**Agreement form for agreement on technical consultancy services and assistance in accordance with ABR 18**

The form is used together with the General Conditions for Consultancy Services and Assistance, ABR 18.

The agreement form has been developed by The Danish Association of Architectural Firms and The Danish Association of Consulting Engineers, FRI.

|  |  |  |
| --- | --- | --- |
| **1.** | **Parties** | |
|  | 1.1 | The undersigned  represented by: |
|  |  | hereinafter referred to as the ”Client”, and |
|  | 1.2 | The co-signatory  represented by: |
|  |  | hereinafter referred to as the (full-service) Consultant, have entered into the following Agreement: |
| **2.** | **The Task** | |
|  | 2.1 | The Agreement comprises technical consultancy services and assistance in relation to |
|  | 2.2 | The following subconsultants are involved in the Project |
|  | 2.3 | The (full-service) Consultant’s key employees: |
|  | 2.4 | The Client’s employees who represents the Client in dealings with the Consultant in accordance with ABR 18, Section 22 |
|  | 2.5 | The Client’s other consultants for the task |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **3.** | **The Agreement** | | | |
|  | 3.1 | | Prioritised hierarchy in the event that disagreement should arise between the provisions of the Agreement documents:  The Consultant Agreement  The Danish Association of Architectural Firms and FRI’s Description of Services for Building and Landscape 2018 with the amendments, addenda and specifications specified in Annex 1.  ABR 18 with the amendments and addenda specified in this Agreement, cf. Annex 2.  Any IKT specification, cf. Annex 3. | |
|  | 3.2 | | The following Client materials | |
|  | 3.3 | Authority in accordance with ABR 18, Section 26 | |
| **4.** | **Services to be provided by the Consultant, cf. Annex 4** | | |
|  | Scope of:  4.1 Project planning management, cf. ABR 18, Section 23  Construction management  Technical supervision  4.2 Organisational form of construction  4.3 Functional tender  4.4 Options | | |
| **5.** | **The Client’s services** | | |
|  |  | | |
| **6.** | **Deadlines in accordance with the overall time schedule, cf. Annex...** | | |
|  | 6.1  6.1.2  6.1.3  6.1.4  6.1.5  6.1.6 | | Overall time schedule  Deadline for the services plan  Deadline for the Client’s decisions and delivery of materials  Deadline for the Client obtaining regulatory approvals  Any other interim deadlines  Expected end time for the completion of the construction | |
| **7.** | **Finances** | | |
|  | 7.1  7.2  7.3 | | The financial framework of the Project, cf. ABR 18, Section 4 (2) (c)  The overall financial framework of the Project, cf. ABR 18, Section 4 (4) (a)  Budgetary assumptions and risks for both the financial framework and  the overall financial framework | |
| **8.** | **Fee** | | |
|  | 8.1  8.2 | | Type of fee and rates  Index  The Consultant’s hourly rates or fixed fee are indexed, cf. ABR 18, Section 33, in accordance with Statistics Denmark’s quarterly index of average earnings in companies and organisations by industry and seasonal adjustment (ILON12) with MA Consultancy etc. as the selected industry. | |
| **9.** | **Expenses**  In accordance with ABR 18, Section 33 (7) cf. section 34 (4). | | |
|  |  | |  | |
|  | |  | | | |
| **10.** | **Payment of fee and expenses**  In accordance with ABR 18, Section 34.  Choose:  Payment Plan  A/C payment  Interest in accordance with ABR 18, Section 35 (2). | | |
|  |  | |  | |
|  | |  | | | |

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **11.** | **Responsibility**  The Consultant’s total liability according to ABR 18, Section 50 (4) is, regardless of the number of damages, limited to | | | | | | | | |
| **12.** | 1. 2 X the agreed upon fee, however, at the least DKK 2,500,000 through insurance coverage with ongoing liability coverage.   At the signing of the contract the liability amounts to DKK \_\_\_\_\_\_\_\_\_  NB! The liability may, cf. ABR 18, increase if the fee increases at a later time.  **OR**   1. DKK \_\_\_\_\_\_\_\_\_ for damages to property and DKK \_\_\_\_\_\_\_\_\_ for damages to persons if project liability insurance has been taken out (i.e., project specific insurance, also known as object insurance, project insurance or project liability insurance).   If the project liability insurance covers more contracts than this one, the Consultant liability is further limited to the cover amount remaining on the project insurance at any time.  **Insurance**  The Consultant has taken out consultancy liability insurance with | | | | | | | | |
|  |  | |  | | | | | | | |
| **13.** | **Disputes**  In accordance with ABR 18 chapter J. | | | | | | | | |
|  |  | |  | | | | | | | |
| **14.** | **Special provisions** | | | | | | | | |
|  |  | |  | | | | | | | |
|  |  | |  | | | | | | | |
| **15.** | **Annexes** | | | | | | | | |
|  |  | |  | | | | | | | |
|  | |  | | | | | | | | | | |
|  | |  | | | | | | | | | | |
|  | |  | | | | | | | | | | |
|  | |  | | | | | | | | | | |
|  | |  | | | | | | | | | | |
|  | |  | | | | | | | | | | |
|  | |  | | | | | | | | | | |
| Date | | | |  | Client |  | Date |  | Consultant | | |

**Instructions for the agreement form for agreements on technical consultancy services and assistance in accordance with ABR 18**

Developed by FRI (The Danish Association of Consulting Engineers) and The Danish Association of Architectural Firms.

**General**  
The agreement form and the following instructions have been designed for agreements on both joint consultancy services and full-service consultancy services. In the instructions, conditions that specifically need to be observed in connection with these are explained. ABR 18 does not apply for agreements with consumers, but between all other types of clients and consultants, e.g., architects, engineers, and landscape architects. The conditions in ABR form a coherent set of contract terms that regulate the relation between the Parties with provisions that are balanced in relation to the Parties’ interests, and that ensure a fixed and familiar framework for the Parties’ legal relationship. In the event of deviations, there is a risk of shifting the balance between the Parties of the construction work. Therefore, the provisions should be used in their entirety, and the Client and the Consultant should be very reluctant to depart from ABR 18, see also the Ministry of Housing's circular letter of 1990-02-28 for ministries, agencies and municipal councils, Circular no. 120 of 1990-06-26 on urban renewal, Executive Order no. 500 of 2002 (general housing and supported private cooperative housing, etc.), according to which state or government-supported buildings may not deviate from the AB-rules unless there is a special justification.

**re. 1.1**  
If it has been agreed that one or more persons are responsible for the agreed service, state the name(s) here. According to ABR 18, Section 22, it must be stated in the agreement who represents the Client in dealings with the Consultant.

**re. 1.2**  
In case of joint consultancy, cf. ABR 18, Section 10 (2), state the name(s) and address(es).

In the case of full-service consultancy, cf. ABR 18, Section 10 (1), the name and address of the lead consultant/group/consortium and the group leader must be stated.

**re. 2.1**  
State information for the individualisation of the task, e.g., the name of the project, location and gross occupancy area, as well as whether it concerns renovation, rebuilding, extension or new construction.

Specify the delimitation of the professional scope of the consultancy services, e.g. architectural services, or for engineers clarify whether the service relates to plumbing, electricity, constructions, environment, etc. It should also be clarified here if a natural part of the service is not provided by the Consultant but by the Client themselves or by another consultant.

**re. 2.2**  
The subconsultants contracted by the Consultant in connection with the task shall be specified here, cf. ABR 18, Section 7.

**re. 2.3**

If the following have been appointed:

As project planning manager, cf. ABR 18, Section 23, we have appointed: […………………………]

As construction manager, cf. AB 18, Section 24, we have appointed: […………………………]

As other “key persons”, we have appointed: […………………………]

**re. 2.4**  
According to ABR 18, Section 22, the Client must state in the agreement who represents the Client in dealings with the Consultant. The Consultant should make sure that the specified person has the authority to enter into binding agreements with the Consultant on behalf of the Client: […………………………]

**Re. 2.5**

The Client has assigned the following other consultants to the project:

[Company]

[Address]

[Postal code and city]

[CVR (Company Registration)/no.]

**re. 3.0**

In order for the agreement to be as clear as possible, the Parties should carefully consider which documents should be listed here as elements of the contractual basis. In case of disagreements, note the hierarchy of the documents, cf. ABR 18, Section 4 (5). If there is deviation from ABR 18, this should be clearly stated with reference to the respective provisions in Annex 1.

**Re. 3.1**

Reference has been made to The Danish Association of Architectural Firms and FRI’s description of services for Building and Landscape 2018 in the agreement form, but there may be other descriptions of services that are relevant, such as The Danish Association of Architectural Firms and FRI’s Description of Services for Building and Landscape 2013, which is enclosed as Annex 2.

If the parties have chosen not to use a description of services for the Agreement, it is very important that both Consultant and Client services are determined precisely and in detail in the Agreement, so that mutual expectations are in place.

It may also be relevant to refer to an ICT specification, cf. Annex 3.

**re. 3.2**  
The basis for the task must be stated here, i.e., the Client's materials that are a prerequisite for the task, such as drawing materials, feasibility studies, building information, already available project materials and requirement specifications/construction programs, as well as other special requirements that apply to the Client's business and/or task.

The basis for the project must be stated unequivocally, including the Client's prerequisites regarding schedule, budget, risk assessment and so on.

If the Client needs to provide further materials, this is indicated in paragraph 5.

**re. 3.3**  
The Consultant's authority is specified here if it deviates from ABR 18, Section 26.

**re.  4**

If the Agreement includes a tender, the consultancy phase and possibly the form of tendering that should form the basis of the tender must be specified.

ABR 18 presupposes that the services are specified so that there is clarity as to which services are needed in the specific case, i.e., that standard services may be deselected and special services may be selected. The project-specific description of services may, optionally, be enclosed as Annex 4.

**re. 4.1, 4.2 and 4.3**

The scope of the services that the Consultant must provide is stated here, cf. ABR 18, Section 4 (2) (a). In order to arrive at matching expectations, it is important to clarify the scope of, e.g., building management and professional supervision, cf. ABR 18, Sections 24 and 25.

If there is a requirement for extra services mentioned in the Danish Association of Architectural Firms and FRI’s Description of Services for Building and Landscape 2018 under Chapter 9, these must be clarified so that the Parties are in agreement on what is to be delivered. Otherwise, the Consultant is entitled to unilaterally determine the scope of the services in relation to the tasks described in the Description of Services for Building and Landscape 2018, ch. 9.

If the Consultant is obliged to use concepts, e.g., document templates and financial management tools, as well as various instructions, etc., made available by the Client, these must be specified in the agreement.

If the Consultant’s assistance is remunerated according to two or more different principles for fee calculation, cf. paragraph 8, the services that are remunerated according to the same principles shall be stated collectively.

**re. 4.4** Under this point, the scope of the functional tender must be determined.

**re. 4.5** If the Client is able to predict, but has yet to clarify, a need for an extension/reduction of the Consultant’s assistance, a provision may be included regarding a possible extension of the assistance in the form of options. In the provision it is also stated whether the expansion shall happen by annotation to this Agreement or through another written statement, e.g. in the form of an addendum, including a description of how the fee is determined.

**re.  5**  
As the basis for the Client's deliveries, the Description of Services for Building and Landscape 2018, paragraph 1.1.8 and associated processes are reviewed for the purpose of clarifying the Client's services, as it may be necessary to provide specific Client services. Likewise, contact with neighbours, authorities and users – including applicable deadlines – may also require special agreement.

**re.  6**  
Agreed deadlines for the Consultant's services and for the Client's submission of materials, including decisions that are prerequisite for this, are stated here. The overall time schedule and the deadline for the preparation of the service plan, cf. ABR 18, Section 4 (2) (g) and Section 12 and the Client's deadlines for making decisions, cf. ABR 18, Section 4 (3), regulatory approval, etc. must therefore be stated here. If daily penalty has been agreed upon, cf. ABR 18, Section 39, the size and possible interim deadlines must be stated under this point. It is recommended that the Parties' deadlines be incorporated into a shared annex that is regularly updated.

**re. 7**  
The Agreement must contain information on both the "financial framework" and the "overall financial framework" when it comes to building and construction projects.

The difference is that the financial framework contains costs that govern the Consultant's project planning, i.e., the framework set by the Client for the total expenses in connection with the Consultant's execution of the task including remuneration, tax, and service fees.

In the case of project planning of building and construction projects, the overall financial framework, cf. ABR 18, Section 4 (5), must also be stated. In addition to project planning and execution, the overall financial framework includes other consultancy services that the Consultant does not have direct influence on, e.g., costs for land acquisition and development.

ABR 18, Section 46 contains a re-projection clause, which may entail that the Consultant, if he is to carry out budgeting, must reproject, free of charge, if the contractor's offer exceeds the latest updated and approved budget. It is a prerequisite for being able to assess whether the Consultant ought to have assumed the exceedance that the Parties have aimed at a fair and realistic budget.

The budgetary assumptions must, therefore, be stated including relevant indices for building costs, the agreed upon level of quality and the risks that have been calculated in the financial framework. For each estimate, information on which items the estimate includes, how they have been calculated and the intended form of construction must be stated.

To the extent that the contractor is not entitled to indexing the contract price (or possibly is subject to a fixed price period), it should be taken into account that the contractor will, in connection with his tender offer, include an additional price corresponding to the lack of indexing. Usually, the contractor's additional price corresponds to the expected indexation from the tender until the central point of the execution of the construction, where the majority of the contractor's expenses are incurred. In construction cases where the Client's financial framework is continuously projected according to an index relevant to the building case, it may thus occur that the contractor's fixed price offer exceeds the financial framework on the day of the tender, but that this excess has been offset at the time when the payment to the contractor must be made.

In construction cases where the Client's financial framework follows a (partially) politically-determined index, it should be clarified whether the Consultant – on a purely budgetary level – must operate according to the expected indexation of the financial framework or, instead, according to the expected price development of an index relevant to the building case. The Consultant should not assume the budgetary risk of exceeding a financial framework not indexed by an index relevant to the building case.

Prior to the start of the project planning, the index according to which the Consultant must manage their budget must be determined, and whether, in connection with the tendering procedure, a smaller excess corresponding to the expected indexation from the tendering procedure until the central point of the execution shall be accepted. The latter is only relevant if the contractor is wholly or partly subject to fixed price terms.

The problems arising from indexing may be illustrated as follows:

The Agreement may stipulate a variation limit for the estimate and expenses for unforeseen costs. The Parties should prepare a joint annex confirming the content and prerequisites of the financial framework and the overall financial framework, which is updated on an ongoing basis.

**re. 8**  
The Parties agree specifically on which fee structure should be used, possibly a combination of several structures. It should be specified which services are covered by which types of fees, e.g., that a fixed fee has been agreed for the main service and that additional works and/or supervision is paid on account. Regardless of the type of fee, changes to the scope of the service entail adjustment of the fee.

The types of fees may, for example, be:

* Fixed fee

Fixed fee has been agreed at: […………………………]

* Fee according to construction costs, where the Consultant receives a percentage fee on the realised fee-bearing construction costs. By fee-bearing construction costs refers to the realised construction costs as calculated in the final construction accounts, however, at the latest the building accounts that are available at the 1-year review. Connection fees, consumption of water, heat and electricity are not included. Also, no fee is charged for building permits, interest and insurances, fixtures/Client deliveries, etc. that are not covered by the Agreement or for construction costs resulting from the Consultant's project errors or omissions.
* Fee according to invoice

It is agreed between the Parties that the fee for the Consultant, including subconsultants, shall be settled according to invoice - possible within a fixed limit of DKK ………… ex. VAT. The Client may request an estimate or possibly determine a cap on the fee.

Hourly rates are as follows, ex. VAT, with a stipulated number of hours:

Owner/partner/specialist: DKK [……] per hour, alternatively for X hours)

Project planning manager/construction manager: DKK [……] per hour, alternatively for X hours)

Architects, engineers and building constructors (Academic workers) (DKK [……] per hour, alternatively for X hours)

Hourly rates are indexed according to ABR 18, Section 33. For example, as the basis for the consultancy fees, Statistics Denmark’s quarterly index of average earnings in corporations and organisations by industry and seasonal adjustment (ILON12) with MA consultancy etc. as the selected industry is used.

If a framework has been agreed, the Consultant undertakes to continuously monitor compliance with the framework. If the framework is exceeded due to circumstances that are not due to the Consultant's affairs, the Consultant undertakes to notify the Client so the Client can decide on the necessary measures, possibly expanding the framework.

If the agreement is designed with a view to a possible extension of the assistance, an agreement on the fee for supplementary services should be included in an addendum to the agreement.

The Parties should agree on whether the fee should include remuneration of travel time which does not fall under working time between the Consultant's workplace and the Client's address and the construction site. Or whether travel time should be calculated and invoiced separately, e.g., because the amount of travel time is difficult to predict.

**re.  9**  
What constitutes an expense is stated in ABR 18, Section 33 (7). If you would like to add amendments/addenda, these must be specified in the Agreement.

It is recommended to consider the payment of travel expenses in connection with the task's execution, including mileage allowance, air/train travel, board and lodging in connection with trips, meetings, etc.

**re. 10**  
The fee may be required to be paid in arrears on a monthly basis, cf. ABR 18, Section 34 (1), unless another payment plan has been agreed upon, cf. ABR 18, Section 34 (2).

In case of late payment, interest on arrears and fees are calculated according to the provisions in the Danish Interest Act, cf. Executive Order 459 of 13 May 2014.

**re. 11**  
ABR 18’s rules concerning liability in cases of errors and omissions make it unnecessary to include further liability provisions in the Agreement. An independent statement that the Consultant is liable in accordance with the general rules of Danish law on liability is not in accordance with ABR 18’s section G on liability.

The limits of the Consultant’s financial liability are set out in ABR 18, Section 50. If project liability insurance has been agreed, liability is limited to the project liability insurance sum. If no project liability insurance has been taken out, liability is limited to 2 times the remuneration sum, though at the least DKK 2.5 million. In order to avoid subsequent discussions on the size of the fee, it is appropriate to state a specific amount, corresponding to twice the budgeted remuneration for the specific project if it exceeds DKK 2.5 million. Otherwise, DKK 2.5 million shall be stated.

Note that the Consultant's liability will be higher than the original amount if ongoing insurance has been agreed, and the final fee will be higher than the originally-agreed fee and will thus exceed DKK 1,250,000 ex. VAT.

If a project-specific insurance (project liability insurance) has been agreed upon and this insurance covers more contracts than the present one, there must be an additional limitation of liability corresponding to the coverage sum that remains at any time on the project liability insurance, so that the Consultant is not left with an uncovered liability as a result of (other parties’) use of the coverage.

**re. 12**  
The Client should make sure in the Agreement that the task is covered by an ongoing liability insurance, cf. ABR 18, Section 8, or alternatively by a project liability insurance, possibly by stating the name of the insurance company and the policy number.

**re. 13**  
Since ABR 18, section J, is comprehensive, further additions should not be made.

**re. 14**  
Here, provisions may be added that were not possible to incorporate under one of the previous paragraphs or explanatory comments.

The need for special consultancy services that may be considered necessary is determined, cf. ABR 18, Section 9 (2). Furthermore, agreement is made on whether this assistance is paid directly by the Client or as an expense, cf. ABR 18, Section 33 (7).

**Re. 15**

Any annexes should be dated and enclosed with the Agreement.

In circumstances where the Client cannot with certainty be assumed to have the necessary knowledge of the contractual circumstances for the building, the Consultant should always enclose a copy of ABR 18 and the chosen descriptions of services for the Agreement. The Consultant should – before signing the Agreement – review the Agreement and the descriptions of services with the Client in order to ensure that they have understood the Agreement and the Annexes.