

## Latest news on SIA design contracts

The Swiss Society of Engineers and Architects (SIA) has for many years provided architects and engineers with tried and tested documents to use as a basis for their contracts. The SIA 1001/1 Planner and Construction Management Contract serves as the base document. It is usually used in conjunction with the services and fees regulations (SIA LHO [Leistungs- und Honorarordnung] 102, 103, 105, 108).

### New SIA services and fees regulations

In September 2017, the Swiss Competition Commission (COMCO) took action against the previous SIA LHO; the COMCO was particularly disturbed by certain aspects of the fee model, which was based on building costs. In close cooperation with COMCO, the SIA in a first step worked on developing an interim solution. This will be superseded and replaced in 2020 by new versions of the SIA LHO.

The interim solution, which has been published since the end of October 2018 and applies as of November 2018 ([www.lho.sia.ch](http://www.lho.sia.ch)), is based on the previous concept but splits the previous regulatory content of the SIA LHO into two separate documents and makes adjustments especially to the fee models.

For one, the SIA LHO 102, 103, 105, 108 were reissued. They now include the following regulatory content:

- Art. 1 contains the General Contractual Terms and Conditions, which are unchanged from the previous edition of the SIA LHO (2014).
- Art. 2 describes the tasks and position of the planner – without any changes.
- Art. 3 describes the services provided by planners. The few changes relate to general planning and technical coordination: While the previous version of the SIA LHO (2014) suggested an additional fee for these functions, this point is left open in the new SIA LHO; stating that a fee is "to be examined".
- Art. 4 contains the detailed descriptions of services – likewise unchanged.

- Art. 5 introduces the subject of compensation with the corresponding principles. A few adjustments were made in this area: The (mandatory) stipulation that additional cost components (e.g. ancillary costs) must be compensated separately is no longer included. The same applies to compensation for travel time and for statutory surcharges – here too, separate rules are necessary, as there are no longer stated stipulations. Likewise, the percentage-based increases in compensation for planning consortia or general planner functions that were previously provided no longer apply; instead – as with the integration of sub-planners – any fee adjustment must be separately agreed by the parties.

For another, the SIA LHO are now supplemented with calculation aids. These calculation aids contain the detailed rules regarding the charging of fees based on time (Art. 6) and based on building costs (Art. 7). In contrast to the previous SIA LHO, a few adjustments were made in the new calculation aids:

- Art. 6 (time-based fees) omits references to additional cost components and to travel time. In addition, the previous requirements factor is deleted without replacement.
- Substantial changes were made to Art. 7 (fees based on building costs): The formula now no longer serves to calculate the average time spent but to estimate the quantile (in particular, the median) of the time spent. This then presents the users with a variation range within which the estimate of effort deemed to be correct for the project is then to be specified. Further adjustments are made to the descriptions of the degrees of difficulty, the adaptation factor, the team factor, and the factor for special services.

The calculation aid is supplemented by an online tool. This allows the estimates of effort (variation range) to be calculated using stored statistical data.

All the new documents are available in three languages (DE/FR/IT) on the SIA website [www.lho.sia.ch](http://www.lho.sia.ch) set up specifically for this purpose – all now free of charge.

The new base documents can be used with immediate effect for regulating the contractual relationships between planners (engineers and architects) and their clients. Of course, existing contracts that refer to the previous base documents remain valid; existing contracts need not be adapted.

### New SIA BIM Supplementary Agreement

Another new feature relates to the contractual treatment of BIM (Building Information Modelling), i.e. digital planning. At the end of 2017, the SIA published Fact Sheet 2051, the first comprehensive description of the BIM method in Switzerland. In Chapter 5 (Services), the Fact Sheet also addresses legal issues. The working group coordination digitisation of the central committee for regulations has now addressed these legal issues. In mid-June 2018, the SIA published the new BIM Supplementary Agreement (SIA 1001/11) developed by this working group along with a related commentary. Both documents are available free of charge on the SIA website ([LINK](#)).

The Supplementary Agreement is designed so that it can be used in addition to the traditional planner contract (contract form SIA 1001/1). The parties can enter into the SIA BIM Supplementary Agreement at the same time as the planner contract or at a later point if the additional BIM-specific services are only agreed during the course of the project. Once concluded, the SIA BIM Supplementary Agreement becomes an integral part of the planner contract. It takes precedence over the planner contract, including its components, to the extent that it deviates from the planner contract.

The SIA BIM Supplementary Agreement is broadly worded and largely dispenses with fixed contractual provisions. Rather, the Supplementary Agreement addresses the BIM-specific issues and gives the contracting parties options for choosing their contractual provisions. As regards its content, the Supplementary Agreement addresses the following issues:

Sec. 1: The parties must first agree on using the BIM method. The Supplementary Agreement attaches great importance in this regard to the client's information requirements (CIR). They are to contain the corresponding requirements (goals, work results etc.) and become an additional integral part of the contract.

Sec. 2.2: When using the BIM method it may be necessary that, unlike the usual SIA phased process, the planning services (which otherwise remain unchanged) be provided at a different time. For this purpose, services may be moved to other sub-phases. At the same time, the impact on fees can be specified.

Sec. 2.3: The Agreement affords the opportunity to specially agree on BIM-specific services. This includes supplementary services that are not included in the SIA LHO lists of services, for example, collaboration in developing the BIM project execution plan, provision and maintenance of the virtual project room, or BIM management or coordination services. The parties have the option of agreeing to their own service contents.

Sec. 2.4: With regard to the BIM-specific services, the (potentially additional) compensation can be stipulated, although the type of fee is left to the parties.

Sec. 3: The commentary states that, also when using the BIM method, the rule applies that all rights to the work results remain with the contracted professional

(Art. 1.3.1 SIA LHO). The client must be granted the right to use the data, with that right relating to the "agreed project". This thereby specifically eliminates the possibility of the client using the digital construction data for another project that was not agreed. If the client wishes to do so, such a use in derogation from Section 3 of the SIA BIM Supplementary Agreement would need to be specifically agreed. From the client's point of view, it may be advisable to state explicitly that the use of the data is also guaranteed beyond the pure planning and implementation phase.

Sec. 4: Nothing special applies with respect to the responsibilities of the parties. As in the traditional planner contract, each party is responsible for its services. Here too, liability will be assessed according to provisions applicable to contracts for work and services (e.g. planning errors in the sense of an error in the digital building model) or services contracts (e.g. negligent BIM management). However, in addition to the liability issues that are already known, the use of BIM may create new sources of errors, which might result in liability. This may include, for instance, software or transmission errors. Sec. 4 (2) offers an initial solution in this respect in that the client is liable, for instance, for hardware and software products that it requires to be used.

Sec. 5: The parties may choose the file format for data exchange. If native data is transferred to the client, it must be treated as confidential. The Supplementary Agreement further proposes how to handle the

client's review of the digital building model and invites the parties to address data storage.

Sec. 6-8: Lastly, the Supplementary Agreement provides an option for the parties to discuss the issues concerning the client's inspection of the work results and the retention obligation, as well as to enter into additional Special Agreements.

The SIA BIM Supplementary Agreement provides a good basis for contractually documenting BIM-specific issues. The Supplementary Agreement is, however, no panacea; instead, it provides a good checklist and invites the parties to clarify and agree on the important issues in good time. The parties are still required, however, to specify in detail before the start of the project how they wish to collaborate and what reciprocal rights and obligations they wish to assign to each other in the process. This relates, in particular, to the CIRs, which must already be agreed by the parties upon entering into the SIA BIM Supplementary Agreement. Accordingly, the need for contractual rules does not diminish even when the SIA BIM Supplementary Agreement is used.

Berne, November 2018

Dr. Mario Marti  
mario.marti@kellerhals-carrard.ch

The content of this Newsletter does not constitute legal or tax advice and may not be relied upon as such. Should you seek advice with regard to your specific circumstances, please approach your Kellerhals Carrard contact or the authors of this Newsletter.  
This Newsletter is available on our website [www.kellerhals-carrard.ch](http://www.kellerhals-carrard.ch) in English, German, French and Italian.

<b>Basel</b> Hirschgaesslein 11 P.O. Box 257 CH-4010 Basel Tel. +41 58 200 30 00 Fax +41 58 200 30 11	<b>Berne</b> Effingerstrasse 1 P.O. Box CH-3001 Berne Tel. +41 58 200 35 00 Fax +41 58 200 35 11	<b>Lausanne</b> Place Saint-François 1 P.O. Box 7191 CH-1002 Lausanne Tel. +41 58 200 33 00 Fax +41 58 200 33 11	<b>Lugano</b> Via Luigi Canonica 5 P.O. Box 6280 CH-6901 Lugano Tel. +41 58 200 31 00 Fax +41 58 200 31 11	<b>Sion</b> Rue du Scex 4 P.O. Box 317 CH-1951 Sion Tel. +41 58 200 34 00 Fax +41 58 200 34 11	<b>Zurich</b> Raemistrasse 5 P.O. Box CH-8024 Zurich Tel. +41 58 200 39 00 Fax +41 58 200 39 11
--	---	---	---	---	--