

15 January 2019

Navitas receives revised non-binding proposal from the BGH Consortium at \$5.825 per share and Board intends to recommend to shareholders

Highlights

- Revised non-binding proposal received for an all cash offer to acquire 100% of the shares in Navitas at \$5.825 per share by way of a Scheme of Arrangement
- Navitas Directors intend to unanimously recommend the Revised Proposal to shareholders subject to conditions described below
- BGH Consortium to be granted exclusive due diligence until no later than 18 February 2019, subject to no Superior Proposal emerging which the BGH Consortium does not match
- Mechanism now potentially available for Rod Jones and AustralianSuper to support a Superior Proposal should any emerge and not be matched by the BGH Consortium

Navitas Limited (NVT:ASX) ("Navitas" or "the Company") announces that it has received a revised indicative, preliminary, non-binding and conditional proposal from the BGH Consortium to acquire 100% of the outstanding shares in Navitas by way of a scheme of arrangement, for an increased offer price of \$5.825 cash per Navitas share ("Revised Proposal"). Pursuant to the Revised Proposal, the offer price would be reduced by the amount of any dividends paid by Navitas prior to implementation of any scheme of arrangement proposal.

Intention to Recommend

The Board has considered the Revised Proposal having regard to the relevant factors for all Navitas shareholders, and has determined that progressing the Revised Proposal is consistent with the Board's continued focus on maximising value for all Navitas shareholders and its role in ensuring that Navitas' strong relationships with its university partners are maintained, and its commitment to its students is not compromised, throughout.

The Board's assessment of the Revised Proposal has been informed by its views of the medium and longer term potential of Navitas and the opportunity for shareholders to realise certain value for their investment, as well as the BGH Consortium's preparedness to lift the contractual restrictions (on Mr Rod Jones and AustralianSuper) that would otherwise prevent those Navitas shareholders from supporting any Superior Proposal that may emerge.

The Directors of Navitas intend to unanimously recommend the Revised Proposal to shareholders (at the increased offer price of \$5.825 cash per Navitas share) subject to the parties entering into a binding scheme implementation deed on terms consistent with the Revised Proposal ("SID") following completion of the BGH Consortium's due diligence investigations and otherwise during the period contemplated by the Process and Confidentiality Deed (discussed later in this announcement and attached, excluding its schedules, in Appendix B), in the absence of a Superior Proposal and subject to an independent expert

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concluding (and continuing to conclude) that the Revised Proposal is in the best interests of Navitas shareholders.

Revised Non-binding Proposal

The Revised Proposal represents an increase of \$0.325 per Navitas share relative to the previous proposals received from the BGH Consortium, as set out in announcements to the ASX on 10 October 2018 and 12 November 2018 ("Prior Proposals"), and a premium of 34% to the Navitas share price on 9 October 2018 (being the last closing price of Navitas shares prior to announcement of the Prior Proposals). The BGH Consortium has indicated that the Revised Proposal represents its best and final offer in the absence of Navitas receiving a superior offer or proposal.

Under the Revised Proposal, the BGH Consortium has agreed to amend its Co-operation and Process Agreement dated 8 October 2018 ("CoPA") such that restrictions on Rod Jones and AustralianSuper accepting, voting in favour of or otherwise supporting a Competing Proposal (as defined in the CoPA) and the requirement for Rod Jones and AustralianSuper to vote against any Competing Proposal, no longer apply in the event that Navitas receives a Superior Proposal, the BGH Consortium does not match that Superior Proposal within the agreed timeframe and the Superior Proposal becomes binding prior to or on 22 March 2019, and Navitas has otherwise complied with its obligations under the Process and Confidentiality Deed (discussed below).

The offer under the Revised Proposal is an all-cash offer. The BGH Consortium has indicated that it is reconsidering the suitability of the cash and unlisted scrip alternative outlined in the Prior Proposals and whether or not this alternative should be offered more broadly to all Navitas shareholders, in addition to Rod Jones and AustralianSuper.

Further conditions to the Revised Proposal are set out in Appendix A.

Process and Confidentiality Deed

Navitas and the BGH Consortium have executed a Process and Confidentiality Deed which, in addition to providing appropriate confidentiality obligations, governs the process under which the BGH Consortium will undertake due diligence and the parties will work towards agreeing and executing a binding SID, and documents the amendment to the CoPA in the specific circumstance set out above.

A period of exclusive due diligence access has been granted, which is to commence on 15 January 2019 and run until no later than 18 February 2019 ("Exclusivity Period"), with the first two weeks of access to be granted on a "closed" exclusive basis. The Exclusivity Period may terminate before 18 February 2019 in specific circumstances set out in the Process and Confidentiality Deed. The exclusivity provisions include customary "no shop", "no due diligence" and notification protections, and a five business day right to match any Superior Proposal, as well as a "no talk" restriction that will apply during the initial closed period only. After expiry of the initial closed period (on 29 January 2019), and having exhausted the matching right regime, Navitas would be entitled to grant due diligence access to the proponent of any Superior Proposal which has not been matched by the BGH Consortium. During the Exclusivity Period, Navitas has agreed not to grant due diligence to the proponent of any Superior Proposal which has been successfully matched by the BGH Consortium.

Beyond the expiry of the Exclusivity Period on 18 February 2019 (and until at least 5 March 2019), the Navitas Directors would maintain their intention to recommend the Revised Proposal, subject to the conditions described elsewhere in this announcement and in the Process and Confidentiality Deed, and

provided that: (1) nothing occurs (whether before or after 18 February 2019) which causes, or would have caused, the relevant exclusivity arrangements (in the Process and Confidentiality Deed) to terminate, and (2) the Consortium has complied with the obligations it has assumed under that deed.

A copy of the Process and Confidentiality Deed (excluding the schedules) is attached in Appendix B. Investors should refer to that document for a detailed understanding of the agreed arrangements.

Navitas will continue to keep the market informed of any material developments in accordance with its continuous disclosure requirements. There is no certainty that the Revised Proposal will result in a transaction being put forward to shareholders for consideration and shareholders do not need to take any action in relation to the Revised Proposal.

Goldman Sachs is acting as financial adviser and Ashurst is acting as legal adviser to Navitas.

-----ENDS-----

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About Navitas

Navitas is a leading global education provider that offers an extensive range of educational services through two major Divisions to students and professionals including university programs, creative media education, professional education, English language training and settlement services. Navitas is a S&P/ASX200 company. Further details about Navitas are available at www.navitas.com

Appendix A – Terms of the Revised Proposal

The Revised Proposal is subject to a number of conditions, including the Board of Navitas announcing that it intends to unanimously recommend the Revised Proposal to shareholders in the absence of a Superior Proposal, subject to an independent expert opinion (and continuing to opine) that the scheme is in the best interests of shareholders and subject to execution of a SID reflecting the agreed commercial terms and otherwise customary terms. Some of the other conditions of the Revised Proposal are reflected in the Process and Confidentiality Deed, including relating to due diligence access generally, as well as engagement with key customers and partners of Navitas.

The remainder of the terms of the Revised Proposal are essentially the same as the Prior Proposals and include a number of conditions to be satisfied prior to executing a binding SID, including:

- satisfactory completion of due diligence;
- that the Company does not issue additional shares or other securities convertible or exchangeable into shares;
- that there have been no changes to material terms of the current University Partnership contracts or losses of any of these contracts;
- the Company does not make any material acquisitions (or disposals) or enter into any binding agreement in relation to any material acquisitions (or disposals);
- no transaction cost reimbursement arrangements are offered or provided to any party which may be exploring the possibility of acquiring shares in Navitas;
- the BGH Consortium finalising debt commitments for the transaction;
- that each BGH Consortium member receives final approval to submit a binding proposal from its investment committee (where relevant); and
- agreement of a SID that would include provisions consistent with the above matters and otherwise customary terms and conditions, including customary deal protection provisions (subject to a fiduciary carve-out), and will not contain a financing condition.

Appendix B – Process and Confidentiality Deed



Process and Confidentiality Deed

BGH Capital Pty Ltd

ABN 59 617 386 982

AustralianSuper Pty Ltd

ABN 94 006 457 987

(as trustee for AustralianSuper ABN 65 714 394 898)

Rodney Malcolm Jones

Hoperidge Enterprises Pty Ltd

ACN 058 568 835

Remjay Investments Pty Ltd

ABN 69 075 697 086

and

Navitas Limited

ABN 69 109 613 309

14 January 2019

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION.....	2
1.1 Definitions	2
1.2 Rules for interpreting this document.....	9
1.3 Non Business Days.....	10
2. CONFIDENTIALITY ACKNOWLEDGMENTS	10
3. PERMITTED USE AND DISCLOSURE	10
3.1 Use and disclosure of Disclosing Party's Confidential Information	10
3.2 Permitted disclosures to Authorised Persons	10
3.3 Disclosures required by law	11
3.4 Disclosures by Navitas of Proposal Confidential Information	11
3.5 Records	12
4. SECURITY AND CONTROL.....	12
5. FURTHER ACKNOWLEDGMENTS	12
5.1 Definition of Disclosed Information.....	12
5.2 Acknowledgments	12
6. RETURN OR DESTRUCTION OF RECORDS.....	13
6.1 Return or destruction	13
6.2 Exceptions to requirement to return or destroy Records.....	14
6.3 No release.....	14
7. STANDSTILL.....	14
7.1 Definitions	14
7.2 Current holding.....	15
7.3 Standstill obligation.....	15
7.4 Exceptions	15
7.5 Notification obligation	16
8. DUE DILIGENCE ACCESS TO THE CONSORTIUM.....	16
8.1 Provision of due diligence information.....	16
8.2 Limitations on due diligence access	17
8.3 Management meetings	17
9. NEGOTIATION OF THE PROPOSAL AND PROGRESS UPDATES	18
9.1 Negotiation of the Scheme Implementation Deed.....	18
9.2 Progress updates	19
9.3 Failure to provide Confirmation Notice	19
10. ENGAGEMENT WITH KEY CUSTOMERS / PARTNERS	19
11. EXCLUSIVITY.....	20
11.1 No current discussions regarding a Competing Proposal.....	20
11.2 No shop.....	20
11.3 No talk	20
11.4 No due diligence	21
11.5 Notification obligation.....	21
11.6 Failure to match a Superior Proposal	22
12. PRIVACY LAWS COMPLIANCE.....	23
12.1 Compliance with Privacy Laws and policies	23
12.2 Access and directives	23

12.3	General obligations	23
13.	NO INSIDER TRADING	23
14.	RESTRICTIONS ON CERTAIN ACTIVITIES	24
14.1	Enquiries to be made only of Navitas Approved Persons.....	24
14.2	Enquiries to be made only of Consortium Approved Persons	24
14.3	No contact with financiers, customers, suppliers, etc	24
14.4	Exceptions	24
14.5	Restrictions	25
15.	AMENDMENT AND RELEASES IN RESPECT OF THE CO-OPERATION AND PROCESS AGREEMENT	25
16.	SHAREHOLDER RIGHTS	26
17.	AUSSUPER LIMITATION OF LIABILITY	26
18.	REMEDIES	27
18.1	Acknowledgements	27
19.	TERM.....	27
20.	NOTICES.....	27
20.1	How to give a notice.....	27
20.2	When a notice is given.....	27
20.3	Address for notices.....	28
21.	AMENDMENT AND ASSIGNMENT	29
21.1	Amendment	29
21.2	Assignment	29
22.	GENERAL	29
22.1	Governing law	29
22.2	Liability for expenses.....	29
22.3	Variation of rights	29
22.4	Operation of this document	29
22.5	Counterparts	29

Schedules 1 to 4

(Not included in this version)

THIS DEED is made on 14 January 2019

BETWEEN:

- (1) **BGH Capital Pty Ltd** (ABN 59 617 386 982) of Level 26, 101 Collins Street, Melbourne VIC 3000 in its capacity as manager or adviser to each of the constituent entities of the BGH Capital Fund I (**BGH**);
- (2) **AustralianSuper Pty Ltd** (ABN 94 006 457 987) as trustee for AustralianSuper (ABN 65 714 394 898) of Level 33, 50 Lonsdale Street, Melbourne VIC 3000 (**AusSuper**);
- (3) **Rodney Malcolm Jones, Hoperidge Enterprises Pty Ltd and Remjay Investments Pty Ltd** each of 3/93 South Perth Esplanade, South Perth WA 6151 (together, **RMJ**); and
- (4) **Navitas Limited** (ABN 69 109 613 309) whose registered office is at Level 8, Brookfield Place, 125 St Georges Terrace, Perth WA 6000 (**Navitas**).

RECITALS:

- (A) The Consortium has sent Navitas the NBIO, which contains a further (and revised) non-binding indicative proposal for BidCo to acquire all of the shares in Navitas for the Revised Offer Price by way of a scheme arrangement between Navitas and its members that is recommended by each of the directors of Navitas on the Proposal Terms and which terms would also permit the payment of the Special Dividend (**Proposal**).
- (B) The Navitas Board has determined that it would unanimously recommend the Proposal to Navitas Shareholders subject to:
 - (1) Navitas, BidCo and the Consortium Members entering into a scheme implementation deed on the Proposal Terms before the end of the Exclusivity Period;
 - (2) no Superior Proposal emerging; and
 - (3) an independent expert concluding (and continuing to conclude) that the Proposal is in the best interests of Navitas Shareholders.
- (C) To progress the Proposal:
 - (1) Navitas has agreed to permit the Consortium to carry out the Confirmatory Due Diligence Investigations during the Exclusivity Period for the Permitted Purpose; and
 - (2) BGH has agreed to provide periodic updates to Navitas during the Exclusivity Period about the progress of its due diligence investigations,in both cases, on the terms of this document.
- (D) Each of the parties agree to use the information made available to them only for the Permitted Purpose, and to keep such information confidential, on the terms of this document.
- (E) The Consortium Members have agreed to amend the terms of the Co-operation and Process Agreement on and subject to the terms of this document.
- (F) To avoid any doubt, this document sets out the parties' common understanding and agreement with respect to the matters dealt with in it and in the NBIO, such that it supersedes the NBIO to the extent of any inconsistency.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Additional Due Diligence Request List means the list of additional, specific information that the Consortium has requested be disclosed for the purposes of the Confirmatory Due Diligence Investigations, as agreed between Navitas and the Consortium prior to the date of this document and set out in Schedule 1.

Affiliate has the meaning given in clause 7.1(a).

Agreed Management Meetings means the management meetings between specified members of management of Navitas and the Consortium, as agreed between Navitas and the Consortium prior to the date of this document and set out in Schedule 2 (in each case subject to clause 8.3(a)), together with any further meetings that may be agreed between Navitas and the Consortium.

ASX means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

Authorised Person, in relation to a party, means:

- (a) any Related Entity of that party;
- (b) a director, an officer, board committee member or employee of that party, or of any of its Related Entities;
- (c) a person who is engaged by that party to provide professional advice (such as legal, financial or accounting advice) to it about the Proposal and who owes an obligation of confidence to the party in relation to information disclosed to the person;
- (d) if the party is BGH, the investors in the private equity fund managed or advised by BGH and any actual or potential source of equity or debt financing engaged by BGH or its Related Entities in connection with the Proposal who, in each case, owe an obligation of confidence to BGH, or its Related Entity (as applicable) and are not competitors of Navitas or its Related Entities;
- (e) if the party is Navitas, any other person nominated by Navitas to the Consortium and approved in writing by the Consortium as an "Authorised Person"; and
- (f) if the party is a Consortium Member, any other person nominated by that Consortium Member to Navitas and approved in writing by Navitas as an "Authorised Person".

BidCo means any special purpose vehicle established by the Consortium to make the Proposal.

Binding Superior Proposal has the meaning given in clause 15(a).

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Perth, Western Australia and Melbourne, Victoria.

Closed Due Diligence Period means the period:

- (a) beginning on the date of this document; and
- (b) ending on 11.59 pm (Perth time) on 29 January 2019.

Competing Proposal means any proposal (including a scheme of arrangement) or offer that would, if completed substantially in accordance with its terms, result in any person or persons other than the Consortium, a Consortium Member or their respective Affiliates acquiring directly or indirectly:

- (a) a legal, beneficial or economic interest in all or a substantial part or a material part of the assets of the Navitas Group;
- (b) control of any member of the Navitas Group who holds all or a substantial part or a material part of the assets of the Navitas Group; or
- (c) a relevant interest, beneficial or economic interest in more than 10% of the Navitas Shares,

or which would otherwise result in the Proposal becoming incapable of being implemented (however, any divestment or proposed divestment contemplated by the Company's announcement to ASX dated 18 July 2018 ("Navitas to Rationalise Careers and Industry Division") is not a Competing Proposal).

Consortium means the consortium comprising BGH, AusSuper and RMJ and, as applicable (for example, when referring to implementation of the Proposal), also includes BidCo.

Consortium Confidential Information means information that is made available by or on behalf of BGH to Navitas (whether directly or indirectly, and whether before, on or after the date of this document) and relates to the Consortium, the Consortium Members (or any of their respective Related Entities), BidCo or any part of their respective businesses, assets or affairs, including:

- (a) commercial, financial, legal and technical information and know-how (including forecasts and projections);
- (b) the Proposal Confidential Information; and
- (c) information which is derived or produced wholly or partly from any information that is "Consortium Confidential Information" by virtue of this definition by or on behalf of Navitas or any person (including an Authorised Person of it) to whom it has made such information available including an analysis, note, calculation, report, conclusion or summary,

but excluding Excluded Information.

Confidential Information means:

- (a) where the Disclosing Party is Navitas and the Receiving Party is a Consortium Member, the Navitas Confidential Information; and
- (b) where the Disclosing Party is BGH and the Receiving Party is Navitas, the Consortium Confidential Information.

Confirmation Notice has the meaning given in clause 9.2.

Confirmatory Due Diligence Investigations means the investigations to be carried out by the Consortium Members and their respective Authorised Persons in relation to the information provided by Navitas pursuant to clauses 8.1(a)(i) and 8.1(a)(ii), and any information provided by Navitas in response to any follow-up requests pursuant to clause 8.1(a)(iii).

Consortium Member means any or each of BGH, AusSuper or RMJ and, unless the context requires otherwise, includes BidCo.

Co-operation and Process Agreement means the Co-operation and Process Agreement dated 8 October 2018 between BGH, AusSuper and RMJ.

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

Disclosing Party means:

- (a) Navitas:
 - (i) when used in clause 5 in relation to any information made available by or on behalf of Navitas to a Consortium Member (including any Navitas Confidential Information);
 - (ii) when used in clause 12 in relation to any Personal Information made available by or on behalf of Navitas to a Consortium Member (including any Navitas Confidential Information); and
 - (iii) when used in any other clause in relation to any Navitas Confidential Information; and
- (b) BGH:
 - (i) when used in clause 5 in relation any information made available by or on behalf of BGH to Navitas (including any Consortium Confidential Information);
 - (ii) when used in clause 12 in relation to any Personal Information made available by or on behalf of BGH to Navitas (including any of Consortium Confidential Information); and
 - (iii) when used in any other clause in relation to any Consortium Confidential Information.

Excluded Information means information that:

- (a) is in or enters the public domain through no fault of the Receiving Party or any of its Authorised Persons;
- (b) is or was already known to the Receiving Party at the time it was first made available to the Receiving Party and the Receiving Party obtained the information by lawful means from a third party (other than, to avoid any doubt, another party to this document, the Disclosing Party or their respective Authorised Persons) in circumstances that, to the knowledge of the Receiving Party, did not involve the third party breaching an obligation of confidence owed to the Disclosing Party (as can be reasonably demonstrated by written records); or
- (c) is or was developed by the Receiving Party without reference to or use of information any Confidential Information,

but, to avoid any doubt, any information:

- (d) that would otherwise come within paragraphs (b) or (c) above, and to which paragraph (a) does not apply; and
- (e) which was already known to RMJ prior to the 7 November 2018 (being the date of the previous confidentiality deed entered into between the parties); and
- (f) was provided to or received by Mr Rodney Malcolm Jones in his capacity as a director of Navitas, or was derived, developed or produced wholly or partly from any information that was provided to or received by Mr Rodney Malcolm Jones in his capacity as a director of Navitas,

is not Excluded Information.

Exclusivity Period means the period commencing on the date of this document and ending on the earlier of:

- (a) 11.59 pm (Perth time) on Monday, 18 February 2019;
- (b) the Notice Deadline, but only if the Exclusivity Period terminates pursuant to clause 9.3;
- (c) the Matching Deadline, but only if the Exclusivity Period terminates pursuant to clause 11.6(a); and
- (d) 48 hours after Navitas has provided notice in accordance with clause 11.6(b)(i), but only if the Exclusivity Period terminates pursuant to clause 11.6(b)(iii).

Interim Dividend has the meaning given in clause 9.1(c)(i).

Key Partner has the meaning given in clause 10(a).

Government Agency means a government or government department or other body, a governmental, semi-governmental or judicial person, or a person (whether autonomous or not) who is charged with the administration of a law.

Introductory Meeting has the meaning given in clause 10(a).

Management Presentation means the management presentation given to the Consortium on 8 November 2018.

Matching Deadline means:

- (a) in relation to a Superior Proposal notified to BGH by Navitas in accordance with clause 11.5(b) **before** the expiry of the Closed Due Diligence Period, 5.00 pm (Perth time) on the date that is five Business Days after the expiry of the Closed Due Diligence Period; and
- (b) in relation to a Superior Proposal notified to BGH by Navitas in accordance with clause 11.5(b) **after** the expiry of the Closed Due Diligence Period, 5.00 pm (Perth time) on the date that is five Business Days after BGH is notified of such Superior Proposal by Navitas.

Material Partner Agreements means the agreements listed in Schedule 4, which includes all agreements with Key Partners.

Navitas Confidential Information means information that is made available by or on behalf of Navitas to a Consortium Member (whether directly or indirectly, and whether before, on or after the date of this document) and relates to Navitas (or any Related

Entity of it) or any part of the business, assets or affairs of Navitas (or any Related Entity of it), including:

- (a) the information in or provided during the Management Presentation;
- (b) commercial, financial, legal and technical information and know-how (including forecasts and projections) made available by or on behalf of Navitas to a Consortium Member;
- (c) the Proposal Confidential Information; and
- (d) information which is derived or produced wholly or partly from any information that is Navitas Confidential Information by virtue of this definition by or on behalf of a Consortium Member or any person (including an Authorised Person of it) to whom a Consortium Member has made such information available including an analysis, note, calculation, report, conclusion or summary,

but excluding Excluded Information.

Navitas Board means the board of directors of Navitas, as constituted from time to time.

Navitas Group means Navitas and its subsidiaries.

Navitas Share means an ordinary share in Navitas.

Navitas Shareholder means a holder of a Navitas Share (at the relevant time).

NBIO means the non-binding indicative offer letter dated 14 January 2019.

Notice Deadline has the meaning given in clause 9.2.

Permitted Purpose means:

- (a) evaluating, and considering whether to make the Proposal and, if so, agreeing the full terms and conditions of the Proposal in the Scheme Implementation Deed;
- (b) formulating or discussing the full terms and conditions of the Proposal (including formulating, discussing and negotiating the terms of the financing in relation to the Proposal);
- (c) implementing the Proposal; and
- (d) any other purpose that the parties may agree in writing from time to time.

Personal Information has the meaning as defined in any applicable Privacy Law.

Priority Due Diligence Request List means the list of specific, priority information that the Consortium has requested be disclosed for the purposes of the Confirmatory Due Diligence Investigations, as agreed between Navitas and the Consortium prior to the date of this document and set out in Schedule 1.

Privacy Laws means the *Privacy Act 1988* (Cth) and, where the Disclosing Party specifically notifies a Receiving Party of its application, any other legislation anywhere in the world imposing an obligation in relation to the collection, use, disclosure, storage or transmission of personal information (including without limitation health information), including any codes, principles or guidelines contained in or arising out of such legislation.

Proposal has the meaning given in recital (A).

Proposal Confidential Information means information concerning the Proposal, the Proposal Terms and any developments in respect of any such terms.

Proposal Terms means:

- (a) the terms of the Proposal set out in the NBIO, which terms include (among other things) that Navitas Shareholders will receive no less than the Revised Offer Price and that the Consortium will permit Navitas to pay the Interim Dividend and any other Special Dividend prior to the implementation of the Proposal (with a corresponding reduction for the amount of such dividends in the cash payment paid by the Consortium and, in the case of any Special Dividend other than the Interim Dividend, subject to reasonable safeguards to protect the Consortium's interests (such safeguards to be agreed in the Scheme Implementation Deed)); and
- (b) any further terms and conditions of the Proposal or amendments to the terms set out in the NBIO agreed between the parties after the date of this document.

Receiving Party means:

- (a) Navitas:
 - (i) when used in clause 5 in relation any information made available by or on behalf of BGH to Navitas (including any Consortium Confidential Information);
 - (ii) when used in clause 12 in relation to any Personal Information made available by or on behalf of BGH to Navitas (including any Consortium Confidential Information); and
 - (iii) when used in any other clause in relation to any Consortium Confidential Information;
- (b) each Consortium Member:
 - (i) when used in clause 5 in relation any information made available by or on behalf of Navitas to that Consortium Member (including any Navitas Confidential Information);
 - (ii) when used in clause 12 in relation to any Personal Information made available by or on behalf of Navitas to that Consortium Member (including any Navitas Confidential Information); and
 - (iii) when used in any other clause in relation to any Navitas Confidential Information.

Records means records (including all copies) in any form or media (whether or not visible) that contain, refer to or are based on any Confidential Information of the Disclosing Party.

Related Entity means, in relation to a party:

- (a) a related body corporate of a party; and
- (b) any other person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such party; the term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise,

and, in the case of a Consortium Member, BidCo.

Revised Offer Price means \$5.825 per Navitas Share.

Scheme Implementation Deed means an implementation agreement to be entered into by Navitas, BidCo and the Consortium Members in respect of the Proposal, the terms of which, to avoid doubt, will include (amongst other things):

- (a) reasonable "no-shop", "no-talk" and "no-due diligence" undertakings, a notification obligation in respect of competing proposals, a matching right and break fees not exceeding 1% of the equity value of Navitas at the price offered by the Consortium, which (where appropriate) will be subject to a fiduciary carve-out and will otherwise be on customary terms; and
- (b) that the Co-operation and Process Agreement is automatically amended on the terms set out in clause 15(c) and the parties to the Co-operation and Process Agreement are released from that agreement on the terms set out in clause 15(d) (in the case of each clause, as those terms are amended only to the extent required to accurately reflect the corresponding context and terminology used in the Scheme Implementation Deed) if, following the entry into of any Scheme Implementation Deed, the Consortium does not match, or exceed, a Superior Proposal within five Business Days of being notified of such Superior Proposal provided, to avoid doubt, that these amendments and releases only apply to a Binding Superior Proposal and provided that in such circumstances a break fee would be payable to the Consortium under the terms of the Scheme Implementation Deed (unless such amendment has already been made, and such release has already occurred, by operation of clause 15 before any Scheme Implementation Deed is entered into).

Special Dividend means any dividend or dividends of an amount per Navitas Share to be determined by the Navitas Board, having regard to, among other things, the availability of franking credits, where:

- (a) the cash amount per Navitas Share of any such dividend or dividends, ignoring the value of any associated franking credits, will reduce the amount of the offer price per Navitas Share that would ultimately be payable by the Consortium under the Proposal;
- (b) payment of any such dividend or dividends must not cause Navitas to incur any franking deficits tax, or to incur or otherwise become liable for any fine or penalty in connection with such a franking deficit;
- (c) clause 9.1(c) applies; and
- (d) the determination of any such dividend or dividends (other than the Interim Dividend) is subject to reasonable safeguards to protect the Consortium's interests (such safeguards to be agreed in the Scheme Implementation Deed).

Superior Proposal means a Competing Proposal that is received by Navitas in writing which the Navitas Board determines, acting in good faith after consultation with its financial advisors and its external legal advisers:

- (a) is on conditions which are reasonably likely to be satisfied, and does not include a financing condition;
- (b) is reasonably capable of being completed having regard to its conditions and other terms (including, to the extent the Competing Proposal is made by a private equity fund, the Navitas Board reasonably considers that the fund has the capacity to fund the equity financing for the Competing Proposal and has debt financiers in place

who have provided a highly confident letter for debt financing, such that the total equity and debt financing (covered by the highly confident letter) would be sufficient to fund the consideration for the Competing Proposal); and

- (c) would, if completed substantially in accordance with its terms, reasonably be expected to be more favourable to Navitas Shareholders than the Proposal or than any proposal subsequently notified to Navitas by the Consortium after the date of this document (as the case may be).

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **applicable law** includes any applicable law of a jurisdiction within or outside Australia, any applicable listing rule of the Australian Securities Exchange or of any other stock exchange (whether or not within Australia) on which securities of the relevant party are quoted and any applicable judgment or order of a court of competent jurisdiction or other Government Agency.
- (g) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (h) The words **related body corporate** has the same meaning as in the Corporations Act. The word **control** has the same meaning as in section 50AA of the Corporations Act.

- (i) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document.

1.3 **Non Business Days**

If the day on or by which a person must do something under this document is not a Business Day, the person must do it on or by the next Business Day.

2. **CONFIDENTIALITY ACKNOWLEDGMENTS**

The Receiving Party acknowledges and agrees with the Disclosing Party that:

- (a) the Disclosing Party's Confidential Information is secret, confidential and valuable to the Disclosing Party;
- (b) the Receiving Party owes an obligation of confidence to the Disclosing Party concerning the Disclosing Party's Confidential Information; and
- (c) as between the Disclosing Party and the Receiving Party, all rights (including all intellectual property rights) in the Disclosing Party's Confidential Information belong solely to the Disclosing Party.

3. **PERMITTED USE AND DISCLOSURE**

3.1 **Use and disclosure of Disclosing Party's Confidential Information**

A Receiving Party must not:

- (a) use any of the Disclosing Party's Confidential Information except for the Permitted Purpose (it being acknowledged that any disclosure of Confidential Information in accordance with clause 3.3 or clause 3.4 (if applicable) will not in and of itself breach this clause 3.1(a));
- (b) without limiting clause 3.1(a), not use any of the Disclosing Party's Confidential Information for a commercial advantage over the Disclosing Party or any of its Related Entities; or
- (c) disclose any of the Disclosing Party's Confidential Information except in accordance with clause 3.2, clause 3.3 or clause 3.4.

3.2 **Permitted disclosures to Authorised Persons**

- (a) Subject to clause 3.2(b), a Receiving Party may disclose Confidential Information of the Disclosing Party to any of the Receiving Party's Authorised Persons to the extent such persons need to know that Confidential Information for the Permitted Purpose.
- (b) Before a Receiving Party discloses any of the Disclosing Party's Confidential Information to an Authorised Person, the Receiving Party must inform the Authorised Person of the confidential nature of that Confidential Information and of the Receiving Party's obligations in relation to it under this document.
- (c) A Receiving Party must create and maintain an up-to-date register of the Receiving Party's Authorised Persons to whom the Disclosing Party's Confidential Information has been made available and, upon written request from the Disclosing Party, provide an up-to-date copy of the register to the Disclosing Party.
- (d) A Receiving Party must ensure that each of its Authorised Persons to whom the Disclosing Party's Confidential Information is made available keeps the Disclosing

Party's Confidential Information secret and complies with the confidentiality provisions of this document as if references to "the Receiving Party" were references to the Authorised Person.

3.3 **Disclosures required by law**

- (a) Subject to clause 3.3(b), a Receiving Party (and its Authorised Persons) may disclose Confidential Information of the Disclosing Party as required by applicable law, regulation or the requirements of any Government Agency or other legal process. However, a Receiving Party must not intentionally do, and must ensure none of its Authorised Persons who have received Confidential Information of the Disclosing Party intentionally does, anything (other than making a takeover offer) that results in the Receiving Party (or a Related Entity of it) becoming obliged to disclose the Disclosing Party's Confidential Information.
- (b) If a Receiving Party (or any of its Authorised Persons) is required by applicable law to disclose Confidential Information of the Disclosing Party, the Receiving Party must:
 - (i) to the extent practicable or permissible, notify the Disclosing Party as soon as reasonably practicable if it becomes aware that it is required to disclose any of the Disclosing Party's Confidential Information;
 - (ii) to the extent practicable, consult with and follow any reasonable directions from the Disclosing Party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose the Disclosing Party's Confidential Information to the extent necessary to comply with the applicable law;
 - (B) use reasonable efforts to ensure that any Disclosing Party's Confidential Information disclosed is kept confidential; and
 - (C) notify the Disclosing Party of the form, timing, nature and extent of the disclosure as soon as reasonably practicable after such disclosure is made.

3.4 **Disclosures by Navitas of Proposal Confidential Information**

- (a) Navitas will make the agreed ASX announcement following the execution of this document. Such announcement will:
 - (i) confirm the determination of the Navitas Board to recommend the Proposal subject to the matters set out in recital (B) and the balance of this document; and
 - (ii) indicate that, if both:
 - (A) the Exclusivity Period expires at 11.59 pm (Perth time) on 18 February 2019 without having been terminated pursuant to any of clauses 9.3, 11.6(a) or 11.6(b)(iii) and without the Consortium having failed to meet any of its obligations under this document; and
 - (B) in the period from the end of the Exclusivity Period until no later 5 March 2019, no matter or circumstance has arisen that would have caused the Exclusivity Period to terminate pursuant to any of clauses 9.3, 11.6(a) or 11.6(b)(iii) (had such circumstance occurred before the Exclusivity Period expired),

the Navitas Board would maintain that determination until at least 5 March 2019, to allow the parties to continue to work together in good faith to conclude their discussions and negotiations.

- (b) Navitas may disclose Proposal Confidential Information:
 - (i) in an ASX announcement that deals with the receipt of the NBIO and the entry into of this document and its terms; and
 - (ii) to the extent that the board of directors of Navitas reasonably considers such information should be disclosed to shareholders on the basis that its disclosure would reasonably be expected (by those shareholders) or is otherwise appropriate, having regard to (among other things) the conduct of the parties to date, the market's expectations as a result and generally,

provided that, only to the extent reasonably practicable in all the circumstances, Navitas consults with the Consortium prior to making any such announcement and takes into account, in good faith, any reasonable comments of the Consortium.

3.5 **Records**

Without limiting this clause 3, a Receiving Party may make Records and may allow an Authorised Person of it to whom disclosure is permitted to make Records, but in each case only to the extent necessary for the Permitted Purpose.

4. **SECURITY AND CONTROL**

A Receiving Party, at its cost, must keep, and must use reasonable endeavours to ensure that each person to whom the Receiving Party makes Confidential Information of the Disclosing Party available, keeps the Confidential Information and each Record:

- (a) confidential, in a way that makes it clear that it is confidential and, if so required by the Disclosing Party, that it is confidential to the Disclosing Party;
- (b) under its effective control; and
- (c) secure from theft, loss, damage and unauthorised access or alteration, use and disclosure.

5. **FURTHER ACKNOWLEDGMENTS**

5.1 **Definition of Disclosed Information**

In this clause 5, **Disclosed Information** of the Disclosing Party means information made available by or on behalf of the Disclosing Party to the Receiving Party, and includes Confidential Information of the Disclosing Party.

5.2 **Acknowledgments**

- (a) Except as may be agreed in the Scheme Implementation Deed, each party acknowledges and agrees that:
 - (i) none of the Disclosing Party, its Related Entities and their respective officers, employees, agents, advisers or consultants makes any representation or warranty (express or implied) that any Disclosed Information is accurate, complete or reliable;
 - (ii) any opinion or belief contained in any Disclosed Information is based on the knowledge and attitude of the person who formed that opinion and belief at

the date it was so formed and the opinion or belief may have ceased, or may in the future cease, to be the opinion or belief of the relevant person;

- (iii) it must rely solely on its own investigations and analysis, and must not rely on any Disclosed Information, for the Permitted Purpose or otherwise; and
 - (iv) except to the extent that exclusion of liability is not permitted by law, none of the Disclosing Party, its Related Entities and their respective officers, employees, agents, advisers or consultants is liable (whether on the basis of negligence or otherwise) or accepts responsibility for any loss or damage that the Receiving Party or anyone else may suffer or incur as a result of using, relying on or disclosing any Disclosed Information.
- (b) Without limiting clause 5.2(a), to the extent that Disclosed Information of the Disclosing Party includes any projections, forecasts, statements, estimates or opinions with respect to anticipated future performance or other forward looking information (together **Forward Looking Information**), the Receiving Party acknowledges and agrees that the Forward Looking Information:
- (i) has been prepared for the Disclosing Party's internal management purposes and has not been independently verified;
 - (ii) depends on certain key assumptions which are matters of opinion only and may not be reasonable or prove to be correct (and some of which are unstated or hypothetical);
 - (iii) depends on a number of matters which involve subjective opinions; and
 - (iv) is subject to significant uncertainties and contingencies, many of which are outside the Disclosing Party's control.

Accordingly no representation or warranty (express or implied) is made in relation to the Forward Looking Information.

6. **RETURN OR DESTRUCTION OF RECORDS**

6.1 **Return or destruction**

- (a) Subject to clause 6.2, at a Disclosing Party's request or, if earlier, if either Navitas or BGH notify the other that they do not wish to proceed with the Proposal, the Receiving Party must immediately stop using all the Disclosing Party's Confidential Information, and, at its cost, must:
- (i) deliver to the Disclosing Party or, at the Receiving Party's option, destroy, every tangible Record; and
 - (ii) erase or destroy in another way all electronic and other intangible Records, which are in the possession, custody or control of the Receiving Party or of any person to whom it has given access. The Receiving Party must also ensure that each person to whom the Disclosing Party's Confidential Information has been made available does likewise.
- (b) If requested by a Disclosing Party to do so, the Receiving Party must (within seven days of the request) certify in writing to the Disclosing Party that every Record of the Disclosing Party's Confidential Information in the possession, custody or control of the Receiving Party has been delivered, erased or destroyed in accordance with this clause 6 (subject to clause 6.2) and has requested the same of any person to

whom it has given access to any Record and obtained confirmation of such persons that they have done so.

6.2 **Exceptions to requirement to return or destroy Records**

- (a) A Receiving Party and its Authorised Persons may each retain Records to the extent that:
 - (i) the Records are in electronic storage where it is impracticable to erase or destroy them, but the Receiving Party must not, and must ensure that each of its Authorised Persons does not, access or use the Records or allow any other person to do so;
 - (ii) the Records form part of the minutes of the board of directors, a committee of the board of directors or an investment committee of the Receiving Party, or an Authorised Person of the Receiving Party;
 - (iii) the Records are required to be retained in accordance with the Receiving Party's bona fide existing and documented internal compliance, audit and document retention protocols;
 - (iv) the Records are required by law or the rules of any Government Agency or legal process or any mandatory rule of professional standards applying to the Receiving Party or the relevant Authorised Person to be retained;
 - (v) the Records form part of any legal advice or legal opinion prepared for the Recipient in connection with the Proposal.
- (b) The Receiving Party remains bound by this document in respect of any Confidential Information of the Disclosing Party retained under this clause 6.2.

6.3 **No release**

The return, destruction or deletion of Records under clause 6.1 does not release the Receiving Party from its obligations under this document.

7. **STANDSTILL**

7.1 **Definitions**

In this clause:

- (a) **Affiliate**, in relation to a party, means:
 - (i) a Related Entity of that party that has received Navitas Confidential Information or is involved in the consideration of the Proposal for the party;
 - (ii) a director, officer or employee of that party or of a Related Entity of that party in each case that has received Navitas Confidential Information or is involved in the consideration of the Proposal for the party; and
 - (iii) a person who is an associate of that party by reason of section 12(2)(b) or 12(2)(c) of the Corporations Act;
- (b) **relevant interest** and **voting power** have the meanings given in Chapter 6 of the Corporations Act; and
- (c) **Standstill Period** means the period from the date of this document until the end of four months from the date of receipt by the Consortium or Navitas (as the case

may be) of notice from the other that it does not wish to proceed with the Proposal (or any other date agreed in writing by the parties).

7.2 **Current holding**

BGH, AusSuper and RMJ each represent and warrant to Navitas that, as at the date of this document, it and its Related Bodies Corporate (as defined in the Co-operation and Process Agreement), and in the case of RMJ, RMJ's Associates, do not hold any Navitas Shares, rights to acquire Navitas Shares or any economic interest in Navitas Shares (through a cash settled equity swap, derivative or otherwise) which would require disclosure under the Australian Takeover Panel's Guidance Note 20: Equity Derivatives, other than:

- (a) AusSuper which owns 20,645,584 Navitas Shares; and
- (b) RMJ which owns 45,117,995 Navitas Shares.

7.3 **Standstill obligation**

Subject to clause 7.4, during the Standstill Period, each Consortium Member must not and must ensure that its respective Affiliates do not:

- (a) acquire any further relevant interest in any Navitas Shares; or
- (b) enter into any agreement, arrangement or understanding involving the conferring of rights on the relevant Consortium Member or any of their Affiliates, the economic effect of which is equivalent, or substantially equivalent, to the relevant Consortium Member or any of their Affiliates acquiring or holding Navitas Shares (including any derivative, swap or synthetic agreement, deed or other arrangement under which payments may be made that are referable (in whole or in part) to the trading price, or the economic value of Navitas Shares); or
- (c) solicit proxies from shareholders of Navitas or otherwise seek to influence or control the management or policies of Navitas (including, without limitation, by:
 - (i) calling or holding a general meeting of the holders of Navitas Shares;
 - (ii) requesting that the directors of Navitas call a general meeting of the holders of Navitas Shares;
 - (iii) giving notice of a resolution, or resolutions, that would be considered at a general meeting of the holders of Navitas Shares,or doing anything that would support or otherwise bring about any of the matters referred to in subparagraphs (i) to (iii) above); or
- (d) aid, abet, counsel, assist, facilitate or induce any other person in doing so, or publicly announce that it will do any of the things mentioned in this clause 7.3.

7.4 **Exceptions**

- (a) Clause 7.3 does not apply to carrying out the Proposal.
- (b) Clauses 7.3(a), 7.3(b) and 7.3(d) (but in the case of clause 7.3(d) only to the extent it relates to any thing mentioned in clauses 7.3(a) and 7.3(b)) will cease to apply if a Competing Proposal is announced by a person other than a Consortium Member or any of their respective Affiliates.
- (c) Clause 7.3 does not apply in respect of anything done with the prior written consent or agreement of Navitas.

- (d) Clause 7.3 does not apply to investments in an index fund which invests in a broad basket of securities or any other matter specified in clause 5.3 of the Co-operation and Process Agreement.
- (e) Clause 7.3 does not apply to any relevant interest in any Navitas Shares acquired as a result of AusSuper holding voting power of more than 20% of an entity (including, for example, Industry Super Holdings Pty Ltd) in circumstances where AusSuper does not control that entity.
- (f) Clauses 7.3(c) and 7.3(d) do not prohibit or otherwise limit a Consortium Member from exercising their rights to attend, speak or vote (including by proxy or corporate representative) at a general meeting of shareholders in circumstances where there has otherwise been no breach of clauses 7.3(c) and 7.3(d).

7.5 **Notification obligation**

Each Consortium Member must immediately notify Navitas if they become aware of a breach of clause 7.3.

8. **DUE DILIGENCE ACCESS TO THE CONSORTIUM**

8.1 **Provision of due diligence information**

- (a) Subject to clause 8.2, Navitas must:
 - (i) on and from 15 January 2019, provide the Consortium Members and their respective Authorised Persons with access to the information which Navitas has prepared to reasonably address the matters set out in the Priority Due Diligence Requests;
 - (ii) subject to the Exclusivity Period not having ended (before such time as access would be given), within five Business Days of the opening of the data room to the Consortium, provide the Consortium Members and their respective Authorised Persons with access to the information which Navitas has prepared to reasonably address the matters set out in the Additional Due Diligence Requests; and
 - (iii) during the Exclusivity Period, respond to all reasonable follow-up requests that arise from the Consortium's Confirmatory Due Diligence Investigations that are within the scope of the Priority Due Diligence Request List or Additional Due Diligence Request List or any other matter within a reasonable period of time following receipt.
- (b) The information provided in accordance with clause 8.1(a) will be provided by Navitas via an electronic data room.
- (c) The Consortium must within 48 hours of it (or its Authorised Persons) being given access to the information provided in accordance with clause 8.1(a)(i) notify Navitas either that:
 - (i) the information provided reasonably addresses the matters set out in the Priority Due Diligence Requests; or
 - (ii) the information provided is incomplete, and specifies the information from the Priority Due Diligence Requests which has not (subject to clause 8.2) been reasonably addressed,

provided that if the Consortium does not give any such notification by the prescribed time (or acts unreasonably in giving a notice under clause 8.1(c)(ii)), it

will be deemed to have given the notification in clause 8.1(c)(i). Where clause 8.1(c)(ii) applies, Navitas must (subject to clause 8.2) promptly provide the Consortium Members with access to information which reasonably addresses the missing information following which it will confirm to the Consortium in writing that such information has now been provided and the process in this clause 8.1(c) will recommence.

- (d) The Consortium must within 48 hours of it and its Authorised Persons being given access to the information provided in accordance with clause 8.1(a)(ii) notify Navitas either that:
 - (i) the information provided reasonably addresses the matters set out in the Additional Due Diligence Requests; or
 - (ii) the information provided is incomplete, and specifies the information from the Additional Due Diligence Requests which has not (subject to clause 8.2) been reasonably addressed,

provided that if the Consortium does not give any such notification by the prescribed time (or acts unreasonably in giving a notice under clause 8.1(d)(ii)), it will be deemed to have given the notification in clause 8.1(d)(i). Where clause 8.1(d)(ii) applies, Navitas must (subject to clause 8.2) promptly provide the Consortium Members with access to information which reasonably addresses the missing information following which it will confirm to the Consortium in writing that such information has now been provided and the process in this clause 8.1(d) will recommence.

8.2 **Limitations on due diligence access**

- (a) Navitas has no obligation to provide the Consortium with access to any information under clause 8.1 to the extent that:
 - (i) providing any such information would or may result in Navitas:
 - (A) breaching any applicable law; or
 - (B) compromising any claim of privilege; or
 - (ii) in the case of Material Partner Agreements that are subject to confidentiality restrictions, notwithstanding its best commercial endeavours and compliance with clause 8.2(b), Navitas is unable to procure the consent of a Key Partner to disclosure for the purposes of addressing a Priority Due Diligence Request; in which case (to avoid any doubt), Navitas may redact or hold back any information to the extent necessary (but only to the extent necessary) to ensure that it (or a Related Entity of Navitas) complies with the corresponding confidentiality provisions of the applicable contract or contracts with that Key Partner.
- (b) Navitas must use its best commercial endeavours to procure the consent of counterparties to Material Partner Agreements to disclose the corresponding agreement as specified in Schedule 4 in full to the Consortium as soon as possible.
- (c) Navitas confirms that Schedule 4 lists all agreements with Key Partners.

8.3 **Management meetings**

- (a) During the Exclusivity Period, but only for so long as BGH has not failed to comply with clause 8.3(b) in respect of the applicable meeting, Navitas undertakes to:

- (i) arrange each Agreed Management Meeting; and
- (ii) for each Agreed Management Meeting, procure that the specified members of Navitas management attend the applicable meeting in person or by telephone or video conference,

and arrange additional management meetings with relevant management where reasonably requested by the Consortium, it being acknowledged and agreed that the management personnel, dates and duration currently specified in Schedule 2 reflect what is currently proposed between the parties, but these details may change or be refined (at all times in consultation with the Consortium):

- (iii) following receipt of further details by Navitas from the Consortium about the objectives of each meeting; and
 - (iv) to ensure that management personnel with appropriate knowledge of the applicable parts of the Navitas business are in attendance to address those objectives.
- (b) At least two Business Days before each meeting contemplated by clause 8.3(a), BGH must send Navitas a notice specifying the agenda and list of questions for the applicable meeting, together with a list of proposed attendees.
 - (c) It is acknowledged and agreed that representative(s) of Goldman Sachs (on Navitas' behalf) will also attend each Agreed Management Meeting.

9. **NEGOTIATION OF THE PROPOSAL AND PROGRESS UPDATES**

9.1 **Negotiation of the Scheme Implementation Deed**

- (a) The Consortium must provide a first draft of the Scheme Implementation Deed to Navitas within 10 days of the date the notice under clause 8.1(c)(i) is provided.
- (b) For the duration of the Exclusivity Period, Navitas and the Consortium each undertake to negotiate in good faith a Scheme Implementation Deed and any other documentation required to document or implement the Proposal on the Proposal Terms.
- (c) In respect of any Special Dividend, it is acknowledged and agreed that:
 - (i) the Navitas Board may (in its absolute discretion) determine or declare, and Navitas may pay, any interim dividend with respect to the period ended 31 December 2018 in accordance with Navitas' dividend policy and consistent with past practice, without any prior consent of or consultation with the Consortium and regardless of whether such interim dividend is franked or unfranked (in whole or in part) (**Interim Dividend**);
 - (ii) the Navitas Board must reasonably consult with the Consortium in respect of (the amount of, basis for and availability of franking credits for) any Special Dividend other than the Interim Dividend that it determines to pay prior to implementation of the Proposal and reasonable safeguards to protect the Consortium's interests in relation thereto will be agreed in the Scheme Implementation Deed; and
 - (iii) to avoid any doubt, the cash amount per Navitas Share of any Special Dividend (including the Interim Dividend), ignoring the value of any associated franking credits, will reduce the amount of the offer price per Navitas Share that would ultimately be payable by the Consortium under the Proposal.

9.2 **Progress updates**

BGH must, on the date that is one week after 15 January 2019 and by every subsequent Friday thereafter (each a **Notice Deadline**), deliver a notice to Navitas (**Confirmation Notice**):

- (a) confirming that, based on the due diligence carried out by the Consortium Members and their respective Authorised Persons up to the relevant Notice Deadline, the Consortium remains willing and able to proceed to enter into a Scheme Implementation Deed on the Proposal Terms, which terms (to avoid any doubt) include that Navitas Shareholders will receive no less than the Revised Offer Price from the Consortium and that the Consortium will also permit Navitas to pay the Interim Dividend and any other Special Dividend (with the amount of the Interim Dividend and the amount of any other Special Dividend being deducted from the final offer price) prior to the implementation of the Proposal;
- (b) specifying each request (if any) that has arisen from the Consortium's Confirmatory Due Diligence Investigations which is outstanding; and
- (c) confirming that, based on the progress made up to the Notice Deadline and assuming Navitas:
 - (i) satisfies any requests notified to it in accordance with clause 9.2(b) within a reasonable period of time after the Notice Deadline; and
 - (ii) if required by the Consortium, obtains consent to disclose Material Partner Agreements that are subject to confidentiality restrictions in full to the Consortium in a timely manner,

the Consortium expects to be in a position to both complete the Confirmatory Due Diligence Investigations and enter into a Scheme Implementation Deed by no later than 11.59pm (Perth time) on 18 February 2019.

9.3 **Failure to provide Confirmation Notice**

Unless otherwise agreed in writing by Navitas (acting reasonably and in good faith), the Exclusivity Period will automatically terminate with effect from the Notice Deadline, if BGH fails to deliver a Confirmation Notice in accordance with clause 9.2.

10. **ENGAGEMENT WITH KEY CUSTOMERS / PARTNERS**

- (a) The Consortium and Navitas have agreed to use reasonable endeavours to arrange an introductory meeting between representatives of the Consortium and of the key customers and partners set out in Schedule 3 (each a **Key Partner**) that would be held during the Exclusivity Period (each an **Introductory Meeting**), it being acknowledged and agreed that:
 - (i) when arranging the Introductory Meeting, Navitas will offer the Key Partner the opportunity to hold the meeting either with representatives of the Consortium only or with representatives of the Consortium and of Navitas. If a Key Partner indicates to Navitas they would like Navitas representatives to attend they are also entitled to attend and participate in that Introductory Meeting. If a Key Partner indicates to Navitas that they would prefer that Navitas not attend the applicable Introductory Meeting at all, or only attend and participate in part of the Introductory Meeting, the preference of the Key Partner will be accommodated;

- (ii) subject to the Key Partner indicating that they are comfortable with such an approach, there may be a part of any Introductory Meeting during which representatives of Navitas would not be present; and
 - (iii) for each Key Partner Navitas must, during the first week of the Exclusivity Period, make contact with each Key Partner and use best commercial endeavours to confirm a time and forum for the Introductory Meeting.
- (b) Regardless of whether or not a Key Partner has requested that representatives of Navitas do not attend, no less than 24 hours prior to each Introductory Meeting:
- (i) the Consortium must provide Navitas with notice of:
 - (A) the representatives of the Consortium who will attend the Introductory Meeting; and
 - (B) the agenda for the Introductory Meeting.
 - (ii) Navitas must provide the Consortium with notice of the representatives of Navitas who will attend the Introductory Meetings.
- (c) To the extent that any contract with a Key Partner contains a change of control or similar provision or restriction in favour of the relevant Key Partner which would be triggered by implementation of the Proposal, Navitas must, during the Exclusivity Period, provide the Consortium with reasonable assistance to enable the Consortium to obtain from the Key Partners all consents required in relation to the transaction contemplated by the Proposal, in all cases subject to the Proposal being implemented.

11. **EXCLUSIVITY**

11.1 **No current discussions regarding a Competing Proposal**

Navitas represents and warrants that, other than the discussions with the Consortium and its representatives in respect of the Proposal, as at the date of this document neither Navitas nor any of its Authorised Persons is in negotiations or discussions in respect of any Competing Proposal with any person.

11.2 **No shop**

During the Exclusivity Period Navitas must ensure that neither it nor any of its Authorised Persons directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, expressions of interest, offers, proposals, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

with a view to, or that may be reasonably expected to encourage or lead to, obtaining any offer, proposal or expression of interest from any person in relation to a Competing Proposal.

11.3 **No talk**

During the Closed Due Diligence Period Navitas must ensure that neither it nor any of its Authorised Persons:

- (a) negotiates or enters into; or

- (b) participates in negotiations or discussions with any other person regarding, a Competing Proposal or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Navitas or any of its Authorised Persons or the person has publicly announced the Competing Proposal.

11.4 **No due diligence**

During the Exclusivity Period but, to avoid any doubt, subject to clause 11.6, Navitas must not, and must procure that its Authorised Persons do not:

- (a) permit any person (other than the Consortium and their respective Authorised Persons) to undertake due diligence investigations in respect of Navitas, its Related Entities or any of their businesses, assets and operations;
- (b) make available to any other person, or permits any other person to receive, other than the Consortium and its Authorised Persons (in the course of due diligence investigations or otherwise) any non public information relating to any member of the Navitas Group, any of the operations or assets of the Navitas Group or any part thereof;
- (c) make available to any other person, or permits any other person to have access to, other than the Consortium and its Authorised Persons (in the course of due diligence investigations or otherwise) any premises used, leased, licenced or owned by the Navitas Group;
- (d) make available to any other person, or permits any other person to have access to, other than the Consortium and its Authorised Persons (in the course of due diligence investigations or otherwise) any officers or employees of the Navitas Group,

in each case for the purposes of any such person making, formulating, developing or finalising a Competing Proposal.

11.5 **Notification obligation**

- (a) During the Exclusivity Period, Navitas must promptly, and in any event within two Business Days, notify BGH in writing if Navitas receives any Competing Proposal.
- (b) During the Exclusivity Period, Navitas must promptly, and in any event within one Business Day, notify BGH in writing if Navitas receives any Superior Proposal and the Navitas Board determines that it would be in the best interests of Navitas Shareholders to grant the proponent of such Superior Proposal due diligence access.
- (c) A notification given under clause 11.5(a) or 11.5(b) must disclose the price, conditions and all other material terms of the Competing Proposal or the Superior Proposal (to the extent known by Navitas) including, to avoid any doubt, the identity of the proponent of the Superior Proposal.
- (d) If any material, non-public information about the business or affairs of the Navitas Group is provided or made available to any person in connection with an actual, proposed or potential Competing Proposal which has not previously been provided or made available to the Consortium, Navitas must promptly, and in any event within two Business Days, provide to the Consortium:
 - (i) in the case of written materials, a copy of; and

(ii) in any other case, a written statement of,
that material, non-public information.

11.6 Failure to match a Superior Proposal

- (a) Subject to clause 11.6(b), the Exclusivity Period will automatically terminate with effect from the Matching Deadline if the Consortium does not provide a revised proposal in writing to Navitas that:
- (i) is at the same cash price or a higher cash price than the Superior Proposal; and
 - (ii) to the extent there are material considerations beyond the cash price, the Navitas Board determines, acting reasonably and in good faith and having consulted with its financial advisers and external legal advisers, is equally as favourable to, or more favourable to, Navitas Shareholders than the terms of the Superior Proposal,
- by the Matching Deadline.
- (b) Where clause 11.6(a)(ii) applies:
- (i) Navitas must give the Consortium written notice as to why it does not consider the Consortium's revised proposal to be equally as favourable to, or more favourable to, Navitas Shareholders than the terms of the Superior Proposal; and
 - (ii) the Consortium will have 48 hours from the time of the notice in clause 11.6(b)(i) to make a further revised proposal in writing and until such time, the Exclusivity Period will not terminate; and
 - (iii) the Exclusivity Period will terminate if no further revised proposal is received from the Consortium (within the 48 hour period contemplated by, and otherwise in accordance with, clause 11.6(b)(ii)) that the Navitas Board determines, acting reasonably and in good faith and having consulted with its financial advisers and external legal advisers, is equally as favourable to, or more favourable to, Navitas Shareholders than the terms of the Superior Proposal.
- (c) For the avoidance of any doubt:
- (i) where the Navitas Board determines, acting reasonably and in good faith and having consulted with its financial advisers and external legal advisers, that the Consortium's revised proposal is at least equally as favourable than the Superior Proposal, the Exclusivity Period will continue and the obligations on Navitas in clause 11.4 will continue to apply; and
 - (ii) where the Consortium does not make a revised proposal or the Navitas Board determines, acting reasonably and in good faith and having consulted with its financial advisers and external legal advisers, that its revised proposal is not at least equally as favourable than the Superior Proposal, Navitas will continue to give the Consortium due diligence access as required under this document (but without exclusivity).

12. **PRIVACY LAWS COMPLIANCE**

12.1 **Compliance with Privacy Laws and policies**

Notwithstanding any other term of this document, the Receiving Party must ensure that all of its dealings with Personal Information made available to it by the Disclosing Party in connection with the Proposal:

- (a) conform with its obligations under the Privacy Laws;
- (b) to the extent that different Privacy Laws apply to the Disclosing Party and the Receiving Party, and without limiting paragraph (a), conform with the obligations applicable to the Disclosing Party as if they were binding upon the Receiving Party where these different Privacy Laws are expressly made known by the Disclosing Party to the Receiving Party; and
- (c) conform to the extent relevant to this document, with the requirements of the Disclosing Party's published privacy policies (as amended from time to time) which has been made known and provided by the Disclosing Party to the Receiving Party.

12.2 **Access and directives**

The Receiving Party must, in respect of any Personal Information made available to that party by or on behalf of the Disclosing Party in connection with the Proposal provide reasonable assistance in relation to any reasonable request by the Disclosing Party made for the purpose of ensuring either party's compliance with:

- (a) any obligations under the Privacy Laws;
- (b) any applicable direction or determination issued by the Office of the Australian Information Commissioner (or such other privacy authority with jurisdiction over either party); or
- (c) a party's privacy policy which has been made known and provided by the Disclosing Party to the Receiving Party.

12.3 **General obligations**

The Receiving Party must:

- (a) ensure that its employees, officers, contractors and agents who deal with Personal Information made available by the Disclosing Party in connection with the Proposal are aware of and comply with the Disclosing Party's obligations under this document in relation to such Personal Information; and
- (b) promptly notify the Disclosing Party if it becomes aware of a breach of its obligations in relation to Personal Information under this document.

13. **NO INSIDER TRADING**

- (a) Each Consortium Member acknowledges that the Navitas Confidential Information may include information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of securities of Party B (within the meaning of Division 3 of Part 7.10 of the Corporations Act).
- (b) Each Consortium Member acknowledges its legal requirements to comply with applicable insider trading and other securities laws (including Division 3 of Part

7.10 of the Corporations Act) and will take all reasonable steps to advise its respective Authorised Persons about the requirement to comply with such laws.

14. **RESTRICTIONS ON CERTAIN ACTIVITIES**

14.1 **Enquiries to be made only of Navitas Approved Persons**

Insofar as advisers, officers or employees of the Navitas or its Related Entities are concerned, each Consortium Member may only make, and must procure that their respective Authorised Persons only make, enquiries of and discuss with Approved Persons of Navitas matters concerning the Navitas Confidential Information (including the Proposal). For the purpose of this clause, an **Approved Person** for Navitas is:

- (a) Ms Tracey Horton, Mr David Buckingham and Mr Philip Mirams (each of the Discloser), Mr Nick Sims (of Goldman Sachs) and Mr Roger Davies (of Ashurst); or
- (b) any other person approved in writing by such a person as an "Approved Person" for the purpose of this clause.

14.2 **Enquiries to be made only of Consortium Approved Persons**

Navitas may only make, and must procure that its Authorised Persons only make, enquiries of and discuss with Approved Persons of the Consortium matters concerning the Consortium Confidential Information (including the Proposal). For the purpose of this clause, an **Approved Person** for the Consortium is:

- (a) Mr Ben Gray and Mr Jason Korman (of BGH Capital) and Mr Neil Pathak (of Gilbert + Tobin); or
- (b) any other person approved in writing by such a person as an "Approved Person" for the purpose of this clause;

14.3 **No contact with financiers, customers, suppliers, etc**

Without limiting clause 14.1, but subject to clause 14.4, each Consortium Member must not, and must procure that their Authorised Persons do not, directly or indirectly (without the prior written consent of Navitas) make enquiries of, or have discussions with, any officer or employee (but save as permitted by clause 14.1), financier (except to the extent a financier is also an Authorised Person of the Consortium Member), contractor, university partner, student recruitment agent, customer or supplier of Navitas or of any of its Related Entities any matter concerning the Navitas Confidential Information (including the Proposal).

14.4 **Exceptions**

Clauses 14.1 and 14.2 do not prevent a Consortium Member or its Authorised Persons from:

- (a) participating in the meetings with Key Partners which are arranged and held in accordance with clause 10; or
- (b) contacting any persons specified in clause 14.3 in the ordinary course of their ordinary business without reference to the Navitas Confidential Information (including the Proposal); or
- (c) working with, disclosing Navitas Confidential Information to, or discussing the Proposal (and any revision to it) with, RMJ (and, to avoid any doubt, RMJ is deemed to be a Receiving Party and Navitas the Disclosing Party of the Navitas

Confidential Information so disclosed, irrespective of whether such information was made available by or on behalf of Navitas to Rodney Malcolm Jones); or

- (d) following contact from Navitas to set up an Introductory Meeting, making enquiries of, or having discussions with, any university partner about any matter concerning the Proposal, provided that:
 - (i) in any event and without limiting anything in the balance of this clause 14.4(d), the Consortium gives written notice to Navitas no less than 24 hours before any such enquiries are made, or any such discussions occur, specifying the university partner in respect of whom enquiries would be made or with whom discussions would be had (including the specific individual representatives of such university partner); and
 - (ii) where Navitas attended the Introductory Meeting with the relevant university partner, such a university partner is first asked by the Consortium whether they wish for a representative of Navitas to be present, or otherwise participate, in respect of any such enquiries or any such discussions; and
 - (iii) where any university partner indicates that they wish for a representative of Navitas to be so present or to so participate (in respect of any such enquiries or discussions), the Consortium must give Navitas a reasonable opportunity to do so. (To avoid doubt, "reasonable opportunity" will be given if the meeting is being set up at least 24 hours after notice has been given); or
- (e) (in the case of RMJ only) calling the Vice-Chancellors of Key Partners contributing more than A\$3 million in EBITDA to Navitas in its last financial year to express his support for the Proposal and to seek any feedback such Vice-Chancellors would like to provide, provided that the Consortium gives written notice to Navitas no less than 24 hours after any such call or discussions occur. For the avoidance of doubt, such calls to be without a representative of Navitas on the call; or
- (f) making enquiries of, or having discussions with, any student recruitment agent about any matter concerning the Proposal, provided that the Consortium gives written notice to Navitas no less than 24 hours after any such enquiries are made, or any such discussions occur, specifying the student recruitment agent in respect of whom enquiries have been made or with whom discussions have been had (including the specific individual representatives of such student recruitment agent).

14.5 **Restrictions**

The Receiving Party acknowledges and agrees that the restrictions in this clause 14 are reasonable and proportionate for the purposes of protecting the legitimate interests of the Disclosing Party.

15. **AMENDMENT AND RELEASES IN RESPECT OF THE CO-OPERATION AND PROCESS AGREEMENT**

Each of BGH, RMJ and AusSuper agrees that paragraph (d) of the definition of "Exclusivity Period" in the Co-operation and Process Agreement is amended by deleting paragraph (d) and replacing it with "30 September 2019". In addition, if:

- (a) the Exclusivity Period terminates in accordance with clause 11.6 (ie by reason of a failure to match (or exceed) a Superior Proposal notified to BGH) and such Superior Proposal becomes binding on or before 22 March 2019 (the **Binding Superior Proposal**); and

- (b) Navitas has at all times complied with its obligations under this document including, but not limited to, clauses 2, 3, 4, 8, 9.1, 10 and 11,

each of BGH, RMJ and AusSuper agrees:

- (c) (pursuant to clause 12.3 of the Co-operation and Process Agreement) that the Co-operation and Process Agreement is automatically amended at the time both paragraphs (a) and (b) are satisfied by:
 - (i) amending clauses 4.2(b) and 4.2(c) such that they do not apply to the Binding Superior Proposal;
 - (ii) deleting the language currently included in clause 5.1(a)(i) (standstill from selling or otherwise disposing of a Relevant Interest in any Navitas Shares) in its entirety and replacing it with the following:

directly or indirectly sell or otherwise dispose of a Relevant Interest in any Navitas Shares, other than any disposal arising as a result of the acceptance of a Binding Superior Proposal or the implementation of a Binding Superior Proposal (as defined in the process and confidentiality deed between the parties and Navitas dated 14 January 2019);
 - (iii) amending clause 5.1(a)(ii) (standstill from accepting, voting in favour of or otherwise supporting a Competing Proposal (as that term is defined in the Co-operation and Process Agreement)) such that it does not apply to a Binding Superior Proposal; and
- (d) (to avoid any doubt) that the other parties to the Co-operation Agreement (each a **Released Party**) are irrevocably released and discharged from any other provision of the Co-operation Agreement that would or may in any way prevent or restrict a Released Party or any of its Related Entities, from accepting, voting in favour of, or otherwise supporting, any Binding Superior Proposal.

16. **SHAREHOLDER RIGHTS**

Other than clause 7 of this document, and subject at all times to their compliance with clause 7, nothing in this document restricts the parties from exercising their rights as shareholders of Navitas.

17. **AUSSUPER LIMITATION OF LIABILITY**

Notwithstanding any other provision of this document, the parties (other than AusSuper) acknowledge and agree that:

- (a) AusSuper enters into and performs this document and the transactions it contemplates in its capacity as the trustee for the AustralianSuper superannuation fund (the **Fund**) and in no other capacity. This applies also in respect of any past and future conduct (including omissions) relating to this document or those transactions;
- (b) AusSuper is not liable to pay or satisfy any of its obligations under and in connection with this document and those transactions and will have no liability to the other parties except to the extent of AusSuper's right of indemnity out of the assets of the Fund;
- (c) if those assets are insufficient, the other parties will not seek to recover any shortfall by bringing proceedings against AusSuper personally and may not seek the appointment of a liquidator, administrator, receiver or similar person to

AusSuper or prove in any liquidation, administration or arrangement of or affecting AusSuper; and

- (d) the other parties waive their rights and release AusSuper from any personal liability whatsoever in respect of any loss or damage which cannot be paid or satisfied out of the assets of the Fund.

18. **REMEDIES**

18.1 **Acknowledgements**

Each party acknowledges and agrees that:

- (a) any breach of this document may cause the relevant other party immediate and irreparable harm for which damages alone may not be an adequate remedy; and
- (b) it must promptly take all steps that the relevant other party may reasonably require, and must cooperate with the relevant other party in any investigation, litigation or other action of the relevant other party (or of a Related Entity of the relevant other party), relating to any breach of this document or any theft, loss, damage or unauthorised access, use or disclosure of or to Personal Information or any of the relevant other party's Confidential Information that is or was in the possession, custody or control of the first mentioned party or an Authorised Person of it.

19. **TERM**

This document (other than clauses 1, 6.2(a), 15, 17, 18, 21, and 22) ends on the second anniversary of the date of it. The termination of this document does not affect any right or claim a party may have which arises on, or has arisen before, termination.

20. **NOTICES**

20.1 **How to give a notice**

A notice, consent or other communication under this document is only effective if it is in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and either:

- (a) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
- (b) sent by email.

20.2 **When a notice is given**

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is sent by delivered:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;

- (b) if it is sent by mail:
 - (i) within Australia – three Business Days after posting; or
 - (ii) to or from a place outside Australia – seven Business Days after posting; and
- (c) if it is sent by email:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - when sent; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day,

provided that no notice of failure of transmission or other error message is received by the sender.

20.3 **Address for notices**

A person's address, email address and fax number are those set out below, or as the person notifies the sender:

BGH

Address: Level 26, 101 Collins Street, Melbourne VIC 3000
 Email Address: ecahill@bghcapital.com
 Attention: Emma Cahill

With a copy (for information purposes only) to:

Address: Level 22, 101 Collins Street, Melbourne VIC 3000
 Email Address: npathak@gtlaw.com.au
 Attention: Neil Pathak

AusSuper

Address: Level 33, 50 Lonsdale Street, Melbourne VIC 3000
 Email Address: bensmith@australiansuper.com
 (with a copy to investmentslegal@australiansuper.com)
 Attention: Ben Smith

RMJ

Address: 3/93 South Perth Esplanade, South Perth WA 6151
 Email Address: rod.jones@hoperidge.com.au
 Attention: Mr Rodney Malcolm Jones

Navitas

Address: Level 8, Brookfield Place, 125 St Georges Terrace, Perth WA 6000
 Email Address: Phil.Mirams@navitas.com
 Attention: Mr Philip Mirams, Chief Financial Officer

With a copy (for information purposes only) to:

Address: Level 10, 123 St Georges Terrace, Perth WA 6000
 Email Address: roger.davies@ashurst.com
 Attention: Roger Davies

21. **AMENDMENT AND ASSIGNMENT**

21.1 **Amendment**

This document can only be amended or replaced by another document executed by the parties.

21.2 **Assignment**

- (a) Subject to clause 21.2(b), a party may only assign, encumber, declare a trust over or otherwise deal with its rights under this document with the written consent of the other party.
- (b) Navitas may assign its rights under this document to any holding company of Navitas from time to time.

22. **GENERAL**

22.1 **Governing law**

- (a) This document and any dispute arising out of this document is governed by the laws of the State of Western Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them, in respect of any proceedings arising out of this document.

22.2 **Liability for expenses**

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this document.

22.3 **Variation of rights**

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this document. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this document.

22.4 **Operation of this document**

- (a) Subject to clause 22.4(b), this document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter (including the confidentiality deed between the parties dated 7 November 2018) is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

22.5 **Counterparts**

This document may be executed in counterparts.

EXECUTED as a deed.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

SIGNED for **BGH CAPITAL PTY LTD** by its duly authorised officer, in the presence of:

Signature of officer

Signature of witness

Name

Name

SIGNED, SEALED and **DELIVERED** for **AUSTRALIANSUPER PTY LTD** as trustee of AustralianSuper by its attorneys who have not received any notice of revocation of the Power of Attorney dated 15 September 2016 as amended from the time to time in the presence of:

Signature of attorney

Signature of witness

Name

Name

Signature of attorney

Address of witness

Name

SIGNED by **RODNEY MALCOLM JONES**
in the presence of:

Signature of party

Signature of witness

Name

Address of witness

SIGNED for **HOPERIDGE ENTERPRISES
PTY LTD** by its duly authorised officer, in
the presence of:

Signature of officer

Signature of witness

Name

Name

SIGNED for **REMJAY INVESTMENTS
PTY LTD** by its duly authorised officer, in
the presence of:

Signature of officer

Signature of witness

Name

Name

EXECUTED by **NAVITAS LIMITED:**

Signature of director

Signature of director/secretary

Name

Name

Schedules 1 to 4

(Not included in this version)