

21 March 2019

## Navitas enters into Scheme Implementation Deed with BGH Consortium

### Highlights

- Navitas has agreed terms of a binding offer from the BGH Consortium, under which the BGH Consortium will acquire 100% of the share capital of Navitas by way of Scheme of Arrangement
- Navitas shareholders to receive Cash Consideration of \$5.825 per Navitas share upon the Scheme being implemented
- Navitas Directors unanimously recommend Navitas shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to an independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Navitas shareholders
- Scheme booklet expected to be distributed to Navitas shareholders in May, and Scheme meetings expected to be held in June.

### Overview of the Scheme

Navitas Limited (NVT:ASX) (“Navitas” or “the Company”) announces that it has entered into a Scheme Implementation Deed (“SID”) with BGH BidCo A Pty Ltd (“BGH BidCo”), an entity that will be owned by a consortium comprising the BGH Fund (as defined in the SID), AustralianSuper, entities associated with Mr Rodney Jones (“RMJ”) and certain limited partners of the BGH Fund who are co-investing with the other consortium members (the “BGH Consortium”).

Under the SID, it is proposed that BGH BidCo will acquire 100% of the share capital of Navitas by way of a scheme of arrangement (the “Scheme”).

If the Scheme is implemented, Navitas shareholders will receive \$5.825 in cash per Navitas share (“Cash Consideration”)¹. The Cash Consideration values Navitas’ equity at approximately \$2.1 billion² and represents:

- an increase of \$0.325 per Navitas share (approximately 6%) to the price offered under the first non-binding proposal from the BGH Consortium of \$5.50 per Navitas share, as announced to ASX on 10 October 2018 (“First Indicative Proposal”);
- a 34% premium to the closing price of Navitas shares on 9 October 2018 of \$4.35, being the last trading day prior to Navitas announcing that it had received the First Indicative Proposal;
- a 33% premium to the one month VWAP up to and including 9 October 2018 of \$4.37;
- a 33% premium to the three month VWAP up to and including 9 October 2018 of \$4.39; and
- an enterprise value / pro forma EBITDA from continuing operations for the twelve months ending 31 December 2018 multiple of 15.5x³.

¹ Except for AustralianSuper and Mr Jones, who will receive the mixed consideration as described below.

² Calculated based on 358,251,068 ordinary shares in Navitas on issue.

³ Enterprise value based on equity value of \$2.1bn plus net debt of \$207.9m and minority interests of \$0.4m as at 31 December 2018. Pro forma EBITDA from continuing operations of \$148.5m includes share of EBITDA from joint ventures and excludes bid advisory fees and other expenses accrued in connection with the BGH proposals, contributions from closed Business Units (Macquarie and Curtin Sydney) and adjustments arising from the rationalisation of the Careers and Industry Division.

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## Navitas Board unanimously recommends the Scheme

Based on the Cash Consideration of \$5.825 per Navitas share, the Directors of Navitas unanimously recommend that shareholders vote in favour of the Scheme at the Scheme meeting, in the absence of a Superior Proposal and subject to an independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Navitas shareholders. Subject to those same qualifications, each Director of Navitas intends to vote all the Navitas shares held or controlled by them in favour of the Scheme.

## Details of the SID

The Scheme is subject to various conditions. A copy of the SID, which sets out all the terms and conditions of the Scheme and associated matters, is attached to this announcement (excluding certain of its schedules). Capitalised terms used in this section below have the meaning given to those terms in the SID.

In summary, conditions for implementation of the Scheme, include:

- approval of Navitas shareholders and the Federal Court of Australia;
- no Material Adverse Change or Prescribed Occurrence;
- the counterparties to 24 Specified Contracts (to which there are 18 separate counterparties) providing consent or confirmation in respect of the change of control of Navitas, and the counterparties to 7 Specified Contracts that expire before 31 December 2020 not giving notice that they do not intend to renew those contracts as a result of the change of control of Navitas or that they would only renew on amended terms that are materially adverse to Navitas (in all cases subject to a materiality qualification, so that if the aggregate budgeted FY19 EBITDA contribution of all contracts for which the condition is not satisfied does not exceed \$6 million in aggregate, and no individual "unsatisfied" contract exceeds \$4 million, then the condition will be deemed to be satisfied);
- the Australian education regulators, TEQSA and ASQA, not taking specified actions (such as objecting to the change of control or cancelling the accreditations or registrations of relevant companies in the Navitas Group);
- approval of Australia's Foreign Investment Review Board ("FIRB") (an application for approval has already been submitted to FIRB by BGH BidCo);
- certain relevant US education regulatory authorities (the ACCSC, BPPE and FCIE) approving (provisionally or otherwise) a Navitas change of control (or confirming that such approval is not required); and
- other customary conditions.

BGH BidCo has obtained a binding Debt Commitment Letter, and binding Equity Commitment Letters, that in aggregate represent sufficient funding to pay the maximum amount of Cash Consideration payable under the Scheme. The Scheme is not subject to any financing condition.

Under the SID, Navitas is subject to customary exclusivity obligations, including "no shop", "no talk" and notification obligations. The SID also contains a matching right regime in respect of any Superior Proposal received by Navitas. The SID also details circumstances under which a break fee of \$15.65 million may be payable by Navitas to BGH BidCo, or a reverse break fee of \$15.65 million may be payable by BGH BidCo to Navitas, depending on the circumstances.

As previously announced, the Navitas Board has negotiated an amendment to the BGH Consortium's Co-operation and Process Agreement dated 8 October 2018 ("COPA") such that restrictions on RMJ and AustralianSuper accepting, voting in favour of or otherwise supporting a Competing Proposal (as defined in the COPA) no longer apply if Navitas receives a Superior Proposal, the BGH Consortium fails to match

that Superior Proposal within the agreed timeframe and the Superior Proposal becomes binding prior to or on 2 April 2019 (provided that Navitas has otherwise complied with its exclusivity obligations under the SID). This amended arrangement has been recorded in a deed between Navitas, BGH Capital Pty Ltd ("BGH Capital"), AustralianSuper and RMJ, a copy of which is also attached to this announcement.

### **Consortium shareholders and mixed consideration alternative**

As members of the BGH Consortium, RMJ and AustralianSuper (who in aggregate own approximately 18% of the Navitas shares on issue) will receive some or all of their consideration in the form of shares in the ultimate holding company of BGH BidCo, instead of the Cash Consideration available to all other Navitas shareholders.

RMJ and AustralianSuper will not be permitted to vote at the general Scheme meeting of Navitas shareholders for the purpose of approving the Scheme. AustralianSuper and RMJ will instead vote in a separate class, at a separate Scheme meeting, to all other Navitas shareholders. RMJ and AustralianSuper are required (by contractual commitments with the Consortium) to vote in favour of the Scheme at the separate Scheme meeting, such that approval at the separate Scheme meeting will be obtained on that basis.

### **No special dividend**

As previously disclosed, the Company had a reduction in its franking balance during FY18. Navitas currently expects that, at the time the Scheme is implemented and after payment of Scheme-related transaction costs, Navitas will likely have a minimal franking credit balance available to apply to any special dividend.

Given the minimal additional franking credit benefit (if any) that would be attached to any special dividend (and that the cash amount of any special dividend paid by Navitas would be deducted from the Cash Consideration payable by the BGH Consortium under the Scheme), the Board has determined that it is not in the best interests of Navitas to declare a special dividend. In the event the Scheme does not proceed, the Board expects to continue to pay dividends in the future, with franking credits to the extent available.

### **Indicative timetable and next steps**

Navitas shareholders do not need to take any action at the present time.

A Scheme booklet, which will contain important information relating to the Scheme and the Scheme meetings, the reasons for the Directors' recommendation, and the Independent Expert's report (to be prepared by Lonergan Edwards & Associates Limited), is expected to be sent to shareholders in May 2019.

The Scheme is subject to approval by Navitas shareholders at the Scheme meetings which are expected to be held in June 2019. Subject to shareholder approval, the other conditions of the Scheme being satisfied, and approval by the Court, the Scheme is expected to be implemented in late June or early July 2019.

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

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### **For further information contact:**

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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](http://www.navitas.com)

## **About BGH Capital**

BGH Capital was founded in 2017 by Robin Bishop, Ben Gray and Simon Harle with the objective of creating the pre-eminent private equity firm in Australia and New Zealand. BGH Capital is headquartered in Melbourne, Australia and is an independent firm, owned and managed by its founding partners. BGH Capital Fund I had a final close of approximately A\$2.6 billion in May 2018 making it the largest private equity fund focused on Australia and New Zealand that is actively deploying capital. BGH Capital aims to provide its portfolio companies with the capital they need to grow, as well as analytical, strategic and operational resources to help them realise their full potential. For more information, visit [www.bghcapital.com](http://www.bghcapital.com)

## **About AustralianSuper**

AustralianSuper manages more than \$140 billion of members' retirement savings on behalf of more than 2.2 million members from around 280,000 businesses. One in 10 working Australians is a member of AustralianSuper, the nation's largest superannuation fund.

**Appendix A – Scheme Implementation Deed (excluding certain schedules)**

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# **Scheme implementation deed**

BGH Bidco A Pty Ltd

and

Navitas Limited

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## Parties

- 1 **BGH Bidco A Pty Ltd** ACN 631 573 763 of Level 26, 101 Collins Street, Melbourne Victoria 3000 (**Bidder**)
  - 2 **Navitas Limited** ABN 69 109 613 309 whose registered office is at Level 8, Brookfield Place, 125 St Georges Terrace, Perth WA 6000 (**Navitas**)
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## Background

- A Bidder and Navitas have agreed that Bidder will acquire Navitas by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Navitas and Scheme Shareholders.
- B Bidder and Navitas have agreed to implement the Scheme on and subject to the terms and conditions of this document.

### The parties agree

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## 1 Defined terms and interpretation

### 1.1 Defined terms

A term or expression starting with a capital letter which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

### 1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this document.

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## 2 Agreement to proceed with Transaction

- (a) Navitas agrees to propose the Scheme on and subject to the terms and conditions of this document.
  - (b) Bidder agrees to assist Navitas to propose the Scheme on and subject to the terms and conditions of this document.
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## 3 Conditions precedent

### 3.1 Conditions precedent

Subject to this clause 3, the Scheme will not become Effective until and unless each of the following conditions precedent is satisfied or waived in accordance with clause 3.3.

- (a) **(Shareholder approval)** Navitas Shareholders agree to the Scheme at the Scheme Meetings by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act.
- (b) **(Court approval)** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.

- (c) **(FIRB)** By 8.00 am on the Second Court Date, either:
- (i) the Treasurer (or the Treasurer's delegate) has provided a written no objection notification in respect of the Scheme and Bidder's proposed acquisition of all the Navitas Shares either without conditions or subject only to standard tax conditions or conditions which are acceptable to Bidder; or
  - (ii) following notice of the proposed Scheme and Bidder's proposed acquisition of all the Navitas Shares having been given by Bidder to the Treasurer under the Foreign Acquisitions and Takeovers Act 1975 (Cth) **(FIRB Approval)**, the Treasurer has ceased to be empowered to make any order under Part 3 of the Foreign Acquisitions and Takeovers Act 1975 (Cth) because the applicable time limit on making orders and decisions has expired.

For the purposes of this clause, a standard tax condition is a condition included in the list of tax conditions published on the Foreign Investment Review Board website at: [https://firb.gov.au/files/2016/05/Tax\\_conditions.pdf](https://firb.gov.au/files/2016/05/Tax_conditions.pdf)).

- (d) **(Restraints)** By 8.00 am on the Second Court Date, there is not in effect any temporary, preliminary or final order, decision or decree issued by any court of competent jurisdiction or Government Agency which restrains, prohibits, or otherwise materially adversely impacts upon, the Scheme.
- (e) **(Material Adverse Change)** No Material Adverse Change occurs or is announced or becomes known to Bidder between the date of this document and 8.00 am on the Second Court Date.
- (f) **(Prescribed Occurrence)** No Prescribed Occurrence occurs between the date of this document and 8.00 am on the Second Court Date.
- (g) **(TEQSA action)** Before 8.00 am on the Second Court Date, TEQSA has not:
- (i) stated in writing that it objects to the Scheme (or the acquisition of Navitas Shares, or the change of control of Navitas arising, pursuant to the Scheme);
  - (ii) taken any action to cancel, or provided written notification of its intention to cancel, any registration or accreditation of a member of the Navitas Group; or
  - (iii) taken any action to impose a new condition on, or vary an existing condition to, or provided written notification of its intention to impose a new condition on or vary an existing condition to, any registration or accreditation of a member of the Navitas Group where such new condition or variation has or may reasonably be expected to have a material adverse impact on such member's ability to conduct its business in the manner it is presently being conducted.
- (h) **(ASQA action)** Before 8.00 am on the Second Court Date, ASQA has not:
- (i) stated in writing that it objects to the change of control of Navitas English Pty Ltd arising pursuant to the Scheme;
  - (ii) taken any action to cancel, or provided written notification of its intention to cancel, any registration or accreditation of Navitas English Pty Ltd; or
  - (iii) taken any action to impose a new condition on, or vary an existing condition to, or provided written notification of its intention to impose a new condition

on or vary an existing condition to, any registration or accreditation of Navitas English Pty Ltd where such new condition or variation has or may reasonably be expected to have a material adverse impact on Navitas English Pty Ltd's ability to conduct its business in the manner it is presently being conducted.

- (i) **(Navitas Scheme Representations and Warranties)** The Navitas Scheme Representations and Warranties are true and correct in all material respects as at the date of this document and 8.00 am on the Second Court Date.
- (j) **(Specified Contracts)** Before 8.00 am on the Second Court Date:
  - (i) each of the Specified Contract counterparties has provided (as applicable):
    - (A) written consent to the change of control or ownership of Navitas (or a subsidiary of Navitas) that will arise from the implementation of the Scheme; or
    - (B) written confirmation that it will not terminate the Specified Contract as a result of the fact that a change of control or ownership of Navitas (or a subsidiary of Navitas) will arise from the implementation of the Scheme (and, where the contract provides for termination for convenience or on notice, will not terminate the Specified Contract for convenience or with notice prior to, or on, implementation of the Scheme),  
  
in each case, in the manner agreed between Bidder and Navitas; and
  - (ii) such consent or confirmation is not withdrawn, cancelled or revoked,  
  
except that this condition will be deemed to be satisfied if:
    - (iii) the aggregate expected EBITDA contribution for FY19 from all Specified Contracts for which sub-paragraph (A) or (B) above (as applicable) is not satisfied does not exceed \$6 million; and
    - (iv) the expected EBITDA contribution for FY19 for any Specified Contract for which sub-paragraph (A) or (B) above (as applicable) is not satisfied does not exceed \$4 million.
- (k) **(US education regulatory approval)** Before 8.00 am on the Second Court Date, each of the ACCSC, BPPE (in respect of Ex'pression Centre for New Media, Inc. trading as SAE Expression College and SAE Institute of Technology (San Francisco) Corp trading as SAE Institute of Technology only) and FCIE (in respect of SAE Institute of Technology (Miami) Corp trading as SAE Institute of Technology only) has done any one of the following:
  - (i) confirmed in writing that its approval is not required in respect of the change of control arising from the implementation of the Scheme on terms acceptable to Bidder (acting reasonably);
  - (ii) provided provisional written approval in respect of the change of control arising from the implementation of the Scheme; or
  - (iii) provided written approval in respect of the change of control arising from the implementation of the Scheme,

and (in respect of sub-clauses (ii) and (iii) only) such approval is on terms satisfactory to the Bidder (acting reasonably), and each such confirmation or approval (as applicable) is not withdrawn, cancelled or revoked before 8.00 am on the Second Court Date.

### **3.2 Reasonable endeavours**

- (a) Each of Bidder and Navitas must use reasonable endeavours to procure that:
  - (i) the conditions precedent in clauses 3.1(a), 3.1(b), 3.1(d), 3.1(g), 3.1(h), 3.1(j) and 3.1(k) are satisfied; and
  - (ii) there is no occurrence within its control or the control of any of its related bodies corporate that prevents, or would be reasonably likely to prevent, the satisfaction of any condition precedent.
- (b) Bidder must use reasonable endeavours to procure that the condition precedent in clause 3.1(c) is satisfied as soon as practicable after the date of this document.
- (c) Navitas must use reasonable endeavours to procure that the conditions precedent in clauses 3.1(e), 3.1(f) and 3.1(i) are satisfied.
- (d) Each of Bidder and Navitas, in respect of matters within its knowledge, must keep the other reasonably informed of the progress towards satisfying the conditions precedent.
- (e) Without limiting clause 3.2(a) or clause 7.8(b), each of Bidder and Navitas must provide all reasonable assistance to the other in obtaining the consent or confirmation in respect of each Specified Contract as contemplated by clause 3.1(j) or (as the case requires) to avoid a counterparty to a Specified Contract referred to in paragraph (a)(ii) of the definition of "Material Adverse Change" advising that it does not intend to renew the relevant contract, in each case as soon as reasonably practicable after the date of this document by:
  - (i) providing such information to each other, and engaging in meetings with the Specified Contract counterparties, as is reasonably necessary or appropriate, or reasonably requested by a counterparty; and
  - (ii) agreeing the form of notification to be sent by Navitas to each Specified Contract counterparty.

### **3.3 Waiver of conditions precedent**

- (a) The conditions precedent in clauses 3.1(a), 3.1(b) and 3.1(c) cannot be waived.
- (b) The condition precedent in clause 3.1(d) is for the benefit of both Bidder and Navitas and any breach or non-fulfilment of that condition precedent may only be waived by written agreement between Bidder and Navitas.
- (c) The conditions precedent in clauses 3.1(e), 3.1(f), 3.1(g), 3.1(h), 3.1(i), 3.1(j) and 3.1(k) are for the sole benefit of Bidder and any breach or non-fulfilment of any of these conditions precedent may only be waived by Bidder (in its absolute discretion) in writing.
- (d) If Bidder or Navitas waives the breach or non-fulfilment of a condition precedent, that waiver does not prevent the relevant party from suing the other for any breach

of this document that resulted in such breach or non-fulfilment provided that the relevant party is otherwise permitted to do so under this document.

- (e) Waiver of a breach or non-fulfilment of a condition precedent does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other condition precedent resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that condition precedent resulting from any other event.

### 3.4 Termination on failure of condition precedent

- (a) If:
  - (i) there is a breach or non-fulfilment of a condition precedent that has not been waived in accordance with clause 3.3;
  - (ii) a condition precedent becomes incapable of satisfaction and the breach or non-fulfilment of that condition precedent that has occurred, or would otherwise occur, has not been waived in accordance with clause 3.3; or
  - (iii) the Scheme has not become Effective by the End Date,

then either Bidder or Navitas may give the other written notice (**Consultation Notice**) within 10 Business Days after the relevant event (**Termination Event**). Bidder and Navitas must then consult in good faith to determine whether they can reach agreement with respect to:

- (iv) extending the time for satisfaction of the relevant condition precedent or the End Date (as the case may be), or both;
  - (v) changing the date on which an application is made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application to a date agreed between Bidder and Navitas (as applicable); or
  - (vi) the Transaction proceeding by way of alternative means or methods.
- (b) If Bidder and Navitas are unable to reach such agreement within 10 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within 10 Business Days after a Termination Event, either Bidder or Navitas (in this clause 3.4, the **Terminating Party**) may terminate this document by giving written notice (**Termination Notice**) to the other, provided that:
    - (i) if the basis upon which the Terminating Party is seeking to terminate this document is the occurrence of an event described in clause 3.4(a)(i) or 3.4(a)(ii), the Terminating Party has the benefit of the relevant condition precedent or the condition precedent is referred to in clause 3.3(a); and
    - (ii) there has been no failure by the Terminating Party to comply with its obligations under this document, where that failure directly and materially contributed to the occurrence of the Termination Event.
  - (c) Where a Termination Notice is given under this clause 3.4(a), this document will terminate with immediate effect and clause 14.4 will apply.

### **3.5 Certain notices**

Each of Bidder and Navitas must promptly notify the other in writing if it becomes aware:

- (a) that a condition precedent has been satisfied or breached; or
- (b) of any fact, matter or circumstance that has resulted or is reasonably likely to result in:
  - (i) a condition precedent becoming incapable of satisfaction or otherwise not being satisfied in accordance with its terms;
  - (ii) a Representation and Warranty given by that party under this document ceasing to be true and correct in all material respects as at the date or dates it is expressed to be given in this document; or
  - (iii) a material breach of this document by that party.

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## **4 Transaction steps**

### **4.1 Scheme**

- (a) Navitas agrees to propose the Scheme on and subject to the terms of this document.
- (b) Navitas must not consent to any modification of, or amendment to, the Scheme, or to the making or imposition by a court of any condition in respect of the Scheme, without the prior written consent of Bidder (such consent not to be unreasonably withheld).

### **4.2 Scheme Consideration**

Subject to and in accordance with this document and the Scheme, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder.

### **4.3 Provision of Scheme Consideration**

Subject to the Scheme becoming Effective, Bidder agrees in favour of Navitas that, in consideration of the transfer to Bidder of each Scheme Share under the Scheme, Bidder will:

- (a) accept such transfer; and
- (b) provide or procure the provision of the relevant component of the Scheme Consideration in accordance with the Scheme.

### **4.4 Election mechanism**

- (a) Navitas must ensure that an Election Form is made available to the Relevant Shareholders.
- (b) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed by Bidder and Navitas in writing.

#### 4.5 HoldCo Shares

Bidder covenants in favour of Navitas (in its own right and on behalf of each Relevant Shareholder) that:

- (a) the HoldCo Shares issued as Scheme Consideration will, on their issue, rank equally in all respects with all other HoldCo Shares in the same class; and
- (b) on issue, each HoldCo Share will be fully paid and, to the extent within the control of Bidder, free from any Encumbrance.

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## 5 Not used

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## 6 Implementation

### 6.1 Navitas obligations

Navitas must, acting at all times in good faith, take all steps reasonably necessary to implement the Scheme in accordance with the Timetable and otherwise as soon as practicable and on the terms and conditions of this document, and must consult with Bidder on a regular basis about its progress towards satisfying its obligation under this clause 6.1. Without limiting the foregoing, Navitas must do the following:

- (a) **(Independent Expert)** as soon as reasonably practicable after the date of this document, appoint the Independent Expert and provide such assistance and information as is reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (b) **(Promotion of Transaction)** subject to no Superior Proposal emerging and to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of Navitas Shareholders and not changing that conclusion, provide all reasonable co-operation in the promotion of the Transaction to Navitas Shareholders requested by Bidder, including procuring that senior Navitas Group employees meet with key Navitas Shareholders and communicate with employees, partners, agents, students, customers and suppliers in a manner which is supportive of the Scheme;
- (c) **(preparation of Scheme Booklet)**
  - (i) prepare the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) in accordance with applicable laws, including the Corporations Act, Corporations Regulations, RG 60, Takeover Panel policy and guidance notes and the Listing Rules; and
  - (ii) provide Bidder with drafts of the Scheme Booklet and Independent Expert's Report in a timely manner (including a final draft no later than two Business Days prior to lodgement of the Regulator's Draft) and (in the case of the Scheme Booklet) consider in good faith any reasonable comments provided by or on behalf of Bidder in a timely manner;

- (d) **(lodgement of Regulator’s Draft)**
- (i) provide an advanced draft of the Scheme Booklet (**Regulator’s Draft**) to ASIC for its review for the purposes of section 411(2) of the Corporations Act; and
  - (ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the Regulator’s Draft and any steps taken to address such issues (provided that, where such issues relate to Bidder Information, Navitas must not propose any resolution of those issues to ASIC without Bidder’s prior written consent, which is not to be unreasonably withheld or delayed);
- (e) **(no objection statement)** apply to ASIC for a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (f) **(First Court Hearing)** apply to the Court for an order under section 411(1) of the Corporations Act directing Navitas to convene the Scheme Meetings;
- (g) **(approval and registration of Scheme Booklet)**
- (i) procure that the Navitas Board authorises the registration with ASIC and despatch of the Scheme Booklet to Navitas Shareholders (which authorisation may be given subject to the order referred in clause 6.1(f) being granted); and
  - (ii) subject to receipt from Bidder of the written confirmation referred to in clause 6.2(f), request that, in accordance with section 412(6) of the Corporations Act, ASIC register the explanatory statement in relation to the Scheme, as contained in the Scheme Booklet;
- (h) **(Scheme Meeting)** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to Navitas Shareholders and convene and hold the Scheme Meetings in accordance with the orders made by the Court at the First Court Hearing;
- (i) **(director’s voting)** use reasonable endeavours to procure that each Navitas Director votes any Navitas Shares in which that Navitas Director has a Relevant Interest in favour of the Scheme (subject to no Superior Proposal emerging and the Independent Expert concluding in the Independent Expert’s Report that the Scheme is in the best interests of Navitas Shareholders and not changing that conclusion);
- (j) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, it becomes aware:
- (i) that information included in the Scheme Booklet is or has become false or misleading in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to Navitas Shareholders under any applicable law, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules,
- promptly consult with Bidder as to the need for, and form of, any supplementary disclosure to Navitas Shareholders, and make any such disclosure as it considers reasonably necessary as soon as reasonably practicable and having regard to applicable laws, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules;

- (k) **(conditions precedent certificate)** at the Second Court Hearing, provide to the Court (through its counsel):
  - (i) a certificate confirming (in respect of matters within its knowledge) whether or not the conditions precedent (other than the condition precedent in clause 3.1(b)) included for its benefit have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to Bidder by 5.00 pm on the date that is two Business Days before the Second Court Date; and
  - (ii) any certificate provided to it by Bidder pursuant to clause 6.2(i);
- (l) **(Second Court Hearing)** subject to the conditions precedent (other than the condition precedent in clause 3.1(b)) being satisfied or waived in accordance with clause 3, apply to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme;
- (m) **(Court Documents)** prepare the Court Documents, provide drafts of those documents to Bidder and consider in good faith any reasonable comments provided by or on behalf of Bidder within a reasonable period of time (having regard to the scheduled dates for the First Court Hearing and the Second Court Hearing (as applicable));
- (n) **(Bidder representation at Court Hearings)** allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at a Court Hearing;
- (o) **(lodgement of Court order)** if the Court approves the Scheme under section 411(4) of the Corporations Act, for the purposes of section 411(10) of the Corporations Act, lodge with ASIC an office copy of the order made by the Court before 5.00 pm on the Business Day following the day on which such office copy is received;
- (p) **(Navitas Register)** procure that the Navitas Register is closed as at the Scheme Record Date to determine the identity of the Scheme Shareholders and their entitlements to Scheme Consideration;
- (q) **(proxy reports)** keep Bidder reasonably informed:
  - (i) on the status of proxy forms received for the Scheme Meetings, including over the period commencing 10 Business Days before the Scheme Meetings and ending on the deadline for receipt of proxy forms; and
  - (ii) about such other information as Navitas or its Representatives may receive concerning the voting intentions of Navitas Shareholders;
- (r) **(instruments of transfer)** subject to Bidder satisfying its obligations under clause 4.3, on the Implementation Date:
  - (i) execute proper instruments of transfer and effect the transfer of Navitas Shares to Bidder in accordance with the Scheme; and
  - (ii) register all transfers of Navitas Shares held by Scheme Shareholders to Bidder;

- (s) **(quotation of Navitas Shares and ASX listing)** apply to ASX to have:
- (i) trading in Navitas Shares suspended from the close of trading on the Effective Date; and
  - (ii) Navitas removed from the official list of ASX from the close of trading on the Business Day immediately following the Implementation Date,
- and not do anything to cause any of these things to happen before the relevant date specified in this clause 6.1(s) without the prior consent of Bidder;
- (t) **(provision of information to Bidder)** provide Bidder with such information as Bidder reasonably requests in relation to the shareholdings of Navitas Shareholders in a form reasonably requested by Bidder for the purpose of Bidder canvassing approval and soliciting votes in favour of the Scheme by Navitas Shareholders, otherwise promoting the Scheme, and providing the Scheme Consideration to Scheme Shareholders in accordance with the terms of the Scheme;
- (u) **(compliance with laws)** do everything reasonably within its power to ensure that the Scheme is effected in accordance with applicable laws;
- (v) **(regulatory notification)** within 15 Business Days of the date of this document, lodge with TEQSA, ASQA, ACCSC, British Columbia Ministry of Advanced Education, Skills and Training, the BPPE, the FCIE and any other Government Agency the parties agree has a pre-closing approval, filing or notification requirement which is mandatory (each a **Relevant Government Agency**) all notices, documentation and filings required to be lodged by Navitas in relation to the Scheme, and:
- (i) consult with Bidder on and take into account Bidder's reasonable comments in relation to, all written communications with the Relevant Government Agency in relation to the Scheme;
  - (ii) provide to the Relevant Government Agency as part of the relevant notification all information provided by the Bidder in relation to the identity of the Bidder and the proposed new directors of Navitas, provided that such information is given to Navitas in a timely manner and only to the extent that such information is reasonably necessary or required to be included in the relevant communication with the Relevant Government Agency in relation to the Scheme;
  - (iii) provide Bidder with copies of all written correspondence between Navitas and the Relevant Government Agency in relation to the Scheme;
  - (iv) at Bidder's request, allow Bidder Representatives the opportunity to be present at any meetings with the Relevant Government Agency in relation to the Scheme;
- (w) **(implementation)** if the Scheme becomes Effective, do all things contemplated of it under the Scheme and all other things (if any) reasonably necessary to lawfully give effect to the Scheme; and
- (x) **(conditions)** not do anything, or omit to do anything, which will, or is reasonably likely to, result in any of the conditions precedent in clause 3.1 being breached or not fulfilled.

## 6.2 Bidder obligations

Bidder must, acting at all times in good faith, take all steps reasonably necessary to implement the Scheme in accordance with the Timetable and otherwise as soon as practicable and on the terms and conditions of this document, and must consult with Navitas on a regular basis about its progress towards satisfying its obligation under this clause 6.2. Without limiting the foregoing or clauses 2 and 4, Bidder must do the following:

- (a) **(FIRB Approval and otherwise)** consult with Navitas (in a reasonable and timely manner):
  - (i) about the progress of its application for the FIRB Approval;
  - (ii) with respect to any input that Bidder considers it is necessary or desirable for Navitas to provide in respect of anything contemplated by clause 6.2(a)(i);
- (b) **(Relevant Government Agencies)** provide any information and certifications reasonably requested by any Relevant Government Agency in respect of Bidder, any other member of the Bidder Group or its plans and intentions in respect of any member of the Navitas Group or any business of the Navitas Group;
- (c) **(prepare Bidder Information)** as soon as practicable after the date of this document:
  - (i) prepare the Bidder Information for inclusion in the Scheme Booklet in accordance with applicable laws, including the Corporations Act, Corporations Regulations, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules; and
  - (ii) provide Navitas with drafts of the Bidder Information in a timely manner (and consider in good faith any reasonable comments provided by or on behalf of Navitas in a timely manner);
- (d) **(assistance with Scheme Booklet and Court Documents)** without limiting paragraph (c) above, provide any assistance or information reasonably requested by Navitas or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Navitas Shareholders) or any Court Documents;
- (e) **(Independent Expert's Report)** subject to the Independent Expert agreeing to reasonable confidentiality restrictions, provide any assistance or information reasonably requested by Navitas or its Representative, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report;
- (f) **(confirmation of Bidder Information)** promptly after the Bidder Information has been finalised, provide confirmation in writing to Navitas before 8.00 am on the First Court Date from Bidder that:
  - (i) it consents to the inclusion of the Bidder Information (including any references to, and information about, the Consortium Members) in the Scheme Booklet, in the form and context in which the Bidder Information appears; and
  - (ii) the Bidder Information, in that form and context, is not false or misleading in any material respect (whether by omission or otherwise) and otherwise

complies with all applicable laws, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules;

- (g) **(provide comments promptly)** promptly (having regard to the Timetable) provide comments on documents on which Navitas and Bidder are required to consult in accordance with or as contemplated by clause 6.1(c) and clause 6.1(m) (including the Scheme Booklet and all material documents required to be given to the Court in relation to the Scheme)
- (h) **(update Bidder Information)** promptly advise Navitas in writing if it becomes aware:
  - (i) of information which should have been included in any Bidder Information previously provided to Navitas, and promptly provide all such information; or
  - (ii) that any Bidder Information previously provided to Navitas is or has become false or misleading in any material respect (whether by omission or otherwise) or otherwise does not comply with applicable laws, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules, and promptly provide Navitas with all information necessary to ensure the Bidder Information complies with applicable laws and is not false or misleading in any material respect (whether by omission or otherwise);
- (i) **(conditions precedent certificate)** before 8.00 am on the Second Court Date, give to Navitas, for provision to the Court at the Second Court Hearing, a certificate confirming (in respect of matters within its knowledge) whether or not the conditions precedent (other than the condition precedent in clause 3.1(b)) included for its benefit have been satisfied or waived in accordance with clause 3, a draft of which certificate must be provided to Navitas by 5.00 pm on the date that is two Business Days before the Second Court Date;
- (j) **(representation at Second Court Hearing)** ensure that it is represented by counsel at the Second Court Hearing and give such undertakings (if any) to the Court (through its counsel) as are reasonably necessary to ensure the Court makes an order under section 411(4)(b) of the Corporations Act approving the Scheme;
- (k) **(Deed Poll)** before 5.00 pm on the date that is one Business Day before the First Court Date, execute the Deed Poll and procure that HoldCo executes the Deed Poll, and, if the Scheme becomes Effective, fully comply with the Deed Poll and procure that HoldCo complies with the Deed Poll;
- (l) **(Share transfer)** if the Scheme becomes Effective, accept a transfer of the Navitas Shares as contemplated by clause 4.3(a) and the terms of the Scheme;
- (m) **(Scheme Consideration)** if the Scheme becomes Effective, provide or procure the provision of the Scheme Consideration in the manner and amount contemplated by clause 4.3(b) and the terms of the Scheme and in accordance with the Deed Poll; and
- (n) **(compliance with laws)** do everything reasonably within its power to ensure that the Scheme is effected in accordance with all applicable laws.

### 6.3 Scheme Booklet

- (a) If Bidder and Navitas are unable to agree on the form or content of a particular part of the Scheme Booklet, then:
  - (i) if the relevant part of the Scheme Booklet is Bidder Information, Navitas will make such amendments to that part of the Scheme Booklet as required by Bidder (acting reasonably and in good faith); and
  - (ii) if the relevant part of the Scheme Booklet is Navitas Information, Navitas (acting reasonably and in good faith) will decide the form and content of that part of the Scheme Booklet.
- (b) Bidder and Navitas agree that the Scheme Booklet will contain a responsibility statement in a form to be agreed between the parties to the effect that:
  - (i) Navitas is responsible for the Navitas Information contained in the Scheme Booklet; and
  - (ii) Bidder is responsible for the Bidder Information contained in the Scheme Booklet.

### 6.4 Verification

Navitas must undertake appropriate verification processes in relation to the Navitas Information included in the Scheme Booklet and Bidder must undertake appropriate verification processes in relation to the Bidder Information included in the Scheme Booklet.

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## 7 Conduct of business

### 7.1 Conduct of business – general obligations

- (a) Subject to clause 7.3, from the date of this document up to and including the Implementation Date (both dates inclusive), Navitas must:
  - (i) ensure that the business of the Navitas Group is conducted:
    - (A) in the ordinary course;
    - (B) in a manner generally consistent with the manner in which such business has been conducted during the period beginning on the date that is 12 months prior to the date of this document and ending on the date of this document; and
    - (C) in accordance with all applicable laws;
  - (ii) keep Bidder reasonably and promptly informed of, and reasonably consider Bidder's views about, material developments in the business of the Navitas Group;
  - (iii) promptly notify Bidder in writing of any of the following matters of which Navitas becomes aware, and such written notification must include a reasonable summary of the relevant matter:

- (A) events, facts, matters or circumstances which would or would be reasonably be expected to (x) constitute a Material Adverse Change or (y) have a material adverse effect on the financial or operational performance, or the reputation, of the Navitas Group or the Navitas Group's relationships with Government Agencies or Key Partners; and
  - (B) any breach of, or default under, any law, contract, arrangement, permit, licence or authorisation that is binding on any member of the Navitas Group and which is reasonably likely to result in a material liability for any member of the Navitas Group (save that Navitas is not obliged to provide any information to the extent that doing so would breach any existing obligations of confidence to which a member of the Navitas Group is subject or result in the loss of legal privilege).
- (iv) make reasonable efforts to:
- (A) keep available the services of the current officers and employees of the Navitas Group; and
  - (B) maintain and preserve the Navitas Group's relationships with partners, customers, suppliers, Government Agencies, licensors, licensees and others with whom it has material business dealings.
- (b) Without limiting clause 7.1(a), from the date of this document up to and including the Implementation Date, Navitas must ensure that no member of the Navitas Group:
- (i) takes or fails to take any action that constitutes, or that could reasonably be expected to result in or otherwise give rise to, a Prescribed Occurrence; or
  - (ii) authorise, commit or agree to do any such thing.

## **7.2 Conduct of business – specific obligations**

From the date of this document up to and including the Implementation Date, Navitas must not (and must procure that each member of the Navitas Group does not):

- (a) renew, materially amend (in a manner adverse to Navitas) or terminate, or agree to renew or materially amend (in a manner adverse to Navitas) or terminate, any contract with a person (other than another member of the Navitas Group):
  - (i) that could reasonably be expected to generate revenue for the Navitas Group, or that contemplates expenditure by the Navitas Group in excess of:
    - (A) \$A1,000,000 in any 12 month period; or
    - (B) in relation to an existing contract that generates revenue of, or incurs expenditure of, \$500,000 or more in any 12 month period, an amount of expenditure 10% more than that existing contract where the scope of services provided under the renewed or materially amended contract is substantially the same or less than those provided under the existing contract;
  - (ii) where the relevant action would have the effect of amending an existing restrictive covenant or otherwise has the effect of imposing additional restrictions on the future business activities of the Navitas Group; or

- (iii) that has a term of more than 3 years;
- (b) enter into any new contract (which, to avoid doubt, is not a renewal of an existing contract) with a person other than another member of the Navitas Group that:
  - (i) could reasonably be expected to generate revenue for the Navitas Group, or that contemplates expenditure by the Navitas Group, in excess of A\$500,000 in any 12 month period;
  - (ii) contains a restrictive covenant or otherwise has the effect of restricting the future business activities of the Navitas Group; or
  - (iii) has a term of more than 3 years;
- (c) incur or commit to, or bring forward the time for incurring or committing to, or grant to another person a right the exercise of which could be reasonably expected to involve or result in any member of the Navitas Group incurring or committing to, any capital expenditure, or any financial indebtedness (including borrowings, loans and advances) or liability (whether actual or contingent) in either case in respect of a capital expenditure item, or foregoing any revenue, for one or more related items or amounts of in aggregate more than A\$500,000;
- (d) enter into a new employment contract with a new employee of the Navitas Group, or enter into a new employment contract or materially amend (in a manner adverse to Navitas) or terminate (without cause) an existing employment contract with, promote, or make an internal transfer of, an existing employee of the Navitas Group, where the total fixed employment cost payable to that new or existing employee exceeds or would exceed \$150,000 per annum, except as:
  - (i) required by law;
  - (ii) provided for in an existing contract in place as at the date of this document; or
  - (iii) resulting from the positions set out in rows 5 and 6 of Attachment 2 to the Disclosure Letter being filled as discussed between the parties prior to signing of this document;
- (e) increase any employee's base salary by more than 5% except for salary increases;
  - (i) provided for in an existing contract in place as at the date of this document; or
  - (ii) required by law;
- (f) accelerate the rights of any director or employee to compensation or benefits of any kind, other than in circumstances where:
  - (i) the acceleration, compensation or benefit (as the case may be) results from or otherwise arises in connection with the removal of disposal restrictions applying to any Navitas Shares already issued under Navitas' Employee Share Ownership Plan or Executive Share Plan; or
  - (ii) the acceleration is provided for in an existing contract in place as at the date of this document;

- (g) pay or agree to pay any of its directors or employees a bonus, termination payment or any other increase in fees or benefits, except:
  - (i) as required by law;
  - (ii) as required in accordance with an existing contract in place at the date of this document;
  - (iii) in accordance with salary sacrifice arrangements in the ordinary course of business; or
  - (iv) where such payment or increase amounts to no more than \$1,000 for any individual employee (subject to cap of \$100,000 in aggregate);
- (h) pay, incur or agree to pay or incur Transaction Costs in excess of, in aggregate, \$20 million;
- (i) pay, incur or agree to pay or incur any special exertion fees to the Navitas Directors in excess of, in aggregate, \$300,000;
- (j) settles or offers to settle any legal proceedings, claim, investigation, arbitration or other like proceeding where any member of the Navitas Group is or would be required to pay a settlement amount that exceeds A\$1 million;
- (k) accepts as a compromise of a matter less than the full compensation due to it or any other member(s) of the Navitas Group where the compromise is more than \$1 million, or waives any material Third Party default where the financial impact upon the Navitas Group would be in excess of \$1 million;
- (l) change any accounting policy applied by it to report its financial position other than any change in policy required by a change in accounting standards or law;
- (m) enter into or resolve to enter into a transaction with any related party of Navitas (other than a related party which is a member of the Navitas Group) as defined in section 228 of the Corporations Act, other than:
  - (i) in connection with the removal of disposal restrictions applying to any Navitas Shares already issued under Navitas' Employee Share Ownership Plan or Executive Share Plan;
  - (ii) in respect of any reimbursement by Navitas of expenses incurred by a Navitas Director or a director of any other member of the Navitas Group in accordance with applicable board policies and procedures existing as at the date of this document; or
- (n) authorise, procure or commit or agree to do any of the matters set out above.

### **7.3 Exception**

Neither clause 7.1 nor clause 7.2 restricts the ability of Navitas (or any other member of the Navitas Group) to take any action which:

- (a) is required by this document or the Scheme;
- (b) has been consented to in writing by Bidder (such consent not to be unreasonably withheld or delayed and, for the purposes of clause 7.2(d), 7.2(e) and 7.2(g),

Bidder will be deemed to have consented to the relevant action if Bidder does not respond within two Business Days of being asked in writing to consent); or

- (c) is a Navitas Excluded Action, provided that:
  - (i) the restrictions in clause 7.2(a)(ii) and 7.2(b)(ii) will only be subject to the exception in this clause 7.3(c) if the restrictive covenant or provision which otherwise has the effect of restricting the future business activities of the Navitas Group has been disclosed in the Disclosure Materials and has not materially changed; and
  - (ii) the matters in Part C of the Annexure of the Disclosure Letter cannot be undertaken unless expressly set out in clause 7.2(d)(iii) or Bidder consents in accordance with clause 7.3(b).

#### 7.4 Engagement with Key Partners

Notwithstanding anything to the contrary in the Confidentiality Deed, between the date of this document and the Implementation Date (both dates inclusive), representatives of the Bidder Group may hold meetings and have discussions with Key Partners (**Key Partner Meeting**) for the purposes of:

- (a) implementation of the Transaction;
- (b) obtaining an understanding, or furthering its understanding, of the Navitas Group's business and relationship with that Key Partner or in order to allow Bidder to develop, finalise and implement its plans for the Navitas Group following implementation of the Transaction; or
- (c) any other purpose agreed between Bidder and Navitas,

provided that:

- (d) before any Key Partner Meeting is held, such Key Partner is first asked by Bidder whether they wish for a representative of Navitas to be present during such meeting;
- (e) where a Key Partner indicates that they wish for a representative of Navitas to be so present, Bidder must give Navitas at least 24 hours' notice of the time for the Key Partner Meeting; and
- (f) in circumstances where the Key Partner does not wish a representative of Navitas to be present, no later than 24 hours after a Key Partner Meeting, Bidder must notify Navitas of that Key Partner Meeting, including details of the representatives of the Bidder Group that attended the Key Partner Meeting.

#### 7.5 Access

Notwithstanding anything to the contrary in the Confidentiality Deed, but subject to clause 7.4, between the date of this document and the Implementation Date (both dates inclusive), Navitas must use reasonable endeavours to procure that Bidder is provided with reasonable access to information, documents, records, premises, senior executives, customers, agents, partners and third party service providers (including by providing consent to discussions with that third party service provider), of any member of the Navitas Group, reasonably requested by Bidder for the purposes of:

- (a) implementation of the Transaction;

- (b) obtaining an understanding, or furthering its understanding, of the Navitas Group or its business, financial position, prospects or assets in order to allow Bidder to develop, finalise and implement its plans for the Navitas Group following implementation of the Transaction;
- (c) keeping Bidder informed of material developments relating to the Navitas Group; or
- (d) any other purpose agreed between Bidder and Navitas,

provided that:

- (e) compliance with any such request would not, in the reasonable opinion of Navitas (acting in good faith), result in undue disruption to the Navitas Group's business; and
- (f) Navitas will not be required to provide any access contemplated by this clause 7.5 to the extent that to do so would breach any applicable law or regulation or any obligations of confidentiality owed to third parties, or result in the loss of legal privilege.

#### **7.6 Provision of certain information to Bidder**

- (a) Without limiting clause 7.5 (but subject at all times to clause 7.5(f) which applies to this clause as if the reference in that clause to clause 7.5 were to this clause 7.6), between the date of this document and the Implementation Date (both dates inclusive), Navitas must:
  - (i) promptly provide Bidder with:
    - (A) EFTSU Figures for the first semester of 2019 once available to Navitas; and
    - (B) a confirmation by the end of each month that Navitas has not received any notice, advice or correspondence from:
      - (1) a counterparty to a Key Material Contract with respect to the termination, non-renewal (or renewal will only be undertaken with material changes) or material breach of a Key Material Contract; or
      - (2) a Government Agency (x) indicating its objection to the Scheme (or the acquisition of Navitas Shares or the change of control of Navitas arising pursuant to the Scheme), (y) cancelling, or providing notification of its intention to cancel, any registration or accreditation of a member of the Navitas Group, or (z) imposing a new condition on, or vary an existing condition to, or provide notification of its intention to impose a new condition on or vary an existing condition to, any registration or accreditation of a member of the Navitas Group where such new condition or variation has or may reasonably be expected to have a material adverse impact on such member's ability to conduct its business in the manner it is presently being conducted;
  - (ii) provide Bidder:
    - (A) with a Net Indebtedness calculation for the 16<sup>th</sup> (or, if the 16th is not a Business Day, the next Business Day following that date) and the last

Business Day of each month to be provided on the Business Day following such dates (together with supporting calculations); and

(B) by 5.00 pm on the date that is the Business Day before the Second Court Date with a certificate:

(1) confirming the Net Indebtedness as at the date which is two Business Days before the Second Court Date (together with supporting calculations); and

(2) setting out Navitas' best estimate of the Net Indebtedness at the Implementation Date (together with supporting calculations);

(iii) provide Bidder with drafts of any proposed new Key Material Contract, or Material Contract proposed to be renewed, at least three Business Days before such contract is entered into or renewed (as the case may be), unless:

(A) in the case of a proposed new Key Material Contract, the form of that contract has been included in the Disclosure Materials and has not materially changed; and

(B) in the case of a Material Contract proposed to be renewed, the form of the renewed contract has been included in the Disclosure Materials and has not materially changed;

(iv) provide Bidder with copies of the following materials, promptly following the relevant meeting of the Navitas Board at which the relevant materials are considered:

(A) the minutes of any Navitas Board meetings held between the date of this document and the Implementation Date (that have been adopted by the Navitas Board) once the minutes are in final form; and

(B) any reports of the Group CEO and Managing Director or Chief Financial Officer, provided to the Navitas Board for the purposes of any such meetings,

save that Navitas has no obligation under this clause 7.6(a)(iv) to provide Bidder with, and may redact or withhold in its entirety, any information about, or otherwise in connection with, its consideration of the Transaction and any Competing Proposal (provided this exception does not in any way derogate from Navitas' obligations under clause 10); and

(v) a copy of all material correspondence received from, or provided or proposed to be provided to, a Government Agency.

## **7.7 Implementation and integration planning**

(a) The parties must work together in good faith from the date of this agreement up to and including the Implementation Date to commence planning for the merger and integration of Navitas and Bidder Group following the Implementation Date in the manner contemplated by this clause 7.7.

(b) As soon as practicable after the date of this document, the parties will constitute an implementation committee which will comprise the Navitas Committee Members

and the Bidder Committee Members and such other persons as the Bidder and Navitas may agree from time to time.

- (c) The role of the implementation committee is to act as a forum for the consideration and planning of matters relevant to implementation of the Transaction, including any consents required as contemplated by clause 7.8 and integration of the merged businesses.
- (d) The implementation committee will meet fortnightly and otherwise as reasonably required by either party.
- (e) If any provision of this document requires Bidder's agreement or consent in relation to the ongoing business operations of the Navitas Group, such agreement or consent will be taken to be given by Bidder if each Bidder Committee Member confirms their support of the matter at a duly convened and minuted meeting of the committee at which all Bidder Committee Members are present.
- (f) The parties acknowledge and agree that:
  - (i) nothing in this clause 7.7 requires a party to act at the direction of the other party;
  - (ii) the respective businesses of the Bidder Group and the Navitas Group are to continue to operate independently until the Implementation Date; and
  - (iii) nothing in this document is intended to constitute or create the relationship of partnership, joint venture or similar.

## 7.8 Change of control

- (a) For each contract with a Key Partner (or any other counterparty) that contains a change of control or similar provision or restriction in favour of the relevant Key Partner (or counterparty) which would be triggered by the implementation of the Scheme (each a **Change of Control Right**), Navitas must provide Bidder with such reasonable assistance as it requests for the purposes of obtaining any consents required in accordance with such Change of Control Right as soon as practicable after the date of this document and in any event before the Second Court Date and on terms reasonably acceptable to Bidder, which assistance includes (without limitation):
  - (i) agreeing a proposed strategy to obtain any consents required in accordance with a Change of Control Right and using reasonable endeavours to promptly seek those consents in accordance with the agreed strategy and reasonable requests of the Bidder;
  - (ii) only if required by the Bidder (but without in any way limiting clause 7.4), initiating contact with the relevant Key Partner (or counterparty) to make any notifications required by the relevant contract and requesting that such Key Partner (or counterparty) provide the required consent in accordance with the Change of Control Right;
  - (iii) if required by Bidder or the relevant Key Partner, Navitas participating in discussions with the relevant Key Partner;
  - (iv) consulting with Bidder in good faith in relation to the method and content of communications with the relevant Key Partner (and each other Key Partner (or counterparty) which has a Change of Control Right); and

- (v) promptly providing any information reasonably required by the relevant Key Partner (or counterparty) and making representatives available, where necessary and reasonable, to meet with the relevant Key Partner (or counterparty) to deal with issues arising in relation to the matter;
- (b) Bidder must take all reasonable action necessary to comply with any reasonable requirement of landlords, Key Partners or other relevant counterparties that are necessary to obtain the consents or confirmations from those parties in respect of the Change of Control Rights, including providing any information or security reasonably requested and as landlords, Key Partners or other relevant counterparties may reasonably request on terms and conditions substantially the same as the existing arrangements and make officers and employees available, where necessary and reasonable to meet with any landlords or counterparties to deal with any issues arising in relation to the matter.
- (c) If Navitas has provided all reasonable assistance requested by Bidder as required by clause 7.8(a), a failure by a member of the Navitas Group to obtain any consent or confirmation in respect of a Change of Control Right, or the exercise of a termination right, will not constitute a breach of this document by Navitas.
- (d) Nothing in this clause 7.8 or any other provision of this document requires Bidder to agree to any new conditions or to provide any new guarantees or security to a contract or lease counterparty which are not reasonably acceptable to Bidder.

## 7.9 Cooperation with Financing

- (a) Navitas must cooperate with, and undertake all steps reasonably required or requested in connection with any repayment of existing debt of the Navitas Group as may be required in connection with the Transaction, including:
  - (i) liaising with Bidder in good faith in relation to the use of the existing cash reserves of Navitas for this purpose where such use is on and from the Effective Date;
  - (ii) issuing prepayment notices in relation to existing Navitas Group debt facilities and closing out any hedging positions to give effect to any refinancing and/or funds flow on and from the Effective Date;
  - (iii) in connection with the repayment in full of such existing debt effective on and from the Effective Date, using all reasonable endeavours to procure deeds of release, discharges of real property mortgages and registrations on the PPSR (or any other relevant security register in other jurisdictions as applicable) from secured parties in relation to any security interest granted by a member of the Navitas Group in favour of that party and procuring the return of any title documents held by a secured party.
- (b) Prior to the Implementation Date, Navitas shall use commercially reasonable efforts to provide, and cause each other member of the Navitas Group and the respective officers, employees, agents and representatives of each member of the Navitas Group to provide, all reasonable cooperation to the Bidder in connection with the arrangement of the Debt Financing or any alternative financing in respect of any Replacement Financing Letters (as defined below) (the **Alternative Financing**) as may be reasonably requested by the Bidder in writing, including using commercially reasonable efforts with respect to:
  - (i) causing appropriate senior officers of the Navitas Group to be available to participate at reasonable times, upon reasonable notice, in a reasonable

- number of in-person or telephone meetings, presentations, road shows and rating agency and due diligence sessions;
- (ii) reasonably assisting the Bidder and the Financing Sources in the preparation of rating agency presentations and marketing materials (including the authorisation of the use of the Navitas Group's logos in the marketing materials) upon reasonable notice;
  - (iii) reasonably cooperating with the marketing efforts of the Bidder and the Financing Sources for any portion of the Debt Financing by making appropriate senior officers of the Navitas Group available at reasonable times, upon reasonable notice, on a reasonable number of occasions;
  - (iv) obtaining surveys, title insurance and legal opinions at the expense of and as reasonably requested by the Bidder;
  - (v) if required as a condition or obligation of any Debt Financing or Alternative Financing, obtaining a solvency certificate of the chief financial officer or other officer with equivalent duties of Navitas substantially in the form attached to the Debt Commitment Letter;
  - (vi) providing any other reasonable pertinent or customary information to the extent reasonably available to the Navitas Group (including any reports of the Chief Financial Officer of the Navitas Group, or management accounts of the Navitas Group, provided to the Navitas Board ahead of, and for the purposes of, meetings of the Navitas Board and the historical financial statements within the timeframe required by the Debt Commitment Letter) and reasonably requested by Bidder;
  - (vii) furnishing the Bidder and the Financing Sources at least 3 Business Days prior to the Effective Date with all documentation and other information required by Government Agencies and reasonably requested by the Bidder with respect to the Debt Financing under applicable "know your customer" and anti-money laundering rules and regulations to the extent requested by the Bidder at least 8 Business Days prior to the Effective Date;
  - (viii) using commercially reasonable efforts to cause accountants to consent to the use of their reports in any material relating to the Debt Financing.
- (c) Bidder must indemnify and hold harmless Navitas (in its own right and separately as trustee or nominee for each other Navitas Indemnified Party) and each other Navitas Indemnified Party from and against any and all Losses suffered or incurred by any of them in connection with the Debt Financing (including, to avoid doubt, any Alternative Financing) or the Equity Financing and any information utilized in connection therewith in each case other than to the extent any of the foregoing arises from the bad faith or wilful misconduct by that Navitas Indemnified Party.
- (d) Nothing in this clause 7.9 shall require Navitas' cooperation to the extent that it would:
- (i) unreasonably interfere with the ongoing business or operations of Navitas (having regard to, among other things, the reasonableness of the notice given to Navitas of any requested assistance or cooperation);
  - (ii) cause any condition precedent in clause 3.1 to not be satisfied or otherwise cause any breach of this document;

- (iii) require any member of the Navitas Group to take any action that would reasonably be expected to conflict with or violate each member of the Navitas Group's organisation documents or any law or regulation; or
  - (iv) require any member of the Navitas Group to take any action that would breach any existing contractual obligations or result in the loss of legal privilege.
- (e) Bidder agrees to reimburse Navitas for its reasonable out-of-pocket costs and expenses incurred as a result of complying with its obligations under this clause 7.9, promptly following receipt of a tax invoice evidencing the relevant out-of-pocket cost or expense.

#### **7.10 Bidder's obligations in respect of Debt Financing and Equity Financing**

- (a) Bidder must use all commercially reasonable efforts to obtain the proceeds of the Debt Financing and Equity Financing on the terms and conditions described in the Debt Commitment Letters and Equity Commitment Letters (respectively) on or prior to the Implementation Date, including by using reasonable efforts to:
- (i) maintaining in effect the Debt Commitment Letters and Equity Commitment Letters (or in the case of the Equity Commitment Letters, negotiating and implementing Subscription Documents in HoldCo to replace the Equity Commitment Letters);
  - (ii) negotiating Debt Documents with respect to the Debt Financing and the Subscription Documents with respect to the Equity Financing on terms which do not:
    - (A) reduce the aggregate amount of the Debt Financing or Equity Financing, such that the aggregate funds available to Bidder on the Implementation Date would not be sufficient to satisfy Bidder's obligations under this document, the Scheme and the Deed Poll; or
    - (B) impose new or additional conditions precedent (other than conditions precedent that have already been satisfied at the time they are so added) or adversely modify any existing conditions precedent to the receipt of the Debt Financing or Equity Financing; and
  - (iii) satisfying on a timely basis all conditions precedent to funding of the Debt Financing and Equity Financing.
- (b) Bidder must give Navitas prompt written notice of:
- (i) any termination or repudiation (or the triggering of any right of termination or repudiation of which Bidder has knowledge and that it could reasonably be expected to materially and adversely affect the ability (or likelihood) of Bidder to consummate the transactions contemplated by this document in accordance with the Timetable) of any of the Debt Commitment Letters or Equity Commitment Letters of which Bidder has knowledge; or
  - (ii) any breach of or default under any of the Debt Commitment Letters or Equity Commitment Letters by any party of which Bidder has knowledge and that could reasonably be expected to materially and adversely affect the ability (or likelihood) of Bidder to consummate the transactions contemplated by this document in accordance with the Timetable.

- (c) Bidder must not, without the prior written consent of Navitas:
- (i) permit any material amendment or modification to, or any waiver of any provision or remedy under, any of the Debt Commitment Letters or Equity Commitment Letters, or the Co-investment Agreement, which is materially prejudicial to the Bidder's ability to comply with its obligations under this document, the Scheme and the Deed Poll; or
  - (ii) terminate any of the Debt Commitment Letters or Equity Commitment Letters, or the Co-Investment Agreement. For the avoidance of doubt, the issuing of a Debt Commitment Letter, an Equity Commitment Letter (or Subscription Documents), or a new Co-Investment Agreement (or Subscription Documents) (as applicable) after the date of this agreement for the purpose of superseding a previous Debt Commitment Letter, an Equity Commitment Letter or the existing Co-Investment Agreement (again, as applicable) shall not constitute a termination for the purpose of this provision so long as:
    - (A) the superseded Debt Commitment Letter, Equity Commitment Letter or Co-Investment Agreement is not terminated until the new Debt Commitment Letter, Equity Commitment Letter (or Subscription Documents) or Co-Investment Agreement (or Subscription Documents) has been validly executed (as applicable); and
    - (B) as applicable:
      - (1) the new Debt Commitment Letter or Equity Commitment Letter (or Subscription Documents) is for the same amount or more as, and otherwise on substantially similar terms (or more favourable terms) as, the previous Debt Commitment Letter or Equity Commitment Letter (as applicable) and (in the case of a new Debt Commitment Letter) would otherwise satisfy the requirements for a Replacement Financing Letter set out in clause 7.11); or
      - (2) the new Co-Investment Agreement (or Subscription Documents) does not adversely affect Bidder's ability to pay the Bidder Break Fee in accordance with this document.
- (d) Subject to clause 7.10(e), but otherwise notwithstanding anything in this clause 7.10, Bidder may in its sole discretion reduce the amount of Debt Financing or the Equity Financing provided that Bidder furnishes to Navitas:
- (i) one or more Replacement Financing Letters (on substantially similar terms as the Debt Commitment Letters) which letters, to avoid doubt, were obtained in compliance with clause 7.11;
  - (ii) one or more additional Equity Commitment Letters (on substantially similar terms as the Equity Commitment Letters); or
  - (iii) a combination of the above,
- for an aggregate amount equal to or greater than the relevant reduction in Debt Financing or Equity Financing (as the case may be).
- (e) If any portion of the Debt Financing or Equity Financing becomes unavailable, regardless of the reason, Bidder must:

- (i) promptly notify Navitas of such unavailability and the reason for it; and
- (ii) by no later than the date which is 15 Business Days after the date the portion of the Debt Financing or Equity Financing becomes unavailable (or such shorter period concluding at 8.00 am on the Second Court Date) obtain:
  - (A) Alternative Financing; or
  - (B) one or more replacement Equity Commitment Letters (or Subscription Documents) on substantially similar terms or more favourable terms as the Equity Commitment Letters,

of an amount that is sufficient, when taken together with the aggregate Debt Financing and Equity Financing which is still available, to enable Bidder to fully perform its obligations under this document, the Scheme and the Deed Poll.

### 7.11 Alternative Financing

- (a) Subject to clause 7.10, but notwithstanding any other provision to the contrary contained in this document, a Debt Commitment Letter may be superseded at the option of the Bidder after the date of this document but prior to the Implementation Date by Alternative Financing under instruments (the **Replacement Financing Letters**) that replace the existing Debt Commitment Letters or contemplate co-investment by or financing from one or more debt financing sources or other or additional parties, provided that:
  - (i) the terms of any Replacement Financing Letter must not:
    - (A) reduce the aggregate amount of the Debt Financing below the amount necessary to fund the Scheme Consideration; or
    - (B) expand upon the conditions precedent to the Debt Financing as set forth in the Debt Commitment Letters; or
    - (C) include any conditions precedent to the Alternative Financing that are more onerous than the conditions precedent in the Debt Commitment Letter; and
  - (ii) neither the arrangement nor negotiation of any Replacement Financing Letters, nor the terms thereof, may delay the Implementation Date.
- (b) For the purposes of this document:
  - (i) the references to "Debt Financing" shall include the financing contemplated by the Debt Commitment Letters to be amended, modified or replaced as permitted by this clause 7.11;
  - (ii) the references to "Debt Commitment Letters" shall include such documents (including any fee letter in connection with such Debt Commitment Letter) as amended, modified or replaced as permitted by this clause 7.11, in each case from and after such amendment, modification and replacement
  - (iii) the references to "Equity Financing" shall include the financing contemplated by the Equity Commitment Letters to be amended, modified or replaced as permitted by clause 7.10;

- (iv) the references to "Equity Commitment Letters" shall include such documents as amended, modified or replaced as permitted by clause 7.10, in each case from and after such amendment, modification and replacement; and
- (v) the references to "Co-Investment Agreement" shall include such document as amended, modified or replaced as permitted by clause 7.10 (including, to avoid doubt, the Subscription Documents where the Co-Investment Agreement is replaced with those documents as permitted by clause 7.10), in each case from and after such amendment, modification and replacement.

#### **7.12 Navitas Rights**

Navitas:

- (a) confirms that as at the date of this document there are no outstanding Navitas Rights; and
- (b) must ensure that:
  - (i) as at the Effective Date, there are no outstanding Navitas Rights; and
  - (ii) other than in relation to the removal of disposal restrictions applying to any Navitas Shares already issued under Navitas' Employee Share Ownership Plan or Executive Share Plan, the Navitas Board does not exercise any discretions with respect to Navitas Rights in a manner that would accelerate vesting of Navitas Rights or otherwise free Navitas Rights from vesting conditions or other restrictions.

#### **7.13 Appointment of directors**

Subject to the Scheme Consideration having been paid to Scheme Shareholders, Navitas must:

- (a) take all actions necessary to appoint the persons nominated by Bidder as new directors of Navitas and each other member of the Navitas Group with effect from (and subject to) implementation of the Scheme, subject to Bidder nominating such persons in writing, providing consents to act signed by such persons before the Scheme Record Date; and
- (b) procure that all directors of Navitas and each other member of the Navitas Group (other than directors appointed pursuant to clause 7.13(a) or existing directors which Bidder has agreed in writing will continue to be directors) resign as directors with effect from and subject to implementation of the Scheme,

in each case in accordance with the constitution of the relevant member of the Navitas Group and applicable law and regulation (including the Corporations Act and the Listing Rules).

#### **7.14 D&O Insurance**

- (a) Navitas must:
  - (i) undertake a tender process in accordance with clause 7.14(a)(ii) for the directors' and officers' run-off insurance policy in respect of any directors and officers and relevant former directors and officers of any member of the Navitas Group that applies for no less than a 7 year period following the Implementation Date (**D&O run off policy**);

- (ii) engage the independent consultant, which Bidder approved prior to the date of this document, to run a tender process for the D&O run off policy seeking at least 3 proposals from reputable insurance brokers (approved by the Bidder, such approval not to be unreasonably withheld or delayed) to provide a D&O run off policy from a panel of reputable insurers that have a rating that is the same as, or better than, the rating of the insurers for the Navitas directors' and officers' insurance policy in place as at 15 January 2019 for the current financial year (each such insurer being an **Equivalent Insurer**) on the following basis:
    - (A) the same amount of coverage;
    - (B) the same deductible or excess; and
    - (C) otherwise on terms that are no less favourable to the current directors or officers of the Navitas Group than the Navitas directors' and officers' insurance policy in place as at 15 January 2019 for the current financial year; and
  - (iii) keep the Bidder reasonably informed of all material developments in the tender process and provide a copy of the proposals received under the tender process.
- (b) Before 8.00 am on the Second Court Date, Navitas must enter into the D&O run off policy which is the lowest cost (inclusive of the costs of brokerage, stamp duty and any other transaction costs in relation thereto) of the 3 proposals received under the tender process in clause 7.14(a)(ii), provided such policy satisfies the requirements in clauses 7.14(a)(ii)(A) to 7.14(a)(ii)(C) (the **Policy Requirements**) and is from an Equivalent Insurer. If such policy does not satisfy the Policy Requirements or is not from an Equivalent Insurer, Navitas must enter into the D&O run off policy that is the next lowest cost that satisfies the Policy Requirements and is from an Equivalent Insurer.
  - (c) Any consent or approval required from Bidder under this clause 7.14 is deemed to have been given by Bidder if Bidder does not respond within five Business Days following any request from Navitas for such consent or approval.

#### 7.15 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective, Bidder undertakes in favour of Navitas and each other Navitas Indemnified Party that it will procure that Navitas and each member of the Navitas Group complies with any deeds of indemnity, access and insurance entered into by them in favour of their respective directors and officers from time to time, including to ensure that directors' and officers' run-off insurance cover for such directors and officers obtained in accordance with clause 7.14 is maintained (and Navitas may, at its election, pay any reasonable amounts necessary to ensure such maintenance upfront and prior to the implementation of the Scheme).
- (b) The undertakings contained in clause 7.15(a) are subject to any Corporations Act restriction.
- (c) Navitas receives and holds the benefit of clause 7.15(a), to the extent it relates to other Navitas Indemnified Parties, for and on behalf of, and as trustee for, them.
- (d) The undertakings in clause 7.15(a) are given until the date on which the relevant Navitas Group member ceases to be part of the Navitas Group.

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## 8 Public announcements

- (a) Immediately after execution of this document (or as otherwise agreed between Bidder and Navitas), Navitas must issue a written public announcement:
  - (i) in a form agreed by Bidder and Navitas; and
  - (ii) that attaches a complete copy of both this document and the COPA Amendment Deed, save for any redaction of commercially sensitive material from either attachment.
- (b) Navitas must not refer to Bidder, the Consortium, any member of the Bidder Group or the Transaction in any subsequent public announcement or other statement made by it without the prior written consent of Bidder, except where:
  - (i) Navitas repeats any material in relation to Bidder, the Consortium or any other member of the Bidder Group which was included in a written public announcement previously made by Navitas with the prior written consent of Bidder; or
  - (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,

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

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## 9 Board support of Transaction

### 9.1 Confirmation

Navitas represents and warrants to Bidder that, as at the date this document, each Navitas Director has confirmed that:

- (a) his or her recommendation in respect of the Scheme is that Navitas Shareholders vote in favour of the Scheme (**Recommendation**); and
- (b) he or she intends to vote, or cause to be voted, all Navitas Shares that he or she holds or controls in favour of the Scheme (**Voting Intention**),

in each case subject to:

- (c) no Superior Proposal emerging; and
- (d) the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Navitas Shareholders.

### 9.2 Maintenance of Recommendation

- (a) Navitas must procure that no Navitas Director withdraws, changes or adversely changes his or her Recommendation or Voting Intention, unless:

- (i) a Superior Proposal is made and 5 Business Days have passed after Navitas gives a Matching Right Notice without the Navitas Board having made the determination set out in clause 10.7(a)(iii); or
  - (ii) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Navitas Shareholders or, having previously concluded that the Scheme is in the best interests of Navitas Shareholders, changes that conclusion.
- (b) Subject to a Navitas Director withdrawing or changing the Recommendation or Voting Intention where an exception in clause 9.2(a) applies, Navitas must ensure that:
- (i) the Scheme Booklet includes statements to the effect that that Navitas Director gives the Recommendation and has the Voting Intention (but only to the extent that these statements are correct); and
  - (ii) no public announcement is made by Navitas, and procure that no public statement is made by that Navitas Director, which is inconsistent with that Navitas Director giving the Recommendation and having the Voting Intention.

### 9.3 Scrip Scheme Consideration

Notwithstanding anything else in this clause 9 or elsewhere in this document, the parties acknowledge and agree that:

- (a) the Navitas Directors may, in their sole and absolute discretion:
  - (i) make the Recommendation only in respect of the Cash Price and make no recommendation in respect of the Scrip Scheme Consideration; and
  - (ii) make no recommendation at all in relation to whether Relevant Shareholders should make an Election to receive the Scrip Scheme Consideration under the Scheme, and
- (b) the Navitas Directors will not have failed to comply with this clause 9 (or any other provision of this document) where they do anything contemplated by clause 9.3(a) above.

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## 10 Exclusivity

### 10.1 Termination of existing discussions

Navitas represents and warrants to Bidder that as at the date of this document:

- (a) it and its Representatives have terminated all discussions with any Third Party in relation to, or which could reasonably be expected to lead to, a Competing Proposal;
- (b) any due diligence access granted to any Third Party for the purposes of such Third Party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been terminated; and

- (c) any Third Party to whom non-public information in relation to the Navitas Group has been provided or made available for the purposes of such Third Party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been requested to immediately return or destroy that non-public information in accordance with any agreed terms of confidentiality currently in place with such Third Party.

## **10.2 No-shop**

During the Exclusivity Period, Navitas must not, and must ensure that its Representatives do not:

- (a) directly or indirectly solicit, initiate or invite enquiries, discussions or proposals in relation to, or which may reasonably be expected to lead to, a Competing Proposal; or
- (b) communicate to any person any intention to do any of the things referred to in clause 10.2(a).

## **10.3 No-talk**

Subject to clause 10.6, during the Exclusivity Period, Navitas must not, and must ensure that its Representatives do not:

- (a) directly or indirectly participate in or continue any discussions or negotiations in relation to, or which may reasonably be expected to lead to, a Competing Proposal; or
- (b) communicate to any person any intention to do any of the things referred to in clause 10.3(a).

## **10.4 No due diligence**

Without limiting clause 10.3, during the Exclusivity Period, Navitas must not:

- (a) solicit, initiate, facilitate (other than as part of one of the actions contemplated by clause 10.4(b) but only to the extent that action is not prohibited by reason of it being permitted by operation of clause 10.6) or encourage any Third Party (other than Bidder or its Representatives) to undertake due diligence on Navitas or any member of the Navitas Group; or
- (b) subject to clause 10.6:
  - (i) make available to any Third Party (other than Bidder or its Representatives) or permit such person to receive any non-public information relating to Navitas or any member of the Navitas Group;
  - (ii) make available to any Third Party (other than Bidder or its Representatives), or permit any such Third Party to have access to (in the course of due diligence investigations or otherwise) any premises used, leased, licenced or owned by the Navitas Group; or
  - (iii) make available to any Third Party (other than Bidder or its Representatives), or permit any such Third Party to have access to, (in the course of due diligence investigations or otherwise) any officers or employees of the Navitas Group; or

- (iv) facilitate anything contemplated by any of clauses 10.4(b)(i), 10.4(b)(ii) or 10.4(b)(iii),

in each case, for the purposes of any such Third Party making, formulating, developing or finalising of, or assisting such Third Party to make, formulate, develop or finalise, a Competing Proposal.

This clause 10.4 does not prevent Navitas from providing information to ASX or Navitas' auditors and advisers in the ordinary course of business or to otherwise effect the negotiation and entry into this document.

### **10.5 Notification obligation**

During the Exclusivity Period, Navitas must notify Bidder in writing as soon as reasonably practicable and in any event within 2 Business Days if it or any of its Representatives:

- (a) is approached by any person in relation to an actual or potential Competing Proposal, and that notice must include all material terms of the Competing Proposal, including:
  - (i) if specified, the price, consideration, conditions, structure, timing, break fee, financing and due diligence requirements; and
  - (ii) the identity of the proponent(s) of any Competing Proposal;
- (b) receives any request for information relating to Navitas or any of its Related Entities or any of their businesses or operations or any request for access to the books or records of Navitas or any of its Related Entities, which Navitas has reasonable grounds to suspect may relate to a current or future Competing Proposal; and
- (c) provides any information relating to Navitas or any of its Related Entities or any of their businesses or operations to any person in connection with or for the purposes of a current or future Competing Proposal.

### **10.6 Fiduciary exception**

In respect of a bona fide written Competing Proposal received by Navitas without any breach of its obligations under this clause 10 in respect of that Competing Proposal, Navitas may undertake any action that would otherwise be prohibited by clause 10.3 or clause 10.4(b) if (and only to the extent that) the Navitas Board determines, acting in good faith and after receiving:

- (a) written advice from its investment banking advisers that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; and
- (b) written advice from its external legal advisers that not undertaking the relevant action would be reasonably likely to be contrary to the fiduciary or statutory duties of the Navitas Directors.

### **10.7 Matching right**

- (a) Without limiting any other part of this clause 10, Navitas must procure that no Navitas Director publicly recommends a Competing Proposal, and must not enter into any agreement, arrangement or understanding (whether or not in writing) to implement a Competing Proposal, unless:

- (i) the Competing Proposal is a Superior Proposal;
  - (ii) Navitas has given Bidder written notice (**Matching Right Notice**) of the key terms of the Competing Proposal (including the identity of the person(s) who made the Competing Proposal); and
  - (iii) Bidder does not, within 5 Business Days after Navitas gives the Matching Right Notice, make a written proposal to Navitas to increase the Scheme Consideration or otherwise alter the terms of the Transaction that the Navitas Board determines (acting reasonably and in good faith) would produce an outcome for Navitas Shareholders that is at least as favourable to them as the outcome that would be produced by the Competing Proposal.
- (b) Navitas acknowledges and agrees that each successive material modification of any Competing Proposal will constitute a new Competing Proposal for the purposes of the requirements under this clause 10.7 and accordingly Navitas must comply with clause 10.7(a) in respect of any new Competing Proposal.

#### 10.8 Bidder counterproposal

- (a) If, following receipt of a Matching Right Notice, Bidder makes a written proposal to Navitas to increase the Scheme Consideration or otherwise alter the terms of the Transaction (**Bidder Counterproposal**) before the expiry of the 5 Business Day period referred to in clause 10.7(a)(iii), Navitas must procure that the Navitas Board considers the Bidder Counterproposal and if the Navitas Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would produce an outcome for Navitas Shareholders that is at least as favourable to them as the outcome that would be produced by the Competing Proposal (**Matching Counterproposal**), then:
- (i) Bidder and Navitas must promptly agree in good faith such matters (including, if applicable, amendments to this document and the Scheme) as are reasonably necessary to give effect to the Matching Counterproposal as soon as reasonably practicable; and
  - (ii) subject to the parties reaching agreement as contemplated by clause 10.8(a)(ii), Navitas must procure that each of the Navitas Directors continues to recommend the Scheme (as modified by the Matching Counterproposal) to Navitas Shareholders.

#### 10.9 Presentations

Nothing in this clause 10 will prevent Navitas from continuing to make normal presentations to brokers, portfolio investors and analysts in the ordinary course of business.

#### 10.10 COPA Amendment Deed

The parties acknowledge that:

- (a) on the date of this document, Navitas, BGH, AusSuper and RMJ entered into the COPA Amendment Deed; and
- (b) the COPA Amendment Deed automatically amends the Co-operation and Process Agreement if certain conditions are satisfied, some of which relate to compliance with this clause 10 and the non-receipt of a Matching Counterproposal by Navitas.

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## 11 Break Fee

### 11.1 Background

This clause 11 has been agreed to in circumstances where:

- (a) each of Bidder and Navitas believes it and its shareholders and investors will derive significant benefits from the implementation of the Scheme;
- (b) each of Bidder and Navitas has incurred, and will further incur, significant costs in connection with the Scheme, which will include significant opportunity costs if the Scheme is not implemented;
- (c) each of Bidder and Navitas has requested that provision be made for the payment of the Bidder Break Fee and Navitas Break Fee (as applicable), and neither would have entered into this document had such relevant payment obligation not been included;
- (d) each of Bidder and Navitas believes that it is appropriate to agree to the payment which it agrees to under this clause 11 to secure the other party's entry into this document; and
- (e) each of Bidder and Navitas has received legal advice in relation to this document and the operation of this clause 11.

Bidder and Navitas acknowledge and agree that the costs referred to in clause 11.1(b) are of such a nature that they cannot be precisely quantified, but that the amount of the applicable payment under this clause 11 is a genuine and reasonable pre-estimate of those costs.

### 11.2 Payment of Navitas Break Fee

Subject to clauses 11.4 and 11.7, Navitas must pay Bidder the Navitas Break Fee, without set-off or withholding and within 10 Business Days after receipt of a written demand from Bidder, if any of the following events occur:

- (a) at any time before the termination of this document under clause 14, a Competing Proposal is made or announced by a Third Party, and, within 12 months thereafter:
  - (i) a Third Party acquires Control of, or merges with, Navitas; or
  - (ii) a Third Party acquires voting power of (or an economic interest in) 50% or more of Navitas Shares or acquires or obtains an economic interest in all or a substantial part of the assets of the Navitas Group (as a whole);
- (b) at any time before termination of this document, Navitas enters into any agreement with a Third Party in respect of a Competing Proposal under which that Third Party and Navitas agree to implement such Competing Proposal;
- (c) Bidder terminates this document under clause 14.1(a)(ii) or 14.2(a);
- (d) prior to the End Date, any Navitas Director publicly:
  - (i) withdraws or adversely changes his or her Recommendation or Voting Intention; or

- (ii) makes any public statement to the effect that the Scheme is not, or is no longer, recommended,

other than:

- (iii) where the Independent Expert concludes either in the Independent Expert's Report or in any written update to that report that the Scheme is not in the best interests of Navitas Shareholders, except where the reason for that conclusion is a Competing Proposal; or
- (iv) in circumstances where Navitas has terminated this document under clause 14.1.

### **11.3 Payment of Bidder Break Fee**

Subject to clauses 11.4 and 11.7, Bidder must pay Navitas the Bidder Break Fee, without set-off or withholding and within 10 Business Days after receipt of a written demand from Navitas, if Bidder is in material breach of this document and Navitas terminates this document under clause 14.1(a)(ii).

### **11.4 Payment conditions**

- (a) Notwithstanding the occurrence of any event described in clause 11.2 or 11.3, no amount will be payable under this clause 11 if the Scheme becomes Effective. If an amount has been paid and then the Scheme subsequently becomes Effective, such amount must be immediately refunded to by the payee to the payor.
- (b) Any amount payable by Navitas or Bidder (as applicable) under this clause 11 is only payable once.

### **11.5 Exclusive remedy**

- (a) Subject to clause 11.5(d), each party acknowledges and agrees that the amount payable to it under clause 11.2 or clause 11.3 (as the case may be) is the sole and exclusive remedy in respect of the matter giving rise to the payment and otherwise in respect of the Scheme or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by a party in respect of such matter or the Scheme or connection with this document.
- (b) Subject to clause 11.5(d), the maximum aggregate amount that Navitas or Bidder is required to pay to the other party in respect of the Scheme or in connection with this document (including any breach of this document or entry into this document) is the amount of the Navitas Break Fee or Bidder Break Fee (as the case may be) and in no event will the aggregate liability of Navitas or Bidder to the other party in respect of the Scheme or in connection with this document exceed the amount of the Navitas Break Fee or Bidder Break Fee (as the case may be).
- (c) Subject to clause 11.5(d), notwithstanding any clause in this document, if an amount is paid under clause 11.2 or clause 11.3, that amount is received in complete settlement of any and all Claims, whether known (actually or constructively) or unknown to any party and/or their Related Entities at the date of receipt, that the party receiving the Navitas Break Fee or Bidder Break Fee (as the case may be) may have against the party paying the relevant amount in respect of the Scheme or in connection with this document. If the Bidder Break Fee is paid to Navitas under this document, Navitas cannot make any claim against Bidder or the other Bidder Parties in relation to any matter, event or occurrence in relation to this document. If the Navitas Break Fee is paid to the Bidder under this document,

Bidder cannot make any claim against Navitas or the other Navitas Indemnified Parties in relation to any matter, event or occurrence in relation to this document.

- (d) For the avoidance of doubt, nothing in clauses 11.5(a), 11.5(b) and 11.5(c) limit or restrict the Bidder's ability to make a Claim under the W&I Policy in the manner contemplated by clause 12.

### 11.6 Nature of payment

Each of Bidder and Navitas acknowledges that any amount payable by it under this clause 11 is an amount to compensate the other party for the following costs and expenses:

- (a) external advisory costs (excluding success fees);
- (b) internal costs such as costs of management and directors' time, risk management costs and capital costs;
- (c) out-of-pocket expenses; and
- (d) opportunity costs incurred in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which otherwise could have been developed.

### 11.7 Compliance with law

This clause 11 imposes obligations on Navitas and Bidder only to the extent that the performance of those obligations:

- (a) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel;
- (b) does not breach the fiduciary or statutory duties of any Navitas Director or director of Bidder; and
- (c) is not otherwise unlawful or held to be unenforceable by a court.

If any of clause 11.7(a), 11.7(b) or 11.7(c) applies, the applicable amount payable under this clause 11 (the **Applicable Amount**) will be deemed to be reduced by the relevant amount for the purposes of this clause 11 and, if the Applicable Amount has already been paid, the payee must immediately reimburse payor for the amount of the reduction to the Applicable Amount.

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## 12 Representations and Warranties

### 12.1 Navitas Representations and Warranties

- (a) Subject to clause 12.1(c), Navitas represents and warrants to Bidder that each Navitas Representation and Warranty is true and correct as at the date of this document and again at 8.00 am on the Second Court Date (unless expressly stated otherwise in the Navitas Representation and Warranty).
- (b) Bidder acknowledges and agrees that the Navitas Representations and Warranties, the Navitas Indemnity and the Tax Indemnity are given subject to those matters which:

- (i) are expressly provided for in this document;
  - (ii) are fairly disclosed in the Disclosure Materials;
  - (iii) are fairly disclosed in the Disclosure Letter;
  - (iv) are fairly disclosed in a release to ASX prior to the date of this document;
  - (v) would have been disclosed to Bidder had Bidder conducted searches of:
    - (A) public records maintained by ASIC on 18 January 2019;
    - (B) the register established under the *Personal Property Securities Act 2009* (Cth) on 22 January 2019;
    - (C) public records maintained by the registries of the High Court of Australia, Federal Court of Australia and the Supreme Courts of each state and territory in Australia on 1 March 2019; or
    - (D) public records maintained by IP Australia on 18 January 2019;
    - (E) the register maintained by Companies House in the United Kingdom on 12 February 2019; or
    - (F) (in respect of each of the Properties in Australia only) the registry of the relevant state or territory titles office, between 21 January 2019 and 26 February 2019; or
  - (vi) are within the actual knowledge of Bidder as at the date of this document, which for these purposes will be taken to include (and be limited to) the facts, matters and circumstances of which the following individuals are actually aware as at the date of this document:
    - (A) Ben Gray;
    - (B) Terry Bowen; and
    - (C) Jason Korman.
- (c) Notwithstanding any provision to the contrary in this document:
- (i) Bidder agrees that it will not be entitled to make, and that it will not make, and irrevocably waives any right it may have to make, any Warranty or Indemnity Claim against any Navitas Indemnified Party, except to the extent:
    - (A) required to permit a Claim under the W&I Policy (if any) and then only on the basis that Bidder's sole and only recourse and remedy would be under the W&I Policy (and under the Bidder Break Fee, if payable) and no Navitas Indemnified Party will have any liability whatsoever for such Claim; or
    - (B) such Claim (which is made against Navitas) arises as a result of fraud by Navitas or such Claim (which is made against a director of Navitas as at the date of this document) arises as a result of fraud by that director;

- (ii) Bidder covenants in favour of Navitas that, prior to the Scheme being implemented and subject to Bidder taking out a W&I Policy, it will:
  - (A) not do anything which causes any right of the insured under the W&I Policy not to have full force and effect upon its terms;
  - (B) not novate or assign its rights under the W&I Policy other than where permitted by the terms of the W&I Policy; and
  - (C) comply with the terms of the W&I Policy relating to deliverables required to satisfy conditions in the W&I Policy;
- (iii) Bidder will ensure that any W&I Policy includes terms to the effect that:
  - (A) the insurer irrevocably waives its rights to bring any claim against any Navitas Indemnified Party by way of subrogation, claim for contribution or otherwise, except claims by way of subrogation against:
    - (1) Navitas to the extent that the relevant loss arose out of fraud by Navitas; or
    - (2) a director of Navitas at the date of this document to the extent that the relevant loss arose out of fraud by that director,and only to the extent of the rights of recovery relating directly to fraud by Navitas or the relevant director (as applicable); and
  - (B) Bidder acknowledges that each Navitas Indemnified Party is entitled to directly enforce such waivers and that in respect of the waivers Bidder contracts in its own right and as agent of each Navitas Indemnified Party;
- (iv) Bidder acknowledges and agrees that:
  - (A) there is no excess, premium or any other amount payable by any Navitas Indemnified Party under the W&I Policy (if any);
  - (B) sub-paragraph (i) above applies: (x) notwithstanding whether or not it takes out a W&I Policy; and (y) regardless of whether any W&I Policy that Bidder does take out lapses, is or becomes void or is voided or rescinded, or does not respond to or otherwise apply to cover any Warranty or Indemnity Claim;
  - (C) it indemnifies and must hold harmless each Navitas Indemnified Party in respect of any Loss or Claim arising out of or otherwise in connection with any exercise or attempted or purported exercise by an insurer (under any W&I Policy, the general law, statute or otherwise) of any rights of subrogation or claim for contribution, other than to the extent that the relevant Loss or Claim arose out of fraud by Navitas or a director of Navitas; and
  - (D) in the event that it takes out a W&I Policy, it will promptly provide Navitas with a copy of such policy; and
- (v) Navitas acknowledges and agree that:

- (A) Bidder intends to purchase the W&I Policy but is under no obligation to take out a W&I Policy;
- (B) it will cooperate with Bidder and provide all reasonable assistance requested by Bidder in connection with the purchase of the W&I Policy, including: (x) arranging for management to be available to respond to any queries and responding in writing to any written queries from the Bidder in relation to the W&I Policy, the insurance broker engaged by Bidder or any underwriter of the W&I Policy or from Bidder to the extent they arise due to queries from the insurance broker engaged by Bidder or any underwriter of the W&I Policy, provided that Bidder has first considered those queries and responded to them to the extent that it is reasonably able to; and (y) providing access to the "Project Consortium" online data room maintained by Navitas to the insurance broker engaged by Bidder, any underwriter of the W&I Policy, or any of their respective advisers (in each case as and when requested by Bidder, but subject to the proviso that each such person first enters into a non-disclosure agreement with Navitas on reasonable and customary terms); and
- (C) if Bidder takes out a W&I Policy and provides a copy of such policy to it, it shall keep the terms of such policy confidential in accordance with the Confidentiality Deed.

## 12.2 Bidder Representations and Warranties

Bidder represents and warrants to Navitas that each Bidder Representation and Warranty is true and correct as at the date of this document and again at 8.00 am on the Second Court Date, other than the Bidder Representation and Warranty in paragraph (m) of Schedule 4, which the Bidder represents and warrants to Navitas is true and correct as at the date that the relevant Debt Document or Subscription Document (as the case may be) is entered into and again at 8.00 am on the Second Court Date.

## 12.3 Indemnities

- (a) Subject at all times to clause 12.1(c)(i), Navitas indemnifies Bidder (and only Bidder) against all Losses incurred by Bidder or any other Bidder Party directly or indirectly as a result of any of the Navitas Representations and Warranties being breached (**Navitas Indemnity**).
- (b) For the avoidance of doubt, the Navitas Indemnity is given in favour of Bidder only (in its individual capacity), and does not confer any right or benefit on any other person.
- (c) Bidder indemnifies Navitas against all Losses incurred directly or indirectly as a result of any of the Bidder Representations and Warranties being breached.

## 12.4 Tax indemnity

Subject to clause 12.1(c), Navitas indemnifies Bidder against, and must pay Bidder on demand the amount of, any losses, liabilities, damages, costs, charges or expenses attributable to:

- (a) Tax or Duty payable by a member of the Navitas Group (whether payable before, on or after implementation of the Scheme) as a result of a Tax Demand to the extent that such Tax or Duty relates to:

- (i) any period, or part period, up to and including implementation of the Scheme; or
  - (ii) any act, transaction, event or omission, or any misstatement, executed, performed or made on or prior to implementation of the Scheme,
- excluding any Duty payable by Bidder under clause 16.1;
- (b) the loss or limitation, including any reduction in the rate of use, of any tax attributes of the Navitas Group at the implementation of the Scheme due to prior changes in the control or ownership of the Navitas Group; or
  - (c) Tax Costs incurred by or on behalf of a member of the Navitas Group to the extent that such Tax Costs arise from or relate to any of the matters for which Navitas is liable under clauses 12.4(a) or 12.4(b),

in each case except to the extent that Navitas' liability is limited or qualified under clause 12.1(b).

## **12.5 Survival of Representations and Warranties**

- (a) Each Representation and Warranty and indemnity in this document (including those in clauses 7.9(c), 12.1(c), 12.3 and 12.4):
  - (i) is severable;
  - (ii) survives termination of this agreement; and
  - (iii) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this document.
- (b) Each indemnity in this document (including those in clauses 7.9(c), 12.1(c), 12.3 and 12.4):
  - (i) is a continuing obligation; and
  - (ii) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this document.

## **12.6 Navitas' knowledge or awareness**

Navitas' knowledge or awareness, for the purposes of a Navitas Representation and Warranty that is qualified by reference to the knowledge or awareness of Navitas, will be deemed to comprise only those matters or circumstances of which David Buckingham, Phil Mirams, Iain Rothwell, Bev Hudson, Scott Jones, Brian Stevenson, Paul Lovegrove, Hugh Hangchi, Geoff Kirk and Matthew Rumpus are actually aware as at the date that the Navitas Representation and Warranty is given.

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# **13 Releases**

## **13.1 Release of Navitas Indemnified Parties**

- (a) Subject to clause 13.1(b), Bidder releases, with effect from the date of this document, any and all rights that it has or may have or that may otherwise accrue to it after the date of this document, whether known (actually or constructively) or

unknown to any party of their Related Entities, and agrees with Navitas that it will not make any Claim, against any Navitas Indemnified Party (excluding Navitas) at any time in connection with:

- (i) any breach of any representation or warranty given by Navitas under this document;
- (ii) any breach of any covenant given by Navitas under this document;
- (iii) any disclosures or information provided in connection with this document or the Scheme containing any statement which is false or misleading (whether by omission or otherwise); or
- (iv) any failure to provide information in connection with this document or Scheme,

except where that Navitas Indemnified Party has:

- (v) in the case of the release in clause 13.1(a)(i), engaged in fraud; or
- (vi) in the case of clauses 13.1(a)(ii) to 13.1(a)(iv) (but other than in connection with any breach of any representation or warranty referred to in clause 13.1(a)(i)), not acted in good faith, engaged in wilful misconduct, wilful concealment or fraud.

To avoid doubt nothing in this clause 13.1 limits the rights of Bidder to terminate this document under clause 14.

- (b) The release in clause 13.1(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Navitas receives and holds the benefit of clause 13.1(a) as trustee for the other Navitas Indemnified Parties.

### **13.2 Release of Bidder Parties**

- (a) Subject to clause 13.2(b), Navitas releases, with effect from the date of this document, any and all rights that it has or may have or that may otherwise accrue to it after the date of this document, whether known (actually or constructively) or unknown to any party of their Related Entities, and agrees with Bidder that it will not make any Claim, against any Bidder Party (excluding Bidder) at any time in connection with:
  - (i) any breach of any covenant, representation or warranty given by Bidder under this document;
  - (ii) any disclosures or information provided containing any statement which is false or misleading (whether by omission or otherwise); or
  - (iii) any failure to provide information,

except where a Bidder Party has not acted in good faith, engaged in wilful misconduct, wilful concealment or fraud.

To avoid doubt, nothing in this clause 13.2 limits the rights of Navitas to terminate this document under clause 14.

- (b) The release in clause 13.2(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Bidder receives and holds the benefit of clause 13.2(a) as trustee for the Bidder Parties.

### **13.3 Survival of releases**

Each release in this clause 13:

- (a) is severable;
- (b) survives termination of this agreement; and
- (c) is a continuing obligation; and
- (d) constitutes a separate and independent obligation of the party given the release from any other obligation of that party under this document.

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## **14 Termination**

### **14.1 Termination by Bidder or Navitas**

- (a) Subject at all times to clause 14.4, Bidder or Navitas may terminate this document:
  - (i) in accordance with clause 3.4; or
  - (ii) at any time before 8.00 am on the Second Court Date if the other commits a material breach of this document (including a Representation and Warranty, but excluding both: (1) the Navitas Business Representations and Warranties; and (2) any failure by Navitas to give Bidder a notice required by clause 3.5(b) in relation to any Navitas Business Representation and Warranty) and:
    - (A) it has given written notice to the other setting out the relevant circumstances and stating an intention to terminate this document; and
    - (B) the relevant circumstances are not remedied to the non-defaulting party's reasonable satisfaction and have continued to exist for 5 Business Days from the time such notice is given (or any shorter period ending at 8.00 am on the Second Court Date).
- (b) Termination under clause 14.1(a)(ii) will be deemed to take effect at the expiry of the relevant period referred to in clause 14.1(a)(ii)(B).

### **14.2 Termination by Bidder**

Bidder may terminate this document, with immediate effect, at any time before 8.00 am on the Second Court Date by notice in writing to Navitas if:

- (a) Navitas materially breaches clause 10;
- (b) a Prescribed Occurrence occurs;
- (c) any Navitas Director:

- (i) withdraws, changes or modifies his or her Recommendation or Voting Intention;
- (ii) makes any public statement that is inconsistent with the Recommendation or Voting Intention; or
- (iii) recommends, endorses or supports any Competing Proposal,

in each case in any circumstances (including following the occurrence of one of the events referred to in clause 9.2).

#### **14.3 Termination by Navitas**

(a) Navitas may terminate this document, with immediate effect, at any time before 8.00 am on the Second Court Date by notice in writing to Bidder if a majority of Navitas Directors wishes to publicly:

- (i) withdraw or adversely change their Recommendation; or
- (ii) recommend a Competing Proposal,

in each case provided that one of the events referred to in clause 9.2 has occurred.

(b) Navitas may terminate this document, with immediate effect, by notice in writing to Bidder if the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that in its opinion the Scheme is not in the best interests of Navitas Shareholders.

#### **14.4 Knowledge of breach**

Notwithstanding any other provision of this document, Bidder is not entitled to terminate this document, and the Navitas Break Fee will not be payable to Bidder under clause 11, for any breach of any Navitas Scheme Representation and Warranty if the facts, matters and circumstances that gave rise to the breach of that Navitas Scheme Representation and Warranty were within the actual knowledge of Rod Jones as at the date of this document.

#### **14.5 Effect of termination**

If this document is terminated in accordance with this clause 14, this document will cease to have force and effect without any liability or obligation on the part of any party, except that:

- (a) this clause 14 and clauses 7.9(c), 11, 12, 13, 15, 17 and 18 (except clause 18.8), and the Schedules, will survive termination; and
- (b) each party shall retain any rights and remedies that accrued prior to termination, including any rights and remedies in respect of any past breach of this document or (if applicable) in respect of the breach giving rise to termination.

#### **14.6 Notice of termination**

Subject to 14.1(b), where Navitas or Bidder has a right to terminate this document, that right for all purposes will be validly exercised if Navitas or Bidder (as the case may be) delivers a notice in writing to the other party stating that it terminates this document.

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## 15 Confidentiality

Except as otherwise expressly specified in this document, each party acknowledges and agrees that nothing in this document derogates from or limits the provisions of the Confidentiality Deed. Accordingly, except as otherwise expressly specified in this document, all information provided under or in connection with this document is subject to the terms of the Confidentiality Deed.

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## 16 Duty, costs and expenses

### 16.1 Stamp duty

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this document, the performance of this document and each transaction contemplated by this document; and
- (b) indemnifies Navitas against any liability arising from or in connection with any failure by it to comply with clause 16.1(a).

### 16.2 Costs and expenses

Except as otherwise provided in this document, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this document and the proposed, attempted or actual implementation of the Transaction.

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## 17 GST

### 17.1 Interpretation

In this clause 17, a word or expression defined in the GST Law has the meaning given to it in that law.

### 17.2 GST gross up

- (a) Subject to clause 17.2(b), if a party makes a supply under or in connection with this document in respect of which GST is payable, the consideration for the supply but for the application of this clause 17.2 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (b) Clause 17.2(a) does not apply to any consideration that is expressed in this document to be inclusive of GST.

### 17.3 Reimbursements and indemnifications

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party (or its representative member) is entitled to for the loss, cost or expense, and then increased in accordance with clause 17.2 (if applicable).

## 17.4 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this document until it receives a tax invoice for the supply to which the payment relates.

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# 18 General

## 18.1 Notices

- (a) A notice, consent, approval, waiver, request or other communication sent or made by a party under this document (**Notice**) must be:
- (i) in writing;
  - (ii) sent by an authorised representative of that party; and
  - (iii) marked for the attention of the person named below,
- and must be:
- (iv) left at the address set out below; or
  - (v) sent by email to the address set out below.

### Navitas

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

with a copy (for information purposes only) to:

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

### Bidder

Attention: Hari Morfis / Emma Cahill  
Address: Level 26, 101 Collins Street, Melbourne Victoria 3000  
Email: hmorfis@bghcapital.com / ecahill@bghcapital.com

with a copy (for information purposes only) to:

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

- (b) Subject to clause 18.1(c), a Notice is taken to be received:

- (i) if sent by delivery, when it is delivered; or
- (ii) if sent by email, on the first to occur of:
  - (A) the sender receiving an automated message confirming delivery; and
  - (B) two hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered.
- (c) If a Notice is received or taken to be received under clause 18.1(b):
  - (i) before 9.00 am on a Business Day, it will be taken to be received at 9.00 am on that Business Day; or
  - (ii) after 5.00 pm on a Business Day or on a day other than a Business Day, it will be taken to be received at 9.00 am on the next Business Day.

## **18.2 Governing law and jurisdiction**

- (a) This document is governed by the laws of Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and courts competent to hear appeals from those courts.

## **18.3 No representation or reliance**

- (a) Each party acknowledges that neither party (nor any person acting on its behalf) nor any of the Consortium Members has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this document, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party confirms that it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other person, except for any representation or inducement expressly set out in this document.

## **18.4 No merger**

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

## **18.5 Waivers, consents and approvals**

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this document by any party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this document.
- (b) Any waiver or consent given by a party under this document is only effective and binding on that party if it is given or confirmed in writing by that party.

- (c) No waiver of a breach of any term of this document operates as a waiver of another breach of that term or of a breach of any other term of this document.
- (d) Except where this document expressly provides otherwise, where the consent or approval of a party is required under this document, such consent or approval may be given or withheld in that party's absolute discretion.

#### **18.6 Variation**

- (a) Subject to clause 18.6(b), this document may only be varied by a document signed by or on behalf of each of the parties.
- (b) On and from the Implementation Date, the parties may not amend or vary this document in a manner that adversely affects any right or benefit conferred on a Navitas Indemnified Party (other than Navitas) or Bidder Party (as the case may be) under this document without the prior written consent of the majority of directors of Navitas at the date of this document or Bidder Party (as the case may be).

#### **18.7 Assignment**

- (a) Subject to clause 18.7(b), a party may not assign, novate or otherwise transfer any of its rights or obligations under this document without the prior written consent of the other party.
- (b) The Bidder may assign, grant a security interest over, novate or otherwise transfer by way of security, any of its rights or obligations under this document to a financier or financiers (or a security agent or security trustee thereof) without the prior written consent of Navitas solely for the purpose of obtaining finance or providing security in connection with the Transaction.

#### **18.8 Further action**

Each party will do all things and execute all further documents necessary to give full effect to this document.

#### **18.9 Entire agreement**

This document supersedes all previous agreements, understandings, negotiations or deeds (other than the Confidentiality Deed) in respect of its subject matter and embodies the entire agreement between the parties.

#### **18.10 Severability**

- (a) If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction but only to the extent that it is void, unenforceable or illegal and provided that it will have full force and effect in any other jurisdiction. Where a provision (or any part thereof) is severed in a jurisdiction, the remainder of this document shall have full force and effect in that (and any other) jurisdiction.
- (b) This clause 18.10 does not apply to any severance that alters the basic nature of this document or is contrary to public policy.

### **18.11 Counterparts**

This document may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

### **18.12 Navitas Indemnified Parties and Bidder Parties**

The parties acknowledge and agree that:

- (a) in the case of Navitas Indemnified Parties, Navitas enters into this document for itself and as trustee for each of the other Navitas Indemnified Parties, each of whom may also rely on and enforce any clause of this document that is expressed to confer a right or benefit on a Navitas Indemnified Party; and
- (b) in the case of Bidder Parties, Bidder enters into this document for itself and as trustee for each of the other Bidder Parties, each of whom may also rely on and enforce any clause of this document that is expressed to confer a right or benefit on a Bidder Party.

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## Schedule 1 Dictionary

**Accounting Standards** means:

- (a) the requirements of the Corporations Act about the preparation of financial reports; and
- (b) the accounting standards and any authoritative interpretations issued by the Australian Accounting Standards Board.

**ACCSC** means United States Accrediting Commission for Career Schools and Colleges.

**Adviser** means, in relation to an entity, a financial, corporate, legal, or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Transaction by the entity.

**ASIC** means the Australian Securities and Investments Commission.

**ASQA** means the Australian Skills Quality Authority.

**associate** has the meaning given in section 12 of the Corporations Act.

**ASX** means ASX Limited (ABN 98 008 624 691) or, where the context requires, the financial market operated by it known as the “Australian Securities Exchange”.

**AusSuper** means 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.

**BGH** means 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.

**Authorisation** means:

- (a) an approval, authorisation, consent, declaration, exemption, licence, notarisation, permit or waiver, however it is described, including any renewal or amendment and any condition attaching to it from or by a Government Agency; and
- (b) in relation to anything that could be prohibited or restricted by law, if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken.

**BGH Fund** means BGH Capital IA Pty Ltd in its capacity as trustee for BGH Capital Trust IA, BGH Capital IB Pty Ltd in its capacity as trustee for BGH Capital Trust IB and BGH Capital Offshore GP I Limited as general partner of BGH Capital Offshore I LP.

**Bidder Break Fee** means \$15,651,094.

**Bidder Committee Members** means Terry Bowen, Jonathan Chamberlain and Jason Korman, provided that the Bidder may substitute one or more of such persons for other Representatives with immediate effect at any time by notice in writing to Navitas, provided that, at all times, that Bidder has no more than 3 Bidder Committee Members at any one time.

**Bidder Group** means Bidder, each Consortium Member and each of their respective Related Entities.

**Bidder Information** means all information provided by Bidder to Navitas in writing for inclusion in the Scheme Booklet, which must include information in relation to Bidder, HoldCo, the funding of the Scheme Consideration and Bidder's intentions in relation to the Navitas Group and its business (including the Navitas Group's employees and assets), and includes any information contained in the Scheme Booklet that is solely based on any information so provided by or solely relates to the Bidder.

**Bidder Party** means any member of the Bidder Group, or a director, officer, employee or Adviser of a member of the Bidder Group.

**Bidder Representations and Warranties** means the representations and warranties set out in Schedule 4.

**BPPE** means the California Bureau of Private Postsecondary Education.

**Business Day** has the meaning given in the Listing Rules.

**Cash Price** means \$5.825 for each Scheme Share.

**Claim** means any allegation, cause of action, claim or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Co-investment Agreement** means the Co-investment Agreement between Bidder, each of the Consortium Members and BGH Capital Pty Ltd dated on or prior to the date of this document and which came into force before or simultaneously with this document.

**Competing Proposal** means any expression of interest, proposal, offer, transaction, agreement or arrangement which if entered into or completed in accordance with its terms:

- (a) would result in a Third Party (either alone or together with one or more other Third Parties) directly or indirectly:
  - (i) acquiring Control of Navitas or any member of the Navitas Group which holds all or a substantial part or a material part of the business or assets of the Navitas Group;
  - (ii) acquiring an interest (including an economic interest by way of an equity swap, contract for difference or similar transaction or arrangement) or a Relevant Interest in more than 10% of the Navitas Shares;
  - (iii) acquiring, becoming the holder of or having a right to acquire or an economic interest in all or a substantial part of the business, or any of the material assets, of the Navitas Group (where a material asset of the Navitas Group will be an asset representing more than 10% of the value of the Navitas Group's total consolidated assets); or
  - (iv) otherwise acquiring Control of or merging with Navitas or any other member or members of the Navitas Group holding a substantial or a material part of the assets of the Navitas Group,

whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of

shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement; or

- (b) would result in the Transaction not being able to be implemented on the basis set out in this document,

but excluding (to avoid doubt) any divestment or proposed divestment contemplated by Navitas' announcement to ASX dated 18 July 2018 ("Navitas to Rationalise Careers and Industry").

**Condition precedent** means a condition precedent set out in clause 3.1.

**Confidentiality Deed** means the process and confidentiality deed dated 14 January 2019 between BGH, AusSuper, RMJ and Navitas.

**Consolidated Group** means (i) a "consolidated group" or a "MEC group" as those terms are defined in section 995-1(1) of the ITAA 1997 or (ii) any consolidated or unitary group under U.S. federal, state or local Tax Law.

**Consortium** means the consortium comprising BGH, BGH Fund, AusSuper and RMJ and each of the limited partners of the BGH Fund who are co-investing in the ultimate holding company of Bidder, unless the context requires otherwise, includes Bidder.

**Consortium Member** means a member of the Consortium and, unless the context requires otherwise, includes Bidder.

**Consultation Notice** has the meaning given in clause 3.4(a).

**Control** has the meaning given in section 50AA of the Corporations Act.

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

**COPA Amendment Deed** means the deed of amendment to the Co-operation and Process Agreement dated on or about the same date of this document between Navitas, BGH, RMJ and AusSuper.

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

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

**Court** means the Federal Court of Australia (Western Australia Registry) or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Navitas and Bidder.

**Court Documents** means the documents which the Navitas determines (acting reasonably) are required for the purposes of a Court Hearing, which may include originating process, affidavits, submissions and draft minutes of Court orders.

**Court Hearing** means the First Court Hearing or Second Court Hearing (as applicable), and **Court Hearings** means both of them.

**Debt Commitment** means the financing commitments pursuant to the Debt Commitment Letters.

**Debt Commitment Letter** means the executed binding commitment letters and accompanying binding term sheets from the Bidder's debt financiers addressed to the Bidder and provided to the Bidder on or before the date of this document.

**Debt Documents** means the definitive agreements related to the Debt Financing on terms contemplated by the Debt Commitment Letter.

**Debt Financing** means the debt financing incurred or intended to be incurred pursuant to the Debt Commitment Letter.

**Deed Poll** means the deed poll, in the form of Attachment B, to be entered into by Bidder pursuant to clause 6.2(k), under which (among other things) Bidder covenants in favour of Scheme Shareholders to provide the Scheme Consideration in accordance with the terms of the Scheme.

**Disclosure Letter** means the letter containing disclosures against, among other things, the Navitas Representations and Warranties addressed to Bidder and delivered to Bidder on or before the date of this document and includes all of its schedules, annexures and attachments (if any).

**Disclosure Materials** means:

- (a) the documents and information contained in the "Project Consortium" online data room as at 9.38 am (Sydney time) on 11 March 2019 and included on the USBs provided to Bidder by the relevant data room provider;
- (b) the written responses provided by or on behalf of Navitas to requests for information made by or on behalf of Bidder and included on the USB referred to in paragraph (a);
- (c) the email titled 'Executive retention letters' sent by David Buckingham to Terry Bowen on 30 January 2019, including (to avoid any doubt) the information contained and disclosed in both that email and its attachments; and
- (d) the contracts listed in Schedule 9.

**Disputing Action** means, in respect of a Tax Demand, any action to cause the tax Demand to be withdrawn, reduced or postponed or to avoid, resist, object to, defend, appear against or compromise the Tax Demand and any judicial or administrative proceedings arising out of that action.

**Dividend Reinvestment Plan** means the dividend reinvestment plan of Navitas dated 30 July 2013.

**Duty** means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

**EBITDA** means the consolidated earnings from continuing activities of the Navitas Group before interest, tax, depreciation and amortisation calculated in accordance with the accounting policies and practices applied by Navitas as at the date of this document, excluding (to avoid doubt) all Transaction Costs incurred by Navitas.

**Effective** means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme.

**Effective Date** means the date on which the Scheme becomes Effective.

**EFTSU Figures** means “equivalent full time student units” in relation to Navitas’ University Partnerships Divisions on an aggregated basis across all of the divisions and not on a division-by-division.

**Election** means an election or deemed election by a Scheme Shareholder in accordance with clause 4.4.

**Election Form** has the meaning given in the Scheme.

**Election Time** has the meaning given in the Scheme.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

**End Date** means 30 September 2019 (or such other later date agreed in writing between the parties).

**Equity Commitment Letter** means the executed binding commitment letters from each Consortium Member (except RMJ) provided to the Bidder prior to the date of this document.

**Equity Financing** means the financing commitments set out in the Equity Commitment Letters from each Consortium Member (except RMJ).

**Exclusivity Period** means the period from the date of this document until the earlier of:

- (a) the termination of this document under clause 14; and
- (b) the End Date.

**FCIE** means the Florida Commission for Independent Education.

**Financing** means the Equity Financing as contemplated by the Equity Commitment Letters and the Debt Financing as contemplated by the Debt Commitment Letters.

**Financing Sources** means the persons that have committed to provide or otherwise entered into agreements to provide the Debt Financing or other alternative debt financings as permitted by this document (including the Alternative Financing) in connection with the transactions contemplated hereby and any arrangers thereof, including the parties to the financing commitments in the Debt Commitment Letter and in any joinder agreements, credit agreements or other financing agreements relating thereto.

**FIRB** means the Foreign Investment Review Board.

**FIRB Approval** has the meaning given in clause 3.1(c)(ii).

**First Court Date** means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act directing Navitas to convene the Scheme Meetings is heard, with such hearing being the **First Court Hearing**.

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian.

**GST** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law.

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

**GST exclusive consideration** has the meaning given in clause 17.2(a).

**GST Law** has the meaning given in the GST Act.

**HoldCo** means the ultimate holding company of Bidder.

**HoldCo Share** means a newly issued fully paid share in the capital of HoldCo.

**Implementation Date** means, at the election of the Bidder, any date during the period beginning on the date that is three Business Days after the Scheme Record Date and ending on (and including) the date that is 13 Business Days after the Scheme Record Date, provided that such election is made by Bidder before 5.00 pm on the day immediately prior to the date of the Scheme Meetings, and failing such an election will be the date that is four Business Days after the Scheme Record Date.

**Independent Expert** means the independent expert to be appointed by Navitas to prepare the Independent Expert's Report in accordance with clause 6.1(a) and ASIC Regulatory Guide 111 *Content of expert reports*.

**Independent Expert's Report** means the report to be prepared and issued by the Independent Expert in connection with the Scheme for inclusion in the Scheme Booklet.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to any person:

- (a) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 15 Business Days of it being made;
- (b) a liquidator or provisional liquidator is appointed;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
- (d) a Controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) a receiver is appointed to it or any of its assets;
- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (h) is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (i) a deregistration notice is issued under sections 601AA or 601AB of the Corporations Act;

- (j) a writ of execution is levied against it or a material part of its property; or
- (k) anything occurs under the law of any jurisdiction outside Australia which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

**Intellectual Property Rights** means all intellectual and industrial property rights of whatever nature throughout the world conferred under statute, common law or equity, whether existing now or at any time in the future, and includes rights in respect of or in connection with trade marks, service marks (including good will in those marks), business names, trade names, domain names, designs, inventions (including patents), business processes or methods, circuit layouts, copyright and analogous rights, rights to have confidential information, know-how and similar intellectual property and industrial rights, whether or not registered or registrable, and includes pending applications for such rights and the right to apply for or renew the registration of such rights.

**ITAA 1936** means the *Income Tax Assessment Act 1936* (Cth).

**ITAA 1997** means the *Income Tax Assessment Act 1997* (Cth).

**Key Material Contract** means each contract to which a member of the Navitas Group is party that could reasonably be expected to generate EBITDA of A\$500,000 or more in any 12 month period.

**Key Partner** has the meaning given in the Confidentiality Deed.

**Listing Rules** means the official listing rules of ASX.

**Loss** includes losses, liabilities, damages, costs, charges, expenses, fines, penalties, taxes and duties.

**Management Accounts** means management accounts of the Navitas Group contained in the Disclosure Materials.

**Matching Counterproposal** has the meaning given in clause 10.8.

**Matching Right Notice** has the meaning given in clause 10.7(a)(iii).

**Material Adverse Change** means:

- (a) either:
  - (i) termination of any Specified Contract; or
  - (ii) any counterparty to a Specified Contract, the term of which ends on or before 31 December 2020, advising:
    - (A) Navitas Group or Bidder in writing; or
    - (B) Navitas Group and Bidder other than in writing in a manner which is unequivocal,

that it does not intend to renew such Specified Contract (or that it would only renew on amended terms that are materially adverse to Navitas),

where the aggregate expected EBITDA contribution for FY19 from such Specified Contracts exceeds \$6 million or the expected EBITDA contribution for FY19 from any such individual Specified Contract exceeds \$4 million;

- (b) a matter, event or circumstance that occurs, is announced or becomes known to Bidder after the execution of this document where that matter, event or circumstance has, has had, or is reasonably likely to have, either individually, or when aggregated with any other such matters, events or circumstances, the effect of:
  - (i) diminishing the consolidated EBITDA of the Navitas Group, taken as a whole, for the financial year ending 30 June 2020 or 30 June 2021 by at least \$14 million;
  - (ii) increasing the consolidated Net Indebtedness of the Navitas Group above the figures specified in the table below for the corresponding date:

Date	Net Indebtedness (A\$'000s)
31 March 2019	188,303
30 April 2019	216,915
31 May 2019	224,994
30 June 2019	179,753
31 July 2019	163,552
31 August 2019	153,016
30 September 2019	161,263

; or

- (iii) the Navitas Group being unable to carry on its business in substantially the same manner as at the date of this agreement,
- (c) any:
- (i) enacted change to applicable legislation or legislative instrument; or
  - (ii) implemented change to applicable:
    - (A) publicly documented government policy; or
    - (B) announced (in writing) government policy,

that comes into force and effect before 8.00 am on the Second Court Date in relation to:

- (iii) visa or immigration law or policy in Australia or Canada affecting students from other countries attending university pathway programs in Australia or Canada; and
- (iv) laws or policy in China or India for students for university pathway programs in Australia and Canada which would reduce or limit the flow of students from China or India to Australia or Canada,

which is reasonably likely to have the effect of diminishing the consolidated EBITDA of the Navitas Group, taken as a whole, for the financial year ending 30 June 2020 or 30 June 2021 by at least \$14 million,

other than any matters, events or circumstances:

- (d) fairly disclosed in the Disclosure Materials or to ASX within the 3 years prior to the date of this document;
- (e) fairly disclosed in Part D of the Annexure of the Disclosure Letter;
- (f) required or contemplated by Part E of the Annexure of the Disclosure Letter;
- (g) comprising or arising from the payment of, incurrence of or agreement to pay or incur any Transaction Cost to the extent such payment, incurrence or agreement to pay or incur complies with clause 7.2(h);
- (h) comprising or arising from anything contemplated by clauses 7.14 (D&O Insurance), but only in respect of that amount of the D&O run-off policy which exceeds the existing annual premium for D&O insurance;
- (i) expressly required by this document or the Scheme;
- (j) that are consented to in writing by the Bidder;
- (k) arising from a change to law, interpretation of the law or to any policy of a Government Agency, save that the exception in this paragraph (k) does not apply for the purposes of paragraph (c);
- (l) comprising or arising from changes in applicable exchange rates; or
- (m) relating to any material adverse change or disruption to the existing financial markets or economic or business conditions of Australia, Canada, Germany, the United Kingdom, the United States of America, Hong Kong or China.

**Material Contract** has the meaning given in warranty 12(a) of Schedule 3.

**Material Member of the Navitas Group** means Navitas or any member of the Navitas Group whose assets account for more than 5% of the total consolidated assets of the Navitas Group.

**Navitas Board** means the board of directors of Navitas.

**Navitas Break Fee** means \$15,651,094.

**Navitas Business Representations and Warranties** means the representations and warranties set out in paragraphs 9 (Navitas Group) to 23 (Specific Compliance Matters) of Schedule 3.

**Navitas Committee Members** means David Buckingham, Phil Mirams and Matthew Rumpus or one of their nominees.

**Navitas Consolidated Group** means the Consolidated Group of which Navitas is the head company.

**Navitas Director** means a director of Navitas.

**Navitas Excluded Action** means:

- (a) any action or thing fairly disclosed in the Disclosure Materials (including any expenditure or commitment referred to in or otherwise contemplated by the Navitas FY19 Budget provided that the aggregate of the expenditure or commitment for each line item of expenditure is not greater than the amount set out in the FY19 capex forecast in Part F of the Annexure of the Disclosure Letter, which is deemed to be fairly disclosed);
- (b) any action or thing fairly disclosed in Part C or Part D of the Annexure to the Disclosure Letter;
- (c) any action or thing required or contemplated by Part E of the Annexure of the Disclosure Letter;
- (d) any action or thing disclosed in any release to ASX within the three years prior to the date of this document;
- (e) the entry into or renewal (as applicable) of the university partnership agreements or lease specified in Schedule 8 and any reasonable action taken pursuant to any such agreements once entered into or renewed;
- (f) the entry into of the college enterprise bargaining agreements specified in document 07.04.18 in the "Project Consortium" online data room and any action required under such agreements once entered into;
- (g) any action required by law or by any Government Agency;
- (h) a transaction required to be done or procured by Navitas under this document or the Scheme;
- (i) the payment of, incurrence of or agreement to pay or incur any Transaction Cost to the extent such payment, incurrence or agreement to pay or incur does not breach clause 7.2(h); or
- (j) anything contemplated by clauses 7.14 (D&O Insurance) or 7.15 (Deeds of indemnity and insurance).

**Navitas FY19 Budget** means the budget and expenditure plan in relation to Navitas and its business for the financial year ending 30 June 2019:

- (a) as disclosed in the data room folder 10.02.02 of the "Project Consortium" online data room that forms part of the Disclosure Materials; and
- (b) as updated by the cash flow forecast included in the online data room that forms part of the Disclosure Materials and the FY19 capex forecast in Part F of the Annexure of the Disclosure Letter.

**Navitas Group** means Navitas and each of its Related Entities.

**Navitas Indemnified Party** means any member of the Navitas Group, or any director, officer, employee or Adviser of any member of the Navitas Group who held such position at any time before the Implementation Date.

**Navitas Indemnity** has the meaning given in clause 12.3(a).

**Navitas Information** means all the information in the Scheme Booklet other than the Bidder Information and Independent Expert's Report.

**Navitas Register** means the register of members of Navitas maintained by or on behalf of Navitas in accordance with section 168(1) of the Corporations Act.

**Navitas Representations and Warranties** means the Navitas Scheme Representations and Warranties and the Navitas Business Representations and Warranties.

**Navitas Right** means a right or other entitlement granted under a Navitas employee incentive scheme or plan to acquire by way of issue or transfer (or have vesting or forfeiture conditions satisfied in respect of) one or more Navitas Shares subject to the terms of that scheme or plan. To avoid doubt, Navitas Shares already issued under Navitas' Employee Share Ownership Plan or Executive Share Plan are not a Navitas Right under this document.

**Navitas Scheme Representations and Warranties** means the representations and warranties set out in paragraphs 1 (Incorporation and existence) to 8 (Change of control) of Schedule 3.

**Navitas Share** means a fully paid ordinary share in the capital of Navitas.

**Navitas Shareholder** means a holder of one or more Navitas Shares, as shown in the register of members maintained by (or on behalf of) Navitas in accordance with the Corporations Act.

**Net Indebtedness** means indebtedness less the amount of cash, cash equivalents and short terms interest bearing deposits, where:

- (a) the terms "cash" and "cash equivalents" are as defined in: (i) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of that Act relating to the preparation and content of accounts; and (ii) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (i);
- (b) the amount of cash includes cash held as part of the Tuition Protection Service; and
- (c) indebtedness excludes guarantees, but includes finance leases, to which any member of the Navitas Group is party; and
- (d) the cost of or, any indebtedness in connection with funding, any premium paid or payable by a member of Navitas Group for directors' and officers' run-off insurance pursuant to clause 7.14 is excluded; and
- (e) the cost of or, any indebtedness in connection with funding, any Transaction Costs is excluded to the extent such payment, incurrence of or agreement to pay or incur complies with clause 7.2(h).

**Notice** has the meaning given in clause 18.1(a).

**Permitted Encumbrances** means an encumbrance granted by any member of the Navitas Group that is permitted under the Debt Commitment Letter or the Debt Documents.

**PPSR** means the register maintained for the purposes of the *Personal Property Securities Act 2009* (Cth).

**Prescribed Occurrence** means the occurrence of any of the events listed in Schedule 5, but excluding any Navitas Excluded Action.

**Recommendation** has the meaning given in clause 9.1(a).

**Regulator's Draft** has the meaning given in clause 6.1(d)(i).

**Related Entity** means, in relation to a party:

- (a) a related body corporate of a party (within the meaning given in section 50 of the Corporations Act); 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, Bidder.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Relevant Shareholder** has the same meaning as in the Scheme.

**Representation and Warranty** means a Navitas Representation and Warranty or a Bidder Representation and Warranty (as applicable).

**Representative** means in respect of a party, an employee, agent, officer, director, financier or adviser of or to that party (or a Related Entity of that party), and, in the case of advisers, includes employees, officers and agents of the adviser (as applicable).

**RG 60** means Regulatory Guide 60 issued by ASIC and dated September 2011.

**RMJ** means Rodney Malcolm Jones, Hoperidge Enterprises Pty Ltd and Remjay Investments Pty Ltd, each of Level 16, 111 St Georges Terrace, Perth WA 6000.

**Sanctioned Country** means any country or region that is currently or was in the last five years the subject or target of a comprehensive embargo under Sanctions Laws (including, without limitation, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine).

**Sanctioned Person** means any person that is the subject or target of sanctions or restrictions under Sanctions Laws, including: (i) any person listed on any applicable U.S., Australian, or other non-U.S. sanctions list, including the U.S. Department of the Treasury's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List; (ii) any person that is, in the aggregate, 50 percent or greater owned, directly or indirectly, or otherwise controlled by a person or persons described in (i); or (iii) any national of a Sanctioned Country.

**Sanctions Laws** means all U.S., Australian, and other non-U.S. laws relating to economic or trade sanctions, including the laws administered or enforced by the U.S. (including by U.S. Department of the Treasury's Office of Foreign Assets Control's or the U.S. Department of State), the Australian Department of Foreign Affairs and Trade, and the United Nations Security Council.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Navitas and the Scheme Shareholders, in the form of Attachment A, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act, provided that each such alteration or condition must be approved in writing by Navitas and Bidder (each acting reasonably) prior to the Court granting the final orders.

**Scheme Booklet** means the explanatory statement in respect of the Scheme to be prepared by Navitas pursuant to section 412 of the Corporations Act and in accordance with clause 6.1(c), and to be despatched to Navitas Shareholders in accordance with clause 6.1(h), which shall contain the Independent Expert's Report (or a concise version of that report), notices of meeting in respect of each Scheme Meeting and a proxy forms.

**Scheme Consideration** has the meaning given in the Scheme.

**Scheme Meetings** means the meetings of Navitas Shareholders ordered by the Court to be convened at the First Court Hearing.

**Scheme Record Date** means 5.00 pm on the third Business Day after the Effective Date.

**Scheme Share** means a Navitas Share held by a Scheme Shareholder as at the Scheme Record Date.

**Scheme Shareholder** means a Navitas Shareholder as at the Scheme Record Date.

**Scrip Scheme Consideration** has the meaning given in the Scheme.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard, with such hearing being the **Second Court Hearing**.

**Security Interest** has the meaning given in section 12 of the Personal Property Securities Act 2009 (Cth).

**Social Media Accounts** means all accounts, pages, profiles, feeds, registrations and other presences maintained by or on behalf of the Navitas Group on or in connection with any social media or social networking service, blog, mobile application, content-sharing website, rating or review website or online forum.

**Specified Contract** means each Key Material Contract that gives the counterparty the right to terminate such contract as a result of a change of control, ownership or governance of Navitas (or a subsidiary of Navitas) on implementation of the Scheme (or any such Key Material Contract that has a provision which has a similar effect) and each Key Material Contract that can be terminated for convenience or on notice and, for the purposes of paragraph (a) of the definition of Material Adverse Change, includes each Key Material Contract with a term that ends on or before 31 December 2020 (irrespective of whether or not such contract has a change of control provision or can be terminated for convenience), in each case, where such Key Material Contract has been agreed by the parties in writing to be a "Specified Contract" on or before the date of this document.

**Subscription Documents** means definitive agreements related to the Equity Financing for an amount in aggregate which is the same or more than the amount contemplated by the Equity Commitment Letters and which is, in the aggregate, not subject to any greater substantive conditionality or termination rights regarding the Equity Financing provided by the Consortium than in the relevant Equity Commitment Letters.

**Superior Proposal** means a Competing Proposal that is received by Navitas in writing for the acquisition of 100% of Navitas securities 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 the proponents, 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 Scheme (as modified by any Bidder Counterproposal received before the expiry of the 5 Business Day period referred to in clause 10.7(a)(iii)) or any Matching Counterproposal.

**Tax** means any tax, levy, charge, impost, fee, deduction, goods and services tax (including GST), compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty.

**Tax Costs** means all costs and expenses incurred in:

- (a) managing an inquiry; or
- (b) conducting any Disputing Action in relation to a Tax Demand.

**Tax Demand** means:

- (a) a demand or assessment from a Government Agency requiring the payment of any Tax or Duty for which Navitas may be liable under this document;
- (b) any document received from a Government Agency administering any Tax or Duty assessing, imposing, claiming or indicating an intention to claim any Tax or Duty;
- (c) a notice to a contributing member of a Consolidated Group given under section 721-15(5) of the ITAA 1997;
- (d) a notice to a member of a GST Group (as defined in the GST Act), in relation to section 444-90(1) of Schedule 1 to the TAA; and
- (e) a lodgement of a Tax or Duty return or a request for an amendment to a lodged Tax or Duty return.

**Tax Indemnity** means the indemnity in clause 12.4.

**Tax Law** means any law relating to either Tax or Duty as the context requires.

**TEQSA** means Tertiary Education Quality and Standards Agency.

**Termination Event** has the meaning given in clause 3.4(a).

**Third Party** means a person other than Bidder, another member of the Bidder Group and their respective associates.

**Timetable** means the indicative timetable for the implementation of the Transaction set out in Schedule 6.

**Transaction** means the acquisition of Navitas by Bidder by means of the Scheme.

**Transaction Costs** means investment banking, financial adviser, legal, accounting, share registry and other costs payable to other advisers or third party service providers, and retention payments, incurred by Navitas in respect of the Transaction and in each case exclusive of GST, but excluding, to avoid doubt, the costs of any directors' and officers' run-off insurance obtained pursuant to clause 7.14, any special exertion fees paid to the Navitas Directors, the costs of any independent consultant contemplated in clause 7.14 and any costs incurred in carrying out actions required or contemplated by Part E of the Annexure of the Disclosure Letter.

**U.S. Employee Benefit Plan** means each "employee benefit plan" (as such term is defined in section 3(3) of the U.S. Employee Retirement Income Security Act of 1974, as amended).

**Voting Intention** has the meaning given in clause 9.1(b).

**Warranty or Indemnity Claim** means any Claim arising out of a breach of any Representation or Warranty, or Claim under the Navitas Indemnity or the Tax Indemnity.

**Work Safety Authority** means a Government Agency with responsibility for the investigation and enforcement of work health and safety legislation, amongst other functions.

**W&I Policy** means any policy of warranty and indemnity insurance issued to the Bidder in respect of the Warranty or Indemnity Claims that complies with the requirements in clause 12.1(c)(iii).

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## 2 Interpretation

In this document, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this document.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

- (e) The words “include”, “including”, “such as”, “to avoid doubt” and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
  - (ii) a thing (including a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this document (as applicable);
  - (vi) this document includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
  - (viii) an agreement (other than this document) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
  - (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
  - (x) a monetary amount is in Australian dollars;
- (g) An agreement on the part of two or more persons binds them severally.
- (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (i) A reference to time in this document is a reference to time in Perth, Western Australia, save that where the reference to time is in respect of the giving or receiving of Notice, such reference shall be the time in the place where the party receiving the Notice is located.
- (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it.

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## Schedule 2    Capital Structure

Security	Total number on issue
Navitas Shares	358,251,068

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## Schedule 3 Navitas Representations and Warranties

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### 1 Incorporation or existence

- (a) It is a validly existing corporation registered under the laws of its place of incorporation.
- (b) An Insolvency Event has not occurred in relation to it and will not occur prior to implementation of the Scheme.
- (c) No member of the Navitas Group is insolvent or otherwise unable to pay their debts as and when they fall due.

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### 2 Authority

- (a) It has full corporate power and lawful authority to execute, deliver and perform this document and the Scheme.
- (b) It has taken all necessary corporate action to authorise the entry into this document, and has taken or will take all necessary corporate action to authorise the performance of this document and the Scheme.
- (c) This document is its valid and binding obligation enforceable against it in accordance with its terms.
- (d) The execution and performance by it of this document and each transaction contemplated by this document did not and will not violate or breach any provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree binding on it; or
  - (ii) its constitution.
- (e) As at the date of this document, Navitas is not aware of any facts or circumstances that will cause a Third Party, as a result of the entry into this document and the implementation of the Scheme, to:
  - (i) exercise a right to terminate a contract which is material to the business of the Navitas Group (as a whole) or vary the performance of any material obligation of Navitas under any such contract; or
  - (ii) exercise a right to acquire, or require the disposal of, any material assets of the Navitas Group (as a whole).

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### 3 Capital structure

Its capital structure is as set out in Schedule 2 and:

- (a) it has not issued any other Navitas Shares or other securities, rights or instruments which are still outstanding and may convert into, or give the holder the right to be issued, Navitas Shares;
- (b) it has no Navitas Rights on issue; and
- (c) it is not under any obligation to issue, and no person has any right to require or call for the issue of, any Navitas Shares or other securities, rights or instruments issuable by Navitas (whether such obligation or right is conditional or otherwise).

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### 4 Continuous disclosure

- (a) It is in compliance with its continuous disclosure obligations under Listing Rule 3.1 in all material respects.
- (b) As at the date of this document, following release of the agreed announcement under clause 8(a) and other than information relating to the potential new contracts and proposed contract renewals contemplated by Schedule 8, there will be no information which it is withholding from disclosure in reliance on Listing Rule 3.1A.

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### 5 Information

- (a) The Navitas Information included in the Scheme Booklet despatched to Navitas Shareholders, and any supplementary disclosure made to Navitas Shareholders pursuant to clause 6.1(j) (excluding information provided by or on behalf of Bidder for any purposes, or by or on behalf of the Independent Expert), will not be false or misleading in any material respect (whether by omission or otherwise) and will comply in all material respects with applicable laws, including the Corporations Act, Corporations Regulations, RG 60 and the Listing Rules.
- (b) All information provided by or on behalf of Navitas to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.
- (c) To the extent the Navitas Information includes forward looking statements, those forward looking statements are based on assumptions which Navitas believes, as at the date the information was provided, and continues to believe, to be reasonable.
- (d) No document or announcement which Navitas or any of its related bodies corporate has lodged or filed with, or otherwise given to, any Government Agency (or which has been so lodged, filed or given on its behalf or on behalf of any of its related bodies corporate) since the date 3 years prior to the date of this document, and which is currently publicly available or otherwise in the public domain (each a Navitas Public Document), was misleading or deceptive in any material respect (whether by omission or otherwise) as at the date the Navitas Public Document was lodged or filed with or given to the Government Agency, or the information contained in the Navitas Public Document was otherwise expressed to be given.

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## 6 Compliance with laws

Each member of the Navitas Group has complied with applicable laws and regulations in all material respects and holds all material licences, authorisations and permits necessary for them to conduct their business as presently conducted and is not in breach of, or default under, any such licences, authorisations or permits.

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## 7 Disclosure Materials

The Disclosure Materials have been collated and prepared in good faith, and Navitas is not aware of any information contained in the Disclosure Materials that is false or misleading in any material respect (including by omission). Navitas has not intentionally withheld from the Disclosure Materials any information which would reasonably be expected to be material to a reasonable and sophisticated buyer's evaluation of the Navitas Group and the merits of the Transaction (including details of all material liabilities of the Navitas Group and the aggregate amount of all fees, costs and expenses which Navitas (or any other member of the Navitas Group) has paid or agreed to pay, or may become liable to pay, to advisers in connection with the Transaction). To avoid any doubt, Navitas makes no representation or warranty whatsoever as to the adequacy or sufficiency of the Disclosure Materials for the purpose of the Bidder acquiring the Scheme Shares or for Bidder's funding of that acquisition, which are matters in respect of which only Bidder must or can satisfy itself.

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## 8 Change of control

So far as Navitas is aware, the Disclosure Materials contain sufficient information for Bidder (which is accurate) to identify each Third Party to whom a member of the Navitas Group is required to give notice, or from whom a member of the Navitas Group is required to obtain consent or approval under a contract to which a member of the Navitas Group is party, in connection with this document or the transactions contemplated by it (including in respect of the change in control of Navitas resulting from implementation of the Scheme), except where the failure to give such notice to or obtain such consent or approval from (as applicable) the relevant Third Party could not reasonably be expected to give rise to a material liability on the part of any member of the Navitas Group.

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## 9 Navitas Group

- (a) The structure diagram in Schedule 7 lists all members of the Navitas Group and the details included are true and accurate in all respects.
  - (b) No member of the Navitas Group holds shares, options, units, securities or interests in, or is a member of, any company, trust, partnership, incorporated or unincorporated joint venture or association, or other entity (other than an entity identified in Schedule 7).
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## 10 Financial information

- (a) Navitas' financial statements for the financial year ended 30 June 2018 and the half year ended 31 December 2018:
    - (i) comply with applicable statutory requirements and were prepared in accordance with the Accounting Standards;
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- (ii) give a true and fair view of the financial position and the assets and liabilities of the Navitas Group as at 30 June 2018 and 31 December 2018 (as applicable);
  - (iii) are not misleading or deceptive or likely to mislead or deceive (in each case whether by omission or otherwise); and
  - (iv) are not affected by any unusual, abnormal, extraordinary or non-recurring items, other than those items specifically disclosed in those financial statements.
- (b) The Management Accounts (having regard to the purpose for and basis on which they were prepared):
- (i) fairly represent and show a materially accurate view of:
    - (A) the financial position and state of affairs of the Navitas Group as at the date to which they have been prepared; and
    - (B) the financial performance of the Navitas Group for the period in respect of which they have been prepared;
  - (ii) are not misleading or deceptive or likely to mislead or deceive (in each case whether by omission or otherwise) in a material respect;
  - (iii) have been prepared in good faith and with reasonable care and diligence.

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## 11 Conduct of business since Accounts Date

- (a) Since 31 December 2018, the Navitas Group has conducted its businesses and operations:
- (i) in the ordinary course;
  - (ii) in accordance with legal and contractual obligations, in all material respects; and
  - (iii) in a manner generally consistent (subject to any applicable laws, regulations and regulatory approvals) with the manner in which each such business and operation had been conducted in the 12 month period prior to 31 December 2018.
- (b) Between 31 December 2018 and the date of this document:
- (i) no member of the Navitas Group undertook any actions which would have resulted in a breach of clause 7.1(b) had it been operative during that period; and
  - (ii) no Material Adverse Change has occurred.

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## 12 Material contracts and other arrangements

- (a) All contracts, agreements and arrangements in existence as at the date of this document that could reasonably be considered material to the Navitas Group (**Material Contracts**) have been fairly disclosed in the Disclosure Materials and the

copies of all Material Contracts included in the Disclosure Materials are current, accurate and complete (when considered with any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Material Contracts that are also included in the Disclosure Materials).

- (b) Each Material Contract is valid, binding and enforceable upon and against each member of the Navitas Group that is a party thereto and (so far as Navitas is aware) each other party thereto.
- (c) No member of the Navitas Group has received or given any notice in respect of any actual, alleged or potential breach of any Material Contract, nor (so far as Navitas is aware) are there any facts, matters or circumstances which may reasonably be expected to result in such a notice being given.
- (d) As at the date of this document, no party to any Material Contract has given any notice terminating or intending to terminate any Material Contract, nor (so far as Navitas is aware and again as at the date of this document) are there any facts, matters or circumstances which may reasonably be expected to result in such a notice being given.
- (e) No member of the Navitas Group is in material default under any Material Contract binding on it or its assets nor has anything occurred which is or would with the giving of notice or the lapse of time constitute an event of default, prepayment event or similar event or give another party a termination right or right to accelerate any right or obligation under any such document.
- (f) No member of the Navitas Group is a party to any material agreement or arrangement that:
  - (i) is not on arm's length terms;
  - (ii) was not entered into in the ordinary course of business; or
  - (iii) other than as expressly set out in the terms of contracts disclosed in the Disclosure Materials, contains a non-compete undertaking or exclusivity restriction.
- (g) No member of the Navitas Group has received any notice, advice or correspondence from a counterparty to a Material Contract:
  - (i) with respect to the non-renewal or non-extension of the term of that Material Contract; or
  - (ii) confirming or suggesting that that Material Contract will be renewed or extended only on materially amended terms.

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## 13 Financing arrangements

- (a) On the Implementation Date, there will be no:
  - (i) agreements or arrangements entered into by any member of the Navitas Group for the borrowing of money or the incurrence of any debt or other financial indebtedness (whether contingent or otherwise), or the granting of Encumbrances or security (other than Permitted Encumbrances);
  - (ii) debentures, bonds, notes or similar debt instruments issued by any member of the Navitas Group (whether by one instrument or by all of the instruments in a series);
  - (iii) guarantees, letters of comfort, indemnities or other commitments of financial support which have been given or issued in favour of any Third Party in respect of any financial indebtedness incurred by any member of the Navitas Group, and no member of the Navitas Group has requested that any bank or other financial institution give or issue any such guarantee, letter of comfort, indemnity or other commitment of financial support;
  - (iv) bank guarantees, letters of credit, trade instruments or similar credit support which have been issued in respect of, or at the request of, any member of the Navitas Group or any arrangements related thereto (including cash-backing);
  - (v) interest rate swaps, foreign currency forward contracts or other derivative contracts to which any member of the Navitas Group is a party or by which any member of the Navitas Group is bound; or
  - (vi) financing arrangements that restrict the sale or disposal of any member of the Navitas Group (or any assets thereof).
- (b) No member of the Navitas Group has given any guarantee, letter of comfort or other commitments of financial support, or granted any encumbrance, in respect of any obligation or liability of any Third Party.
- (c) No outstanding acceleration demands have been made under, or in respect of, any of the financing or security arrangements to which any member of the Navitas Group is a party or by which any member of the Navitas Group (or any assets thereof) is bound (such arrangements, **Financing Arrangements**).
- (d) So far as Navitas is aware:
  - (i) no action has been taken or threatened by any person to enforce any encumbrance of any kind over any assets of any member of the Navitas Group; and
  - (ii) there are no facts, matters or circumstances that would or may entitle any person to take such action.
- (e) There is no existing or unremedied material breach of, nor any default, event of default, cancellation event, review event, prepayment event or similar event currently subsisting under, any Financing Arrangements.
- (f) Where a member of the Navitas Group has received funding or financial support from a Government Agency, no calls or demands have been made to repay those

amounts and no member of the Navitas Group has been notified or is aware that any such funding or financial support is required to be repaid.

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## 14 Key Partner and agent relationships

No member of the Navitas Group has been notified in writing by any Key Partner or agent that such Key Partner or agent (as applicable) intends to cease or alter the nature of its commercial or business dealings with the Navitas Group (or any member thereof), where the cessation or alteration of such commercial or business dealings could be reasonably expected to have a material adverse effect on the operational or financial performance of the Navitas Group (taken as a whole).

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## 15 Properties

- (a) The Disclosure Materials include:
- (i) reasonable particulars of each parcel of real property to which a member of the Navitas Group holds freehold title (all such parcels of real property, the **Owned Properties**); and
  - (ii) copies of all agreements or other documents pursuant to which a member of the Navitas Group leases (or sub-leases) or licences any property (all such agreements and other documents, being the **Property Leases**, and all such parcels of real property, being the **Leased Properties**), and the copies of such Property Leases included in the Disclosure Materials are current, accurate and complete (and include any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Property Leases).
  - (iii) For the purposes of this paragraph 15(a)(ii), "property" means: (A) a property in respect of which the lease is disclosed in data room folder 03.06 of the "Project Consortium" online data room that forms part of the Disclosure Materials; or (B) a property occupied pursuant to an agreement between a member of the Navitas Group and a university partner.
- (b) No member of the Navitas Group has any interest in land other than the interests in the Owned Properties, the Leased Properties and the leased properties listed in the Disclosure Letter (together, the Owned Properties and the Leased Properties are the **Properties**).
- (c) No member of the Navitas Group is party to any agreement or arrangement in relation to the ownership (including purchase or sale), occupation, lease, licence or use of any real property other than in respect of the Properties.
- (d) Each of the Property Leases is valid, binding, enforceable and subsisting, and (where necessary to be binding and enforceable against successors in title) registered or otherwise the subject of a registered caveat.
- (e) No member of the Navitas Group has received:
- (i) any notice to vacate or notice to quit in respect of any of the Properties;
  - (ii) any notice in respect of the compulsory acquisition or resumption of any of the Properties (or any part thereof);

- (iii) any notice requiring material work to be done or expenditure to be made in respect of any of the Properties;
  - (iv) any notice in respect of any contemplated, pending or threatened condemnation or change to the planning, zoning or other ordinances in respect of any of the Properties;
  - (v) any notice in respect of any actual, alleged or potential breach of any Property Lease or the termination or intended termination of any Property Lease; or
  - (vi) any order, direction, notice or proposal from any Government Agency affecting or in respect of any of the Properties or the use thereof, nor is Navitas aware of any facts, matters or circumstances which may result in any such notice, order, direction or proposal being given.
- (f) No member of the Navitas Group is in default, or would be in default but for the requirements of notice or lapse of time, under any Property Lease, and Navitas is not aware of any grounds for termination, rescission, avoidance or repudiation of any Property Lease.
- (g) The relevant members of the Navitas Group are not overdue in the payment of rent, fees, rates and other amounts payable by them in respect of the Properties (including under the Property Leases).
- (h) The relevant members of the Navitas Group have exclusive occupation and right of quiet enjoyment in respect of each of the Properties and none of the Properties is subject to any sublease, licence, tenancy or right of occupation in favour of any person other than a member of the Navitas Group.
- (i) None of the Properties is subject to any restrictive covenant or exception or reservation which may adversely affect its use in the manner in which it is presently used in the Navitas Group's business.
- (j) So far as Navitas is aware:
- (i) there are no disputes, Claims or actions relating to any of the Properties or the use thereof; and
  - (ii) there is no intention on the part of any counterparty to a Property Lease to:
    - (A) terminate the Property Lease;
    - (B) not renew or extend the Property Lease at expiry or only renew or extend the Property Lease at expiry on terms materially more favourable to such counterparty than the current terms; or
    - (C) seek to increase the rent, fees, rates or other amounts payable by the relevant member(s) of the Navitas Group under the Property Lease (whether at expiry of the Property Lease or otherwise).

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## 16 Assets

- (a) All the material tangible assets of the Navitas Group are:
  - (i) the absolute property of a member of the Navitas Group free and clear of all encumbrances or used by a member of the Navitas Group under a contract pursuant to which such member of the Navitas Group is entitled to use the relevant asset(s) on the terms and conditions of such contract (each such contract being a **Relevant Contract**);
  - (ii) not the subject of any lease or hire purchase agreement or agreement for purchase on deferred terms;
  - (iii) in the exclusive possession or under the control of a member of the Navitas Group, its agent or nominee;
  - (iv) other than pursuant to a Relevant Contract, not the subject of any agreements or arrangements to dispose or not dispose or that otherwise restrict their use or disposal.
- (b) The Navitas Group owns, or has the right to use, all of the assets that are necessary for the carrying on of the businesses and operations of the Navitas Group as such businesses and operations are currently carried on.
- (c) No member of the Navitas Group has received any notice, order or direction from any Government Agency or Third Party in respect of any of its assets or the use of such assets, nor is Navitas aware of any facts, matters or circumstances which may result in such a notice being given.
- (d) Each item of material plant and equipment owned or used by the Navitas Group:
  - (i) is capable of performing the function for which it is intended to be used;
  - (ii) has been properly serviced throughout its life;
  - (iii) is in good repair and condition and satisfactory working order for its age;
  - (iv) has been maintained in accordance with industry best practice standards; and
  - (v) complies with all applicable laws and standards in all material respects and has not been repaired or modified in a way which would adversely impact a warranty provided by a supplier of that item of plant and equipment.

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## 17 Intellectual property rights

- (a) The Disclosure Materials fairly disclose reasonable particulars of material Intellectual Property Rights owned or used by any member of the Navitas Group (**Business Intellectual Property**), as well as any terms and conditions attaching to the use of the Business Intellectual Property.
- (b) In respect of the Business Intellectual Property that is owned by a member of the Navitas Group:

- (i) such Business Intellectual Property is valid, subsisting and enforceable, and free and clear of all encumbrances;
- (ii) other than as expressly set out in the terms of contracts disclosed in the Disclosure Materials:
  - (A) no member of the Navitas Group has assigned or otherwise disposed of or allowed to lapse any right, title or interest in such Business Intellectual Property;
  - (B) no member of the Navitas Group is obliged to assign or otherwise dispose of any right in respect of such Business Intellectual Property to any Third Party;
- (iii) the relevant members of the Navitas Group have taken all reasonable steps to obtain and maintain appropriate registrations for such Business Intellectual Property (to the extent such Business Intellectual Property is registrable), including the payment of all applicable application and renewal fees;
- (iv) the terms on which the Business Intellectual Property is licensed within the Navitas Group does not compromise or otherwise adversely affect the validity, subsistence or enforceability of any of the Business Intellectual Property; and
- (v) so far as Navitas is aware:
  - (A) there are no Claims, challenges, disputes or proceedings that have been brought or threatened by any Third Party or Government Agency in relation to such Business Intellectual Property that may adversely affect the right to use, enforce or assign or licence such Business Intellectual Property, including opposition proceedings, non-use proceedings, or amendment, rectification, revocation or cancellation proceedings, and no member of the Navitas Group has received notice of, nor are there any facts, matters or circumstances that could rise to, any such Claims, challenges, disputes or proceedings; and
  - (B) no Third Party:
    - (1) has infringed, attacked or opposed, in the 5 years prior to the date of this document, or is infringing, attacking or opposing, as at the date of this document, such Business Intellectual Property; or
    - (2) has any right to use, assign or licence any such Business Intellectual Property, or any right which would otherwise restrict or have the potential to restrict the use by the Navitas Group (or any member thereof) of such Business Intellectual Property; or
    - (3) has threatened to allege or has alleged in the 6 years prior to the date of this document, or is threatening to allege or is alleging as at the date of this document, that any such Business Intellectual Property infringes Intellectual Property Rights owned by or licensed to that Third Party.
- (c) A member of the Navitas Group has the exclusive right, enforceable against its employees, consultants and independent contractors, to claim full ownership of and

all rights in and title to all Business Intellectual Property generated by those persons in the course of, or in connection with, their employment or engagement with or by the Navitas Group. The Navitas Group has taken steps to ensure that such Intellectual Property Rights do not breach or infringe any Intellectual Property Rights of Third Parties or breach any obligation of confidence owed to any Third Party.

- (d) The use of the Business Intellectual Property by or on behalf of the Navitas Group does not:
  - (i) breach or infringe any Intellectual Property Rights of any Third Party;
  - (ii) breach any obligation of confidence owed to any Third Party; or
  - (iii) breach any law, regulation, rule or policy in force in any jurisdiction,where such breach or infringement or material risk of breach or infringement will, or is reasonably likely to, have a material adverse effect on the operational or financial performance of the Navitas Group (taken as a whole).
- (e) In respect of Business Intellectual Property that is used but not owned by the Navitas Group, a member of the Navitas Group has a current licence to use such Business Intellectual Property and:
  - (i) such licence is valid, binding and enforceable;
  - (ii) no member of the Navitas Group is in breach of such licence; and
  - (iii) the licensor has not given a notice to terminate such licence nor, so far as Navitas is aware, does the licensor intend to give such notice.
- (f) The Intellectual Property Rights owned by the Navitas Group or used by the Navitas Group under valid, binding, enforceable and sub-licensable licences from Third Parties together comprise all of the Intellectual Property Rights necessary for the carrying on of the businesses and operations of the Navitas Group as such businesses and operations are currently carried on.
- (g) There are no material royalties, fees, damages, compensation or other amounts payable by any member of the Navitas Group in connection with the use of Intellectual Property Rights owned by Third Parties.
- (h) The use of the Social Media Accounts by the Navitas Group:
  - (i) does not breach or infringe any Intellectual Property Rights of any Third Party;
  - (ii) does not breach any law, regulation, rule or policy in force in any jurisdiction;
  - (iii) complies with and has complied with all terms and conditions, terms of use, terms of service and other agreements and contracts applicable to such Social Media Accounts.

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## 18 Employees and contractors

- (a) The Disclosure Materials fairly disclose accurate details of the commencement date, position title, employing entity, salaries and wages, Fair Labor Standards Act

classification (if any), participation (if any) in an applicable incentive arrangement, applicable allowances, applicable enterprise agreement (if any), modern award coverage (if any), and accrued long service leave, annual leave, leave loading and personal leave for each employee (of a member of the Navitas Group) (**Employee**) as at the relevant dates specified in such disclosure.

- (b) No member of the Navitas Group is involved in bargaining for a proposed enterprise agreement except as disclosed in the Disclosure Materials and/or the Disclosure Letter.
- (c) No member of the Navitas Group has given a commitment (whether legally binding or otherwise) to increase or supplement the wages, salaries, incentives, annual leave and leave loading, long service leave, personal/carer's leave or any other remuneration, compensation, gratuities or benefits of any Employee:
  - (i) beyond the amounts and entitlements specified in the Disclosure Materials; or
  - (ii) except as a result of any promotion, seniority or salary band progression or as a result of any employee assuming higher or further duties (as a result of there being a vacancy in their team or otherwise).
- (d) Each member of the Navitas Group complies with its obligations under any applicable laws and regulations relating to Employees (including employment and industrial laws, anti-discrimination laws, and work health and safety laws) and any applicable industrial agreements and awards.
- (e) Each member of the Navitas Group has kept adequate and suitable records regarding the service of its Employees and, in respect of each member of the Navitas Group incorporated in Australia, such records meet such member of the Navitas Group's record keeping obligations under the Fair Work Act 2009 (Cth) (if any).
- (f) No member of the Navitas Group is a party to any collective bargaining agreement, workplace agreement or other contract with a trade union or industrial organisation, labour union, labour organisation, works council, group of employees or individual employees in respect of Employees and their employment and no industrial awards, collective bargaining agreements or workplace agreements apply to any Employees.
- (g) No member of the Navitas Group has been involved in any labour or industrial dispute with any union or industrial organization, labour organisation, works council, group of employees or Employee at any time within the 3 years preceding the date of this document.
- (h) There is no actual or pending or (so far as Navitas is aware) threatened Claim, demand, legal proceedings or cause of action by an Employee against any member of the Navitas Group and, so far as Navitas is aware, there are no facts, matters or circumstance which may give rise to any such Claim, demand, charge, complaint, audit, investigation, legal proceeding or cause of action against any member of the Navitas Group.
- (i) The Disclosure Materials fairly disclose details of all Claims and, legal proceedings made against a member of the Navitas Group by current or past Employees during the 3 year period prior to the date of this document.

- (j) No member of the Navitas Group has made any offer of work to, or any appointment of, a new individual (or any company controlled by an individual as a senior executive, or as an independent contractor) who would be categorised as a member of key management personnel for the purposes of the Corporations Act for payment of \$150,000 or more per annum, that remains capable of acceptance and that cannot be terminated without penalty on less than 1 months' notice, except as resulting from the position of Group Human Resources Director being filled.
- (k) No member of the Navitas Group is a party to any written employment or service agreement with any current member of key management personnel for the purposes of the Corporations Act other than those agreements disclosed in full in the Disclosure Materials.
- (l) No Employee is, or may become, entitled to any bonus, compensation, payment or other benefit:
  - (i) in connection with this document or the transactions contemplated hereby; or
  - (ii) of an amount or value exceeding three times that Employee's base salary which is triggered by a change of control of Navitas, or by the termination or cessation of that Employee's employment with the relevant member of the Navitas Group,other than in circumstances where the bonus, compensation, payment or other benefit is not restricted by clause 7.2 of this document.
- (m) No member of the Navitas Group operates or has adopted, or has resolved or agreed to operate or adopt, any incentive plan in which Employees participate or may participate.
- (n) Details of all investigations or Claims relating to health and safety issues which have occurred, been made or carried out in the last 3 years before the date of this document and affecting any member of the Navitas Group or any Employees have been fairly disclosed in the Disclosure Materials.
- (o) The members of the Navitas Group have complied with all their obligations to make superannuation or pension contributions which they are required to make on behalf of Employees.
- (p) The prescribed minimum level of superannuation support for each Employee has been provided by each member of the Navitas Group so as not to incur a superannuation guarantee charge prescribed by the *Superannuation Guarantee (administration) Act 1992* (Cth).
- (q) There are no overdue contributions due to be paid on the part of any member of the Navitas Group or any Employee that are outstanding and unpaid.
- (r) Provisions have been made by each member of the Navitas Group for any outstanding and unpaid superannuation benefits currently due to an Employee or his or her dependants or beneficiaries.
- (s) No member of the Navitas Group contributes to any defined benefit fund in respect of the Employees and no member of the Navitas Group is liable to contribute in respect of any defined benefit fund.
- (t) Each member of the Navitas Group:

- (i) has not been subject to a Work Safety Authority inspection in the last 3 years;
  - (ii) has not at any time received an improvement notice or prohibition notice from a Work Safety Authority in respect of work health and safety; and
  - (iii) is not currently subject to an investigation or prosecution by a Work Safety Authority and, so far as Navitas is aware, no facts, matters or circumstances exist which may give rise to any such investigation or prosecution.
- (u) Each member of the Navitas Group:
- (i) has workers compensation insurance in place, and has paid its workers compensation insurance up to date; and
  - (ii) is not the subject of any current workers compensation claim and Navitas is not aware of any future claim or any facts, matters or circumstances which may give rise to a future claim, and details of all material workers compensation claims during the last 3 years have been fairly disclosed in the Disclosure Materials.
- (v) Each member of the Navitas Group has materially complied with applicable legislation, including any Tax Laws and any agreement binding on it, in respect of independent contractors.
- (w) So far as Navitas is aware, no independent contractor engaged by a member of the Navitas Group (nor any of the personnel of an independent contractor) is an employee of any member of the Navitas Group (or is or was entitled to be treated as one) at law.
- (x) All material documents relating to the establishment, funding and administration of the U.S. Employee Benefit Plans have been provided in the Disclosure Materials. Each U.S. Employee Benefit Plan is and for the past three years has been funded, administered and maintained, in form and operation, in all material respects in accordance with its terms and the applicable requirements of ERISA, the U.S. Internal Revenue Code of 1986, as amended (**Code**) and other applicable laws . All contributions, premiums or other payments from the Navitas Group required to have been made have been accrued or paid on a timely basis with respect to each U.S. Employee Benefit Plan in accordance with the terms of the such U.S. Employee Benefit Plan. Each U.S. Employee Benefit Plan that is intended to meet the requirements of a “qualified plan” under Section 401(a) of the Code has received a favourable determination letter from the Internal Revenue Service or is in the form of a prototype document that is the subject of a favourable opinion letter from the Internal Revenue Service, and no events have occurred that could reasonably be expected to revocation of such plan's qualified status. No member of the Navitas Group maintains, sponsors, contributes to or has any current or contingent liability or obligation under or with respect to, (i) any plan that is or was subject to Title IV of ERISA or Section 412 of the Code or (ii) any “multiemployer plan” (as such term is defined under Section 3(37) of ERISA) subject to Title IV of ERISA. No U.S. Employee Benefit Plan provides (whether now or in the future) post-employment or post-termination health, life or other welfare benefits other than as required under Section 4980B of the Code or any similar applicable law. There do not exist any pending claims (other than routine claims for benefits), suits, actions, disputes, audits or investigations with respect to any U.S. Employee Benefit Plan. No member of the Navitas Group has any liability (whether or not assessed) under Sections 4980D or 4980H of the Code.

- (y) Neither the execution and delivery of this document nor the consummation of the transactions contemplated hereby (alone or in conjunction with any other event) will give rise to the payment of any amount that would not be deductible by Bidder, the Navitas Group or any of their respective affiliates by reason of Section 280G of the Code or any amount that could, individually or in combination with any other such payment, constitute an “excess parachute payment”, as defined in Section 280G(b)(1) of the Code.
- (z) Neither the Navitas Group nor any of its affiliates, has any obligation to “gross-up” or otherwise indemnify any individual for the imposition of the excise tax under Section 4999 of the Code or under Section 409A of the Code.
- (aa) Each arrangement subject to Section 409A of the Code (if any) is in compliance therewith such that no material Taxes or interest will be due and owing by the Navitas Group after the consummation of the transactions contemplated in this document in respect of such arrangement failing to so be in compliance.
- (bb) Except as would not result in any material losses for any member of the Navitas Group, each member of the Navitas Group has paid all wages, salaries, bonuses, commissions, wage premiums, fees, expense reimbursement, severance, and other compensation that have become due and payable to its employees, consultants, independent contractors, and other individual service providers pursuant to any law, contract, or policy.
- (cc) In the past 3 years, no member of the Navitas Group has implemented any plant closing or mass layoff implicating the Worker Adjustment and Retraining Notification Act or similar law (**WARN**), nor are any such actions contemplated, planned, or announced. No member of the Navitas Group has any outstanding liability under WARN.

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## 19 Information technology

- (a) The data, records and information technology and telecommunications systems, hardware and software owned or validly licensed (under a current, enforceable licence) by the Navitas Group (collectively, the **Systems**) comprise all the data, records and information technology and telecommunications systems, hardware and software necessary for the carrying on of the businesses and operations of the Navitas Group as such businesses and operations are currently carried on.
- (b) All reasonable precautions have been taken to preserve the security and integrity of the Systems and the data and information stored on them, and, so far as Navitas is aware, there has been no unauthorised access to the Systems or any of the data or information stored on them.
- (c) No action is necessary to enable Systems to continue to be used by the Navitas Group to the same extent and in the same manner as they are used as at the date of this document.
- (d) No member of the Navitas Group is in breach of any agreement under which a member of the Navitas Group is licensed to use Systems where such breach may result in any member of the Navitas Group ceasing to be entitled to use those Systems.
- (e) So far as Navitas is aware, the software utilised by the Navitas Group:
  - (i) is free of material defects and complies with all applicable laws; and

- (ii) is capable of being used for the functions and purposes for which it was designed and/or for which it is currently utilised by the Navitas Group in all material respects.
- 

## 20 Litigation and disputes

- (a) Other than the matters disclosed in the Disclosure Materials, no litigation, prosecution, arbitration, mediation, or other proceedings (including any investigation by a Government Agency) relating to the Navitas Group has been commenced in the 3 years prior to the date of this document that is still outstanding and that will or which is reasonably likely to have a material adverse effect on the operational or financial performance, or the reputation, of the Navitas Group (taken as a whole) (**Material Proceedings**).
  - (b) So far as Navitas is aware, no Material Proceedings are pending or threatened against a member of the Navitas Group and Navitas is not aware of any facts, matters or circumstances that may give rise to a Material Proceeding.
  - (c) So far as Navitas is aware, no member of the Navitas Group is subject to any outstanding or unsatisfied settlement, judgment, decree, award, order or other decisions of any court, quasi-judicial body or Government Agency (including any Competition Authority).
  - (d) No member of the Navitas Group has given any undertaking or assurance (whether legally binding or otherwise) to any court or Government Agency (including any Competition Authority) under any Antitrust Law.
  - (e) There are no unsatisfied or outstanding judgments, awards, orders, decrees, Claims or demands against any member of the Navitas Group.
- 

## 21 Insurance

- (a) In respect of the insurances effected in respect of the Navitas Group:
  - (i) the insurances provide usual insurance coverage for the business activities undertaken by the Navitas Group; and
  - (ii) the Navitas Group has not carried out any business activities in respect of which it does not have usual insurance coverage.
- (b) The Disclosure Materials fairly disclose reasonable particulars of all current insurance policies and cover notes taken out in respect of the Navitas Group (or a member thereof) or the businesses or operations conducted thereby (or any such business or operation) (**Insurances**).
- (c) Each Insurance is in full force and effect in accordance with its terms and all applicable premiums have been paid by the due date for payment.
- (d) So far as Navitas is aware, nothing has been done or omitted to be done:
  - (i) that would make any Insurance void or voidable or that would permit an insurer to cancel the policy or refuse or materially reduce a claim or materially increase the premium payable under any Insurance or otherwise alter the terms of the policy; or

- (ii) by a member of the Navitas Group so as to make void or voidable any Insurance or to permit an insurer to refuse or reduce a current claim by a member of the Navitas Group under any Insurance.
  - (e) As at the date of this document:
    - (i) there are no outstanding claims made by a member of the Navitas Group or any person on its behalf under any Insurance or an insurance policy previously taken out by or for the benefit of any member of the Navitas Group;
    - (ii) so far as Navitas is aware, there are no threatened or pending claims under any Insurance and there are no facts, matters or circumstances which could give rise to an entitlement to make a claim under any Insurance.
  - (f) The members of the Navitas Group have notified insurers of all material claims, facts, matters and circumstances as required by the notification provisions under each Insurance.
  - (g) No member of the Navitas Group has made a claim under any Insurance that has been rejected or denied by the insurer.
  - (h) Each member of the Navitas Group has in place all insurances required by law or contract to be taken out by it, subject to excesses and deductibles.
- 

## 22 Taxes and duties

- (a) Any Tax or Duty arising under any Tax Law due and payable:
  - (i) in respect of any income, gains or profits (however calculated), transaction or assets of a member of the Navitas Group for all periods up to the Implementation Date;
  - (ii) in respect of any event, omission or instrument executed or performed on or prior to the Implementation Date (other than the Scheme itself); and
  - (iii) in respect of payments made by a member of the Navitas Group to another person that must be withheld from that payment prior to the Implementation Date,

will have been so withheld (if applicable) and paid prior to the Implementation Date in accordance with the requirements of the relevant Tax Law save for any Tax or Duty which is provided for in the Management Accounts.
- (b) Each member of the Navitas Group has complied with all material obligations imposed on them by any Tax Law or as requested by any Government Agency.
- (c) Each member of the Navitas Group has maintained proper and adequate records to enable it to comply in all material respects with its obligations to:
  - (i) prepare and submit any applications, information, notices, computations, returns and payments required in respect of any Tax Law;
  - (ii) prepare any accounts necessary for compliance with any Tax Law; and
  - (iii) retain necessary records as required by any Tax Law.

- (d) Each member of the Navitas Group has up to and including the Implementation Date submitted any necessary applications, information, notices, computations and returns to the relevant Government Agency in respect of any Tax or Duty.
- (e) So far as Navitas is aware, any information, notice, computation and return that has been submitted by any member of the Navitas Group to a Government Agency in respect of any Tax or Duty:
  - (i) discloses all material facts required to be disclosed under any Tax Law; and
  - (ii) is not misleading in any material particular.
- (f) Navitas is not aware of any current, pending or threatened Tax or Duty audit, reviews or investigation relating to any member of the Navitas Group.
- (g) Except in relation to the Navitas Group's VAT dispute with HM Revenue & Customs in the United Kingdom, there are no disputes between any member of the Navitas Group and any Government Agency in respect of any Tax or Duty and Navitas is not aware of facts, matters or circumstances that may give rise to a dispute between any member of the Navitas Group and any Government Agency in respect of any of Tax or Duty.
- (h) No member of the Navitas Group will have a franking or imputation account deficit immediately at or any time after the Implementation Date as a result of any act, transaction or omission relating to periods prior to the Implementation Date. No act or omission of any member of the Navitas Group at or before the Implementation Date will cause any member of the Navitas Group to be liable for franking tax or a similar Tax at or after the Implementation Date.
- (i) To the best of Navitas' knowledge, no member of the Navitas Group has ever received notice that it may be subject to Tax in a jurisdiction where it does not currently file Tax Returns or pay Tax.
- (j) All transactions and other dealings between the Navitas Group and related parties for the purposes of the Tax Law have been (and can be demonstrated to have been) conducted at arm's length.
- (k) No debt owed by any member of the Navitas Group has been, or has been agreed to be, released, waived, forgiven or otherwise extinguished in circumstances which would have attracted any Tax or the operation of the debt forgiveness rules or limited recourse debt rules under the Tax Law.
- (l) No member of the Navitas Group has knowingly entered into or been a party to any transaction which contravenes any anti-avoidance or integrity provisions of any Tax Law.
- (m) Any ruling, determination or election requested, received or made by any member of the Navitas Group in respect of Tax or Duty:
  - (i) has been fairly disclosed in the Disclosure Materials; and
  - (ii) has at all times been complied with in all material respects by that member of the Navitas Group.
- (n) Within the period of five years prior to the Implementation Date, no agreement extending the period for assessment or collection of any Tax or Duty of any member of the Navitas Group has been executed or filed with any Government

Agency (excluding, for the avoidance of doubt, requests by Navitas for extensions of time for tax filings or payments).

- (o) All registrations required to be maintained by any member of the Navitas Group with any Government Agency in relation to Tax or Duty are and have at all times been maintained by that member of the Navitas Group.
- (p) Within the period of five years prior to the Implementation Date, each member of the Navitas Group has at all relevant times appointed a public officer, pursuant to section 252 of the ITAA 1936, where required under the applicable Tax Laws.
- (q) Within the period of five years prior to the Implementation Date, no member of the Navitas Group has entered into or been a party to an arrangement, agreement or indemnity whereby it is liable to reimburse or indemnify another party in respect of Tax or Duty, other than pursuant to customary gross up clauses ordinarily entered into by members of the Navitas Group.
- (r) No member of the Navitas Group has a tainted share capital account or a share capital account that is taken to be tainted under any Tax Law and no member of the Navitas Group has taken any action, up to and including the Implementation Date, that would cause such member of the Navitas Group's share capital account to be a tainted share capital account, nor has an election been made at any time up to and including the Implementation Date, to untaint any member of the Navitas Group's share capital account.
- (s) No member of the Navitas Group has made any election or made any choice under Division 230 of the ITAA 1997.
- (t) No member of the Navitas Group has been in breach of the benchmark franking percentage rules.
- (u) Navitas has been the Head Company of the Navitas Consolidated Group at all times since 1 July 2002.
- (v) The Tax Sharing Agreement is valid under the Tax Law.
- (w) The Navitas Consolidated Group is not and has never been a MEC Group (having the meaning given in given by section 995-1 of the ITAA 1997) for the purposes of Part 3-90 of the ITAA 1997.
- (x) No member of the Navitas Group has been a member of a Consolidated Group other than the Navitas Consolidated Group within the period of five years prior to the date of this document.
- (y) No member of the Navitas Group has participated in a reportable transaction under US Tax Law.
- (z) To the best of Navitas' knowledge, no member of the Navitas Group is a party to any document, instrument, contract, agreement, deed or transaction in respect of which it is or will become liable to pay GST in circumstances where such member of the Navitas Group has no express entitlement to increase the consideration payable under the document, instrument, contract, agreement, deed or transaction or otherwise seek reimbursement so that such member of the Navitas Group retains the amount it would have retained but for the imposition of GST.
- (aa) To the best of Navitas' knowledge, there is no contract, arrangement or understanding requiring a member of the Navitas Group to pay any amount in

respect of GST on a supply which does not contain a provision enabling it as recipient to require the other party to the contract, arrangement or understanding to provide to the member of the Navitas Group a tax invoice for any GST on that supply prior to the due date for payment for that supply.

- (bb) Navitas Limited is the only entity in the Navitas Group that is, and has ever been the representative member of a GST group.
- (cc) Each member of the Navitas Group:
  - (i) that is required to be registered for GST under the GST Law is so registered;
  - (ii) has complied in all respects with the GST Law;
  - (iii) is not in default of any obligation to make or lodge any payment or GST return or notification under the GST Law; and
  - (iv) has adequate systems established for it to ensure it complies with the GST Law.
- (dd) No member of the Navitas Group:
  - (i) has paid any amount on account of, or in respect of, GST to any entity which it was not contractually required to pay; or
  - (ii) is, and has never been, a member (including a joint venture operator) of a GST joint venture.
- (ee) All documents, instruments, contracts, agreements, deeds or transactions which are liable to Duty, or necessary to establish the title of each member of the Navitas Group to an asset, have had Duty paid in full in accordance with all applicable Tax Laws, and there is no requirement to upstamp on account of an interim assessment.
- (ff) No event has occurred, or will occur, as a result of anything provided for in this document, or as a result of this document itself, as a result of which any Duty from which a member of the Navitas Group may have obtained an exemption or other relief may become payable on any document, instrument, contract, agreement, deed or transaction.
- (gg) No member of the Navitas Group has distributed stock of another person, or has had its stock distributed by another person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code within the 3 years prior to the date of hereof.
- (hh) No member of the Navitas Group will be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Effective Date as a result of any:
  - (i) change in, or use of an improper, method of accounting for a taxable period ending on or prior to the Effective Date, (ii) "closing agreement" as described in section 7121 of the Code, as amended (or any corresponding or similar provision of state, local, or non-U.S. income Tax Law) executed on or prior to the Effective Date, (iii) instalment sale or open transaction disposition made on or prior to the Effective Date, (iv) prepaid amount received on or prior to the Effective Date, or (v) election under the Code, as amended, section 108(i).

- (ii) Less than 50% of the market value of the Navitas Group's assets is attributable to *taxable Australian real property* as defined in section 855-20 of the Income Tax Assessment Act 1997.
- 

## 23 Specific compliance matters

- (a) No member of the Navitas Group or past or present director or officer of the Navitas Group (in their capacity as a director or officer of Navitas) is currently or (so far as Navitas is aware) has in the past 5 years been:
  - (i) directly or indirectly engaged in any activity that would violate any applicable anti-money laundering laws, anti-bribery laws or anti-corruption laws, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the Australian laws implemented pursuant to the OECD Anti-Bribery Convention, in each case in any applicable jurisdiction (such laws, the **Relevant Laws**);
  - (ii) a Sanctioned Person, or engaged in any dealings or transactions with any Sanctioned Person or in any Sanctioned Country, to the extent such activities violate Sanctions Laws, or in violation of Sanctions Laws or U.S. anti-boycott laws (such laws, the **Trade Control Laws**);
  - (iii) the subject of any allegation, investigation, notice, inquiry or proceeding regarding any offence or alleged offence or wrongdoing under any Relevant Laws or Trade Control Laws, and so far as Navitas is aware:
    - (A) no such allegation, investigation, inquiry or proceeding has been threatened or is pending; and
    - (B) there are no facts, matters or circumstances which are reasonably likely to give rise to any such allegation, investigation, notice, inquiry or proceeding; or
  - (iv) the subject of any voluntary or involuntary disclosure to a Government Agency, regarding any offence or alleged offence under any Relevant Laws or Trade Control Laws, and so far as Navitas is aware:
    - (A) no such voluntary or involuntary disclosure is to a Government Agency pending; and
    - (B) there are no facts, matters or circumstances which are reasonably likely to give rise to any such voluntary or involuntary disclosure to a Government Agency.

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## Schedule 4 Bidder Representations and Warranties

- (a) **(validly existing)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(power)** it has full corporate power and lawful authority to execute, deliver and perform this document and the Deed Poll;
- (c) **(corporate action)** it has taken all necessary corporate action to authorise the entry into this document and has taken or will take all necessary corporate action to authorise the performance of this document and the Deed Poll;
- (d) **(binding)** this document is its valid and binding obligation enforceable against Bidder in accordance with its terms;
- (e) **(performance)** the execution and performance by it of this document and each transaction contemplated by this document did not and will not violate or breach any provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree binding on it; or
  - (ii) any undertaking, agreement or instrument binding on it or any of its property; or
  - (iii) its constituent documents;
- (f) **(Bidder Information)** the Bidder Information included in the Scheme Booklet with its consent pursuant to clause 6.2(f)(i), and any other information provided by it pursuant to clause 6.2(h), will not be false or misleading in any material respect (whether by omission or otherwise) and will comply in all material respects with applicable laws, including the Corporations Act, Corporations Regulations, RG 60, Takeovers Panel policy and guidance notes and the Listing Rules;
- (g) **(forward looking statements)** to the extent the Bidder Information includes forward looking statements, those forward looking statements are based on assumptions which Bidder believes, as at the date the information was provided and continues to believe, to be reasonable;
- (h) **(information provided to the Independent Expert)** all information provided by or on behalf Bidder to the Independent Expert is not misleading or deceptive in any material respect and does not contain any material omission and has been provided and provided in good faith and on the understanding that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report;
- (i) **(Insolvency Event)** an Insolvency Event has not occurred in relation to it and will not occur prior to implementation of the Scheme;
- (j) **(Equity Commitments)** each Equity Commitment Letter has:
  - (i) been duly executed by the parties to them and constitute legally binding obligations on those parties that are enforceable in accordance with their respective terms; and
  - (ii) other than as permitted under this document:

- (A) has not been amended and Bidder has not agreed to amend such letter; and
  - (B) has not been terminated or rescinded and no right to terminate or rescind each such letter has been triggered);
- (k) **(Debt Commitment Letters)** each Debt Commitment Letter:
- (i) is a true and complete copy executed by all parties thereto (save for the redaction of certain economic or sensitive information); and
  - (ii) other than as permitted under this document:
    - (A) has not been amended and Bidder has not agreed to amend such letter; or
    - (B) has not been terminated or rescinded and no event has occurred which with notice, lapse of time or both, would result in a default under that Debt Commitment Letter;
  - (iii) is enforceable in accordance with its terms and Bidder is not in default thereunder;
  - (iv) provides a Debt Commitment of an amount sufficient (when aggregated with the amounts available under the Equity Commitment Letters and other Debt Commitment Letters) to satisfy all of Bidder's payment obligations under this document, the Deed Poll and the Scheme, as and when those payment obligations become due, including paying the Scheme Consideration on the Implementation Date and any expenses of Bidder in connection with the consummation of the transactions contemplated hereby, and for any proposed repayment or refinancing of any outstanding indebtedness of the Navitas Group in connection with the transactions contemplated hereby;
- (l) **(Co-investment Agreement)**
- (i) the Co-investment Agreement has been duly executed by the parties to it and constitutes legally binding obligations on, and rights of, those parties that are enforceable in accordance with its terms;
  - (ii) the Co-investment Agreement, insofar as it requires the Consortium to provide Bidder with funding to enable Bidder to pay the Bidder Break Fee, and entitles Bidder to call on the Consortium for such funding:
    - (A) requires the Consortium, on an unconditional basis if the Bidder Break Fee becomes payable, to provide Bidder with aggregate funding that is sufficient to enable Bidder to pay the full amount of the Bidder Break Fee;
    - (B) survives for at least so long as the Bidder Break Fee could become payable under this document; and in circumstances where this document is terminated and the Bidder Break Fee becomes payable, survives at least until the Bidder Break Fee has been paid in full by Bidder to Navitas;
    - (C) has not been amended and Bidder has not agreed to amend it in any respect which will, or is reasonably likely to, prejudice Bidder's ability to pay the Bidder Break Fee in accordance with this document; and

- (D) has not been terminated or rescinded and no right to terminate or rescind it has been triggered; and
- (iii) Bidder has not and, so far as Bidder is aware, no Consortium Member has entered into any agreement or arrangement which is inconsistent paragraph (I)(ii)(A) or (I)(ii)(B) of this Schedule 4;
- (m) **(Debt Documents and Subscription Documents)** each Debt Document and Subscription Document:
  - (i) has duly executed by Bidder and constitute legally valid and enforceable obligations on, and rights of, Bidder that are enforceable;
  - (ii) has not been terminated or rescinded and Bidder is not in default thereunder; and
  - (iii) has not been amended by Bidder and Bidder has not agreed to amend such Debt Document or Subscription Document (as applicable), in each case in any respect which will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this document and the Deed Poll;
- (n) **(Availability of funding on Second Court Date)** By 8.00 am on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions relating to the approval of the Court, the Scheme becoming Effective, and other conditions that can only be satisfied or performed after the Second Court Date and are within the control of Bidder) sufficient cash amounts (whether from internal cash resources or external funding arrangements (including debt and equity financing) or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll;
- (o) **(Availability of funding on Implementation Date)** Bidder will have available to it on the Implementation Date sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll; and
- (p) **(FIRB Approval)** Bidder has submitted an application for the FIRB Approval and has paid the applicable application fee.

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## Schedule 5 Prescribed Occurrences

- (a) Navitas converting all or any of its shares into a larger or smaller number of shares;
- (b) Navitas resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) Navitas:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) a member of the Navitas Group issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option other than:
  - (i) to a member of the Navitas Group; or
  - (ii) the issue of shares upon exercise or vesting of a Navitas Right;
- (e) a member of the Navitas Group issuing or agreeing to issue securities convertible into shares (including any issue or agreement to issue performance rights);
- (f) a member of the Navitas Group making any change to its constitution;
- (g) any member of the Navitas Group paying, agreeing to pay, declaring or distributing any distribution, dividend, bonus, special payment or other share of its profits or assets to holders of Navitas Shares;
- (h) a member of the Navitas Group disposing, or agreeing to dispose, of the whole, or a substantial part, of the business or property of the Navitas Group;
- (i) a member of the Navitas Group resolving that it be wound up (other than where the member of the Navitas Group is dormant and the winding up is on a solvent and voluntary basis);
- (j) a liquidator or provisional liquidator of a member of the Navitas Group being appointed (other than where such appointment is made in connection with a solvent and voluntary winding up of a member of the Navitas Group that is dormant);
- (k) a court making an order for the winding up of a member of the Navitas Group (other than where the member of the Navitas Group is dormant and the winding up is on a solvent and voluntary basis);
- (l) an administrator of a member of the Navitas Group being appointed under the Corporations Act;
- (m) a member of the Navitas Group executing a deed of company arrangement;
- (n) dispose of, or agree to dispose of, any securities, business, asset, entity or undertaking in a single or series of related transactions, the value of which exceeds \$10 million, to any person other than another member of the Navitas Group;

- (o) acquire, or agree to acquire, any securities, business, asset, entity or undertaking in a single or series of related transactions, the value of which exceeds \$10 million, from any person other than another member of the Navitas Group;
- (p) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of a member of the Navitas Group; or
- (q) a member of the Navitas Group creating, granting or agreeing to create or grant an encumbrance over the whole, or a substantial part, of the Navitas Group's business or property or over a material asset of the Navitas Group other than in the ordinary course of business.

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## Schedule 6 Timetable

Event	Navitas date
Release of ASX announcement by Navitas	21 March 2019
Regulator's Draft provided to ASIC	Mid April
First Court Hearing	Early May
Election time	3 Business Days before Scheme Meetings
Scheme Meetings	Early to Mid June
Second Court Hearing	Mid June
Effective Date	Mid to Late June
Scheme Record Date	Late June
Implementation Date	28 June/Early July

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## Execution page

### Executed as a deed

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Signed, sealed and delivered for **BGH Bidco A Pty Ltd** by its attorney who has not received any notice of revocation of the Power of Attorney dated \_\_\_\_ March 2019 in the presence of:

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Signature of attorney

---

Signature of witness

---

Name of attorney (print)

---

Name of witness (print)

---

Executed by **Navitas Limited** by:

---

Signature of director

---

Signature of director/secretary

---

Name of director (print)

---

Name of director/secretary (print)

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**Attachment A    Scheme**

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## **Scheme of arrangement**

Navitas Limited (ABN 69 109 613 309)

Each person registered as a holder of fully paid ordinary shares in Navitas as at the Scheme Record Date

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Date:

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## Parties

- 1 **Navitas Limited** (ABN 69 109 613 309) whose registered office is at Level 8, Brookfield Place, 125 St Georges Terrace, Perth WA 6000 (**Navitas**)
- 2 Each person registered as a holder of fully paid ordinary shares in Navitas as at the Scheme Record Date (**Scheme Shareholders**)

### The parties agree

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## 1 Defined terms and interpretation

### 1.1 Defined terms

A term or expression starting with a capital letter which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

### 1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this Scheme.

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## 2 Preliminary matters

- (a) Navitas is an Australian public company limited by shares, and has been admitted to the official list of ASX. Navitas Shares are quoted for trading on the ASX.
- (b) As at the date of the Implementation Deed, there are 358,251,068 Navitas Shares on issue.
- (c) Bidder is an Australian proprietary company limited by shares and incorporated in Australia and registered in Victoria.
- (d) HoldCo is a proprietary company limited by shares and incorporated in [●].
- (e) If this Scheme becomes Effective:
  - (i) in consideration for the transfer of each Scheme Share to Bidder, Bidder and HoldCo will provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme and the Deed Poll;
  - (ii) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder; and
  - (iii) Navitas will enter the name of Bidder in the Share Register in respect of all the Scheme Shares.
- (f) Bidder and Navitas have entered into the Implementation Deed in respect of (among other things) the implementation of this Scheme.
- (g) This Scheme attributes actions to Bidder and HoldCo but does not itself impose any obligations on Bidder and HoldCo to perform those actions. By executing the Deed Poll, Bidder and HoldCo have agreed to perform the actions attributed to

them under this Scheme, including to provide or procure the provision of the Scheme Consideration in accordance with the terms of this Scheme.

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### **3 Conditions**

#### **3.1 Conditions precedent**

This Scheme is conditional on and will not become Effective until and unless each of the following conditions precedent is satisfied:

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in clause 3.1(b) of the Implementation Deed relating to Court approval of this Scheme) are satisfied or waived in accordance with the terms of the Implementation Deed by 8:00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll is terminated in accordance with its terms before 8:00am on the Second Court Date;
- (c) this Scheme is approved by the Court having made orders under section 411(4)(b) of the Corporations Act, including with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act as are acceptable to Navitas and Bidder (each acting reasonably);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to Navitas and Bidder (each acting reasonably) are satisfied or waived; and
- (e) the order of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) approving this Scheme comes into effect pursuant to section 411(10) of the Corporations Act on or before the End Date.

#### **3.2 Certificates**

- (a) Each of Navitas and Bidder will provide a certificate (or such other evidence as the Court may require) to the Court at the Second Court Hearing confirming (in respect of matters within their knowledge), as at 8:00am on the Second Court Date, whether or not the conditions precedent in clauses 3.1(a) and 3.1(b) above have been satisfied or waived (but in the case of the condition precedent in clause 3.1(a) only in respect of those conditions in clause 3.1 of the Implementation Deed (other than the condition in clause 3.1(b) of the Implementation Deed) included for that party's benefit).
- (b) The certificates given by Navitas and Bidder under clause 3.2(a) constitute conclusive evidence that the conditions precedent in clauses 3.1(a) and 3.1(b) above have (as at 8:00am on the Second Court Date) been satisfied or waived in accordance with the terms of the Implementation Deed (to the extent that they are so satisfied or waived).

#### **3.3 End Date**

Without limiting any rights under the Implementation Deed, this Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or

- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms,

unless Bidder and Navitas otherwise agree in writing (and, if required, as approved by the Court).

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## 4 Implementation of this Scheme

### 4.1 Lodgement of Court orders with ASIC

For the purposes of section 411(10) of the Corporations Act, Navitas must lodge with ASIC an office copy of the order made by the Court under section 411(4)(b) of the Corporations Act approving this Scheme as soon as possible following such approval, and in any event before 5:00pm on the Business Day following the day on which the Court approves this Scheme (or such later date as Navitas and Bidder agree in writing).

### 4.2 Transfer of Scheme Shares

Subject to the Scheme becoming Effective, the following will occur on the Implementation Date in the order set out below:

- (a) Bidder confirming in writing to Navitas that:
  - (i) the Cash Scheme Consideration has been provided in accordance with clause 5.4(a); and
  - (ii) the Scrip Scheme Consideration has been provided in accordance with clause 5.5;
- (b) payment by Navitas of the Cash Scheme Consideration in the manner contemplated by clause 5.4(b);
- (c) subject to Bidder providing or procuring the provisions of the Scheme Consideration in accordance with this Scheme and the Deed Poll, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by Navitas as attorney and agent for Scheme Shareholders under clause 8 of this Scheme) by:
  - (i) Navitas delivering to Bidder a duly completed and executed Scheme Transfer, executed on behalf of the Scheme Shareholders by Navitas as their attorney and agent; and
  - (ii) Bidder duly executing the Scheme Transfer and delivering the executed and, if necessary, stamped Scheme Transfer to Navitas for registration; and
  - (iii) immediately following receipt of the duly executed Scheme Transfer in accordance with clause 4.2(c)(ii), Navitas entering, or procuring the entry of, the name of Bidder in the Share Register in respect of all of the Scheme Shares transferred to Bidder in accordance with this Scheme.

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## 5 Scheme Consideration

### 5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, on the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clauses 5.2 to 5.5 and the Deed Poll.

### 5.2 Election procedure

- (a) Navitas must provide or procure the provision of an Election Form to each Relevant Shareholder, with the Scheme Booklet that is sent to them.
- (b) Subject to clauses 5.2(c), 5.2(d) and 5.2(e), each of the Relevant Shareholders will be entitled to make an Election. All Elections will take effect in accordance with this Scheme (provided that any Relevant Shareholder who makes an Election also qualifies as a Scheme Shareholder).
- (c) For an Election to be valid:
  - (i) the Relevant Shareholder must complete and sign the Election Form in accordance with the terms and conditions of the Election Form, the instructions in the Scheme Booklet and this clause 5.2; and
  - (ii) the Election Form must be received by the Share Registry at the address specified on the Election Form before the Election Time,unless Bidder and Navitas agree otherwise, in their absolute discretion.
- (d) If a Relevant Shareholder makes an Election, that Election will apply in respect of that percentage (as specified in the Election Form) of the Relevant Shareholder's entire registered holding of Navitas Shares at the Scheme Record Date, regardless of whether the Relevant Shareholder's holding of Navitas Shares at the Scheme Record Date is greater or less than the Relevant Shareholder's holding at the time it made its Election, unless Bidder and Navitas agree otherwise, in their absolute discretion.
- (e) A Relevant Shareholder who makes a valid Election may vary, withdraw or revoke that Election by lodging a replacement Election Form so that it is received by the Share Registry at the address specified on the Election Form before the Election Time. After the Election Time, a valid Election made by a Relevant Shareholder will be irrevocable unless Bidder and Navitas agree, in their absolute discretion, to the revocation of the Election.

### 5.3 Determination of Scheme Consideration

- (a) If a Scheme Shareholder:
  - (i) is not a Relevant Shareholder; or
  - (ii) is a Relevant Shareholder who has not made a valid Election (before the Election Time),

then the Scheme Consideration applicable for that Scheme Shareholder is \$5.825 for each Scheme Share held by the Scheme Shareholder.

- (b) If the Scheme Shareholder is a Relevant Shareholder who has made a valid Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder for each Scheme Share held by the Scheme Shareholder is:
- (i) [●] HoldCo Shares per Scheme Share in respect of the proportion of the total number of Scheme Shares held by the Relevant Shareholder for which the Relevant Shareholder has elected (in the Election Form) to receive Scheme Consideration in HoldCo Shares; plus
  - (ii) an amount in Australian dollars equal to \$5.825 per Scheme Share in respect of the proportion of the total number of Scheme Shares held by the Relevant Shareholder for which the Relevant Shareholder has elected (in the Election Form) to receive Scheme Consideration in cash.

#### 5.4 Provision of Cash Scheme Consideration

- (a) The obligation of Bidder to provide the Cash Scheme Consideration under this Scheme and the Deed Poll will be satisfied by Bidder, no later than the Business Day before the Implementation Date, depositing (or procuring the deposit), in Immediately Available Funds, the aggregate amount of the Cash Scheme Consideration payable to all Scheme Shareholders into the Trust Account (except that the amount of any interest on the amount deposited, less bank fees and other charges, will be credited to Bidder's account), such amount to be held by Navitas on trust for the purpose of paying the Cash Scheme Consideration to Scheme Shareholders who are entitled to receive it pursuant to clause 5.4(b).
- (b) On the Implementation Date, and subject to receipt of the Cash Scheme Consideration from Bidder in accordance with clause 5.4(a), Navitas must pay (or procure payment) from the Trust Account to each Scheme Shareholder an amount equal to the applicable amount of Cash Scheme Consideration that the Scheme Shareholder is entitled to pursuant to clause 5.3 for each Scheme Share transferred to Bidder on the Implementation Date by that Scheme Shareholder.
- (c) Navitas' obligation under clause 5.4(b) will be satisfied by Navitas:
  - (i) where a Scheme Shareholder has, before the Scheme Record Date, made an election in accordance with the requirements of the Share Registry to receive dividend payments from Navitas by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
  - (ii) whether or not a Scheme Shareholder has made an election referred to in clause 5.4(c)(i), dispatching, or procuring the dispatch of, a cheque in Australian currency for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 5.6).
- (d) In the event that:
  - (i) a Scheme Shareholder does not have a Registered Address and no account has been notified in accordance with clause 5.4(c)(i) or a deposit into such an account is rejected or refunded; or

- (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.7(a),

Navitas as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Navitas (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1990 (WA)*. To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1990 (WA)*.

Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 1990 (WA)*, Navitas must hold the amount on trust for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). Navitas must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

- (e) To the extent that there is a surplus in the amount held by Navitas as the trustee for the Scheme Shareholders in the Trust Account, that surplus may be paid by Navitas as the trustee for the Scheme Shareholders to Bidder following the satisfaction of Navitas' obligations as the trustee for the Scheme Shareholders under this clause 5.4.

## 5.5 Provision of Scrip Scheme Consideration

- (a) HoldCo must, before no later than 12:00 noon (or such later time as Bidder and Navitas may agree in writing) on the Implementation Date, procure that the name of each Scheme Shareholder entitled to be issued HoldCo Shares under this Scheme is entered in HoldCo's register of members as the holder of those HoldCo Shares (and in relation to HoldCo Shares issued to a Scheme Shareholder, having the same holding name and address and other details as the holding of the relevant Navitas Shares). A Scheme Shareholder entitled to be issued HoldCo Shares under this Scheme may, in the Election Form, direct that the HoldCo Shares to which they are entitled be issued to a related body corporate (as defined in the Corporations Act) of the Scheme Shareholder (in which case such related body corporate's name and details will be entered into HoldCo's register of members).
- (b) On or before the Business Day that is five Business Days after the Implementation Date, HoldCo must send or procure the sending of a certificate to each Scheme Shareholder to whom HoldCo Shares are issued under this Scheme, reflecting the issue of such HoldCo Shares.

## 5.6 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Share Register as at the Scheme Record Date; and

- (b) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Share Register as at the Scheme Record Date.

#### **5.7 Cancellation and re-issue of cheques**

- (a) Navitas may cancel a cheque issued under this clause 5 if the cheque:
  - (i) is returned to Navitas; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Navitas (or the Share Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.7(a) must be reissued by Navitas.

#### **5.8 Status of HoldCo Shares**

Subject to this Scheme becoming Effective, HoldCo must:

- (a) issue the HoldCo Shares required to be issued under this Scheme on terms such that each such HoldCo Share will rank equally in all respects with each other HoldCo Share on issue at the time; and
- (b) ensure that each HoldCo Share required to be issued under this Scheme is duly and validly issued in accordance with all applicable laws and is fully paid and free from any Encumbrance.

#### **5.9 Unclaimed monies**

- (a) The *Unclaimed Money Act 1990 (WA)* will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 1990 (WA)*).
- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

#### **5.10 Orders of a court or Government Agency**

If written notice is given to Navitas (or the Share Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by Navitas in accordance with this clause 5, then Navitas will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents Navitas from making a payment to a particular Scheme Shareholder in accordance with clause 5.4(b), or such payment is otherwise prohibited by applicable law, Navitas will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with this clause 5 is permitted by that order or direction or otherwise by law,

and the payment or retention by Navitas will constitute full discharge of Navitas' obligations under clause 5.4(a) with respect of the amount so paid or retained until, in the case of clause 5.10(b), it is no longer required to be retained.

#### **5.11 Fractional entitlements and share splitting or division**

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Scheme Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration:
  - (i) comprising the HoldCo Shares is such that a fractional entitlement to a HoldCo Share arises; or
  - (ii) comprising cash is such that a fractional entitlement to a cent arises,then the fractional entitlement will be rounded:
  - (iii) in the case of HoldCo Shares, down to the nearest whole number of HoldCo Shares; and
  - (iv) in the case of cash, up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent, and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).
  
- (b) If Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.11(a)) have, before the Scheme Record Date for the Scheme, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, then:
  - (i) Bidder may give notice of that opinion and relevant details to Navitas; and
  - (ii) within 2 Business Days of receipt of such notice, Navitas must give notice to those Scheme Shareholders:
    - (A) setting out their names and registered addresses as shown in the Navitas share register;
    - (B) stating that opinion;
    - (C) attributing to one of them specifically identified in the notice of the Scheme Shares held by all of them; and
    - (D) attributing to one of them specifically identified in the notice which Election made by or on behalf of them applies to all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the provisions of the Scheme, be taken to hold no Scheme Shares. Bidder and HoldCo, in complying with the provisions of the Scheme relating to them in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and

discharged their obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

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## 6 Dealings in Navitas Shares

### 6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in Navitas Shares or other alterations to the Share Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Share Register as the holder of the relevant Navitas Shares at the Scheme Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received by 12:00 noon on the day of the Scheme Record Date at the place where the Share Register is kept,

and Navitas must not accept for registration, nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request received after the Scheme Record Date, or received prior to the Scheme Record Date but not in registrable or actionable form.

### 6.2 Share Register

- (a) Navitas must register registrable transmission applications or transfers of Navitas Shares in accordance with clause 6.1(b) at or before the Scheme Record Date, provided that nothing in this clause 6.2(a) requires Navitas to register a transfer that would result in a Navitas Shareholder holding a parcel of Navitas Shares that is less than a 'marketable parcel' (as defined in the operating rules of ASX).
- (b) If this Scheme becomes Effective, each Scheme Shareholder (and any person claiming through that Scheme Shareholder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will be void and have no legal effect and Navitas will be entitled to disregard any such disposal, purported disposal or agreement.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Navitas must maintain, or procure the maintenance of, the Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been provided to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Navitas Shares (other than statements of holding in favour of Bidder) will cease to have effect after the Scheme Record Date as documents of title (or evidence thereof) in respect of those shares and, as from that date, each entry current at that date on the Share Register (other than entries in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Navitas Shares relating to that entry.
- (e) As soon as possible after the Scheme Record Date, and in any event within two Business Days after the Scheme Record Date, Navitas will ensure that details of the names, Registered Addresses and holdings of Navitas Shares for each

Scheme Shareholder as shown in the Share Register as at the Scheme Record Date are available to Bidder in the form Bidder reasonably requires.

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## 7 Quotation of Navitas Shares

- (a) Navitas will apply to ASX to suspend trading in Navitas Shares with effect from the close of trading on the Effective Date.
- (b) Navitas will apply:
  - (i) for termination of the official quotation of Navitas Shares on the ASX; and
  - (ii) to have itself removed from the official list of ASX,

in each case with effect on and from the close of trading on the trading day immediately following the Implementation Date.

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## 8 General Scheme provisions

### 8.1 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) Navitas may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which counsel or solicitors for Navitas has consented to.

### 8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder irrevocably:
  - (i) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those shares to Bidder in accordance with this Scheme;
  - (ii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
  - (iii) agrees to, on the direction of the Bidder, destroy any share certificates relating to their Scheme Shares; and
  - (iv) acknowledges that this Scheme binds Navitas and all Scheme Shareholders (including those who did not attend the Scheme Meetings and those who did not vote, or voted against this Scheme, at the Scheme Meetings),

without the need for any further act by the Scheme Shareholder.

- (b) Each Relevant Shareholder who is issued HoldCo Shares under this Scheme agrees to become a shareholder of HoldCo in respect of those HoldCo Shares and to be bound by the Holdco constitution and the Holdco shareholders agreement entered into by HoldCo and the shareholders of HoldCo each being in the form provided to each Relevant Shareholder with the Election Form.

- (c) Each Scheme Shareholder is taken to have warranted to Bidder, and appointed and authorised Navitas as its attorney and agent to warrant to Bidder, that:
  - (i) all their Scheme Shares (including any rights and entitlements attaching to their Scheme Shares) which are transferred under this Scheme will, at the time of transfer of them to Bidder, be fully paid and free from all:
    - (A) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Properties Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
    - (B) restrictions on transfer of any kind; and
  - (ii) they have full power and capacity to transfer their Scheme Shares to Bidder together with any rights attaching to those shares; and
  - (iii) as at the Scheme Record Date, it has no existing right to be issued any other Scheme Shares or any other form of Navitas securities.

Navitas undertakes that it will provide such warranty to Bidder and HoldCo as agent and attorney of each Scheme Shareholder.

### **8.3 Title to and rights in Scheme Shares**

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme will, at the time of transfer of them to Bidder, vest in Bidder free from all:
  - (i) Encumbrances and interests of third parties of any kind, whether legal or otherwise; and
  - (ii) restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5, Bidder will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by Navitas of Bidder in the Share Register as the holder of the Scheme Shares. Bidder's entitlement to be registered in the Share Register as the holder of the Scheme Shares arises on the Implementation Date in accordance with clause 4.2.

### **8.4 Appointment of sole proxy**

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5, and until Navitas registers Bidder as the holder of all Scheme Shares in the Share Register:

- (a) each Scheme Shareholder is deemed to have irrevocably appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to:
  - (i) attend shareholders' meetings of Navitas;
  - (ii) exercise the votes attaching to the Scheme Shares registered in their name; and

- (iii) sign any Navitas Shareholders' resolution whether in person, by proxy or by corporate representative;
- (b) no Scheme Shareholder may itself attend or vote at any shareholders' meetings or sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) each Scheme Shareholder must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) each Scheme Shareholder acknowledges and agrees that in exercising the powers conferred by clause 8.4(a), Bidder and any director, officer, secretary or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of all of the Scheme Shares.

### **8.5 Authority given to Navitas**

On and from the Effective Date, each Scheme Shareholder, without the need for any further act, irrevocably appoints Navitas and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of:

- (a) enforcing the Deed Poll against Bidder and HoldCo; and
- (b) executing any document, or doing or taking any other act, necessary, desirable or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer,

and Navitas accepts such appointment. Navitas, as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

### **8.6 Binding effect of this Scheme**

This Scheme binds Navitas and all of the Scheme Shareholders (including those who did not attend the Scheme Meetings and those who did not vote, or voted against this Scheme, at the Scheme Meetings) and, to the extent of any inconsistency, overrides the constitution of Navitas.

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## **9 General**

### **9.1 Stamp duty**

Bidder will:

- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in connection with the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to this Scheme or the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

## **9.2 Consent**

Each Scheme Shareholder consents to Navitas doing all things necessary or incidental to give full effect to the implementation of this Scheme and the transactions contemplated by it.

## **9.3 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Navitas, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Navitas' registered office or at the office of the Share Registry.
- (b) The accidental omission to give notice of the Scheme Meetings or the non-receipt of such notice by a Navitas Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meetings or the proceedings of the Scheme Meetings.

## **9.4 Governing law and jurisdiction**

- (a) This document and any dispute arising out of or in connection with the subject matter of this document is governed by the laws in force in Western Australia.
- (b) Each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.4(b)(i).

## **9.5 Further action**

Navitas must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

## **9.6 No liability when acting in good faith**

None of Navitas, Bidder or HoldCo, nor any of their respective directors, officers, secretaries or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

### 1 Dictionary

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited ABN 98 008 624 691 or, as the context requires, the financial market operated by it known as the “Australian Securities Exchange”.

**AusSuper** means AustralianSuper Pty Ltd (ABN 94 006 457 987) as trustee for AustralianSuper (ABN 65 714 394 898).

**Bidder** means BGH Bidco A Pty Ltd ACN 631 573 763.

**Business Day** has the meaning given in the Listing Rules.

**Cash Scheme Consideration** means an amount equal to the aggregate amount of the cash component of the Scheme Consideration payable to Scheme Shareholders under clauses 5.3(a) and 5.3(b)(ii) of this Scheme.

**CHES** means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Limited and ASX Clear Pty Limited.

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

**Court** means the Federal Court of Australia (Western Australia Registry) or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Navitas and Bidder.

**Deed Poll** means the deed poll dated [*insert date*] under which Bidder covenants in favour of Scheme Shareholders to provide the Scheme Consideration in accordance with the terms of this Scheme.

**Effective** means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme.

**Effective Date** means the date on which this Scheme becomes Effective.

**Election** means an election by a Relevant Shareholder to receive their Scheme Consideration partly in the form of HoldCo Shares and partly in the form of cash, made in accordance with clause 5.2(c).

**Election Form** means a form issued by or on behalf of Navitas for the purposes of a Relevant Shareholder making an Election in a form agreed to by Navitas and Bidder.

**Election Time** means 5:00pm on the third Business Day before the date of the Scheme Meetings, or such other date as is agreed in writing between Bidder and Navitas.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the *Personal Property Securities Act 2009* (Cth), or any agreement to create any of them or allow them to exist.

**End Date** has the meaning given in the Implementation Deed.

**First Court Date** means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act directing Navitas to convene the Scheme Meetings is heard, with such hearing being the **First Court Hearing**.

**Government Agency** means:

- (a) any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including, for the avoidance of doubt, the ACCC and the Australian Competition Tribunal), or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

**HoldCo** means [●], the ultimate company of Bidder.

**HoldCo Share** means a fully paid share in HoldCo.

**Immediately Available Funds** means a bank cheque or other form of cleared funds acceptable to Navitas (acting reasonably).

**Implementation Date** means, at the election of the Bidder, any date during the period beginning on the date that is three Business Days after the Scheme Record Date and ending on (and including) the date that is 13 Business Days after the Scheme Record Date, provided that such election is made by Bidder before 5.00 pm on the day immediately prior to the date of the Scheme Meetings, and failing such an election will be the date that is four Business Days after the Scheme Record Date.

**Implementation Deed** means the scheme implementation deed dated [insert] 2019 between Bidder and Navitas relating to (among other things) the implementation of this Scheme.

**Listing Rules** means the official listing rules of ASX.

**Navitas Share** means a fully paid ordinary share in the capital of Navitas.

**Navitas Shareholder** means a holder of one or more Navitas Shares, as shown in the Share Register.

**Relevant Shareholders** means:

- (a) AusSuper; and
- (b) Rodney Malcolm Jones of Level 16, 111 St Georges Terrace, Perth WA 6000;
- (c) Hoperidge Enterprises Pty Ltd (ACN 058 568 835) of Level 16, 111 St Georges Terrace, Perth WA 6000; and
- (d) Remjay Investments Pty Ltd (ABN 69 075 697 086) of Level 16, 111 St Georges Terrace, Perth WA 6000,

and any entity through which any of those persons holds their Navitas Shares, but only to the extent that such an entity holds Navitas Shares on behalf of one of those persons and not to the extent that such an entity holds Navitas Shares on behalf of any other Navitas

Shareholder (and reference to a Relevant Shareholder's Navitas Shares or Scheme Shares (as applicable) means only the Navitas Shares or Scheme Shares (again, as applicable) that are held by or on behalf of them).

**Registered Address** means, in relation to a Navitas Shareholder, the address shown in the Share Register as at the Scheme Record Date.

**Scheme** means this scheme of arrangement subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Bidder and Navitas (each acting reasonably).

**Scheme Booklet** means the explanatory statement in respect of the Scheme prepared by Navitas pursuant to section 412 of the Corporations Act and in accordance with the Implementation Deed, and despatched to Navitas Shareholders.

**Scheme Consideration** means the consideration to be provided by Bidder for the transfer of the Scheme Shares held by a Scheme Shareholder to Bidder determined in accordance with clause 5.3.

**Scheme Meetings** means any meeting of Navitas Shareholders ordered by the Court to be convened at the First Court Hearing.

**Scheme Record Date** means 5:00pm on the third Business Day after the Effective Date.

**Scheme Share** means a Navitas Share held by a Scheme Shareholder as at the Scheme Record Date.

**Scheme Shareholder** means a Navitas Shareholder as at the Scheme Record Date.

**Scrip Scheme Consideration** means the Scheme Consideration to be provided to Scheme Shareholders in the form of the issue of HoldCo Shares under clause 5.3(b)(i) of this Scheme.

**Scheme Transfer** means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving this Scheme is heard (or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **Second Court Hearing**.

**Separate Account** has the meaning given in clause 5.4(d).

**Share Register** means the register of members maintained by (or on behalf of) Navitas in accordance with the Corporations Act.

**Share Registry** means Computershare Investor Services Pty Limited ACN 078 279 277.

**Trust Account** means an Australian dollar denominated trust account which attracts interest at a commercial rate and is operated by Navitas as trustee for the Scheme Shareholders, details of which Navitas must notify to Bidder no later than 5 Business Days before the Implementation Date.

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## 2 Interpretation

In this Scheme, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this Scheme.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words “include”, “including” and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
  - (i) a person includes a natural person, estate of a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
  - (ii) a thing (including a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this Scheme (as applicable);
  - (vi) this Scheme includes all schedules to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
  - (viii) an agreement (other than this Scheme) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
  - (ix) a reference to a date or time is to that date or time in Perth, Australia;
  - (x) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
  - (xi) a monetary amount is in Australian dollars.

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**Attachment B    Deed poll**

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## **Deed poll**

**BGH Bidco A Pty Ltd**  
[•]

In favour of each person registered as a holder of fully paid ordinary shares in Navitas Limited as at the Scheme Record Date

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Date:

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## Parties

BGH Bidco A Pty Ltd ACN 631 573 763 of Level 26, 101 Collins Street, Melbourne Victoria 3000 (**Bidder**)

[•], the ultimate holding company of Bidder (**HoldCo**)

In favour of each person registered as a holder of fully paid ordinary shares in Navitas Limited (**Navitas**) as at the Scheme Record Date (**Scheme Shareholders**)

---

## Background

- A Bidder and Navitas have entered into the Implementation Deed, under which (among other things) Bidder:
- (i) is to pay or procure the provision of the Scheme Consideration to each Scheme Shareholder and acquire all of the Scheme Shares held by Scheme Shareholders under the Scheme; and
  - (ii) has agreed to enter into this deed poll.
- B Each of Bidder and HoldCo is entering into this deed poll for the purpose of covenanting in favour of each Scheme Shareholder to procure and undertake the actions attributed to Bidder and HoldCo under the Scheme.

**Bidder and HoldCo declare as follows**

---

## 1 Defined terms and interpretation

### 1.1 Defined terms

Unless the context otherwise requires:

- (a) **Implementation Deed** means the scheme implementation deed dated [insert] 2019 between Bidder and Navitas relating to (among other things) the implementation of the Scheme;
- (b) **Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Navitas and the Scheme Shareholders, in the form of Attachment A to the Implementation Deed, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Bidder and Navitas (each acting reasonably); and
- (c) terms defined in the Scheme have the same meaning when used in this deed poll.

### 1.2 Interpretation

Clause 2 of Schedule 1 of the Scheme applies to the interpretation of this deed poll, except that references to 'Scheme' are to be read as references to 'deed poll'.

### 1.3 Nature of deed poll

Bidder and HoldCo acknowledge and agree that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
  - (b) under the Scheme, each Scheme Shareholder irrevocably appoints Navitas and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder and HoldCo.
- 

## 2 Conditions

### 2.1 Conditions

The respective obligations of Bidder and HoldCo under this deed poll are subject to the Scheme becoming Effective.

### 2.2 Termination

The respective obligations of Bidder and HoldCo under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective by the End Date,

unless Bidder and Navitas otherwise agree in writing (and, if required, as approved by the Court) in accordance with the Implementation Deed.

### 2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to the Scheme Shareholders:

- (a) Bidder and HoldCo are released from their respective obligations to further perform this deed poll except those obligations under clause 6.1 and any other obligations which by their nature survive termination; and
  - (b) each Scheme Shareholder retains the rights they have against Bidder and HoldCo in respect of any breach of this deed poll which occurs before it was terminated.
- 

## 3 Scheme obligations

Subject to clause 2, each of Bidder and HoldCo undertakes in favour of each Scheme Shareholder to:

- (a) provide or procure the provision of the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme; and
- (b) undertake all other actions attributed to it under the Scheme, as if named as a party to the Scheme,

in each case subject to and in accordance with the terms of the Scheme.

---

## 4 Warranties

Each of Bidder and HoldCo represents and warrants that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the legal right and corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance by it of this deed poll;
- (d) this deed poll is valid and binding on it and is enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any write, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

---

## 5 Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Bidder and HoldCo have fully performed their respective obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

---

## 6 General

### 6.1 Stamp duty and costs

Bidder must:

- (a) pay or procure the payment of all stamp duty (if any) and any related fines and penalties payable on or in connection with the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme and this deed poll;
- (b) bear and be responsible for its own costs arising out of the negotiation, preparation and execution of this deed poll; and
- (c) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 6.1(a).

### 6.2 Notices

- (a) Any notice or other communication to Bidder or HoldCo in connection with this deed poll must be:
  - (i) in legible writing in English;

- (ii) signed by the person making the communication or that person's duly authorised agent; and
- (iii) given by hand delivery, pre-paid post or email in accordance with the details set out below:

### **Bidder or HoldCo**

Attention: Hari Morfis / Emma Cahill  
Address: Level 26, 101 Collins Street, Melbourne Victoria 3000  
Email: hmfis@bghcapital.com / ecahill@bghcapital.com

with a copy (for information purposes only) to npathak@gtlaw.com.au (by email)

- (b) Subject to clause 6.2(c), any notice or other communication given in accordance with clause 6.2(a) will be deemed to have been duly given as follows:

- (i) if delivered by hand, on delivery;
- (ii) if sent by pre-paid post, on receipt; and
- (iii) if sent by email:
  - (A) when the sender receives an email from the recipient confirming receipt of the email; or
  - (B) two hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered,

whichever happens first.

- (c) Any notice or other communication that, pursuant to clause 6.2(b), would be deemed to be given:
  - (i) other than on a Business Day or after 5:00pm on a Business Day is regarded as given at 9:00am on the following Business Day; and
  - (ii) before 9:00am on a Business Day is regarded as given at 9:00am on that Business Day,

where references to time are to time in the place the recipient is located.

### **6.3 Cumulative rights**

The rights, powers and remedies of Bidder, HoldCo and the Scheme Shareholders under this deed poll are cumulative with and do not exclude the rights, powers or remedies provided by law independently of this deed poll.

### **6.4 Waiver and variation**

- (a) A party waives a right under this deed poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

- (b) Failure to exercise or enforce, a delay in exercising or enforcing or the partial exercise or enforcement of:
  - (i) any right, power or remedy provided by law or under this deed poll; or
  - (ii) any right, power, authority, discretion or remedy created or arising upon default under this deed poll,

by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.

- (c) A provision of this deed poll may not be varied unless:
  - (i) if before the First Court Date, the variation is agreed to by Navitas in writing; or
  - (ii) if on or after the First Court Date, the variation is agreed to by Navitas in writing and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event Bidder and HoldCo must enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

- (d) Bidder and HoldCo may not rely on any conduct of another person as a defence to the exercise of a right, power, authority, discretion or remedy by that other person.
- (e) This clause 6.4 may not itself be waived except in writing.

#### **6.5 Governing law and jurisdiction**

- (a) This deed poll is governed by the laws in force in Western Australia.
- (b) Each of Bidder and HoldCo irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.5(b)(i).

#### **6.6 Assignment**

- (a) The rights created by this deed poll are personal to Bidder and each Scheme Shareholder and must not be dealt with at law or in equity.
- (b) Any purported dealing in contravention of clause 6.6(a) is invalid.

#### **6.7 Further action**

Bidder and HoldCo must, at their own expense, promptly do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.

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## Execution page

### Executed as a deed

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Signed, sealed and delivered by **BGH Bidco A Pty Ltd** by its attorney who has not received any notice of revocation of the Power of Attorney dated \_\_\_\_ March 2019 in the presence of:

---

Signature of witness

---

Signature of attorney

---

Name of witness (print)

---

Name of attorney

---

Signed, sealed and delivered by *[[insert HoldCo company name]]* in accordance with section 127 of the *Corporations Act 2001 (Cth)* and by:

---

Signature of director

---

Signature of director/secretary

---

Name of director (print)

---

Name of director/secretary (print)

**Appendix B – COPA Amendment Deed**

March 2019

To: AustralianSuper Pty Ltd (as trustee for AustralianSuper) (**AusSuper**)  
Rodney Malcolm Jones, Hoperidge Enterprises Pty Ltd and Remjay Investments Pty Ltd (**RMJ**)  
Navitas Limited (**Navitas**)

Ladies and Gentlemen

## **Co-operation and Process Agreement – amendment and release letter**

### **1 Background**

We refer to:

- (a) the Co-operation and Process Agreement dated 8 October 2018 between BGH Capital Pty Ltd (**BGH**), AusSuper and RMJ (**Co-operation and Process Agreement**) (as amended pursuant to the Process and Confidentiality Deed, defined below);
- (b) the Process and Confidentiality Deed dated 14 January 2019 between BGH, AusSuper, RMJ and Navitas (**Process and Confidentiality Deed**) (as amended by the letter between BGH, AusSuper, RMJ and Navitas dated 18 February 2019 and released to ASX by Navitas on 19 February 2019); and
- (c) the scheme implementation deed between BGH Bidco A Pty Ltd (**Bidco**) and Navitas to be entered into and dated on or about the date of this letter (**SID**).

Unless otherwise defined, capitalised terms in this letter have the meaning given to them in the SID.

In consideration of Navitas and Bidco (being the special purpose vehicle contemplated in the definition of "Proposal" in the Co-operation and Process Agreement) having agreed to enter into the SID, the parties have agreed to enter into this letter for the benefit of Navitas and each of the Consortium Members.

In this letter the parties agree to amend and (to avoid any doubt) release AusSuper and RMJ from certain obligations under the Co-operation and Process Agreement, as contemplated by the Process and Confidentiality Deed.

### **2 Amendment and release in respect of the Co-operation and Process Agreement**

2.1 If:

- (a) following receipt of a Matching Right Notice in relation to a Superior Proposal, Bidder does not make a Matching Counterproposal before the expiry of the 5 Business Day period referred to in clause 10.7(a)(iii) of the SID and that Superior Proposal becomes binding before 2 April 2019 (**Binding Superior Proposal**); and



(b) Navitas has at such time complied with clause 10 of the SID in all material respects,

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 "Co-operation and Process Agreement - amendment and release letter" between the parties and Navitas dated \_\_\_ March 2019); and*

(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 and Process Agreement (each a **Released Party**) are irrevocably released and discharged from any other provision of the Co-operation and Process 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.

2.2 To avoid doubt, nothing in this letter creates an obligation on BGH, RMJ or AusSuper to accept, vote in favour of or otherwise support a Competing Proposal.

### **3 BGH limitation of liability**

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

3.1 BGH enters into and performs this document and the transactions it contemplates in its capacity as manager or adviser to each of the constituent entities of the BGH Capital Fund I (the **BGH 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;

3.2 BGH 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 BGH's right of indemnity out of the assets of the BGH Fund;

3.3 if those assets are insufficient, the other parties will not seek to recover any shortfall by bringing proceedings against BGH personally and may not seek the appointment of a liquidator, administrator, receiver or similar person to BGH or prove in any liquidation, administration or arrangement of or affecting BGH; and

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

- 3.5 The limitation of liability under clauses 3.1 to 3.4 (inclusive) will not apply to the extent that BGH's right of indemnity from the BGH Fund of which BGH is a manager or adviser is reduced or lost as a result of operation of law or as a result of any fraud, negligence, wilful misconduct or breach of trust by BGH.

#### **4 AusSuper limitation of liability**

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

- 4.1 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;
- 4.2 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;
- 4.3 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
- 4.4 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.

#### **5 General**

Any amendment or variation to this letter, or to the Co-operation and Process Agreement that is inconsistent with the amendment and release set out in this letter, must be agreed in writing by all parties to this letter.

Clauses 12.2, 12.4, 12.5, 12.7 and 12.8 of the Co-operation and Process Agreement apply as if incorporated in to this letter.

Please record your agreement with the terms of this letter by signing where indicated below.

This letter is executed by the parties as a **deed**.

Each person who executes this letter 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** in its capacity as manager or adviser to each of the constituent entities of BGH Capital Fund I 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