



Confidentiality Undertaking

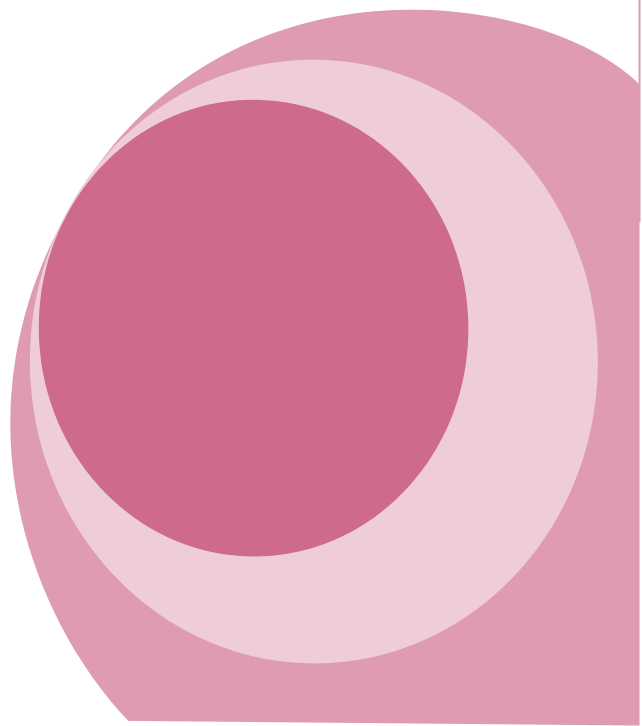
Government of Jersey

**Oakfield Internal
Alterations, Frame &
Fabric Building and
External Works**

**Supply of Main
Contracting Services**

Ref: GOJ/2021/3879

29th November 2021



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[Instructions for completing please:

- complete the text required between the double arrows (<< / >>), and
- delete all red type text between square brackets ([/]), ensuring all information filled-in is completed in black type, then
- sign and return to the Contracting Authority via the Portal.]

GOVERNMENT OF JERSEY – Oakfield Sports Centre Internal Alterations, Frame & Fabric Building and External Works

Procurement of the Main Contracting services (the “Procurement”)

Confidentiality Undertaking (the “Undertaking”)

to GOVERNMENT OF JERSEY

THIS UNDERTAKING is given on << / >> 2021

BY:

(1) << / >> (the “**Applicant**”)

TO:

(2) the Government of Jersey whose place of business is 19 – 21 Broad Street, St Helier, Jersey JE2 3RR (the “**Contracting Authority**”).

BACKGROUND

- A. The Contracting Authority will make available information and documentation issued by the Contracting Authority about the Procurement (the “**Information**”) to the Applicant.
- B. The Applicant may then review the Information and / or submit a response to the Information if requested or invited as a part of the Procurement.
- C. The Contracting Authority may provide further Information if requested or invited as a part of the Procurement.
- D. The Applicant acknowledges that Information disclosed by the Contracting Authority in respect the Procurement will be of a confidential nature and that unauthorised disclosure of that information could be seriously prejudicial to the interests of the Contracting Authority.
- D. On that basis, the Applicant gives the following undertaking to the Contracting Authority.

THE UNDERTAKING

1. For the purposes of this Undertaking,
 - 1.1. “**Information**” means any information in whatever form (including without limitation, in written, oral, visual or electronic form or on tape or disk) disclosed to the Applicant and relating to the Programme whether or not in the case of written materials or any materials in electronic format, they are or were marked as confidential and whether or not, in the case of other information, such information is identified by the Contracting Authority as being confidential.

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- 1.2. **“Procurement”**, **“Programme”** shall have the same meanings as they have in the Invitation to Tender (the **“ITT”**) that will be issued by the Contracting Authority to the Applicant.
2. The Applicant will keep confidential all Information that it receives, and the Applicant will not directly or indirectly whether through any person, firm, company, or other entity, without the Contracting Authority's prior written consent:
 - 2.1. disclose any Information to any third party; or
 - 2.2. make any statement to or write or communicate with the media in respect of Information or publish in any way the same;and further the Applicant will:
 - 2.3. use all Information only for purposes relating to considering and evaluating the Programme, and negotiating with the Contracting Authority in respect of the Programme;
 - 2.4. keep all Information secure and ensure that no Information that is personal data (as defined in Data Protection (Jersey) Law 2018) is transferred;
 - 2.5. process any Information that is personal data in accordance with the provisions of Data Protection (Jersey) Law 2018 and only in accordance with the written instructions of the Contracting Authority;
 - 2.6. limit access to Information to those of the Applicant's employees and colleagues who necessarily require the same;
 - 2.7. inform each person to whom Information is disclosed of the restrictions contained within this Undertaking as to use and disclosure of such Information and ensure that each such person observes such restrictions; and
 - 2.8. where the Applicant intends to disclose Information to a third party with the Contracting Authority's prior written consent pursuant to clause 2.1, ensure that the third party agrees to the terms of this Undertaking (in the favour of the Contracting Authority) as a condition of accessing the Information;
 - 2.9. inform the Contracting Authority immediately on becoming aware or suspecting that the Information has been disclosed to, or otherwise obtained by an unauthorised third party.
3. The Applicant will not be restrained from using or disclosing any Information which:
 - 3.1. the Applicant is authorised to use or disclose by the Contracting Authority;
 - 3.2. has entered the public domain unless it enters the public domain as a result of an unauthorised disclosure by the Applicant or anyone else employed or engaged by it;
 - 3.3. the Applicant is required to disclose by law or regulation, including any requirements for disclosure under Freedom of Information (Jersey) Law 2011 or by the rules of its professional body (where it has such authority), having first consulted the Authority to ensure that disclosure would not be a breach of this Undertaking;
4. The Applicant will destroy or return to the Contracting Authority on demand any document containing Information and any copy which has been made, and expunge all such Information from any computer system, disk or other device containing it.
5. The Applicant shall comply with any instructions issued by the Contracting Authority in its absolute discretion in relation to the storage, viewing, copying or destruction of Information in hard copy or electronic format.
6. The Applicant acknowledges that the Information supplied by the Contracting Authority does not purport to be all inclusive and that no representation or warranty is made by any person as to the accuracy,

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reliability, or completeness of any of such Information. The Applicant agrees that the Contracting Authority shall have no liability to the Applicant resulting from the Applicant's reliance on Information and neither shall the Contracting Authority owe any duty of care to the Applicant.

7. Nothing in this Undertaking shall impose any obligation on either party to continue discussions or negotiations in connection with the Programme.
8. All rights in the Information are reserved and none of the Information shall be a property of the Applicant. The disclosure of the Information to the Applicant shall not give the Applicant or any other person any licence or other right whatsoever in respect of any Information beyond the rights expressly set out in this Undertaking.
9. The Applicant accepts that any breach of this Undertaking could cause injury to the Contracting Authority for which (without limitation of the relief available to the Contracting Authority) monetary damages may not be an adequate remedy. In the event of a breach or threatened or possible breach by the Applicant, the Applicant accepts that the Contracting Authority shall, without prejudice to any other rights and remedies it may have, be entitled to the granting of equitable relief (including, without limitation, injunctive relief) in any court of competent jurisdiction. The Applicant shall reimburse the Contracting Authority for any costs, claims, demands, or liabilities arising directly or indirectly out of such a breach on an indemnity basis, including without limitation all legal and other costs incurred in enforcement. Nothing contained in this Undertaking shall be construed as prohibiting the Contracting Authority from pursuing any other remedies available to it for such a breach.
10. Except as expressly provided in this Undertaking, the rights and remedies provided under this Undertaking are in addition to, and not exclusive of, any rights or remedies provided by law.
11. For the purpose of investigating any breach or threatened or possible breach of this Undertaking, the Applicant will give the Contracting Authority direct access upon demand to any of the Applicant's premises or information which may in the Contracting Authority's opinion (such opinion being held in its absolute discretion) contain Information or any communications with any third parties in respect of Information.
12. This Undertaking constitutes an agreement between the parties which supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, arrangements, and understandings between them, whether written or oral, relating to its subject matter; and further shall remain in place unless and until agreed otherwise between the parties.
13. Each party acknowledges that in entering into this Undertaking it does not rely on and shall have no rights or remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. No party shall have any claim for innocent or negligent misrepresentation based upon any representation, warranty, or other statement in this Undertaking.
14. This Undertaking (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Undertaking or its formation or termination) shall be governed by and construed in accordance with Jersey law and the Applicant irrevocably submits to the exclusive jurisdiction of the Courts of the Island of Jersey.

SIGNED for and on behalf of the Applicant

By (Authorised Signatory)

<< / >> [NAME OF INDIVIDUAL, POSITION]