**Adjudication Referral Document**

**September 2019**

**Limited**

 **v**

**XXX**

**Keith Kelliher**

**Kelliher & Associate Quantity Surveyors**

**Office Unit 9 Swanward Business Centre,**

**Ballymount Road Upper**

**Ballymount, Dublin 24**

**T: +353 1 4424624**

**M: +353 86 2154997**

**E:** info@quantitysurveyor.ie

kkelliher@adjudicator.ie

**Package**

**Contents**

**1. Introduction**

**2. Parties Referred to in this Document**

**3. Relevant Details of the Payment Dispute**

 **a. details of the amount in dispute**

 **b. details of the nature of the dispute**

 **c. details of the site address of the dispute**

**4. Notice of Intention**

**5. The Contentions relied upon**

**6. The Construction Contract**

**7. Conclusion**

**Appendix A –**

**Appendix B –**

**Appendix C –**

**Appendix D –**

**Appendix E –**

**Appendix F –**

**Appendix G –**

**Appendix H –**

**Appendix I –**

**Appendix J –**

**Appendix K –**

**Appendix L –**

**Appendix M –**

**Appendix N –**

**Appendix O –**

**Appendix P –**

**Appendix Q –**

**Appendix R –**

**Appendix S –**

**Appendix T –**

1 Introduction

This referral document relates to a dispute for non-payment of a final account submitted on the back of a breach of contract between a sub-contractor,………

The Referring Party were contracted to complete works at the Project, commenced onsite and completed less than 40% of the works when their Contract was descoped without agreement and a third party Contractor was engaged to complete the works on behalf of the Responding Party. This constitutes repudiation of the contract by the Responding Party. The Referring Party submitted a claim for the costs associated with this breach and this Adjudication is now required to resolve the dispute arising from this breach of Contract.

2 Parties Referred to in this document

The Following are the details of each party to the construction contract referred to in this document.

 **Referring Party Details**:

Name:

 Address:

 Contact Name

 Contact Email

 Contact Mobile

Status Sub-Contractor,

 Contact Person for Adjudication Process Keith Kelliher (Kelliher & Associates)

 Email kkelliher@adjudicator.ie

 Telephone 01 4424624 / 086 2154997

**Responding Party Details**:

Name:

Address:

 Contact Name

Contact Email

 Contact Mobile

Status Main Contractor on project

 Contact Person for Adjudication Process

Contact Email

 Contact Mobile

3 Relevant Details of the Payment Dispute

1. Details of the Amount in dispute

This dispute arises under a construction contract as defined in the Construction Contracts Act 2013. The dispute relates to a payment dispute for construction operations which arises out of a breach of Contract on behalf of the Responding Party and the failure of the Responding Party to make payment of the costs and expenses that arise out of said breach.

The amount in dispute is XXXXXXXXXXXXXX excluding VAT.

In accordance with revenue rules, the Responding party (as the Main Contractor) are the principal contractor on the project and they are therefore responsible for return of the Vat liability on the project.

This dispute relates to a failure to make a payment in respect to the costs and expenses arising from a breach of Contract by the Responding Party which now forms the basis of a payment dispute.

1. Details of the Nature of the dispute

On the 19th October 2018, under cover of a letter of appointment (which is dated 27th August 2018), xxxxxx were appointed as a domestic subcontractor to xxxxx for the installation of all xxxxxx required in the Construction …….

The agreed Contract value of the works was €excluding VAT.

The letter of appointment outlines that the Contract between the parties is based on the conditions of the letter of appointment and in accordance with the subcontractor amended version of the main contract terms. The Main Contract terms are described in Appendix G of the letter of appointment as the RIAI Articles of Agreement (without quantities) 2012 Edition (the “General Conditions”) and Schedule of Amendments.

The project scope included for a

The original contract programme (dated xxxxxx, a copy of which is included in Appendix XXX) had a commencement date for the works as the xxxxxx. Works commenced as per the programme but delays to the Referring Parties works occurred from the outset of the project due to the actions and inactions of others including poor site management, inadequate groundworks and unavailability of materials and plant to be supplied by others.

xxxxx commenced on the project on the xxxx and commenced their works, as directed, with the xxxxxx aspect of the project. The xxx element of the works was to follow on completion of the xxxxx.

On the xxxxxxx, the Referring Party were requested to attend a meeting in the site office of the Responding Party where they were told that due to the xxxx requiring additional room to manoeuvre and the need for an additional lay down area, the xxxx aspect of the works would be delayed. In addition the Referring Party were told that they would receive payment up to date on their account to facilitate cashflow in the interim.

On the xxxxx, the Responding Party issued a “Subcontractor Statement of Final Account” for the works with a specific request to have it signed and returned. The Referring Party reverted to outline that they did not accept that this is a final account, given less than half the Contract works were completed and that they would not sign the document. The Responding Party reverted on the xxxxxx to state that no payment would be released until the final account was signed.

On the xxxx, Kelliher and Associates on behalf of the Referring Party wrote to the Responding Party in rejection of the attempt to determine the Referring Party’s Contact without any cause under the said contract.

On the 2xxx the Referring Party attended a meeting where they were told by the Responding Party that the xxxxxx design was changing and that the works may be retendered.

On the xxxxxx, the Referring Party contacted the Responding party for an update in respect to the xxxxx works so that resources could be programmed. The Responding Party reverted in writing to outline incorrectly, that at the meeting on the xxxxx, the Referring Party were notified that their works were been descoped and that they had requested a submission one expenses.

It is noted for record that the Contract between the parties does not contain a right on behalf of the Responding Party to omit works or to terminate the contract for convenience. It is noted that no official termination of the Contract has been made by the Responding Party however the Responding Party by reducing the scope of work to be performed in the future under the contract to nil have affectively terminated the contract.

The Responding Party have subsequently employed the services of a third party subcontractor to complete the xxxxx works. The Responding Parties omission of works in order to re-tender the works is a clear repudiation of the Contract. The Contract between the parties does not clearly and expressly empower the Responding Party to do so, and no distinct agreement was discussed or agreed with the Referring Party to omit the work. This omission has had a substantial negative economic effect on the Referring Party, who had mobilised significant resources and incurred significant costs in preparation for the works that could have been used profitably elsewhere.

The Referring Party, on the XXXXXXX submitted a detailed claim for this breach of Contract to the Responding Party including claims against the following headings:

* Outstanding Sums on works completed
* Additional Preliminaries and Design Costs for Descoped Works
* Additional Preliminaries due to ongoing Delays during works
* Reduced Labour and Piecemeal construction
* Waste and Abortive Materials
* Loss of overhead and contribution
* Loss of profit
* Finance Charges

The Responding Party have failed to make payment of the monies due which are now in dispute.

This dispute is now the subject of Adjudication under this referral.

1. Details of the Site Address of the Dispute

The dispute arose on works being completed at a property known as.

4 Notice of Intention

The Notice of Intention (copy included in Appendix A) was served on the Responding Party on the XXXXXXXXX.

The Notice of Intention was served by email to the quantity surveyor responsible for the project and copied by registered post to the Responding parties head office address as noted in this referral.

5 The Contentions to be relied upon

5.1 The following is a detailed outline and timeline of events which fully details the issues, facts and contentions on which the referring party will rely upon in this adjudication.

5.2 The repudiatory breach of contract by the Responding Party as dealt with and outlined in Section 3(b) above has resulted in the following items of loss and expense. The Referring Party have compiled their claim over the following headings and will deal with each in turn in the following document:

* Outstanding Sums on works completed
* Additional Preliminaries and Design Costs for Descoped Works
* Additional Preliminaries due to ongoing Delays during works
* Reduced Labour and Piecemeal construction
* Waste and Abortive Materials
* Loss of overhead and contribution
* Loss of profit
* Finance Charges

**Outstanding Sums on Works completed**

**Additional Preliminaries and Design Costs for Descoped Works**

**Additional Preliminaries due to ongoing Delays during works**

**Reduced Labour and Piecemeal construction**

**Waste and Abortive Materials**

1. .

**Loss of overhead and contribution**

**Loss of Profit**

**Finance Charges**

**Summary**

In summary the total value of the Referring Parties Claim is as follows:

6 The Construction Contract

A Copy of the Contract between the parties is included in Appendix XXXXX of this Referral. It is therefore clear that a construction contract exists, that the contract was for construction operations and that a clear payment dispute has crystallised from said works.

7 Conclusion

The Referring party were contracted to complete xxxx works to the xxxxx Project on behalf of the Responding party. These works were commenced, progressed and Payments were sought in accordance with the Contract. The Responding repudiated the Contract by descoping the works and employing a third party contractor to complete the works without agreement of the Referring Party. This resulted in substantial additional costs to the Referring Party which are sought through this Adjudication.

The Referring Party therefore claims for the value noted in this Referral document of €xxxxxx, interest on the outstanding sums due from the date they fell due, an award for the Adjudicators fees against the Responding party or for any other costs or any such value as the Adjudicator may decide.