

Building Contract

This Contract is between:

The Employer

[Organisation Name]

[Address]

And:

The Contractor

[Name] (company number []) whose registered office is at

[insert address]

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1. DEFINITIONS & INTERPRETATIONS

In this Contract, save where the context otherwise requires, the following expressions shall have the meanings hereby assigned to them:

Applicable Standards	means	any industry or service standard or code of practice which relates to the Works and which is generally recognised within the Contractor's trade and/or profession
CDM Regulations	means	the Construction (Design and Management) Regulations 2015.
Commencement Date	means	[<i>insert date</i>]
Conditions	means	these conditions, any supplementary conditions, and any modification thereof.
Contract	means	this Contract document entered between the Contractor and the Employer and includes the documents incorporated therein and forming part thereof.
Contract Administrator	means	Sports and Play Consulting Limited or such other party as the Employer shall appoint in that capacity and notify to the Contractor
Contract Period	means	the period from the Commencement Date (or the date upon which the Contractor starts the Works if earlier) until the end of the Rectification Period
Date for Completion	means	[<i>insert intended date of completion of Works</i>]
Day	means	a business day excluding weekends or public holidays
Documents	means	all the documents listed or referred to in clause 2.3

Drawings	means	all plans, drawings, specifications, calculations, designs, graphs, sketches, models, computer programmes, codes, data, documents and other written or recorded material produced by or on behalf of the Contractor in connection with the Works;
Practical Completion Date	means	the date of issue of the Practical Completion Statement
Practical Completion Statement	means	the certificate issued in accordance with clause 4.7
Principal Contractor	means	the Contractor unless the Employer appoints a third party to act in that capacity
Principal Designer	means	the Contractor unless the Employer appoints a third party to act in that capacity
Programme	means	means the programme for the carrying out of the Works prepared from time to time by or on behalf of the Employer;
Site	means	[<i>insert full details of property at which the Works are to be carried out</i>]
Materials	means	any goods supplied by the Contractor in relation to the Works
Retention	means	the retention held by the Employer in accordance with clause 4.8
Rectification Period	means	the period of 12 months from the date of issue of the Practical Completion Statement
Statutory Requirements	means	any and every law, statute, by-law, directive, decision, regulation, rule, order, notice, rule of court or delegated or subordinated legislation or directions or guidance relative to any of the foregoing issued by any court or governmental or regulatory body, department or Employer which in any way affects or impinges upon any of the matters referred to or requiring to be done in relation to the Works
Tender Application	means	the document in the form attached at Appendix 1 to this Contract
Tender Documents	means	the tender and accompanying documents relating thereto as are referred to in the Appendix 2 to this Contract.
VAT	means	Value Added Tax.
Works	means	[<i>insert details of the Works to be carried out</i>]

2. GENERAL

2.1 Overview of Requirements

The Contractor will design, build and install the Works in accordance with the terms and conditions of this Contract. The Contractor will be fully responsible for all aspects of such design, build and installation.

2.2 Contract Sum

Excluding any variations or changes made in accordance with clause 4.3, the total sum agreed for the purposes of this Contract will be:

£ _____ (EX VAT)

2.3 Documentation

The Employer has had the following documents provided by the Contractor, and are deemed to form and construed as part of this Contract:

- a. The Tender Documents
- b. The quotation outlining costs associated with the project
- c. Any designs and drawings
- d. Any health and safety plans
- e. Tender Application
- f. The Programme and "Construction Phase Plan" expected prior to commencement of the Works

3. GENERAL

3.1 Duty of care

3.1.1 The Contractor warrants that in carrying out the Works it has exercised and will continue to exercise all the reasonable skill and care reasonably to be expected of an experienced, appropriately qualified and competent design and build contractor with experience of carrying out services similar to the Works in connection with projects of a similar standard, size, scope, nature, complexity and value to the Works.

3.1.2 In carrying out the Works the Contractor shall use the degree of skill, care and diligence required under Clause 3.1.1 to comply with the requirements of this Contract, the Documents, the Applicable Standards and the Statutory Requirements in so far as they each relate to the Works

3.1.3 The obligations of the Contractor in terms of this Contract shall not be released, diminished or in any other way affected by any independent inspection, investigation enquiry or approval which may be made or carried out by or for the Employer or by the Employer's failure to carry out such inspection, investigation or enquiry or by the examination of the Documents by or for the Employer (or by the Employer's failure to carry out such an examination) or by the approval by or for the Employer of the Documents.

3.2 Supervision

The Contractor will procure that In addition to the constant management and supervision of the Works the works are under the close control of a competent supervisor to ensure maintenance of satisfactory quality and progress of the Works alongside the Contracts Administrator or authorised person who will meet with the Contractor at pre-arranged dates throughout the carrying out of the Works.

3.3 Repairs and Re-instatement

The Contractor shall make good to the Employer's satisfaction any damage caused directly or indirectly as a result of the carrying out of the Works.

3.4 Good Practice

The Contractor warrants that where and to the extent that materials, products, and workmanship are not fully detailed or specified they will be:

- (i) Of a standard appropriate to the Works and suitable for the purposes stated herein or
- (ii) reasonably to be inferred from the Tender Documents, and in accordance with good practice.

3.5 Stability

The Contractor shall accept responsibility for the stability and structural integrity of the Works during the Contract, and support as necessary and ensure that the structural foundations and bases are stable.

3.6 Nuisance

The Contractor shall take all necessary precautions to keep to a reasonable minimum nuisance from smoke, dust, rubbish, and other causes, likely to cause nuisance to the general public.

3.7 Site Security and Safety

3.7.1 The Contractor shall comply in all respects of the CDM Regulations and make available a copy of their Health & Safety policy and relevant Risk Assessment. Appropriate signage should be displayed ensuring visibility from main access routes, and fencing should be erected on the perimeter of the Works being undertaken, which will be removed on the Practical Completion Date.

3.7.2 The Contractor shall at all times take reasonable measures to prevent any trespass, public or private nuisance (including, without limitation, any nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights and activities of any adjoining or neighbouring landowner, tenant or occupier or any Statutory Undertaker arising out of the carrying out of the Works and shall assist the Employer in defending any relevant action or proceedings which may be instituted.

3.8 Use of the Site

The Contractor shall not use the Site for any purpose other than the carrying out of the Works and the Employer hereby grants to the Contractor a licence to use the Site and all necessary means of access thereto for such purposes.

3.9 Lighting & Power

The Contractor shall make his own arrangements for light and power as may be required (and these shall be deemed to be included in the Contract Sum), unless otherwise stated in the Tender Documents.

3.10 Small Plant & Tools

The Contractor shall provide, as necessary, all tools and plant necessary for the proper execution of the Works.

3.11 Spoil and Waste

The Contractor will dispose of all waste in relation to the Works in accordance with the applicable Statutory Requirements.

3.12 DBS

Valid DBS (Disclosure and Barring Service) checks for all operatives and sub-contractors engaged by the Contractor must be undertaken. The Employer reserves the right to require certain operatives to have new DBS checks. The Contractor will on request from the Employer sign a declaration to confirm that DBS checks have been carried out on employees and subcontractors.

4. CONTRACTOR'S DUTIES

4.1 Sub-Contracting

The Contractor may with the Employer's prior written consent (which will not be unreasonably withheld or delayed) sub-contract out part or all of the Works, so long as those persons or organisation strictly meets the required experience and knowledge to undertake the Works. Notwithstanding any such sub-contracting the Contractor shall remain fully responsible to the Employer for the performance by the Contractor of all of the Contractor's obligations under this Contract

4.2 Variations

The Contract Administrator may issue instructions requiring a change in the Works or the order or manner which they are carried out.

If any instruction for a variation to the Works is issued the parties will use all reasonable endeavours to agree any amendment to the Contract Sum and/or the Programme and subject to such agreement and to a written instruction to proceed issued by the Contract Administrator, the Contractor shall proceed with such variation which shall be treated as part of the Works for the purposes of this Contract.

4.3 The Contract Administrator

The Contractor shall comply with all reasonable instructions given to the Contractor by the Contract Administrator in relation to the Works and the Employer confirms that the Contract Administrator has authority to issue such instructions on the Employer's behalf.

4.4 Extensions of time

The Contractor shall use its reasonable endeavours to achieve the Practical Completion Date by the Date for Completion Date prevented by force majeure, pandemic (including but not limited to coronavirus), accidents, exceptional inclement weather, loss or damage occasioned by any one or more of the risks covered by insurance referred to in Clause 7, civil commotion, local combination of workmen strikes or lock-outs affecting any trades employed in the carrying out of the construction of the Units or any of the trades engaged in the preparation manufacture or transportation of any of the goods or materials required for the construction of the Works, any additions or alterations or changes effected by the Employer (including variations), in which case the Contractor shall be entitled upon written application to the Employer to such reasonable extension of time for Practical Completion as the Contract Administrator acting reasonably and impartially (upon receipt of all necessary information) shall determine. Any dispute between the parties as to the length of any extension of time shall be referred by either party to adjudication in accordance with clause 13.

4.5 Certificate of Practical Completion

The Contractor shall not less than [4] weeks prior to the anticipated Practical Completion Date, give written notice to the Contract Administrator of the date the Contractor expects Practical Completion to take place. Following notification by the Contractor to the Employer of the Contractor's desire to hand over the Works to the Employer on Practical Completion the Employer shall within 10 Working Days of such notification procure that the Contract Administrator shall inspect the Works and if in the Contract Administrator is of the reasonable opinion that Practical Completion has taken place the Contract Administrator will issue the Practical Completion Statement. Any dispute as to whether or not Practical Completion has taken place will be referred to adjudication in accordance with clause 13.

4.6 Defects

The Contractor will at no expense to the Employer remedy to the Employer's reasonable satisfaction and within a reasonable time after being requested to do so all defects occurring in the Works for whatsoever reason at any time and notified to the Contractor at any time prior to the end of the Rectification Period and if the Contractor fails to effect such defects remediation within a reasonable time and to the Employer's reasonable satisfaction the Employer may engage a third party to carry out such works and the cost of so doing will be recoverable from the Contractor as a debt.

4.7 Payment

4.7.1 On or at any time after the Practical Completion Date the Contractor may issue an invoice for the Works (minus any retention listed below). The date of receipt by the Employer of such invoice shall be the Due Date for Payment.

4.7.2 Within 5 days of the Due Date for Payment the Employer shall give notice to the Contractor specifying the amount (if any) of the payment which the Employer considers became due to the Contractor on the Due Date for Payment, to what that payment relates and the basis on which that amount is calculated. If the Employer fails to issue the notice as required, the amount stated in the Contractor's invoice issued in accordance with clause 4.7.1 shall be the amount due for payment.

4.7.3 If the Employer intends to pay less than the amount specified in the payment notice referred to in clause 4.7.2 or as the case may be the amount stated in the Contractor's invoice then it shall not later than 2 days before the final date for payment give a notice to pay less to the Contractor specifying the amount that the Employer considers is due to the Contractor on the date such notice to pay less is given and the basis on which such amount has been calculated

4.7.4 The final date for payment of the any amounts due under this Contract will be 28 days after the Due Date for Payment

4.7.5 Retention: The retention amount to be held over for the Rectification Period will be: **2.5%** of the Contract Sum. Subject to the satisfactory remedying of all defects the retention will be released to the Contractor at the expiry of the Rectification Period which shall be the Due Date for Payment and the provisions of clauses 4.7.2 to 4.7.4 (inclusive) shall apply mutatis mutandis to the release of the retention

5. CDM

In the carrying out of the Works the Contractor:

- warrants that it has the requisite competence and resources in order that at all stages in the design and construction process it shall comply in all respects with the provisions of the CDM Regulations as applicable to the Contractor's role in the Works (which shall include the respective roles of Principal Contractor and Principal Designer);
- shall provide the Employer with such co-operation and information as is required in order to enable the Employer to fulfil the obligations incumbent on them pursuant to the CDM Regulations; and
- shall advise the Employer should the Contractor become aware at any stage that it no longer has the requisite competence or resources to comply with the requirements of the CDM Regulations.
- shall comply with all the obligations of a designer under the CDM Regulations
- Where required, the Contractor shall produce his last issue of the drawings for incorporation into the health and safety plan and file 4 hard copies or in such other format as the Employer may reasonably require.

6. LIABILITY OF CONTRACTOR

6.1 The Contractor shall fully and promptly indemnify the Employer against any liability to any person or property whatsoever arising out of or connected with the carrying out of the Works and/or the act or omission of the Contractor in any way in connection with the Contractor's obligations under this Contract or any act or omission of any employee of the Contractor howsoever such liability may arise.

6.2 The Contractor may be responsible for liaising with residents and neighbouring properties over the Works and working with them to minimise the risk of damage to property, vegetation and ensuring the security of the individual premises.

6.3 The Contractor shall notify residents affected by the Work of their progress and especially inform individual properties in writing, with a copy of each notification to be given to the Contract Administrator, identifying: -

- the Contractor's contact details
- expected duration of the Works
- working hours and days
- any relevant information pertaining to the construction

7. INSURANCE

7.1 The Contractor will throughout the Contract Period [and thereafter] maintain insurances of at least the following levels (all on an "any one claim" basis):

Insurance Type	Minimum Level Covered
Public Liability	£10,000,000 (£10 Million)
Employer Liability	£5,000,000 (£5 Million)
Product Liability	£5,000,000 (£5 Million)
Professional Indemnity	£1,000,000 (£1 Million)

Contractor's All Risks	£1,000,000 (£1 Million)
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7.2. The Contractor shall always maintain in force such policies of insurance with reputable insurers or underwriters as shall fully insure and indemnify the Contractor against liability:

- to the Employer and to any employee of the Employer.
- to the employees of the Contractor.
- to any other persons

7.3 The Contractor shall prior to the commencement of the Works, and at such other times as the Contract Administrator may require, supply the Contract Administrator with copies of all insurance policies, cover notes, premium receipt and other documents necessary to comply with sub clause (a) of this Clause.

7.4 The Contract Administrator shall be entitled to notify the Contractor in writing that in the opinion of the Contract Administrator any such policy of insurance does not affect sufficient cover to comply with the Conditions and to require the Contractor to affect such insurance as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and effect such insurance as the Contract Administrator shall require.

The Contractor will ensure that where it receives notification of any potential insurance claim, it shall deal with the matter directly and/or refer the matter to the contractor's insurers within a period of 28 days from the receipt of notification of the potential claim and ensure that each claim is progressed and resolved with due diligence.

8. BRIBERY AND CORRUPTION

The Employer shall be entitled to terminate the Contract forthwith and to recover from the Contractor the amount of any loss resulting from such termination, if:

- the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do.
or
- for having done or forborne to do any action in relation to the Contract or any other Contract with the Employer; or the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor);
or
- in relation to any Contract with the Employer the Contractor or person employed by him or acting on his behalf shall: -
 - (i) have committed any offence under the Prevention of Corruption Acts 1916 or Bribery Act 2010
or
 - (ii) have given any fee or reward the receipt of which is an offence under the Local Government Act 2003.

9. GRATUITIES

The Contractor shall not, whether by himself or by any person employed by him to perform the Services, solicit any gratuity or tip or any other form of moneymaking or reward, collection or charge for any of the Services other than bona fide charges approved by the Employer.

10. LIABILITY OF EMPLOYER

To the extent permitted by the Unfair Contracts Terms Act 1977 the Employer shall not be liable for any loss or damage whether caused by the negligence of the Employer, its servants or agent in any way whatsoever and the Employer shall in no circumstances be liable to the Contractor for any loss of profit, business or production or any similar loss or damage whether direct, indirect or consequential however caused. The Employer in no way warrants the truth or accuracy of any representations which may have been made to the Contractor and the Contractor acknowledges that he did not rely upon any representation made by or on behalf of the Employer when entering into this Contract.

11. UNSATISFACTORY EMPLOYEES

If, with reasonable justification, the Employer gives the Contractor notice that any person is not to become involved in or is to be removed from involvement with the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the Employer the Contractor shall replace any such person removed under this condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

12. SUSPENSION AND TERMINATION

12.1 If the Contractor shall have offered, or given, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to the obtaining of the Contract, or any other Contract with the Employer, or for showing or forbearing to show favour, or disfavour, to any person in relation to the Contract, or any other Contract with the Employer, or if the like acts shall have been done by any person employed by the Contractor, or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor), or if in relation to the Contract, or any other contract with the Employer, the Contractor or any person employed by the Contractor, or acting on the Contractor's behalf, shall have committed any offence under the Prevention of Corruption Act 1916 or shall have given any fee or reward to any officer of the Employer, which shall have been exacted or accepted by such officer by virtue of his office or employment and is otherwise than such officer's proper remuneration, the Employer shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such termination.

12.2 If the Contractor:

- (i) Commits a breach of any of his obligations under the Contract.

- (ii) becomes bankrupt, or makes a composition or arrangement with his creditors, or has a proposal in respect of his company for the voluntary arrangements for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 2000.
- (iii) has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed.
- (iv) has a provisional liquidator, receiver, or manager of his business or undertaking duly appointed.
- (v) has an administrative receiver, as defined in the Insolvency Act 2000, appointed.
- (vi) has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge.
- (vii) is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the court to make a winding-up order.

then in any such circumstances the Employer may, without prejudice to any accrued right or remedies under the Contract, terminate the Contractor's employment under the Contract by notice in writing having immediate effect.

12.3 If the Contractor's employment is terminated, the Employer shall:

- (i) cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Contractor's employment shall have been calculated and provided such calculation shows a sum or sums due to the Contractor;
- (ii) be entitled to repossess any of its materials, clothing, equipment, vehicles or other goods loaned or hired to the Contractor and to exercise a lien over any of the materials, clothing, equipment, vehicles or other goods belonging to the Contractor for any sum due hereunder or otherwise from the Contractor to the Employer.
- (iii) be entitled to employ and pay other persons to provide and complete provision of the works or any part thereof and to use all such Contractor's materials, clothing, equipment, vehicles or other goods for the purposes thereof.
- (iv) be entitled to deduct from any sum or sums which would have been due from the Employer to the Contractor under this Contract or any other contract or be entitled to recover the same from the Contractor as a debt, any loss or damage to the Employer resulting from or arising out of the termination of the Contractor's employment. Such loss or damage shall include the reasonable cost to the Employer of the time spent by its officers in terminating

the Contractor's employment and in making alternative arrangements for the provision of the works or any part thereof.

- (v) when the total costs, loss and/or damage resulting from or arising out of the termination of the Contractor's employment has been calculated and deducted so far as practicable from any sums which would but for Condition have been due to the Contractor, any balance shown as due to the Employer shall be recoverable as a debt, or alternatively, the Employer shall pay to the Contractor any balance shown as due to the Contractor.

12.4 The Employer may at any time on notice to the Contractor suspend the performance of the Works without payment of any compensation to the Contractor.

13. SETTLEMENT OF DISPUTES AND GOVERNING LAW

13.1 If any dispute or difference arises between the parties in connection with this Contract either party may at any time give notice to the other party of its intention to refer such dispute or difference to adjudication under version 3.2.2 of the TeCSA Adjudication Rules (or such other version as shall be current at the time of a relevant dispute) which Rules are deemed to be incorporated by reference into this Contract.

13.2 Notwithstanding anything to the contrary contained in the Rules any adjudicator appointed pursuant to the Rules shall be directed to provide reasons in writing for any decision which he may reach. If a referral is made to adjudication under Clause 13.1 neither party may commence court proceedings until 21 days after an award of an adjudication has been given.

13.3 This Contract shall be governed by and construed in accordance with English law. Each party hereby submits to the non-exclusive jurisdiction of the English Courts as regards any claim, dispute or matter arising out of or in connection with this Agreement and its implementation and effect.

14. COSTS TO TENDER AND LEGAL FEES

Each party shall bear their own legal and other fees in relation to the preparation and submission of the Tender Documents and any formal Contract documents arising there from.

15. DEFAULT BY CONTRACTOR

If the Contractor, for whatever reason, fails to provide or carry out the Works in whole or in part completely in accordance with the terms of the Contract, then without prejudice to any other remedy contained herein the Employer may by its own or other workmen provide and perform such Services or part thereof in which the Contractor has made default. The costs and charges incurred by the Employer in so doing shall be paid by the Contractor to the Employer on demand or may be deducted by the Employer from any monies due or which may become due to the Contractor.

16. INSPECTION OF SITE, EXTENT AND NATURE OF SERVICES

16.1 The Contractor shall be deemed to have fully acquainted himself with all conditions likely to affect the execution of the Works and have visited the site to satisfy himself with the nature and extent of services to be undertaken as detailed in the Contract Documents and as to the nature of access and all matters likely to affect the execution of the Service

16.2 In the event of adverse weather conditions or aspects not in the control of the Contractor (ie pandemic, national shortage of materials) preventing the performance of the Services the Contractor with the prior consent of the Contract Administrator may modify his method of working.

16.3 In submitting his Tender, the Contractor will have been deemed to understand the nature of the Works and included within his tender sum for performing the Works in adverse weather conditions or such other conditions for periods within the Contract Period.

16.4 The Contractor shall not be entitled to make any claims in any respect regarding the contract through lack of knowledge or understanding of the specified works. Any costs or losses incurred during the preliminary investigations and Tender preparation shall be borne by the Contractor alone.

17. INSPECTION & ACCESS

The Contractor shall always during the Contract Period allow the Contract Administrator and his staff, the Employer's Internal Auditor or such person as may be nominated from time to time by the Contract Administrator access to all locations for the purpose of inspecting:

- (i) Work being performed pursuant to the Contract.
- (ii) Records or documents in the possession of the Contractor in connection with the performance of such work.

18. POST INSTALLATION AND MAINTENANCE

18.1 On the satisfactory completion of all site operations the Contractor shall provide for and give to the Contract Administrator, a complete set of operational and maintenance (O&M) instructions for the new facility, and any tools or equipment for the items that have been installed.

18.2 The Contractor shall on or before the Practical Completion Date, ensure that any temporary structures such as HERAS fencing, storage containers and/or welfare is removed from site in a timely manner once the site is complete and handed over to the Employer.

19. COPYRIGHT

19.1 To the extent that any copyright, design right or any intellectual property right or right of a similar nature in the Drawings is now or at any time vested in the Contractor, the Contractor hereby grants to the Employer and all others authorised by the Employer a full free and irrevocable royalty free non-exclusive and freely-assignable licence to reproduce the Drawings for all purposes relating to the Works including without

prejudice to the foregoing generality the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, refurbishment, extension and repair of the Works such licence to subsist notwithstanding that the Contractor has completed the Works under this Contract or that either the Employer or the Contractor has terminated this Contract. Such use shall not include a licence to reproduce the designs contained in the Drawings for an extension to the Works.

19.2 The Contractor warrants that the Drawings are and will be its own original work and that in any event their use in connection with the Works will not infringe the rights of any other person. The Contractor further warrants that where duly authorised sub-contractors have been used or are used their work is and will be original.

SIGNED by a director on behalf of [NAME OF CONTRACTOR]

X.....
Signature of director

.....
Name of director

...../...../.....
Date

SIGNED on behalf of [THE EMPLOYER]

X.....
Signature

.....
Name

.....
Title

...../...../.....
Date

APPENDIX 1

Tender Application

Insert copy of Contractor's completed Form of Tender

APPENDIX 2

Tender Documents

Insert Copy of tender documents