

Building Contract

Agreement to design and install Outdoor Fitness Equipment,
Surfacing and Associated Works.

This Agreement is between:

The Employer

Organisation Name:

Address:

And:

The Principal Contractor

Business Name:

Address:

Business Number:

Contract Administrators

Organisation: Sports and Play Consulting Limited

Name: Michael Carter

Organisation: Ashby De La Zouch Town Council

Name: Jack Fargher

1. DEFINITIONS & INTERPRETATIONS

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

CDM	means	the Construction (Design and Management) Regulations 2015
Commencement Date	means	the date from which the Contractor will be required to commence to provide the services, as notified by the Contract Administrator or such other date as may be agreed.
Conditions	means	these conditions, any supplementary conditions and any modification thereof.
Contract	means	any formal Contract document entered between the Contractor and the Employer and includes the documents incorporated therein and forming part thereof
Contractor	means	the person, persons or company whose tender is accepted by the Council and includes the Contractor's personal representative and successors.
Contract Administrator	means	Any person authorised by The Employer responsible for all aspects of the contract and ensuring the obligations are met. If more than one individual is named, then each person has equal authority and either person can decide without requiring authority from the others named.
Employer	means	the named Authority which is the organisation purchasing the goods or services outlined in the Contract and referred to as The Employer, Authority or the Organisations formal name.
Lots	means	the site to be re-developed where the Works will take place
Materials	means	any goods supplied by The Contractor in relation to the project.
Retention	means	the amount or percentage held by the Employer for the duration of the Rectification Period until any defects or faults are made good to the satisfaction of the Employer
Rectification Period	means	period in months from the date the services have been formally completed and handed over to the Employer
Works	means	the services to be undertaken by the Contractor as described in the Tender documents or any supporting documentation.
Tender Documents	means	the tender and accompanying documents relating thereto.
VAT	means	Value Added Tax

2. THE WORKS

2.1 Overview of Requirements

The Employer is to design, build and install outdoor fitness equipment, surfacing and associated works in accordance with the details provided by The Contractor and accepted by The Employer. All works and obligations are the responsibility of the Principal Contractor, including all details covered within this agreement in addition to the documentation outlined in 2.3.

2.2 BS EN Regulations and CDM Regulations

Each Party undertakes to the other that in relation to the Works and site, he will duly comply with applicable CDM Regulations.

The finished products and work must comply with the relevant European and British EN Regulations, primarily BS EN 16630 for outdoor fitness equipment. Any other work or materials that relate to this project must comply with the relevant British Standards or its European equivalent.

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 Agreement:

- a. The tender submission
- b. The quotation outlining costs associated with the project
- c. Any designs and drawings
- d. Any health and safety plans
- e. Signed "Form of Contract" – Appendix 1
- f. Completed "Warranty and Reference Information" - Appendix 2
- g. Any emails or communications from the Contractor during or following the tender process including revisions to the original submission
- h. "Programme of Works" expected prior to commencement of the Works

3 GENERAL QUALITY AND METHOD OF WORKS

3.1 Levels of skills required

Operatives must be appropriately skilled and experienced for the type and quality of work.

The contractor shall inspect all components / materials carefully before using and reject any which are defective.

3.2 Supervision

In addition to the constant management and supervision of the work provided by the contractor person in charge, all significant types of work must be 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 works.

3.3 Repairs and Re-instatement

The contractor shall make good any damage because of carrying out works described herein. The method and material used to repair any damage shall be agreed to in writing as part of the documents provided that form the necessary requirements within this agreement.

3.4 Good Practice

Where and to the extent that materials, products and workmanship are not fully detailed or specified they are to be:

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

3.5 Existing Services and Infrastructure

The Employer, if requested, supply any available details and drawings of existing services located on or near the area of works. However, the Contractor shall take precautionary measures to check the current location and type of services by any reasonable means. Notwithstanding, any work that may be required to be carried out and likely to affect new or existing services, must be in accordance with the Bye Laws or Regulations of the relevant Statutory Authority and entirely to their inspector's satisfaction.

3.6 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.

3.7 Adjacent Areas

The Employer expects this site to be a safe site and requires the appropriate safety wear to be worn as identified in the contractor's risk assessments.

3.8 Nuisance

The contractor shall take all necessary precautions to prevent nuisance from smoke, dust, rubbish and other causes, likely to cause nuisance to the general public.

3.9 Site security and safety

The contractor shall comply in all respects with the requirements and intent of the Health & Safety at Work Act, 1974, and the Construction (Health, Safety & welfare) Regulations 1996 and associated and current legislation and good practice as well as local rules as they affect the Works.

The contractor shall make available a copy of their Health & Safety policy.

3.10 Welfare Facilities

The contractor will need to provide their own water and/or toilets during the period of construction at their own cost, unless otherwise stated in the tender document.

3.11 Use of the Site

The contractor shall not use the site for any purpose other than the carrying out of the Works.

3.12 Lighting & Power

The contractor shall make his own arrangements for light and power as may be required.

3.13 Health & Safety

The CA (Contract Administrator) or Employer reserves the absolute right to suspend works at the site if any continuing breaches of Health and Safety legislation occur. Such closure will be at no cost to the Employer and no extension of time will be entertained. This will include breaches noted by the CA or advised to the CA by The Employer.

3.14 Small Plant & Tools

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

3.15 Construction Requirements

The contractor shall determine his own method of working.

During the execution of the works, any trafficking is to be kept to a minimum and every effort must be made to ensure that as little damage as possible is done to the surrounding grounds and areas.

3.16 Risk assessment and Programme of Works

The contractor is to undertake a risk assessment of the proposed works and to provide a copy of that to the Contracts Administrator for agreement purposes before any works are commenced on site. Additionally, a 'Programme of Works' need to be provided before work commences including all the necessary information specifically relating to these Works.

Note: If there are any significant delays (greater than 1 week) on the original lead times to either start or complete the works, with details to be provided on the reasons for the delay and a revised 'Programme of Works' should be emailed to the Contract Administrator.

3.17 Spoil and Waste

All waste from packaging and materials other than what is deemed as natural waste (spoil) from the site, is to be disposed of at a licensed facility unless otherwise stated in the tender document. Any material deemed as hazardous or requires special waste disposal procedures must adhere to the UK regulations, allowing for the provision of evidence such as Waste Consignment Notes to the Employer.

4 CONTRACT PARTICULARS

4.1 HEALTH, SAFETY AND WELFARE

The Contractor in performing the services covered by the contract, to ensure the Health, Safety and Welfare of the contractor's staff, employees of the Council and all other persons including members of the public shall comply with: -

All duties and responsibilities placed upon him by the Health and Safety at Work Act 1974 and all subsidiary legislation especially about the use of unqualified operatives, facilities for workmen, and the protection of motorists and pedestrians. The Contractor must allow for this in his rates.

All other relevant Acts of Parliament, Statutory Instruments, regulations etc.

All revisions, modifications, and amendments to Acts of Parliament, Statutory Instruments, regulations etc.

All relevant Codes of Practice, British or EEC equivalent standards, EU Directives etc. and modifications, amendments and revisions thereto.

4.2 VARIATION OF CONTRACT

- (a) Without prejudice to any other of the conditions hereof no omission from, addition to or variation of the Contract shall be valid or of any effect unless it is issued in writing and signed by the Contract Administrator.
- (b) Save for an omission, addition or variation issued pursuant to paragraph (a) any provision inconsistent with the Conditions contained in any other document or in any oral agreement is to be void and of no effect.
- (c) If any variation to the contract is issued and where the work has been previously quoted for in the tender submission, that rate shall then be used.

4.3 THE CONTRACT ADMINISTRATOR

The functions, rights and powers conferred by this Contract upon the Council shall be exercised by any of the Contract Administrator listed in this document. The Contractor shall in no circumstances question the existence or extent of the Authority of any person authorised by the Contract Administrator to act on his behalf.

4.4 CONTRACT PERIOD

The contract period between the Employer and the Contractor will start from the date this agreement has been signed by both parties, until the works have been satisfactorily completed and handed over to the Employer. The contract period will also extend for the 'Rectification' period and any warranties which are relevant to the works in question.

4.5 PERFORMANCE OF SERVICES

- (a) During the Contract Period the Contractor shall perform the Services (and any modification thereof authorised under the Conditions) in a manner totally consistent with the tender and the terms and conditions of the Contract and to the entire satisfaction of the Contract Administrator.
- (b) The Contractor shall always perform such Services in accordance with a written Programme of Work which shall be submitted to the Contract Administrator prior to commencement of any work (and any modifications thereof authorised under the Conditions).
- (c) The Contractor is to be aware that the maintenance period for the contract is 12 months, starting from the completion/adoption date of the site to The Employer.

4.6 CERTIFICATE OF PRACTICAL COMPLETION AND DEFECTS LIABILITY

- (a) The Contractor will arrange for a Post Installation inspection to be carried out before hand over of the site to the Contracts Administrator.
- (b) On the production of a successfully completed Post Installation Report identifying that all works have been undertaken in accordance with all relevant standards and specification, the Contractor shall be invited to submit his invoice for payment.
- (c) Should the Contractor be required to rectify any defects then he should be aware that no payment will be made until the Contract Administrator is satisfied that all works have been completed to the contract specification.
- (d) The Contractor shall make any payment due to this Authority as a result of his failure to undertake the works within the given time period unless previously agreed in writing with the Contract Administrator.

4.7 PAYMENT

- (a) On receipt of the Certificates of Practical Completion the Contract Administrator shall inspect the site and if the work has been undertaken satisfactorily and approved by the Post Installation Report, the Contractor shall be advised that he may issue an invoice for those works (minus any retention listed below), which shall be paid within 28 days of the date of receipt of the invoice
- (b) Retention:
The retention amount to be held over for the Rectification Period will be 5%
The Rectification Period will begin from the date of formal handover to the Employer and will be a period of 12 Months
- (c) VAT: The Contract Sum is exclusive of VAT and in relation to any payment to the Contractor under this contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect to it

4.8 APPLICABLE LAW

This contract shall be governed by and construed in accordance with the law of England

5. AGENCY

In carrying out the Services the Contractor shall be acting as Principal and not as the Agent of the Council.

Accordingly:

- (a) The Contractor shall not (and shall not procure that its employees, servants or agents do not) say or do anything that might lead any other person to believe that the Contractor is acting as the Agent of the Authority; and
- (b) Nothing in this Contract shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of the Authority, the Authority's employees, servants or agents.

- (c) The Contractor has not and shall not hold himself out as having the power to make, vary, discharge or waive any Byelaw or regulation of any kind.
- (d) The Contractor shall not hold itself out as being authorised to enter into any contract on behalf of the Employer to the performance, variation, release or discharge of any obligation to a third party. The employees of the Contractor shall not hold themselves to be and shall not be held out by the Contractor as being servants or agents of the Employer.

6. LIABILITY OF CONTRACTORS

- (a) The Contractor shall fully and promptly indemnify the Council or consultant employed by the Council (Sports and Play Consulting Limited) against any liability to any person or property whatsoever arising out of or connected with the performance of the Services or any act or omission of any employee of the Contractor howsoever such liability may arise.
- (b) The Contractor shall fully and promptly indemnify the Council or consultant employed by the Council (Sports and Play Consulting Limited Limited) in respect of any damage caused to any land, building or chattel in the ownership, occupation or possession of the Council by any employee or agent of the Contractor (whether such damage is caused by negligence or in any other way whatsoever).
- (c) The Contractor shall fully and promptly indemnify the Council or consultant employed by the Council (Sports and Play Consulting Limited) and all persons concerned in respect of any personal injury caused to any employee of the Council by any employee or agent of the Contractor (whether such injury be caused by negligence or in any other way whatsoever).
- (d) The Contractor shall be responsible at all times during the contract period for the security of the boundaries to all residential and commercial property that abut the site and is affected by the nature of these works and in doing so shall therefore ensure that all boundaries remain intact either through the use of appropriate temporary security fencing or through the completion of each section of new boundary fencing at any given time.
- (e) The Contractor shall be solely 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.
- (f) The Contractor shall always 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 project
 - working hours and days
 - any relevant information pertaining to the construction
- (g) The Contractor shall be solely responsible for ensuring that any waste material is removed immediately leaving no residue that could cause a hazard or risk.

7. INSURANCE

- (a) The Contractor's attention is draw to the insurance details set out below: -

Minimum Amount of Public Liability Insurance	£10,000,000 for any one incident, (total unlimited)
Minimum Amount of Employers Liability Insurance	£5,000,000 for any one incident, (total unlimited)
Minimum Amount of Product Liability Insurance	£5,000,000 for any one incident, (total unlimited)
Professional Indemnity Insurance	No less than £1,000,000

- (b) 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 Council and to any employee of the Council.
 - to the employees of the Contractor.
 - to any other persons
- (c) The Contractor shall prior to the commencement of the Contract, 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.
- (d) 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.

- (e) 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 Council shall be entitled to terminate the Contract forthwith and to recover from the Contractor the amount of any loss resulting from such termination, if:

- (a) 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
- (b) for having done or forborne to do any action in relation to the Contract or any other Contract with the Council; 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
- (c) in relation to any Contract with the Council the Contractor or person employed by him or acting on his behalf shall: -
 - (i) have committed any offence under the Prevention of Corruption Acts 1989 to 1916.
or
 - (ii) have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

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 Council.

10. LIABILITY OF COUNCIL

To the extent permitted by the Unfair Contracts Terms Act 1977 the Council shall not be liable for any loss or damage whether caused by the negligence of the Council, its servants or agent in any way whatsoever and the Council 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 Council 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 Council when entering into this Contract.

11. UNSATISFACTORY EMPLOYEES

If, with reasonable justification, the Authority 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 Authority 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. TERMINATION

- (a) 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 Authority, or for showing or forbearing to show favour, or disfavour, to any person in relation to the Contract, or any other Contract with the Authority, 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 Authority, 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 Acts 1889 to 1916 or shall have given any fee or reward to any officer of the Authority, 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 Authority shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such termination.
- (b) 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 1986.

- (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 1986, 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 rights or remedies under the Contract, terminate the Contractor's employment under the Contract by notice in writing having immediate effect.

- (c) If the Contractor's employment is terminated as provided in Condition 17(b), the Authority 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 Authority;
 - (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 but for Condition 17(c)(i) have been due from the Authority 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 Authority resulting from or arising out of the termination of the Contractor's employment. Such loss or damage shall include the reasonable cost to the Authority 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 Authority shall be recoverable as a debt, or alternatively, the Authority shall pay to the Contractor any balance shown as due to the Contractor.
- (d) The rights of the Authority under Condition 17 are in addition to and without prejudice to any other rights the Authority may have whether against the Contractor directly or pursuant to any guarantee, indemnity or bond.

13. ARBITRATION

- (a) All unresolved disputes between the parties arising out of or connected with this Contract or the performance of the Services by the Contractor shall be referred to an Arbitrator to be agreed upon by the parties or in default of such agreement to be nominated by the President of the Institute of Arbitrators or a person appointed by him.
- (b) Any award or decision of such Arbitrator shall be final and binding on the parties hereto.

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 perform the Services in whole or in part completely in accordance with the terms of the Contract, then without prejudice to any other remedy contained herein the Authority 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 Authority in so doing shall be paid by the Contractor to the Authority on demand or may be deducted by the Authority from any monies due or which may become due to the Contractor.

16. INSPECTION OF SITE, EXTENT AND NATURE OF SERVICES

- (a) 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
- (b) In the event of adverse weather conditions preventing the performance of the Services the Contractor with the prior consent of the Contract Administrator may modify his method of working.
- (c) 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.
- (d) 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 Authority'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: -

- (a) Work being performed pursuant to the contract.
- (b) Records or documents in the possession of the Contractor in connection with the performance of such work.

18. POST INSTALLATION AND MAINTENANCE

- (a) On the satisfactory completion of all site operations the Contractor shall provide for and give to the Contract Administrator, a complete set of maintenance instructions and tools for the individual items that have been installed.
- (b) The Contractor shall on submission of his invoice, provide Guarantee Certificates covering the life of the guarantee periods identified in the Tender Documents.

- (c) Final payment of the Contractor's invoice shall be made on the provision of a Post Installation Inspection Certificate from an approved RPII or ROSPA Inspector. This certificate will identify that all works have been completed to the current British and European Standards and our specification, and any remedies or actions detailed in the report, regardless of risk, have been satisfactorily addressed.

SAMPLE

EXECUTION OF THE AGREEMENT

Signed on behalf of The Employer

Name: _____

Title: _____

Date: _____

Signed on behalf of The Principal Contractor

Name: _____

Title: _____

Date: _____