

Negotiation / Departures Table:

The following table sets out the parties' comments on the [insert document(s)]. The purpose of this table is to facilitate discussion between the parties and any agreed positions remain subject to final approvals.

Item	Reference	Topic	Proposed Departure	[Party A] comments	[Party B] comments
1.	Clause 1.1 (Definitions)	Change in Law	Change in Law means: (a) a repeal of or change to or the coming into effect or implementation after the date of this deed of: (i) Legislation; or (ii) any applicable judgment of a relevant court of law which changes a binding precedent, other than any such repeal, change, coming into effect or implementation which, on the date of this deed: (iii) has been published or of which public notice has been given; or (iv) a party experienced and competent in the delivery of works and/or services similar to the Works, the Temporary Works or the Operations Activities would have reasonably foreseen or anticipated, in substantially the same form as the repeal, change, coming into effect or implementation occurring after the date of this deed; or (b) a repeal of or change to the Building Code or BCIP Act occurring after [insert date].	26.05.2023 We have allowed for compliance with the Building Code and the BCIP Act as at the date of our tender. We are currently unable to assess the impact of the upcoming changes to the Building Code and BCIP Act that are expected to take effect on and from [insert date]. We consider that the upcoming changes should be addressed as part of the Change in Law regime.	05.06.2023 [Party B] does not agree to this change. [Party B] considers there is already enough information about the likely nature and extent of changes to the Building Code and BCIP Act for [Party A] to be able to take a view on the impacts and adjust its bid as required. We request that [Party A] withdraws this departure and advises on the impact (if any) on its bid.
				11.06.2023 While there are aspects of the upcoming changes to the Building Code and BCIP Act that can be allowed for in our bid, we disagree with [Party B]'s position that all changes can be accounted for. As an alternative, [Party A] can agree to: - certain stated changes to the Building Code and BCIP Act (being [insert], [insert] and [insert]) to remain outside of the Change in Law regime; and - other changes to be captured in the regime to the extent that their effects exceed a monetary threshold of \$1,000,000.	13.06.2023 Agreed in principle. [Party A] to please propose drafting on the limited stated changes to be included in the Change in Law regime. We consider that a threshold of \$500,000 is appropriate.
2.	Clauses 9.4, 9.6 and 9.7 (Indemnities)	Indemnities	Delete clauses 9.4, 9.6 and 9.7.	26.05.2023 The stated indemnities relate to risks that are beyond our control and are not usually the contractor's responsibility.	05.06.2023 [Party B] does not agree to this departure. As an alternative, we have proposed amendments to clarify the application of the stated indemnities to the extent that they are within the contractor's control. Please see attached rider dated 5 June 2023.
				11.06.2023 Please see attached rider dated 11 June 2023. We have generally accepted [Party B]'s proposed drafting, with some further amendments to exclude [Party A]'s liability for acts or omissions by [Party B]'s other contractors.	13.06.2023 Agreed – closed. **

Item	Reference	Topic	Proposed Departure	[Party A] comments	[Party B] comments
3.	Clauses 10.3(b), 11.9(a), 20.2(c), 21.3(c)(ii)	Time bars	Replace “3 Business Days” with “5 Business Days”.	26.05.2023 3 Business Days does not provide us with enough time to comply with the notice and information requirements under the relevant clauses. In order for [Party A] to practically comply with these requirements, we will require a longer 5 Business Day period.	05.06.2023 Agreed - closed. **
3A.	Clause 11.10(c)	Notice requirement	Replace clause 11.10(c) with “not used”.	11.06.2023 As discussed in the Commercial Interactive on [8 June 2023], the information required in this clause 11.10(c) will not be practically available to [Party A] and cannot be provided in the time required.	13.06.2023 Agreed – closed. **
4.	Clause 28.1 (FIRB) Schedule 11	FIRB	Position is reserved in relation to [Party A]'s ability to ensure compliance.	26.05.2023 We are awaiting feedback from our subcontractors on their ability or requirement to access FIRB Data (which includes Electricity Data) from outside Australia during commissioning. We will revert as soon as possible.	05.06.2023 [Party A] to please revert.
				11.06.2023 We have set up meetings with our subcontractors towards the end of this week and will revert with comments as soon as possible.	13.06.2023 Thank you for the update. [Party A] to please revert.

Document Status:

Item	Document	Status	Action Required
1.	[Insert document]	Tender version of [insert document] dated [1 April 2023].	[Party B] is updating [insert document] to incorporate agreed positions up to and including [insert date]. [Party B] to reissue [insert document] on [insert date].
2.	Indemnities drafting rider	Issued by [Party B] on [5 June 2023]. Amended version issued by [Party A] on [11 June 2023] Agreed.	[Party B] to update [insert document] to incorporate agreed drafting.