Koh's position as the 35.78% major shareholder. Therefore, the Proposed Transaction enables a significant portion of the register to exit their Phileo investment in full, at a certain and attractive price.
- To the extent that any part of the Consideration is able to be delivered by way of a franked dividend, eligible Australian resident Exiting Shareholders may have access to a tax offset (noting that this will depend on each individual Exiting Shareholder's tax circumstances and profile). A class ruling from the ATO is being sought with respect to this matter along with other relevant tax considerations such as the capital gains tax outcomes arising from the selective capital reduction.
- Exiting Shareholders will avoid ongoing exposure to the significant risks associated with Phileo's business including exposure to:
 - settlement risks from the staggered settlement of the sale of Wyndham Vale (i.e. the default risk associated with collection of the Country Garden receivables);
 - commercial risks associated with the development of the Box Hill site which may arise as a result of issues with the Environmental Protection Agency, as well as planning and other heritage listing issues; and
 - commercial risks associated with reaching settlement of the claim for Public Acquisition Overlay for the Outer Metropolitan Ring Road,(collectively, the **Phileo Business Risks**).
- Exiting Shareholders will be able to dispose of their Phileo shares without incurring brokerage costs.
- Exiting Shareholders will avoid the current risk that Phileo could, in the future (and in the absence of the Proposed Transaction), be de-listed from ASX due to a lack of shareholder spread and liquidity.

² Partially Exiting Shareholders in particular should consider the advantages and disadvantages for both groups, as they would be both an Exiting Shareholder and a Continuing Shareholder for portions of their current shareholding.

For **Exiting Shareholders**, the **potential disadvantages** of the Proposed Transaction include the following:

As their shares will be cancelled, they will cease to have any rights as a member of Phileo, including losing the right to participate in any:

- potential valuation upside associated with a continued holding of Phileo shares (including realising the future potential benefit of the development of the Box Hill site); and
- future dividends or capital returns.

For **Continuing Shareholders**, the **key advantages** of the Proposed Transaction include the following:

- Continuing Shareholders will retain the ability to participate in any potential valuation upside associated with a continued holding of Phileo shares (including realising the future potential benefit of the development of the Box Hill site).
- Phileo will no longer be subject to the regulatory obligations and related ongoing costs associated with being listed on ASX.

For **Continuing Shareholders**, the **potential disadvantages** of the Proposed Transaction include the following:

- Continuing Shareholders will remain exposed to the Phileo Business Risks.
- Continuing Shareholders will experience a further reduction in the liquidity of the Phileo shares they retain, as there will be no public market for those shares once Phileo is delisted.
- After delisting, Phileo's ability to fund future capital needs through equity will be much more limited, as Phileo will no longer be able to raise funds from ASX. This may lead to greater reliance on funding from Continuing Shareholders and/or debt funding, depending on Phileo's future capital needs.
- Continuing Shareholders will not be able to access their proportionate share of the franking credits Phileo has accumulated to date, as these are intended to be distributed in full to Exiting Shareholders and Partially Exiting Shareholders.
- Continuing Shareholders will be shareholders in an unlisted and privatised entity which will be controlled by Mr Koh and which will not be subject to:
 - the minority shareholder and governance protections which are afforded to ASX-listed entities; or
 - ASX's continuous disclosure obligations, enhanced periodic disclosure and other information rights with which publicly listed entities must comply.

A more detailed analysis of the key advantages and disadvantages for Exiting Shareholders and Continuing Shareholders will be included in the explanatory statement to be sent to shareholders prior to the meetings to vote on the Proposed Transaction.

Independent Directors' intentions

The Independent Directors collectively hold or otherwise control 7,891,661 Phileo shares, representing approximately 29% of the total shares currently on issue.

Each Independent Director, except for Mr Michael Loke, intends to participate in the selective capital reduction in respect of their entire shareholding and thereby cease to be a Phileo shareholder, if the selective capital reduction is approved and implemented. Mr Michael Loke intends to deliver a partial opt-out election in respect of 2,750,000 shares out of the total of 3,345,000 shares in which he has a relevant interest, meaning that he will continue to hold 2,750,000 shares if the selective capital reduction is approved and implemented.

The Independent Directors' strong level of intended participation in the selective capital reduction demonstrates that they have formed the view that the Proposed Transaction is compelling overall and, in particular, the opportunity to exit their Phileo investment at \$12.66 cash per share is attractive to each of them in their capacity as a shareholder.

Shareholder approval

The Proposed Transaction will require the approval of Phileo shareholders at three shareholder meetings, as outlined below. Mr Koh undertakes to vote all shares he owns or controls in favour of each resolution that he is eligible to vote on.

First meeting

The first meeting is a meeting of all Phileo shareholders who will be asked to vote on a special resolution to approve the selective capital reduction. At this meeting, Mr Koh and the other Continuing Shareholders (excluding any Partially Exiting Shareholders) will be eligible to vote their shares in *favour* of or *against* the special resolution.

The Exiting Shareholders, the Partially Exiting Shareholders and any associates of Exiting and Partially Existing Shareholders present and voting may only vote (if they do vote) *against*, but not in *favour* of the special resolution at this first meeting.

Second meeting

The second meeting is a meeting of the Exiting Shareholders and the Partially Exiting Shareholders only, who will be asked to vote on a special resolution to approve the selective capital reduction.³

Mr Koh and any other Continuing Shareholder is not eligible to vote at this second meeting.

Third meeting

Subject to the special resolutions at the first two meetings being passed by the requisite majorities, all Phileo shareholders (including Mr Koh and any other Continuing Shareholder) would be asked to vote on the delisting at a third meeting. This resolution must be passed by ordinary resolution.

The resolution for the delisting of Phileo will be inter-dependent on the two resolutions for the selective capital reduction. In other words, if the two selective capital reduction resolutions are not approved by the requisite majorities, the resolution for the delisting of Phileo will not be put to Phileo shareholders for a vote.

³ The Partially Exiting Shareholders may only vote on this resolution in respect of the proportion of their shares that would be cancelled under the selective capital reduction.

The selective capital reduction however is not conditional on the delisting being approved by shareholders.

Conditions

The key conditions for the Proposed Transaction are as follows:

- the independent expert concluding that the Proposed Transaction is fair and reasonable to Phileo shareholders as a whole (or at least reasonable) and not changing this conclusion prior to the shareholder meetings;
- the Independent Directors continuing to unanimously recommend that shareholders vote in favour of the resolutions on which they are entitled to vote;
- a maximum of 10.50 million shares (representing approximately 36.29% of Phileo's issued share capital) being cancelled and opt-out elections being received from shareholders holding at least 8.08 million Phileo shares, and those elections remaining in place on the record date to determine entitlements to participate in the selective capital reduction;
- shareholders entitled to vote on the resolutions approving the resolutions for the selective capital reduction and delisting by the requisite majorities at the relevant meetings; and
- FIRB approval being received by any Continuing Shareholder who requires such approval.⁴

The full terms and conditions of the Proposed Transaction are set out in the Implementation Deed attached as **Annexure B** to this announcement.

The Implementation Deed also contains terms usual for a transaction of this nature, including customary exclusivity arrangements in favour of Mr Koh such as "no shop", "no talk", "no due diligence" and a right for Mr Koh to be notified of and to match any competing proposal.

Timetable and next steps

Phileo shareholders are not required to take any action at this time.

It is expected that the notices of meetings and an explanatory statement for the Proposed Transaction will be dispatched by Phileo to shareholders in mid-November 2018, with the shareholder meetings to consider and vote on the Proposed Transaction being held in mid-December.

If shareholders approve the Proposed Transaction, the selective capital reduction and the delisting of Phileo are expected to be implemented in January 2019.

⁴ FIRB approval may be required because although the number of shares held by a Continuing Shareholder will remain the same if the selective capital reduction is implemented, that Continuing Shareholder's proportionate percentage shareholding in Phileo would increase due to the number of shares cancelled. Phileo has identified that the three Continuing Shareholders who have already provided a statement of their intention to opt-out of the selective capital reduction will require FIRB approval. Those three Continuing Shareholders have each lodged their FIRB approval application.

Advisers

Phileo, its Independent Committee and the Independent Directors are being advised on the Proposed Transaction by Shine Wing Australia Corporate Finance Pty Ltd, Deloitte and MinterEllison.

Mr Koh as the proponent of the Proposed Transaction is being advised by Pitcher Partners Corporate Finance Pty Ltd and Arnold Bloch Leibler.

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Annexure A - Shareholder intention statements

As a result of a confidential shareholder canvassing process conducted by the Chairman of the Independent Committee, Phileo was provided with statements of current intention from the following major shareholders in respect of their participation in the selective capital reduction:

Shareholder	Number of shares held	Percentage of Phileo shares held	Current Intention
Puico Enterprises Corporation* *an entity controlled by Mr Michael Loke , a non-executive director of Phileo ⁵	2,750,000	9.51%	To opt out and remain a Continuing Shareholder Note: FIRB approval application lodged for increase in proportionate shareholding
Soeville Holdings Limited	2,750,000	9.51%	To opt out and remain a Continuing Shareholder Note: FIRB approval application lodged for increase in proportionate shareholding
Belandas Group Limited	2,750,000	9.51%	To opt out and remain a Continuing Shareholder Note: FIRB approval application lodged for increase in proportionate shareholding
Beelye Pty Ltd (as trustee for B L Superannuation fund)	1,962,196	6.78%	To participate in full and have all shares cancelled in exchange for the Consideration as an Exiting Shareholder
ACEQ Pty Ltd (as trustee for Alfred Sung's superannuation fund)* Mr Alfred Sung is an executive director of Phileo	1,896,849	6.56%	To participate in full and have all shares cancelled in exchange for the Consideration as an Exiting Shareholder
Radiance Group Trading Ltd	1,470,824	5.09%	To participate in full and have all shares cancelled in exchange for the Consideration as an Exiting Shareholder

All of the shareholders named above have provided their written consent to being named in this announcement.

⁵ Mr Loke also separately holds an additional 595,000 Phileo shares. Mr Loke's current intention is that these additional shares will participate in the selective capital reduction and be cancelled in exchange for the Consideration.

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Further, each shareholder named above has stated that their current intention is to vote in favour of all resolutions required to give effect to the Proposed Transaction that they are eligible to vote on.

Finally, each shareholder named above has also reserved the right to change their stated current intention in either of the following circumstances:

- by written notice to the Independent Directors within 10 business days after dispatch of the shareholder documentation for the Proposed Transaction; or
- if a superior proposal is publicly announced before the shareholder meetings to vote on the Proposed Transaction.

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Annexure B – Implementation Deed

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Implementation Deed

Phileo Australia Limited
ACN 007 608 755

Mr Rudy Eng Wah Koh

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THIS DEED is made on

5 October

2018

PARTIES

PHILEO AUSTRALIA LIMITED

ACN 007 608 755
of Level 14, 303 Collins Street
Melbourne VIC 3000
("Phileo")

and

MR RUDY ENG WAH KOH

of 17 Monomeath Avenue
Canterbury VIC 3126
("Mr Koh")

BACKGROUND

- A Phileo is a public company listed on the official list of the ASX.
- B Mr Koh is the managing director and a major shareholder of Phileo. Through the Koh Entities Mr Koh currently holds 35.78% of the Shares.
- C Mr Koh is the proponent of the Proposal. The Independent Directors have resolved that it is in the best interests of both Phileo and the Shareholders to propose and implement the Proposal in accordance with the terms and conditions of this Deed.
- D Mr Koh agrees to assist Phileo in implementing the Proposal in accordance with the terms and conditions of this Deed.

AGREED TERMS

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the context requires otherwise:

"Adviser" means, in relation to an entity, a person who in the ordinary course of its business provides services as a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant and who has been engaged in that capacity in connection with the transactions contemplated by the Proposal or this Deed.

"Affiliate" means, in relation to any entity, any other entity that:

- (a) is a related body corporate (as that term is defined in section 9 of the Corporations Act) of the first mentioned entity; or
- (b) Controls, is Controlled by, or is under common Control with the first mentioned entity.

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“Approved Purpose” means the purpose of proposing and implementing the Proposal.

“ASIC” means the Australian Securities and Investments Commission.

“Associate” has the meaning given to that term by section 9 of the Corporations Act.

“ASX” means ASX Limited (ACN 008 624 691) or, as the context requires, the financial market known as the Australian Securities Exchange operated by it.

“Bank” means a corporation authorised by law to carry on the general business of banking in Australia.

“Board” means the board of directors of Phileo from time to time, excluding Mr Koh and any person who is an Associate of Mr Koh.

“Business Day” means a day on which Banks are open for general banking business in Melbourne, Australia, excluding Saturdays, Sundays and public holidays.

“Cancellation Date” means the date on which the Cancelled Shares are cancelled and the Cancellation Price is to be paid, as contemplated by clause 3.1(m)(iii).

“Cancellation Price” means \$12.66 per Cancelled Share.

“Cancelled Share” means each Share to be cancelled as part of the Selective Capital Reduction.

“Claim” means any claim, notice, demand, action, proceeding, litigation, investigation or judgment, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

“Commencement Date” means the date of this Deed.

“Competing Proposal” means any expression of interest, proposal, offer, transaction, agreement, arrangement or understanding (other than any transaction that may be made and implemented in accordance with this Deed) by or with any person pursuant to which a third party (either alone or together with any Associate) may, if entered into or completed substantially in accordance with its terms:

- (a) directly or indirectly acquire an interest (including an economic interest by way of an equity swap or any similar transaction or arrangement) in, or a Relevant Interest in, or become the holder of, 20% or more of the Shares or shares in any Phileo Group Member;
- (b) directly or indirectly acquire, obtain a right to acquire or otherwise obtain an economic interest in, all or a substantial part of the assets or business of Phileo or any other Phileo Group Member;
- (c) acquire Control of Phileo or any other Phileo Group Member;
- (d) enter into any agreement, arrangement or understanding requiring Phileo or any Independent Director to change, withdraw or modify that Independent Director's recommendation in favour of the Proposal; or
- (e) otherwise directly or indirectly acquire, merge or amalgamate with Phileo or any other Phileo Group Member,

whether by way of takeover offer, scheme of arrangement, shareholder-approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets, partnership, joint venture, reverse takeover, dual-listed company structure,

recapitalisation, establishment of a new holding company for the Phileo Group or other synthetic merger or any other transaction, arrangement or understanding whatsoever.

“**Conditions**” means the conditions set out in clause 2.1, each being a “**Condition**”.

“**Confidential Information**” means all information, regardless of its form, relating to the Disclosing Party, its Affiliates or their businesses or affairs, other than any part of the information that is or becomes lawfully part of the public domain or that the Recipient can prove by written records was:

- (a) developed or created by the Recipient prior to the Recipient receiving the information from the Disclosing Party and independently of the Disclosing Party; or
- (b) received from a third party legally entitled to possess the information and provide it to the Recipient.

“**Control**” has the meaning given to that term by section 50AA of the Corporations Act.

“**Controller**” means, in relation to a person's property:

- (a) a receiver or receiver and manager of that property; or
- (b) anyone else who (whether or not as agent for the person) is in possession, or has control of that property to enforce an Encumbrance.

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

“**Deed**” means this deed as amended or varied from time to time.

“**Delisting**” means removing Phileo from the official list of ASX following the cancellation of the Cancelled Shares and “**Delisted**” has the corresponding meaning.

“**Disclosing Party**” means a party that has disclosed information to another party or to whom information relates.

“**Encumbrance**” means any mortgage, lien, hypothecation, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance.

“**End Date**” means 30 June 2019 or such other date as agreed by the parties.

“**Exclusivity Period**” means the period commencing on the Commencement Date and ending on the earlier of:

- (a) the date Phileo is Delisted;
- (b) the End Date; and
- (c) the date this Deed is terminated in accordance with clause 2.5(b) or clause 7.

“**FATA Act**” means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

“**Foreign Person**” has the meaning given to that term in the FATA Act.

“**Government Agency**” means:

- (a) a government or government department;
- (b) a governmental, semi-governmental, regulatory or judicial entity or authority; or

- (c) a person (whether autonomous or not) who is charged with the administration of a law.

“**GST**” has the meaning given to that term in the GST Act.

“**GST Act**” means the Act known as A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“**Implementation Date**” means the date that the Selective Capital Reduction is implemented, in accordance with the Appendix 7A to the Listing Rules, or such other timetable as approved by ASX.

“**Independent Directors**” means each of the Phileo directors other than Mr Koh, being, as at the Commencement Date:

- (a) Mr Albert Graham Homes;
- (b) Mr Alfred Hing Pui Sung;
- (c) Mr Andrew Chooi Seng Hang; and
- (d) Mr Michael Tan Chung Loke,

together with any other person appointed as a director of Phileo after the Commencement Date (provided any such other person is not an Associate of Mr Koh).

“**Independent Expert**” means an independent expert appointed by the Independent Directors to prepare the Independent Expert’s Report.

“**Independent Expert’s Report**” means the report to be prepared by the Independent Expert and to be provided to Shareholders on whether, in the opinion of the Independent Expert, the Proposal is fair and reasonable and in the best interests of Shareholders as a whole.

“**Insolvency Event**” means the occurrence of any of the following events in relation to any person:

- (a) the person becomes insolvent as defined in the Corporations Act, states that it is insolvent or is presumed to be insolvent under an applicable law;
- (b) the person is wound up, dissolved, deregistered or declared bankrupt;
- (c) the person becomes an insolvent under administration as defined in the Corporations Act;
- (d) a liquidator, provisional liquidator, Controller, administrator, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of the person’s assets or undertaking;
- (e) the person enters into or becomes subject to:
 - (i) any arrangement or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors; or
 - (ii) any re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) an application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in any of (b), (c), (d) or (e) above;
- (g) the person is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand;

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- (h) the person suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business or becomes unable to pay its debts when they fall due; or
- (i) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the other paragraphs of this definition,

unless the event occurs as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved in writing by the other party.

“Koh Entities” means each of:

- (a) PAL Investments (Aust.) Pty. Ltd. (ACN 072 027 288);
- (b) Cameo Holdings Pty. Ltd. (ACN 058 184 008);
- (c) KRR Investments Pty. Ltd. (ACN 130 385 054) as trustee for the R K Investment Trust; and
- (d) Koh Superannuation Fund.

“Koh Information” means the information provided by or on behalf of Mr Koh or the Koh Entities to Phileo, another Phileo Group Member or their Representatives in relation to the Proposal, including all information provided pursuant to clause 3.2(a).

“Listing Rules” means the official listing rules of ASX as amended from time to time.

“Meetings” means the extraordinary general meetings of Shareholders convened by Phileo to consider and vote on the Resolutions and includes any adjournment of those meetings.

“Notices of Meeting” means the notices despatched (or intended to be despatched) by Phileo to Shareholders in relation to the Meetings and which must include:

- (a) the Resolutions;
- (b) the information required under sections 249L and 256C(4) of the Corporations Act;
- (c) the form of the Opt-Out Notice;
- (d) the final Independent Expert’s Report;
- (e) the relevant proxy forms for the Resolutions; and
- (f) a copy or summary of this Deed.

“Opt-Out Notice” means each notice given by a Shareholder to Phileo in accordance with clause 3.6.

“Opt-Out Record Date” means 5.00pm on the date that is at least 5 Business Days before the date of the Meetings or such other date as agreed by the parties.

“Participation Intention” has the meaning given to the term in clause 3.4(a)(iii).

“Phileo Group” means Phileo and each of its Subsidiaries.

“Phileo Group Member” means a member of the Phileo Group.

“Phileo Prescribed Occurrence” means the occurrence of any of the following:

- (a) **(dividends)** any Phileo Group Member declaring, making or paying a dividend or any other distribution out of capital, profits or reserves (whether by way of

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dividend, capital reduction, distribution or otherwise and whether in cash or in specie);

- (b) **(capital and debt raising)** any Phileo Group Member creating, issuing or allotting any shares, options or other securities which are convertible into shares or offers or invites parties to subscribe for any shares, options or other securities which are convertible into shares;
- (c) **(capital reduction)** any Phileo Group Member buying-back, redeeming, reducing or cancelling any of its shares, options or other securities which are convertible into shares or any of its share capital;
- (d) **(capital reorganisation)** any Phileo Group Member undertaking a Reorganisation Event;
- (e) **(vary rights)** any Phileo Group Member varying or cancelling any rights attaching to any shares, options or other securities which are convertible into shares;
- (f) **(asset acquisitions or disposals)** any Phileo Group Member entering into any transaction or series of related transactions (whether at one time or over a period of time) involving the acquisition or disposal of a material asset or a substantial part of its business or a Subsidiary;
- (g) **(liability)** any Phileo Group Member undertaking any liability:
 - (i) with a value of \$1,000,000 or more; or
 - (ii) having a duration of more than one year;
- (h) **(borrowing)** any Phileo Group Member borrowing any money or obtain any form of advance, credit or financial accommodation of \$1,000,000 or vary the terms and conditions of any such borrowings, advances, credit or financial accommodation;
- (i) **(Encumbrances)** any Phileo Group Member creating an Encumbrance over any material asset or undertaking of the Phileo Group;
- (j) **(partnerships and mergers)** any Phileo Group Member entering into or varying a partnership or joint venture or merging or amalgamating its business with any other business;
- (k) **(guarantee)** any Phileo Group Member giving or entering into an arrangement to give a guarantee, letter of comfort or performance bond;
- (l) **(contracts)** any Phileo Group Member entering into, amending, assigning, novating or terminating any material contract, long term contract or any contract outside the ordinary course of business;
- (m) **(Constitution)** any Phileo Group Member amending its constitution or adopting a new constitution;
- (n) **(Insolvency Event)** an Insolvency Event occurring in relation to any Phileo Group Member;
- (o) **(Claims)** a Claim is brought against any Phileo Group Member (other than a frivolous or vexatious Claim) which will or is reasonably likely to have a material adverse effect on a Phileo Group Member or the Phileo Group; or
- (p) **(agree to do these things)** any Phileo Group Member agrees or otherwise commits to do any of the things set out in paragraphs (a) to (o) of this definition,

but excluding, any such occurrence that:

- (p) is required to be done or procured by any Phileo Group Member pursuant to, or which is otherwise contemplated by, this Deed;
- (q) was disclosed to Mr Koh prior to the Commencement Date; or

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(r) takes place after the Commencement Date with the prior consent of Mr Koh.

“Proposal” means the Selective Capital Reduction and Delisting.

“Public Recommendation” has the meaning given to the term in clause 3.4(a)(i).

“Recipient” means a party that has received information from another party or that otherwise comes into possession of information relating to another party.

“Relevant Interest” has the meaning given to that term in the Corporations Act.

“Reorganisation Event” means:

- (a) a bonus issue of shares;
- (b) a sub-division or consolidation of shares; or
- (c) any other reorganisation, reclassification or reconstruction of a company’s capital where the company neither pays nor receives cash.

“Representatives” means:

- (a) a Phileo Group Member other than Phileo; and
- (b) any director, officer, employee, adviser, agent or representative of a Phileo Group Member, excluding Mr Koh.

“Resolutions” means the resolutions to be put to Shareholders at the Meetings, including:

- (a) resolutions for the purposes of section 256C of the Corporations Act to permit Phileo to undertake the Selective Capital Reduction; and
- (b) a resolution for the purposes of Listing Rule 17.11 to permit Phileo to undertake the Delisting, with this resolution only being put to Shareholders if all the resolutions referred to under paragraph (a) above are passed by the requisite majorities of Shareholders.

“Selective Capital Reduction” means a selective capital reduction of up to a maximum of 10.50 million Shares on issue as at the Selective Capital Reduction Record Date pursuant to section 256B and section 256C of the Corporations Act, but excluding all Shares:

- (a) held by the Koh Entities at that date; and
- (b) which are the subject of an Opt-Out Notice.

“Selective Capital Reduction Record Date” means 7.00pm on the record date for the Selective Capital Reduction, as determined by Phileo in accordance with Appendix 7A to the Listing Rules or as otherwise approved by ASX.

“Shareholders” means each registered holder of Shares in the capital of Phileo.

“Shares” means fully-paid ordinary shares in the capital of Phileo.

“Subsidiary” has the meaning given to that term by section 9 of the Corporations Act.

“Superior Proposal” means a bona fide Competing Proposal (except with respect to provision (a) of the definition of Competing Proposal, the percentage threshold shall be 50% and not 20%) received after the Commencement Date (and not resulting from a breach by Phileo of any of its obligations under clause 5 (it being understood that any actions by the Representatives of Phileo in breach of clause 5 shall be deemed to be a

breach by Phileo for the purposes of this definition)) which the Board considers to be its fiduciary and statutory duties (after receiving written advice from its legal advisers acting in the area of corporate law and written advice from its financial advisers):

- (a) is reasonably capable of being valued and completed, taking into account all aspects of the Competing Proposal, including any timing considerations, any conditions precedent, the identity, reputation and financial standing of the third party making the Competing Proposal; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to the Shareholders, as a whole, than the Proposal (as such Proposal may be amended or varied following application of the matching right set out in clause 5.5), taking into account all terms and conditions of the Competing Proposal and all aspects of the Proposal.

“Timetable” means the indicative timetable set out in Schedule 1, as amended by the parties from time to time in accordance with this Deed.

“Voting Intention” has the meaning given to that term in clause 3.4(a)(ii).

1.2 Words and expressions

In this document, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this document;
- (e) a reference to this document includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) the background or recitals to this document are adopted as and form part of this document;
- (h) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (i) a reference to “\$”, “A\$” or “dollar” is a reference to Australian currency;
- (j) a reference to a time is a reference to time in Melbourne, Australia;
- (k) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (l) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (m) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (n) a reference to any legislation or to any provision of any legislation includes:
 - (i) any modification or re-enactment of the legislation;
 - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
 - (iii) where relevant, corresponding legislation in any Australian State or Territory;

- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it; and
- (p) the words “including”, “for example”, “such as” or other similar expressions (in any form) are not words of limitation.

1.3 Other rules of interpretation

In this document, unless expressly provided otherwise:

- (a) **(method of payment)** any payment of money by one party to another will be made in Australian currency by bank cheque or by credit of cleared funds to a bank account specified by the recipient;
- (b) **(joint and several liability)** a promise, representation or warranty given by or in favour of two or more persons under this document is given by them or for their benefit jointly and severally;
- (c) **(Business Days)** if:
- (i) the day on or by which any act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing will be done on the next Business Day; and
 - (ii) any money falls due for payment on a date other than a Business Day, that money will be paid on the next Business Day (without interest or any other amount being payable in respect of the intervening period);
- (d) **(rights and powers subject to statute)** the parties acknowledge that:
- (i) the exercise of a right or power under this document, including a right to terminate, may from time to time be subject to a statutory stay, limitation or restriction, including under Parts 5.1, 5.2 and/or 5.3A of the Corporations Act; and
 - (ii) they must make their own searches, investigations, enquiries and evaluations in relation to any exercise or proposed exercise of a right or power under this document; and
- (e) **(inconsistency within document)** if a clause of this document is inconsistent with a schedule or annexure of this document, the clause prevails to the extent of the inconsistency.

1.4 Best and reasonable endeavours

Any provision of this Deed that requires a party to use best endeavours, or reasonable endeavours, or to take all steps reasonably necessary to procure that something is performed or occurs, requires that party to do so as soon as reasonably practicable but does not include any obligation to:

- (a) pay any significant sum of money or to provide any significant financial compensation, valuable consideration or any other incentive to or for the benefit of any person, or to assume or incur a material liability, actual or contingent, except for payment of any applicable fee for the lodgement or filing of any relevant application with any court or Government Agency, the printing and circulation of the Notices of Meeting, or (with respect to each of the parties) fees to any professional Advisers; or
- (b) commence any legal action or proceeding against any person, to procure that any such legal action or proceeding is commenced,

except as required or provided for under the terms of this Deed.

2 Conditions

2.1 Conditions

The obligations of Phileo and Mr Koh in relation to implementation of the Proposal on the Implementation Date are subject to the satisfaction or waiver (as applicable) of each of the following Conditions:

Condition	Party entitled to benefit
(a) (No Phileo Prescribed Occurrence) no Phileo Prescribed Occurrence has occurred between the Commencement Date and 5.00 pm on the Business Day immediately prior to the Implementation Date.	Mr Koh
(b) (Independent Expert's Report) the Independent Expert issues the Independent Expert's Report and the report concludes that the Proposal is fair and reasonable to shareholders as a whole (or at least reasonable), and the Independent Expert does not publicly change its conclusion prior to the Meetings.	Each party
(c) (Independent Directors' Recommendation) each of the Independent Directors continues to unanimously recommend that Shareholders vote in favour of the Resolutions on which they are entitled to vote and does not publicly change his recommendation prior to the Meetings, subject to: <ul style="list-style-type: none">(i) the Independent Expert's Report concluding prior to the Meetings that the Proposal is fair and reasonable to Shareholders as a whole (or at least reasonable);(ii) Phileo not receiving a Superior Proposal prior to the Meetings; and(iii) the Independent Directors continuing to conclude that the implementation of the Proposal will not materially prejudice Phileo's ability to pay its creditors.	Mr Koh
(d) (Opt-Out Notices) Phileo receives Opt-Out Notices in respect of at least 8.08 million Shares (excluding the Koh Entities) on or before the Opt-Out Record Date and those Opt-Out Notices remain effective as at the Selective Capital Reduction Record Date.	Each party
(e) (FATA Act clearance) Phileo is satisfied by 5.00 pm on the Business Day prior to the Implementation Date (acting reasonably) that each of Puico Enterprises Corporation, Soeville Holdings Limited and Belandas Group Limited, being all Shareholders who, prior to the Commencement Date, have indicated in writing that they intend to give Phileo an Opt-Out Notice and are a Foreign Person, have obtained all necessary clearances under the FATA Act in order to increase their proportionate percentage shareholding in Phileo following implementation of the	Each party

Condition	Party entitled to benefit
Selective Capital Reduction.	
(f) (Maximum Shares) no more than 10.50 million Shares will be cancelled under the Selective Capital Reduction.	Each party
(g) (Superior Proposal) no Superior Proposal is announced or proposed to Phileo before 5.00 pm on the Business Day immediately prior to the Meetings.	Each party
(h) (Shareholder approval of Resolutions) Shareholders entitled to vote on the Resolutions approve the Resolutions at the Meetings by the majorities required under the Corporations Act and ASX Listing Rules (as applicable).	Each party
(i) (No termination) this Deed has not been validly terminated in accordance with its terms by 5.00 pm on the Business Day prior to the Implementation Date.	Each party
(j) (Change in law) no court or Government Agency has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Proposal and no such order, decree, ruling other action or refusal is in effect that prohibits, materially restricts, makes illegal or restrains the implementation of the Proposal before 5.00 pm on the Business Day prior to the Implementation Date.	Each party

2.2 Benefit and waiver of Conditions

- (a) The Conditions are for the benefit of each party specified next to a Condition in the table in clause 2.1, and any non-fulfilment or failure to satisfy any Condition may only be waived with the written consent of the relevant party or parties (as the context requires).
- (b) A party entitled to waive the non-fulfilment of or any failure to satisfy a Condition pursuant to this clause 2.2 may do so in its absolute discretion.
- (c) If a waiver by a party of a Condition is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition has not been waived.
- (d) If a party waives the non-fulfilment of or failure to satisfy a Condition, that waiver will not preclude that party from suing any other party for any breach of this Deed constituted by the same event that gave rise to the non-fulfilment of or failure to satisfy the particular Condition.
- (e) Waiver of a non-fulfilment or failure to satisfy a Condition does not constitute:
 - (i) a waiver of non-fulfilment of or failure to satisfy any other Condition resulting from the same events or circumstances; or
 - (ii) a waiver of non-fulfilment of or failure to satisfy that Condition resulting from any other event or circumstance.

2.3 Best endeavours and co-operation

Without prejudice to any other obligations of the parties under this Deed:

- (a) the parties must use their respective best endeavours to satisfy, or procure the satisfaction of, the Conditions in clause 2.1 to the extent that it is within their respective control or ability; and
- (b) no party will take any action that will or is likely to hinder or prevent the satisfaction of the Conditions in clause 2.1,

except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, this Deed or is required by law.

2.4 Notifications

Each party must:

- (a) keep the other parties promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other parties in writing if it believes or becomes aware that any Condition has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; and
- (c) promptly notify the other parties in writing if it believes or becomes aware of a failure to satisfy a Condition or of any fact or circumstance that results in that Condition becoming incapable of being satisfied or that may result in that Condition not being satisfied in accordance with its terms (having regard to the obligations of the parties under clause 2.3).

2.5 Failure of Condition

- (a) If:
 - (i) a Condition is not satisfied or waived in accordance with clause 2.2; or
 - (ii) a Condition becomes incapable of satisfaction, having regard to the obligations of the parties under clause 2.3,

each party, other than a party that has caused the non-fulfilment, may serve notice on the other parties, and the other parties must then consult in good faith with a view to determining whether:

- (iii) the Proposal may proceed by way of alternative means or methods; or
 - (iv) to extend the relevant time or date for satisfaction of the Conditions.
- (b) If the parties are unable to reach agreement under clause 2.5(a) within five Business Days after the delivery of the notice under that clause, any party may terminate this Deed by notice in writing to the other parties, provided that there has been no failure by that party to comply with its obligations under this Deed, where that failure directly and materially contributed to the Condition to which the notice relates becoming incapable of satisfaction, in which case clause 7.3 would have effect.

3 Implementation

3.1 Obligations of Phileo

Phileo must take all steps reasonably necessary to propose and implement the Proposal as soon as reasonably practicable after the Commencement Date, and substantially in accordance with the Timetable, including taking each of the following steps:

- (a) **(Independent Expert)**: as soon as reasonably practicable after the Commencement Date:

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- (i) appoint an Independent Expert to prepare the Independent Expert's Report;
 - (ii) provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
 - (iii) provide Mr Koh with an advanced draft of the Independent Expert's Report, for the purpose of undertaking a review of the factual accuracy of the Koh Information, the description of Phileo and the description of the Proposal; and
 - (iv) provide Mr Koh with a copy of the final Independent Expert's Report;
 - (b) **(accept Opt-Out Notices)**: accept Opt-Out Notices from Shareholders delivered to Phileo in accordance with clauses 3.5(a)(ii)(A)(2) and 3.6;
 - (c) **(Notices of Meetings)**: in accordance with clause 3.7, prepare:
 - (i) as soon as reasonably practicable after the Commencement Date, a draft of the Notices of Meetings;
 - (ii) any revised draft of the Notices of Meetings as contemplated by this clause 3.1; and
 - (iii) substantially in accordance with the Timetable, a final version of the Notices of Meetings;
 - (d) **(provide Opt-Out Notices and Notices of Meetings to Mr Koh)**: promptly provide Mr Koh with a copy of:
 - (i) each Opt-Out Notice;
 - (ii) each draft of the Notices of Meetings for the purpose of enabling Mr Koh and his advisers to review and comment on those drafts; and
 - (iii) the final Notices of Meetings;
 - (e) **(provide Notices of Meetings to ASIC)**: substantially in accordance with the Timetable:
 - (i) provide a copy of the draft Notices of Meetings, in a form approved by the Board (or a committee of the Board appointed for that purpose), to ASIC for its review for the purposes of section 256C(5) of the Corporations Act; and
 - (ii) during ASIC's consideration of the draft Notices of Meetings provided in accordance with clause 3.1(e)(i):
 - (A) liaise with ASIC;
 - (B) keep Mr Koh reasonably informed of any matters raised by ASIC in relation to the Notices of Meetings; and
 - (C) use reasonable endeavours, in consultation with Mr Koh, to resolve any such matters raised by ASIC;
 - (f) **(provide Timetable and Notices of Meetings to ASX)**: as soon as reasonably practicable after the date of this Deed:
 - (i) provide a more detailed version of the Timetable to ASX for its review and confirmation for the purposes of Listing Rules 7.18 and 7.40;
 - (ii) provide a copy of the draft Notices of Meetings, in a form approved by the Board (or a committee of the Board appointed for that purpose), to ASX for its review for the purposes of Listing Rule 15.1; and

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- (iii) during ASX's consideration of the draft Notices of Meetings provided in accordance with clause 3.1(f)(ii):
 - (A) liaise with ASX;
 - (B) keep Mr Koh reasonably informed of any matters raised by ASX in relation to the Notices of Meeting; and
 - (C) use reasonable endeavours, in consultation with Mr Koh, to resolve any such matters raised by ASX;
 - (g) **(regulatory approvals)**: as soon as reasonably practicable after the Commencement Date:
 - (i) in addition to, and without limiting Phileo's obligations under clauses 3.1(e), 3.1(f), 3.1(m)(ii) and 3.1(m)(v), take all steps necessary to obtain any relief, approvals, consents or waivers required from ASX and/or ASIC in connection with the Proposal; and
 - (ii) in relation to any necessary relief, approvals, consents or waivers sought from ASX and/or ASIC:
 - (A) provide Mr Koh with a copy of:
 - (1) each draft of any application to be made to ASIC and/or ASX for the purposes of enabling Mr Koh and his advisers to review and comment on those drafts; and
 - (2) any final applications; and
 - (B) keep Mr Koh reasonably informed of any matters raised by ASIC and/or ASX in relation to any application made in accordance with this clause 3.1(g);
 - (h) **(approval of Notices of Meetings)**: as soon as reasonably practicable after the conclusion of both ASX's and ASIC's review of the draft Notices of Meetings, procure that a meeting of the Board (or a committee of the Board appointed for the purpose) is held to consider approving the Notices of Meetings for despatch to Shareholders;
 - (i) **(despatch Notices of Meetings)**: as soon as reasonably practicable after approval by the Board (or a committee of the Board appointed for the purpose) pursuant to clause 3.1(h), despatch the Notices of Meetings to Shareholders, with a copy to Phileo's auditor;
 - (j) **(convene Meetings)**: convene the Meetings in accordance with the Notices of Meetings including conducting voting on each Resolution by poll;
 - (k) **(Independent Directors to vote in favour of Resolutions)**: procure that each Independent Director acts in accordance with his Voting Intentions, subject to the qualifications specified in clause 3.4(c);
 - (l) **(Announce level of Opt-Out Notices)**: promptly after the Opt-Out Record Date:
 - (i) release an announcement to ASX disclosing material details of the Opt-Out Notices received and whether the Conditions in clauses 2.1(d) and 2.1(f) have been satisfied, subject to the Opt-Out Notices remaining effective on the Selective Capital Reduction Record Date; and
 - (ii) in conjunction with Phileo's share registry, determine Shareholders' eligibility to:
 - (A) attend each relevant Meeting; and
 - (B) vote on the Selective Capital Reduction at each relevant Meeting, having regard to the Opt-Out Notices received;

- (m) **(implement Proposal)**: if the Proposal is approved by the requisite majorities of Shareholders at the Meetings:
- (i) **(lodge copy of Resolutions with ASIC)** within 14 days after the Meetings, lodge a copy of the Resolutions approving the Selective Capital Reduction with ASIC;
 - (ii) **(suspension)**: as soon as reasonably practicable after a copy of the Resolutions approving the Selective Capital Reduction has been lodged with ASIC:
 - (A) request that ASX suspend the Shares from quotation in accordance with the timetable specified in Appendix 7A to the Listing Rules or such other timetable as approved by ASX;
 - (B) provide all information reasonably requested by the ASX for the purpose of granting the suspension; and
 - (C) determine and announce the Selective Capital Reduction Record Date;
 - (iii) **(pay Cancellation Price and cancel Cancelled Shares)** by no earlier than 14 days after a copy of the Resolutions approving the Selective Capital Reduction has been lodged with ASIC in accordance with clause 3.1(m)(i) and in accordance with the timetable specified in Appendix 7A to the Listing Rules or such other timetable as approved by ASX:
 - (A) pay each Shareholder the Cancellation Price for each Cancelled Share held by that Shareholder as at the Selective Capital Reduction Record Date; and
 - (B) cancel each such Cancelled Share;
 - (iv) **(holding statements)** in accordance with the timeframe specified in Appendix 7A to the Listing Rules, or such other timetable as approved by ASX, arrange for Phileo's share registry to dispatch holding statements to those Shareholders whose shareholding has changed following the implementation of the Selective Capital Reduction;
 - (v) **(de-list)** take all steps necessary for Phileo to be Delisted by no later than seven days after the cancellation of the Cancelled Shares, or in accordance with such other timetable as approved by ASX, including lodging a request with ASX under Listing Rule 17.11 to remove Phileo from its official list and providing any information or satisfying any conditions reasonably requested by ASX in relation to that request; and
 - (vi) **(further acts)** do all other things contemplated by or necessary to give effect to the Proposal;
- (n) **(ASX listing)**: subject to clause 3.1(m), not do anything to cause Phileo to enter into a trading halt, the Shares to be suspended or Phileo to be removed from the official list of ASX prior to the earlier of the Implementation Date and the End Date, unless otherwise required by the Listing Rules or the Board's fiduciary duties;
- (o) **(Koh Information)**: without the prior written consent of Mr Koh, use the Koh Information for any purpose other than that expressly contemplated by this Deed;
- (p) **(Shareholder support)**: use reasonable efforts to promote the merits of the Proposal to Shareholders;
- (q) **(No denigration)**: until the End Date, not publicly denigrate Mr Koh or the Proposal and procure that the Independent Directors and each officer and

employee of the Phileo Group does not publicly denigrate Mr Koh or the Proposal; and

- (r) **(compliance with laws)**: do everything reasonably within its power to ensure that all steps contemplated by this Deed are effected in accordance with all applicable laws and regulations.

3.2 Obligations of Mr Koh

Mr Koh must take all steps reasonably necessary to assist Phileo to propose and implement the Proposal as soon as reasonably practicable after the Commencement Date, and substantially in accordance with the Timetable, including taking each of the following steps:

- (a) **(provide Koh Information)**: as soon as reasonably practicable after the Commencement Date up until the Meeting, provide Phileo with all information reasonably required by Phileo to ensure that the Notices of Meeting:
 - (i) comply with all applicable laws and regulations; and
 - (ii) for the avoidance of doubt, are not misleading or deceptive in any material respect (whether by omission or otherwise);
- (b) **(review draft Notices of Meetings)**: as soon as reasonably practicable after delivery of each draft of the Notices of Meetings, review those drafts in good faith and provide comments to Phileo for its consideration;
- (c) **(intention statement)** consent to the inclusion in the initial public announcement of the Proposal and in the Notices of Meetings of a statement in a form approved by Mr Koh to the effect that Mr Koh and the Koh Entities intend to vote all Shares in which they have a Relevant Interest in favour of the Resolutions on which Mr Koh and the Koh Entities are eligible to vote;
- (d) **(vote in favour of Resolutions)**: act in accordance with his stated intention to vote or cause to be voted in favour of the Resolutions on which Mr Koh and the Koh Entities are eligible to vote, all Shares in which Mr Koh and the Koh Entities have a Relevant Interest;
- (e) **(Shareholder support)**: use reasonable efforts to promote the merits of the Proposal to Shareholders;
- (f) **(No denigration)**: until the End Date, not publicly denigrate Phileo, the Board or the Proposal and procure that the Koh Entities and their directors and officers do not publicly denigrate Phileo, the Board or the Proposal; and
- (g) **(compliance with laws)**: do everything reasonably within his power to ensure that all steps contemplated by this Deed are effected in accordance with all applicable laws and regulations.

3.3 Announcements and disclosures

- (a) Subject to clauses 3.3(b) and 3.3(c), no public announcement or disclosure of or in connection with the Proposal or this Deed may be made by a party other than in a form approved by each party (acting reasonably).
- (b) Immediately after the execution of this Deed, Phileo must release a public announcement in relation to the Proposal in the form agreed between the parties.
- (c) Where Phileo is required by applicable laws or regulations (including the Listing Rules) to make any announcement or to make any disclosure in connection with the Proposal or this Deed, Phileo must use reasonable endeavours, to the extent practicable and lawful, to consult with Mr Koh prior to making the relevant announcement or disclosure.

3.4 Recommendations and related matters

- (a) Phileo represents and warrants that, with effect on and from the Commencement Date and subject only to the qualifications in clause 3.4(c), each Independent Director intends to:
- (i) publicly recommend that Shareholders vote in favour of the Resolutions on which they are entitled to vote ("**Public Recommendation**");
 - (ii) vote or cause to be voted all Shares in which they have a Relevant Interest in favour of the Resolutions that they are entitled to vote on at the Meetings ("**Voting Intention**"); and
 - (iii) participate in the Selective Capital Reduction with respect to all Shares in which they have a Relevant Interest (and thereby fully exit their Phileo investment), except in the case of Mr Loke who intends to deliver an Opt-Out Notice in respect of 2,750,000 Shares out of the 3,345,000 Shares in which he has a Relevant Interest ("**Participation Intention**").
- (b) Phileo further represents and warrants that, as at the Commencement Date, each Independent Director has confirmed his intention not to, and Phileo will procure that each Independent Director does not:
- (i) change, modify or withdraw his Public Recommendation;
 - (ii) change, modify or withdraw his Voting Intention;
 - (iii) change, modify or withdraw his Participation Intention; or
 - (iv) make any public announcement or disclosure to the effect, or take any other action that suggests that, the Proposal is longer unanimously recommended by the Independent Directors,
- other than in the circumstances referred to in clause 3.4(c).
- (c) The representations and warranties in clauses 3.4(a) and 3.4(b) are subject only to:
- (i) the Independent Expert's Report concluding prior to the Meetings that the Selective Capital Reduction is fair and reasonable to Shareholders as a whole (or at least reasonable);
 - (ii) Phileo not receiving a Superior Proposal prior to the Meetings; and
 - (iii) the Independent Directors continuing to hold the view up to the Implementation Date, acting reasonably, that the implementation of the Proposal would not be likely to materially prejudice Phileo's ability to pay its creditors.

3.5 Shareholder intention statements

- (a) The parties acknowledge that prior to the Commencement Date:
- (i) the Independent Directors arranged for selected major Shareholders to be confidentially canvassed to ascertain their general sentiment towards the Proposal (which at that point remained an incomplete, confidential and non-binding proposal);
 - (ii) in the context of those confidential soundings, certain Shareholders indicated in writing that their current intention (subject to specific qualifications) is to:
 - (A) vote in favour of the Resolutions that they are entitled to vote on at the Meetings; and either:

- (1) participate in the Selective Capital Reduction in respect of their entire Phileo shareholding (and thereby fully exit their investment in Phileo); or
- (2) deliver an Opt-Out Notice in respect of all or part of their Phileo shareholding before the Opt-Out Record Date in accordance with clause 3.6 (and thereby maintain all or part of their investment in Phileo).
- (b) With the consent of each of the relevant Shareholders canvassed by the Independent Directors, the material details of each intention statement must be referenced in the agreed form of the public announcement about the Proposal, to be released on the Commencement Date immediately after the execution of this Deed.

3.6 Opt-Out Notices

The parties acknowledge and agree that the Proposal will be submitted to Shareholders for their approval on the basis that a Shareholder may elect to not participate in the Selective Capital Reduction if:

- (a) subject to clause 3.6(b):
- (i) in the case of a Shareholder who holds fewer than 10,000 Shares, that Shareholder gives Phileo an Opt-Out Notice in respect of all of their Shares before the Opt-Out Record Date; or
- (ii) in the case of a Shareholder who holds 10,000 or more Shares, that Shareholder gives Phileo an Opt-Out Notice in respect of some or all of their Shares before the Opt-Out Record Date, provided the Opt-Out Notice is in respect of such number of Shares that would result in the Shareholder continuing to hold at least 10,000 Shares following implementation of the Selective Capital Reduction; and
- (b) in the case of a Shareholder who is a Foreign Person, the Opt-Out Notice attaches a copy of a letter from the Treasurer of the Commonwealth of Australia (or his or her delegate) to the Shareholder confirming the Commonwealth Government has no objection to the Shareholder not participating in the Selective Capital Reduction and that advice is either unconditional or imposes conditions or requirements that are acceptable to Phileo and Mr Koh (acting reasonably).

3.7 Notices of Meetings

Phileo must ensure that the final Notices of Meetings:

- (a) incorporate all reasonable comments provided by Mr Koh, with the parties acknowledging that Phileo retains the ultimate discretion in relation to the content of the Notices of Meetings, other than in respect of the Koh Information;
- (b) include the Public Recommendation, Voting Intention and Participation Intention of each Independent Director;
- (c) are despatched to Shareholders at least 28 days prior to the date of the Meetings; and
- (d) comply with all applicable laws and regulations.

3.8 Timetable

The parties agree to negotiate in good faith any amendment to the Timetable that may be reasonably necessary to:

- (a) address any matters raised by ASIC or ASX in their respective review of the draft Notices of Meetings (and in the case of ASX, its review of a more specific version of the Timetable for the purposes of Listing Rules 7.18 and 7.40);

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- (b) ensure any Shareholders who are a Foreign Person, and will remain a Shareholder following implementation of the Proposal, have obtained any clearances required under the FATA Act prior to implementing the Proposal; and
- (c) ensure the Delisting occurs no later than the End Date, or such other date as agreed by the parties.

3.9 Deemed breach

For the avoidance of doubt, Phileo will be deemed to have breached its obligations under this Deed if any of its officers, employees, agents, advisers or any other Phileo Group Member commits any act or omission that, if committed by Phileo, would be a breach of this Deed.

3.10 Cancellation Price

The parties acknowledge and agree that:

- (a) Phileo intends to seek a class ruling from the Commissioner of Taxation under section 358-5 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) for the purposes of determining, from an accounting and tax perspective, the appropriate allocation of the Cancellation Price between a capital payment component and a franked dividend component;
- (b) Phileo's accounting treatment for the Cancellation Price will reflect the outcome of the class ruling referred to in clause 3.10(a) above; and
- (c) implementation of the Proposal in accordance with the parties obligations under this clause 3 is not conditional upon the class ruling contemplated in clause 3.10(a) being obtained.

4 Conduct of business

During the period commencing on the Commencement Date and ending on the earlier of the Implementation Date and the End Date, Phileo must ensure:

- (a) each Phileo Group Member:
- (i) **(conduct)** conducts its business in the ordinary course; and
 - (ii) **(compliance)** complies with all applicable laws and regulations; and
- (b) each Phileo Group Member does not:
- (i) **(dividends)** declare, make or pay a dividend or any other distribution out of capital, profits or reserves (whether by way of dividend, capital reduction, distribution or otherwise and whether in cash or in specie);
 - (ii) **(capital and debt raising)** create, issue or allot any shares, options or other securities which are convertible into shares or offers or invite parties to subscribe for any shares, options or other securities which are convertible into shares;
 - (iii) **(capital reduction)** buy-back, redeem, reduce or cancel any shares, options or other securities which are convertible into shares or any of its share capital;
 - (iv) **(capital reorganisation)** undertake a Reorganisation Event;
 - (v) **(vary rights)** vary or cancel any rights attaching to any shares, options or other securities which are convertible into shares;
 - (vi) **(asset acquisitions or disposals)** enter into any transaction or series of related transactions (whether at one time or over a period of time)

involving the acquisition or disposal of a material asset or a substantial part of its business or a Subsidiary;

- (vii) **(liability)** undertake any liability:
 - (A) with a value of \$1,000,000 or more; or
 - (B) having a duration of more than one year;
- (viii) **(borrowing)** borrow any money or obtain any form of advance, credit or financial accommodation of \$1,000,000 or vary the terms and conditions of any such borrowings, advances, credit or financial accommodation;
- (ix) **(Encumbrances)** create an Encumbrance over any material asset or undertaking of any Phileo Group Member;
- (x) **(partnerships and mergers)** enter into or vary a partnership or joint venture or merge or amalgamate its business with any other business;
- (xi) **(guarantee)** give or enter into an arrangement to give a guarantee, letter of comfort or performance bond;
- (xii) **(contracts)** enter into, amend, assign, novate or terminate any material contract, long term contract or any contract outside the ordinary course of business;
- (xiii) **(constitution)** amend its constitution or adopt a new constitution; or
- (xiv) **(agree to do these things)** agree or commit to doing any of the things referred to in clauses 4(b)(i) to 4(b)(xiii),

with the exception that Phileo may do or procure any of the above matters to be done if the relevant matter:

- (i) is required to be done or procured by any Phileo Group Member pursuant to this Deed or is otherwise contemplated by this Deed;
- (ii) was disclosed to Mr Koh prior to the Commencement Date; or
- (iii) takes place after the Commencement Date with the prior consent of Mr Koh.

5 Exclusivity

5.1 Termination of existing discussions

As at the Commencement Date, Phileo represents and warrants in favour of Mr Koh that:

- (a) it, and its Representatives, have terminated all other negotiations and discussions in respect of any Competing Proposal with any person other than Mr Koh; and
- (b) it has not provided to any third party who has previously made or approached Phileo in relation to a Competing Proposal any Confidential Information for the purposes of making a Competing Proposal.

5.2 No-shop

During the Exclusivity Period, Phileo must not, and must ensure that each of its Representatives does not, directly or indirectly, solicit, invite, encourage or initiate any Competing Proposal or any enquiries, expressions of interest, offers, proposals, negotiations or discussions with any third party in relation to, or which may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

5.3 No-talk and no-due diligence

Subject to clause 5.6, during the Exclusivity Period, Phileo must not, and must ensure that each of its Representatives do not, directly or indirectly:

- (a) enter into, continue, participate in or facilitate any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any third party in relation to, or that may reasonably be expected to encourage or lead to, a Competing Proposal;
- (b) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into any agreement, arrangement or understanding regarding any actual, proposed or potential Competing Proposal;
- (c) make available to any third party (other than to Mr Koh) or permit such third party to receive any non-public information relating to the business or affairs of Phileo in connection with such third party formulating, developing or finalising, or assisting the formulation, development or finalisation of, a Competing Proposal, or which could reasonably be expected to encourage or lead to receipt of a Competing Proposal; or
- (d) communicate to any person an intention to do anything referred to in this clause 5.3;

even if:

- (e) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Phileo or any of its Representatives; or
- (f) the Competing Proposal has been publicly announced.

5.4 Notification of approaches

- (a) Subject to clause 5.6, during the Exclusivity Period, Phileo must promptly (but in any event within two Business Days) notify Mr Koh in writing if it, or any of its Representatives, receives or becomes aware of any direct or indirect:
 - (i) approach or attempt by any third party to take any action of a kind that would breach Phileo's obligations under clauses 5.2 or 5.3 (or would breach its obligations but for clause 5.6); or
 - (ii) proposal to take any action of a kind that is set out in clauses 5.2 or 5.3 (or would breach its obligations but for clause 5.6).
- (b) A notification given under clause 5.4(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all material terms and conditions of the actual, proposed or potential Competing Proposal, together with all material terms and conditions of the actual, proposed or potential Competing Proposal.
- (c) If Phileo receives a Competing Proposal and, as a result:
 - (i) the Board or any Independent Director proposes to publicly change or withdraw its Public Recommendation from that contemplated in clause 3.4(a)(i); or
 - (ii) in the case of any Independent Director that Independent Director publicly changes or withdraws his or her:
 - (A) Voting Intention from that contemplated in clause 3.4(a)(ii); and/or
 - (B) Participation Intention from that contemplated in clause 3.4(a)(iii),

Phileo must:

- (iii) not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party

and/or Phileo proposes to undertake or give effect to a Competing Proposal unless it has first complied with this clause 5.4 and clause 5.5;

- (iv) give Mr Koh five Business Days' prior written notice of such proposed change or withdrawal; and
- (v) provide to Mr Koh all material terms of the applicable Competing Proposal, including the identity of the proponent of the Competing Proposal, details of the proposed price or implied value (including details of the consideration if not simply cash), conditions, timing and break fee (if any) together with any material Confidential Information concerning the Phileo Group's operations provided to any person associated with the Competing Proposal not previously provided to Mr Koh.

5.5 Matching right

- (a) During the period of five Business Days referred to in clause 5.4(c), Mr Koh has the right to make a new proposal or propose a revision to the Proposal so that the terms of the Proposal (as amended) would provide an equivalent or superior outcome for Shareholders taken as a whole than the applicable Competing Proposal (a "**Counterproposal**").
- (b) Phileo must procure that the Board considers any such Counterproposal and if the Board, acting in good faith, determines that the Counterproposal would provide an equivalent or superior outcome for Shareholders taken as a whole than the applicable Competing Proposal, then Phileo must:
 - (i) promptly (but in any event within one Business Day) publicly announce and take all steps to effect the new proposal or variation of the Proposal (as applicable) that are necessary to reflect the Counterproposal (including any amendments to the amount of the consideration);
 - (ii) enter into any necessary agreements to give effect to those variations; and
 - (iii) implement the Counterproposal,in each case as soon as reasonably practicable, and Phileo must use its reasonable endeavours to procure that each of the Independent Directors continues to recommend the Counterproposal to the Shareholders in accordance with clause 3.4(a)(i).
- (c) Any material modification to any Competing Proposal (which will include any material modification relating to the price or value of any Competing Proposal) will be taken to make that proposal a new Competing Proposal in respect of which Phileo must comply with its obligations under this clause 5.5.

5.6 Fiduciary exception to no-talk, no due-diligence and notification of initial approaches

- (a) Clauses 5.3 and 5.4 do not prohibit any action or inaction by Phileo or its Representatives in relation to a Competing Proposal:
 - (i) where the Board determines that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; and
 - (ii) if compliance with the relevant clause would, in the opinion of the Board, formed in good faith after receiving written advice from its external legal advisers, constitute, or would be likely to constitute, a breach of any of the fiduciary or statutory duties owed by an Independent Director,

provided that the Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 5.2.

- (b) If clause 5.6(a) overrides the restrictions in clause 5.3(c), Phileo must not provide any Confidential Information to a third party before the third party has entered into a written agreement in favour of Phileo regarding the use and disclosure of the Confidential Information provided to the third party and that reasonably restricts the third party's ability to solicit the employees of any Phileo Group Member.

6 Representations and warranties

6.1 Representations and warranties

- (a) Each party represents and warrants that:
- (i) **(status)** it is a body corporate duly incorporated under the laws of the place of its incorporation;
 - (ii) **(power)** it has full legal capacity and power to:
 - (A) own property and carry on its business; and
 - (B) enter into and perform its obligations under this document;
 - (iii) **(authorisations)** it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this document;
 - (iv) **(binding obligations)** this document constitutes a valid and legally binding obligation of it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally);
 - (v) **(no Insolvency Event)** it is not subject to an Insolvency Event;
 - (vi) **(no contravention)** the execution, delivery and performance of this document will not contravene:
 - (A) any law, regulation, order, judgement or decree of any court or Government Agency which is binding on it or any of its property;
 - (B) any provision of its constitution or equivalent documents; or
 - (C) any agreement, undertaking or instrument which is binding on it or any of its property; and
 - (vii) **(no litigation)** no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or (to the knowledge of any of its officers after due inquiry) threatened which, if adversely determined, could have a material adverse effect on its ability to perform its obligations under this document.
- (b) Phileo further represents and warrants that:
- (i) **(Competing Proposals)** it is not aware of, nor has it been approached about, any Competing Proposals;
 - (ii) **(Notices of Meetings prepared in good faith)** the Notices of Meetings will be prepared in good faith (acknowledging that the Notices of Meetings will include information prepared by Mr Koh);
 - (iii) **(Notices of Meetings not misleading or deceptive)** as at the date of the Meetings, to the best of its knowledge, information and belief, after due enquiry, the Notices of Meetings are not misleading or deceptive in any material respect (whether by omission or otherwise);

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- (iv) (**continuous disclosure**) subject to the announcement of the Proposal in accordance with clause 3.3(b), it is not in breach of its continuous disclosure obligations under the Listing Rules;
 - (v) (**sufficient funds**) at the Commencement Date it has, and at the Cancellation Date it will have, sufficient funds to pay each Shareholder the Cancellation Price for each Cancelled Share held by that Shareholder; and
 - (vi) (**no material prejudice to creditors**) at the Commencement Date it has reasonable grounds to believe that the implementation of the Proposal would not be likely to materially prejudice Phileo's ability to pay its creditors.
- (c) Mr Koh further represents and warrants that:
- (i) (**FATA Act**) Mr Koh and the Koh Entities are not Foreign Persons and are not required to give any notice arising from or in connection with the Selective Capital Reduction to the Treasurer of the Commonwealth of Australia (or his or her delegate) under the FATA Act;
 - (ii) (**Relevant Interest**) Mr Koh, through the Koh Entities, has a Relevant Interest in 10,348,814 Shares as at the date of this Deed and will maintain that Relevant Interest until the Implementation Date;
 - (iii) (**Koh Information prepared in good faith**) the Koh Information will be prepared in good faith; and
 - (iv) (**Koh Information not misleading or deceptive**) as at the date of the Meetings, to the best of his knowledge, information and belief, the Koh Information is not misleading or deceptive in any material respect (whether by omission or otherwise).

7 Termination

7.1 Termination by Phileo

Without prejudice to any other rights of termination under this Deed, Phileo may terminate this Deed by written notice to Mr Koh at any time before the Implementation Date:

- (a) (**material breach**): if Mr Koh is in material breach of one of his material obligations under this Deed (including a material breach of a representation or warranty), and has failed to remedy that breach by the earlier of:
 - (i) the Implementation Date; and
 - (ii) the date that is five Business Days after receiving a written notice from Phileo setting out details of the relevant circumstances of the alleged breach and requesting that Mr Koh remedy that breach;
- (b) (**Conditions**): in the circumstances set out in, and in accordance with, clause 2.5(b);
- (c) (**Recommendation of Superior Proposal**): if any Independent Director recommends a Superior Proposal and does not, within five Business Days of making such recommendation relating to the Superior Proposal, reinstate his or her Public Recommendation;
- (d) (**End Date**): if the Implementation Date for the Proposal has not occurred on or before the End Date; or
- (e) (**Insolvency Event**): if Mr Koh or one of the Koh Entities is, or becomes, subject to an Insolvency Event.

7.2 Termination by Mr Koh

Without prejudice to any other rights of termination under this Deed, Mr Koh may terminate this Deed by written notice to Phileo at any time before the Implementation Date:

- (a) **(material breach)**: if Phileo is in material breach of one of its material obligations under this Deed (including a material breach of a representation or warranty), and has failed to remedy that breach by the earlier of:
 - (i) the Implementation Date; and
 - (ii) the date that is five Business Days after receiving a written notice from Mr Koh setting out details of the alleged breach and requesting that Phileo remedy that breach;
- (b) **(Conditions)**: in the circumstances set out in, and in accordance with, clause 2.5(b);
- (c) **(Conduct of business)**: without limiting clause 7.2(a), if Phileo breaches an obligation in clause 4;
- (d) **(Exclusivity)**: without limiting clause 7.2(a), if Phileo breaches an obligation in clause 5;
- (e) **(Recommendation)**: if any Independent Director:
 - (i) changes, modifies or withdraws their Public Recommendation; or
 - (ii) makes any public announcement or disclosure to the effect, or take any other action that suggests, that they no longer support the Proposal, or any part of the Proposal, or that they support a Competing Proposal;
- (f) **(Competing Proposal)**: if Phileo enters into an agreement in relation to the implementation of a Competing Proposal;
- (g) **(End Date)**: if the Implementation Date for the Proposal has not occurred on or before the End Date; or
- (h) **(Insolvency Event)**: if Phileo is, or becomes subject to an Insolvency Event.

7.3 Effect of termination

- (a) In the event of termination of this Deed in accordance with clause 7.1, clause 7.2 or clause 2.5(b), this Deed will become void and have no effect, except that the provisions of clauses 8, 9, 10 and 11 and this clause 7.3 will survive termination.
- (b) Termination of this Deed does not affect any accrued rights of a party in respect of a breach of this Deed prior to termination.

8 Confidentiality

8.1 Use and confidentiality of Confidential Information

The Recipient may use Confidential Information solely for the Approved Purpose and must keep this information confidential and ensure that its officers, employees, agents and advisers keep it confidential and must not disclose this information to any person except:

- (a) with the prior written consent of the Disclosing Party;
- (b) to the extent required by law or the rules of any securities exchange; or
- (c) to any officers, employees, agents and advisers of the Recipient who:
 - (i) have a need to know the information for the Approved Purpose, but only to the extent they have a need to know; and

- (ii) before disclosure, are directed by the Recipient to use Confidential Information solely for the Approved Purpose and to keep it confidential.

8.2 Rights

Nothing in this clause 8 confers upon the Recipient any right, licence or intellectual property in or to Confidential Information.

8.3 Deemed breach

The Recipient will be deemed to have breached its obligations under this clause 8 if any of its officers, employees, agents or advisers commits any act or omission that, if committed by the Recipient, would be a breach of this document.

8.4 Notification and assistance

The Recipient must notify the Disclosing Party immediately upon being aware of any suspected, actual or deemed breach of this clause 8 and provide any assistance reasonably requested by the Disclosing Party in relation to any proceedings the Disclosing Party or any of its Affiliates may take against any person for any suspected, actual or deemed breach of this clause 8.

8.5 Indemnity

The Recipient indemnifies the Disclosing Party and each of its Affiliates against any claim, action, liability, loss, damage, cost and expense that the Disclosing Party or any of its Affiliates incurs or is liable for as a result of a breach by the Recipient of its obligations under this clause 8.

8.6 Equitable remedies

The Recipient acknowledges that monetary damages may not be a sufficient remedy for a breach of this clause 8 and that the Disclosing Party or any of its Affiliates may seek, and are entitled to, remedies such as injunctive relief to prevent the breach and orders of specific performance to compel compliance with this clause 8.

8.7 Security

The Recipient must take all reasonable action with respect to the use, copying, access, security and protection of the Confidential Information or any part of it to prevent disclosure to third persons otherwise than in accordance with clause 8.1.

8.8 Return of Confidential Information

The Recipient must, on demand immediately:

- (a) return to the Disclosing Party all records and materials, regardless of form, in its possession or control which contain or embody Confidential Information;
- (b) delete any electronic copies of the Confidential Information; and
- (c) cease to use the Confidential Information or any part of it (including for the Approved Purpose).

8.9 Exception

Notwithstanding clause 8.8, the Recipient may retain one copy of the Confidential Information solely for its corporate governance purposes.

8.10 Confidentiality obligations to survive termination

The rights and obligations of the parties under this clause 8 will survive termination of this Deed and the return of Confidential Information under clause 8.8 and will continue until the Disclosing Party gives the Recipient an unconditional discharge in writing.

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9 GST

9.1 Interpretation

In this clause 9, a word or expression defined in the GST Act has the meaning given in that act.

9.2 Taxable supplies

If anything done under or in connection with this Deed constitutes a Taxable Supply from one party to another in respect of which GST is payable, the consideration payable for the supply will be increased by an amount equal to the GST exclusive consideration multiplied by the applicable rate of GST.

9.3 Reimbursements

If a party must reimburse or indemnify another party for any cost, loss or expense under or in connection with this Deed, the amount of the cost, loss or expense will be reduced by the amount of any Input Tax Credit the other party is entitled to claim for the cost, loss or expense.

9.4 Tax invoice

A party is not required to make a payment for a Taxable Supply made under or in connection with this Deed until it receives a tax invoice in relation to that supply.

9.5 Amounts exclusive of GST

Unless expressly stated otherwise, all amounts payable under this Deed are exclusive of GST.

10 Notices

10.1 Method

All notices, requests, demands, consents, approvals, offers, agreements or other communications ("**notices**") given by a party under or in connection with this document must be:

- (a) in writing;
- (b) signed by a person duly authorised by the sender or, where transmitted by e-mail, sent by a person duly authorised by the sender;
- (c) directed to the intended recipient's address (as specified in clause 10.3 or as varied by any notice); and
- (d) hand delivered, sent by prepaid post or transmitted by e-mail to that address.

10.2 Receipt

A notice given in accordance with this clause is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, either:
 - (i) on the day on which the relevant postal service estimates delivery will occur; or
 - (ii) on the first day of the period during which the relevant postal service estimates delivery will occur,

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based on the most recent estimate published by the relevant postal service as at the date on which the notice is sent; or

- (c) if transmitted by e-mail, on transmission, unless the sender receives an error message indicating that the message has not been received by the intended recipient

but if the delivery or transmission is not on a Business Day or is after 5.00pm (recipient's time) on a Business Day, the notice is taken to be received at 9.00am (recipient's time) on the next Business Day.

10.3 Address of parties

Unless varied by notice in accordance with this clause 10, the parties' addresses and other details are:

Party: **Phileo**
Attention: Mr Graham Homes, Chairman
Address: Level 14, 303 Collins Street Melbourne VIC 3000, with a copy (for information purposes only) to MinterEllison, Rialto, Level 23, 525 Collins Street, Melbourne VIC 3000 (attention Alberto Colla, Partner)
E-mail: grashomes@gmail.com, with a copy (for information purposes only) to alberto.colla@minterellison.com

Party: **Mr Koh**
Attention: Rudy Koh
Address: c/- Arnold Bloch Leibler (attention Jeremy Lanzer, Partner), Level 21, 333 Collins Street, Melbourne VIC 3000
E-mail: rudy@palltd.com.au with a copy (for information purposes only) to janzer@abl.com.au

10.4 Requirement for written notice

For the avoidance of doubt, the requirement in clause 10.1(a) applies to all notices unless expressly excluded and no implication to the contrary is to be drawn from the use of the expressions "written" or "in writing" in relation to some but not all notices.

11 General

11.1 Entire agreement

This document constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this document and have no further effect.

11.2 Paramountcy of document

If this document conflicts with any other document, agreement or arrangement, this document prevails to the extent of the inconsistency.

11.3 No merger

The provisions of this document will not merge on completion of any transaction contemplated in this document and, to the extent any provision has not been fulfilled, will remain in force.

11.4 Attorneys

Each person who executes this document on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or

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circumstance that might affect his or her authority to execute this document under that power.

11.5 Amendment

This document may not be amended or varied unless the amendment or variation is in writing signed by all parties.

11.6 Assignment

No party may assign, transfer or otherwise deal with this document or any right or obligation under this document without the prior written consent of each other party.

11.7 Severability

Part or all of any provision of this document that is illegal or unenforceable will be severed from this document and will not affect the continued operation of the remaining provisions of this document.

11.8 Waiver

Waiver of any power or right under this document:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

11.9 Rights, remedies additional

Any rights and remedies that a person may have under this document are in addition to and do not replace or limit any other rights or remedies that the person may have.

11.10 Further assurances

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this document and the transactions contemplated by it (including, but not limited to, the execution of documents).

11.11 Costs

Each party must bear its own legal, accounting and other costs for:

- (a) the preparation and execution of this document; and
- (b) the submission of the Proposal to Shareholders for their approval and, if the Proposal is duly approved, its implementation.

11.12 Counterparts

This document may be executed in any number of counterparts and all counterparts taken together will constitute one document.

11.13 Electronic delivery of document

If a party delivers an executed counterpart of this document or any other document executed in connection with it ("**Relevant Document**") by e-mail or other electronic means:

- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of the Relevant Document.

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11.14 Governing law and jurisdiction

This document will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State.

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SCHEDULE 1 - TIMETABLE

Event	Date
Announcement of the Proposal	Commencement Date
Dispatch of Notices of Meetings by Phileo to Shareholders	Week commencing 19 November 2018
Meetings to vote on the Proposal	Week commencing 17 December 2018
Implementation of Selective Capital Reduction	Mid to late January 2019
Delisting	January/February 2019

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EXECUTED as a DEED

EXECUTED by PHILEO AUSTRALIA LIMITED (ACN-007 608 755))
)



Signature of director

Alfred Sung

Name of director (print)



Signature of director / company secretary
(delete as applicable)

Andrew Hang

Name of director / company secretary (print)

SIGNED SEALED and DELIVERED by RUDY ENG WAH KOH in the presence of)
)
)

Signature of witness

Rudy Eng Wah Koh

Name of witness (print)

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EXECUTED as a **DEED**

EXECUTED by **PHILEO AUSTRALIA**)
LIMITED (ACN 007 608 755))

Signature of director

Signature of director / company secretary
(delete as applicable)

Name of director (print)

Name of director / company secretary (print)

SIGNED SEALED and **DELIVERED** by)
RUDY ENG WAH KOH in the presence of)
)

Simone Gould

Signature of witness

Rudy Eng Wah Koh

Rudy Eng Wah Koh

SIMONE GOULD

Name of witness (print)