

**Alterations and Amendments to the
Design and Build Contract 2016 issued by the
Joint Contracts Tribunal**

Contract dated

between **South Cambridgeshire District Council** (Employer)

and **To be confirmed** (Contractor)

for **Sample site** (Works)

The following rider shall be added to the Articles of Agreement.

Article 10: Modified Conditions

Insertion sheets
A1 to A/18
incorporation

The Articles of Agreement and the Conditions shall have effect as modified by the amendments in Insertion Sheets A/1 to A/18 attached hereto.

Signed _____
for and on behalf of

Signed _____
for and on behalf of

These are the details to be inserted into the Contract Particulars as referred to in Article 10.

Recitals

Third Recital Shall be deleted and the following inserted.

“the Contractor has examined the Employer’s Requirements and is satisfied:

- as to the feasibility and practicality of the Employer’s Requirements and has agreed to accept full responsibility for any design contained therein;
- that the Contractor’s Proposals and the Contract Sum Analysis will meet the Employer’s Requirement in respect of the Works; and
- that the Employer’s Requirements can be carried out within the timescales envisaged therein and at the cost indicated in the Contract Sum Analysis.”

Part 1 : General

Clause	Subject	
Fourth Recital and clause 4.5	Construction Industry Scheme (CIS)	Employer at the Base Date is a 'contractor' for the purposes of the CIS
Fifth Recital	Description of Sections	Not Applicable.
Sixth Recital	Framework Agreement (if applicable)	Not applicable
Seventh Recital and Part 1 of Schedule 2	Supplemental Provisions – Part 1 <i>(Where neither entry against one of the Supplemental Provisions 1 to 3 below is deleted that Supplemental Provision does not apply)</i>	
	Named Sub-Contractors	Supplemental Provision 1 does not apply
	Valuation of Changes – Contractor's estimates	Supplemental Provision 2 does not apply
	Loss and expense – Contractor's estimates	Supplemental Provision 3 does not apply
Seventh Recital and Part 2 of Schedule 2	Supplemental Provisions – part 2 <i>(Where neither entry against one of the Supplemental Provisions 4 to 10 below is deleted that Supplemental Provision does not apply)</i>	
	Acceleration Quotation	Supplemental Provision 4 applies

Clause	Subject	
	Collaborative working	Supplemental Provision 5 does not apply
	Health and safety	Supplemental Provision 6 applies
	Cost savings and value improvements	Supplemental Provision 7 applies
	Sustainable development and environmental considerations	Supplemental Provision 8 applies
	Performance indicators and monitoring	Supplemental Provision 9 applies
	Notification and negotiation of disputes	Supplemental Provision 10 applies
	Where Supplemental Provision 10 applies, the respective nominees of the Parties are	Employer's nominee: Stephen Hills Contractor's nominee: xxxx or such replacement as each Party may notify to the other from time to time
Article 4	Employer's Requirements	Documents contained in: Section 1 – Preliminaries & General Conditions Section 2 – Design Brief
Article 4	Contractor's Proposals	Documents contained in Section XXXX of the Contract Documents
Article 4	Contract Sum Analysis	Documents contained in Section XXXX of the Contract Documents
1.1	Base Date	10 days before date of tender return
1.1	BIM Protocol (where applicable)	Not applicable
	<i>(State title, edition, date or other identifiers or the relevant documents)</i>	
1.1	Date for Completion of the Works	XXXXXX
1.1	Sections: Dates for Completion of Sections	Not Applicable

Clause	Subject	
1.7	Addresses for service of notices etc. by the Parties <i>(If none is stated, the address in each case, unless and until otherwise agreed and subject to clause 1.7.2, shall be that shown at the commencement of the Agreement.)</i>	Employer South Cambridgeshire District Council South Cambridgeshire Hall, Cambourne Business Park, Cambridge CB23 6EA Contractor XXXX
2.3	Date of Possession of the Site <i>(where possession by Sections does not apply)</i>	XXXX
	Sections: Dates of Possession of Sections	Not Applicable
2.4	Deferment of possession of the Site <i>(where possession by Sections does not apply)</i>	Clause 2.4 applies and the maximum period of deferment may be up to 6 weeks.
	Sections: deferment of possession of Sections	Not Applicable
2.17.3	Limit of Contractors liability for loss of use etc. (if any)	No limit
2.27	Notice period of Practical Completion	28 days
2.29.2	Liquidated damages <i>(where completion by Sections does not apply)</i>	at the rate of £2,250.00 per week or part thereof
2.29.2	Sections: rate of liquidated damages for each Section	Not applicable
2.34	Sections: Section Sums	Not applicable
2.35	Rectification Period <i>(where completion by Sections does not apply) (If no other period is stated, the period is 12 months.)</i>	24 months from the date of Practical Completion of the Works.

Clause	Subject	
2.35	Sections: Rectification Periods <i>(If no other period is stated, the period is 12 months.)</i>	Not applicable
4.2, 4.12 and 4.13	Fluctuations Provisions (unless another option or entry is selected, JCT Fluctuations Option A applies)	No Fluctuations Provision applies
4.6	Advance payment <i>(Not applicable where the Employer is a Local Authority)</i>	Clause 4.6 does not apply
4.6	Advance payment bond (Not applicable where the Employer is a Local Authority) (Where an advance payment is to be made, an advance payment bond is required unless stated that it is not required.)	An advance payment bond is not required
4.7	Method of Payment Interim Payments – Interim Valuation Dates (The dates apply for each Alternative; if no date is stated, the first Interim Valuation Date is one month after the Date of Possession.)	Periodically in accordance with Alternative B (clause 4.13) The first Interim Valuation Date is one month after start on site and thereafter at monthly intervals.
4.15.4	Listed Items – uniquely identified <i>(Delete the entry if no bond is required.)</i>	Not applicable
4.15.5	Listed Items – not uniquely identified <i>(Delete the entry if clause 4.15.5 does not apply)</i>	Not applicable
4.17	Contractor's Retention Bond (Not applicable where the Employer is a Local Authority. Also not applicable unless stated to apply and relevant particulars are given below.)	Clause 4.17 does not apply

Clause	Subject	
4.18.1	Retention Percentage	3 (three) per cent
5.5	Daywork	Not applicable
6.4.1	Contractor's Public Liability insurance – injury to persons or property the required level of cover is not less than	£5,000,000.00 for any one occurrence or series of occurrences arising out of one event.
6.5.1	Insurance – liability of Employer	Minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event £5,000,000.00
6.7 and Schedule 3	Insurance of the Works – Insurance Options	Schedule 3: Insurance Option A applies
	Percentage to cover professional fees	15 per cent
	<i>(If no other percentage is stated, it shall be 15 per cent.)</i>	
	Where Insurance Option A applies and cover is to be provided under the Contractor's annual policy (paragraph A.2), the annual renewal date is	XXXX
	<i>As supplied by the Contractor</i>	
	Where Insurance Option C applies, paragraph C.1	Not applicable.
	<i>(Unless otherwise stated, paragraph C.1 applies. If it is not to apply, state reference number and date or other identifier of the replacement document(s))</i>	
6.10 and Schedule 3	Terrorism Cover – details of the required cover	are set out in the following documents:
	<i>(Unless otherwise stated Pool Re Cover is required)</i>	Pool Re Cover required
6.15	Professional Indemnity insurance	
	Level of cover	Amount of indemnity required relates to claims or series of claims arising out of one event
	<i>(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)</i>	and is £5,000,000.00

Clause	Subject	
	Cover for pollution and contamination claims	Is required, with a sub limit of indemnity of £5,000,000.00
	<i>(if no amount is stated, such cover shall not be required; unless otherwise stated the required limit of indemnity is an annual aggregate amount)</i>	
	Expiry of required period of Professional Indemnity insurance	12 years from the date of partial completion of works
	<i>(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Works)</i>	
6.17	Joint Fire Code	The Joint Fire Code applies/does not apply
	If the Joint Fire Code applies, state whether the insurer under Schedule 3, Insurance Option A, B or C (paragraph C.2) has specified that the Works are a 'Large Project':	Yes/No
6.20	Joint Fire Code – amendments /revisions	The cost, if any, of compliance with amendment(s) or revisions(s) to the Joint Fire Code shall be borne by the Contractor
	<i>(The cost shall be borne by the Contractor unless otherwise stated.)</i>	
7.2	Assignment/grant by Employer of rights under clause 7.2	Clause 7.2 applies
	<i>(if neither entry is deleted, clause 7.2 applies.)</i>	
7.2	Sections: rights under clause 7.2	Not applicable.
	<i>(If clause 7.2 applies, amend the entry if rights under that clause are to apply to certain Sections only.)</i>	
7.3.1	Performance bond or guarantee from bank or other approved surety	Is required
	<i>(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required).</i>	
	The required form of the bond or guarantee is set out in	As included within the appendices to the Employer's Requirements.
	Initial value	10% of the contract sum

Clause	Subject	
	<p>Period of validity – if not specified in the required form, the expiry date of the performance bond or guarantee is to be</p> <p>(if no entry is selected, the date shall be the date of practical completion of the Works)</p>	<p>The date of Notice of Completion of Making Good of the Works</p>
	<p>Reduction in value – if not specified in the required form and if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is</p>	<p>Reduces to 2.5% of the Contract Sum on issue of the Practical Completion Statement</p>
	<p>(If no other percentage is stated, it shall be 50 per cent).</p>	
7.3.2	<p>Guarantee from the Contractors parent company</p>	<p>is not required</p>
	<p>Parent company's name and registration number</p>	<p>Not applicable</p>
	<p>The required form of the guarantee is set out in</p>	<p>Not applicable</p>
7.4	<p>Third Party Rights and Collateral Warranties – details of the requirements for the grant by the Contractor and Sub-Contractor of P&T Rights, Funder Rights and/or (in the case of sub-contractors) Employer Rights in respect of the Works, either as third party rights or by Collateral Warranties ('Rights Particulars') are set out in the following document</p> <p>(State reference number and date or other identifier of the relevant document)</p>	<p>Preliminaries and general conditions</p>
8.9.2	<p>Period of suspension</p> <p><i>(If none is stated, the period is 2 months.)</i></p>	<p>2 months</p>
8.11.1.1 to 8.11.1.6	<p>Period of suspension</p> <p><i>(If none is stated, the period is 2 months.)</i></p>	<p>2 months</p>

Clause**Subject**

9.2.1

Adjudication

The Adjudicator is.

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)

The Royal Institution of Chartered Surveyors

(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)

Effect of Approvals

Insert new clause 1.12 as follows:

Clause 1.12 "Notwithstanding any other provision of this Contract, the term "approval" when used in the context of any approval to be given by or on behalf of the Employer shall have the meaning "acceptance of general principles only", and no such approval shall diminish or relieve the Contractor from any of his obligations or liabilities under this Contract. For the avoidance of doubt, only variations expressly and specifically instructed or sanctioned by Employer in accordance with clause 3.9 shall constitute Changes for the purposes of this Contract."

Contractor's Obligations

Insert new clause 2.1.5 as follows:

Clause 2.1.5 "The Contractor accepts the entire responsibility for the design of the Works (including all design work prepared before or after the date hereof and whether carried out by or on behalf of the Employer or the Contractor) and for all designs contained within the Employer's Requirements and Contractor's Proposals and for any mistake, inaccuracy, discrepancy or omission contained in the same".

Preparation of Employer's Requirements

Delete clause 2.11 and insert:

Clause 2.11 "The contractor shall be responsible for the contents of the Employer's Requirements and for verifying the adequacy of any design contained within them."

Clause 2.12.1 shall be amended at lines 1-2 as follows:

Delete "and the contractor under clause 2.11 is not responsible for verifying its adequacy"

Delete clause 2.12.2 and insert:

Clause 2.12.2 "Any correction or, alteration or modification under clause 2.12.1 shall not be treated as a Change."

Discrepancies in documents

Clause 2.14.1 shall be amended at line 2 as follows:

after "*Contractor's Proposals*" insert the words "*or within the Employer's Requirements or between the Employer's Requirements and Contractor's Proposals*".

Clause 2.14.2 shall be deleted.

Divergences from Statutory Requirements

Clause 2.15.2.2 shall be amended at line 4 as follows:

after "*such amendment shall*" insert the word "*not*".

Design Work – liabilities and limitation

Clause 2.17 shall be deleted entirely and the following inserted:

- Clause 2.17.1* "The Contractor accepts the entire responsibility for the design of the Works (including all design work prepared before or after the date hereof and whether carried out by or on behalf of the Employer or the Contractor) and for all designs contained within the Employer's Requirements and Contractor's Proposals and for any mistake, inaccuracy, discrepancy or omission contained in the same. Nothing contained in the Contractor's Proposals shall affect in any way the obligations of the Contractor under clause 2.17.2."
- Clause 2.17.2* "The Contractor warrants and undertakes to the Employer that:
- 2.17.2.1* there has been exercised and will be exercised in the design of the whole of the Works (whether contained in the Employer's Requirements and/or the Contractor's Proposals including any Change issued in accordance with clause 3.9) and the selection of materials and goods for use therein all the reasonable skill and care to be expected of properly qualified and competent architect or professional designer of the appropriate discipline experienced in undertaking the design of works similar in size, scope, complexity and character to the Works;
 - 2.17.2.2* the Works will, when completed, comply with any performance specification or requirement included or referred to in the Employer's Requirements and/or the Contractor's Proposals including any Change issued in accordance with clause 3.9; and
 - 2.17.2.3* the Works will, when completed, comply with all appropriate requirements of the Employer's Requirements and with any local or public authority and any relevant Statutory Requirements."
- Clause 2.17.3* "The Contractor shall not have or make any claim for any extension of time or for loss and/or expense where and to the extent that the progress of the Works having been delayed, affected or suspended is due to any mistake, inaccuracy or discrepancy in the Employer's Requirements or the Contractor's Proposals or between the same or in any of the drawings or any omissions in the Employer's Requirements and/or in the Contractor's Proposals or in the documents referred to in clause 2.8 or any failure by the Contractor to provide necessary drawings or documents in due time."
- Clause 2.17.4* "Any reference to the design which the Contractor has prepared or shall prepare or issue for the Works shall include a reference to any design which the Employer or the Contractor has caused or shall cause to be prepared or issued by others."

Relevant Events

Clause 2.26.2.3 shall be amended at the end of the clause as follows:

after "contract" insert the words "or unless the opening up for such inspection or test was reasonably required by reason of any similar, equivalent or associated work, materials or goods having been shown by a previous inspection or test not to be in accordance with this Contract."

Practical Completion

Clause 2.27 shall be deleted in its entirety and the following inserted:

Clause 2.27.1 "The Contractor shall give to the Employer the 12 week and 8 week notices stated in the Employer's Requirements to be given before Practical Completion. The Contractor shall give to the Employer written notice of the anticipated date of Practical Completion of the Works or a Section within the Notice Period for Practical Completion (as set out in the Contract Particulars) and shall at the same time provide the Employer with:

2.27.1.1 details of any works which remain to be completed within the Notice Period; and

2.27.1.2 proposals and programming arrangements for the execution and completion of such works."

Clause 2.27.2 "As soon as the Contractor considers that Practical Completion of the Works or a Section has been reached and that he has complied sufficiently with the procedure stated in the Employer's Requirements and with clause 2.27A and if applicable clauses 3.16.2 and 3.16.3 he shall notify the Employer of such date."

Clause 2.27.3 "On the date of anticipated Practical Completion of the Works or a Section stated in the notice issued pursuant to clause 2.27.2 or such other date as may be agreed by the Employer's Agent and the Contractor, the Employer's Agent shall inspect the Works or a Section and if in its reasonable opinion it is satisfied that the Works or a Section are Practically Complete it shall so confirm to the Contractor within three (3) Business Days of such inspection and:

2.27.3.1 in the case of the Works the Employer shall forthwith issue a statement to that effect (the Practical Completion Statement);

2.27.3.2 in the case of a Section he shall forthwith issue a statement of practical of that Section (a Section Completion Statement);

and Practical Completion of the Works or the Section shall be deemed for all the purposes of this Contract to have taken place on the date stated in that statement.

Practical Completion (Cont'd)

Clause 2.27.4 *"If on such inspection the Employer's Agent does not consider that the Works or the Section are Practically Complete it shall within five (5) Business Days of such inspection give written notice to that effect to the Contractor setting out its reasons where upon the Contractor shall without delay proceed to remedy and/or carry out the works specified in such notice."*

Clause 2.27.5 *"The procedures set out in clauses 2.27.3 and 2.27.4 shall be undertaken as often as is necessary until the Employer's Agent is satisfied, acting reasonably, that the Works or the Section are Practically Complete and so notifies the Contractor."*

Clause 2.27.6 *"The Employer shall instruct the Employer's Agent to give due consideration but shall not be bound by any representations made by the Contractor during such inspection as to whether or not the Works or any Section is Practically Complete."*

Insert new clause 2.27A:

Clause 2.27A *"Notwithstanding anything expressed or implied elsewhere in this Contract the Employer shall not be obliged to issue the Practical Completion Statement or any Section Completion Statement in accordance with clause 2.27 and Practical Completion of the Works or the Section shall not for any purpose of this Contract have occurred unless and until the Contractor shall first supply to the Employer all documentation and items listed below in relation to the properties forming part of the Works or the relevant Section:*

2.27A.1 *The Health and Safety File in accordance with the Employer's Requirements;*

2.27A.2 *The Building Manual in accordance with the Employer's Requirements;*

2.27A.3 *The Home User Guide in accordance with the Employer's Requirements.*

2.27A.4 *The NHBC Documents in accordance with the Employer's Requirements;*

2.27A.5 *Evidence of compliance with:*

- a *all Statutory Requirements;*
- b *Development Control Requirements;*

2.27A.6 *Evidence of compliance with all recommendations detailed in any site investigation reports obtained by the Contractor in respect of the Works.*

2.27A.7 *The completion and delivery to the Employer of the Collateral Warranties, performance bond, parent company guarantee and other documents required to be provided pursuant to this Contract;*

Practical Completion (Cont'd)

2.27A.8 *Certified copies of the Design Sub-contractor's contracts or appointments who under the terms of this Contract are to provide a Collateral Warranty."*

Insert new clause 2.27B:

Clause 2.27B.1 *"In the event that one or more of the items referred to in clause 2.27A have not been supplied in full but a written statement of Practical Completion of the Works (or any Sections) is issued, then the Employer may retain the sum of either:*

a *£10,000 (ten thousand pounds); or*

b *such amount ascertained by the Employer (acting fairly and reasonably) to procure such items independently, but in the event of a dispute or difference as to the ascertained amount or, in any event, the amount shall be not less than £10,000 (ten thousand pounds)*

against each and every item referred to in clause 2.27A (Retention Amount) which has not been supplied in full to the reasonable satisfaction of the Employer."

Clause 2.27B.2 *"The Retention Amount shall be added to and be part of the Retention pursuant to this contract save that the Retention Amount relevant to an item which has been subsequently provided shall be released in the next Interim Payment pursuant to clause 4.8 up to the Notice of Completion of Making Good."*

Clause 2.27B.3 *"Any items not provided at Practical Completion pursuant to clause 2.27B.1 shall be deemed to be listed in the schedule of defects pursuant to clause 2.35 and the Notice of Completion of Making Good shall not be issued unless and until the listed items have been provided unless at the end of the Rectification Period the Contractor and the Employer agree an appropriate deduction from the Contract Sum for those listed items which have not been provided at the end of the Rectification Period."*

Schedules of defects and instructions

Clause 2.35.2 shall be deleted and the following inserted:

Clause 2.35.2 "notwithstanding clause 2.35.1, the Employer may whenever he considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good within 24 hours (in the event of emergency), 2 Days (in the event of urgent repairs), 5 days (in the event of urgent), 10 Days (in the event of routine), 20 Days (in the event of non-urgent repairs) and 28 days (in the event of minor repairs) defects as defined in the Employer's Requirements".

Insert additional paragraph at end of clause as follows:

"Provided that for the avoidance of doubt if the Contractor fails to make good any defects, shrinkages or other faults notified by the Employer pursuant to this clause within the time required under this clause then the Employer shall be entitled to instruct another contractor to carry out such works and to recover the cost of the same from the Contractor as a debt and/or to deduct the same from any monies otherwise due to the Contractor."

Conditions of sub-letting

Add new clause 3.4A as follows:

Clause 3.4A "The Contractor shall appoint any design consultants as required in the Employer's Requirements and these design consultants shall be deemed to be sub-contractors for the purpose of the Contract".

Add new clause 3.4B as follows:

Clause 3.4B "The Contractor shall appoint named persons to carry out particular elements of the work and these named persons shall be deemed to be sub-contractors for the purposes of the Contract".

Interim Payments

Clause 4.9.1 shall be amended as follows:

In line 1 delete "14" and insert "16" and delete the words "*from its due date*" and insert:

"from the later of : (a) the due date; and (b) receipt by the Employer of a VAT invoice for the amount stated in the relevant Payment Notice pursuant to clause 4.9.2 or if applicable, the amount of the Interim Application pursuant to clause 4.9.3 from the Contractor,"

Add new clause 4.9.8 as follows:

Clause 4.9.8 *"Interim payments shall be made subject to the following provisions:-*

- 1. No interim payment shall become due until the Employer has received from the Contractor evidence that the properties have been registered for Home Warranty Cover under an NHBC Buildmark policy with options 1,2,& 3.*
- 2. Works allocated for adoption by a statutory authority shall be excluded from any interim payment should the relevant framework adoption agreements not be in place, and evidence thereof provided by the Contractor to the Employer, at a date of six months from the date of possession.*
- 3. Costs in respect of design fees or payments to statutory undertakers that are incorporated in any given interim payment must be confirmed to the Employer prior to the date of the next interim payment by copy of a formal receipt issued by the relevant supplier. Any costs not so confirmed shall be excluded from subsequent interim payments until formal receipt is provided to the Employer".*

Retention

Clause 4.16 shall be deleted and the following inserted:

Clause 4.16 *"The Employer's interest in the Retention shall not be fiduciary and the relationship of the Employer and the Contractor with regard to the same shall be solely that of debtor and unsecured creditor. The Employer shall:*

4.16.1 have no obligation to invest the Retention or any part of it;

4.16.2 have no obligation to segregate the Retention or any part of it in a separate bank account or in any other manner;

4.16.3 be entitled to the full and unencumbered beneficial interest in the Retention or any part of it."

Relevant Matters

Clause 4.21 shall be amended as follows:

At the end of line 1 insert "*(but only to the extent that such matters are not consequent upon or necessitated by any omission, default, negligence or breach of contract or breach of statutory duty of the Contractor, his servants or agents or any sub-contractor, sub consultant or supplier or their respective servants or agents)*"

Clauses 4.21.4 and 5 shall be deleted and the following inserted:

Clause 4.21.4

"delay in receipt of any necessary instructions, information or approvals from the Employer which the Employer is obliged to provide and for which the Contractor has applied in writing provided that such requests is made within 10 working days of the date it has become, or should reasonably have become, apparent to the contractor that the regular progress of the works has been or is likely to be affected. Following a written request from the contractor under this clause, the Employer shall act reasonably when providing all relevant instructions, information or approvals and shall not unreasonably withhold or delay the same".

Conditions affecting the Works

Add new clauses 10.1 and 10.2 as follows:

Clause 10.1

"The Contractor shall be deemed to have inspected and examined the site of the Works and its surroundings and to have satisfied himself before the date of the Contract as to the nature of the existing buildings, the ground, the sub surface conditions and sub soil (any information in connection therewith which may have been provided by or on behalf of the Employer being provided by way of information only without any warranty or representation as to its accuracy, reliability or completeness), the form and nature of the site, the extent, nature and difficulty of the work and materials necessary for the completion of the Works, the means of communication with and restrictions of access to the site of the Works, the accommodation he may require, and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting or likely to influence or affect the execution of, or the price tendered for, the Works."

Clause 10.2

"The Contractor shall not be entitled to any extension of time or to any additional payment on the grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Contractor be released from any of the risks accepted or obligations undertaken by him under the Contract on the grounds that he did not or could not have foreseen any matter which might affect or have affected the execution of the Works."