BIM and Electronic Transfer: Whose Data Is It, Anyway?
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The production and sharing of electronic data among project team members is prevalent in the design and construction industry. In order to manage the evolving and emerging risks of electronic communication, it is critical to have an electronic data exchange agreement with any party that you are sharing data files with, particularly if Building Information Modeling (BIM) is being utilized. These agreements must define the expectations, responsibility and accountability for use of electronic files.

Recommendations
In your contract for professional services and in license agreements with other parties in a construction project, you should:

- Clarify allowable and expected use of and ability to rely on BIM, CAD and other digital data for the project
- Establish protocols for sharing and management of digital data with other project team members
- Define ownership and copyright of digital data and limitations of use for a specific project

Electronic Data Disclaimers
Example language to limit use of electronic files: It is expressly understood that CADD and BIM files (“Digital Data files”) are issued only as supplemental information for convenience to the owner, contractor or other authorized user. Digital Data files, like any electronic data, transferred in any manner or translated from the system and format used by the design professionals on this Project (“Design Team”) to another system or format are subject to errors and modifications that may affect the accuracy and reliability of the data, and, in addition, that electronic data may be altered or corrupted whether inadvertently or otherwise. As a result, no representations or warranties, whether expressed or implied, as to the accuracy of the Digital Data files transferred are made herein. As the accuracy of the Digital Data files cannot be warranted or guaranteed, it is issued as supplemental information only and must be read in conjunction the contract documents, and to the extent there are any discrepancies between the Digital Data files and the contract documents, the physical contract documents control.

Example language to define ownership of electronic files: Digital Data files provided by the Design Team under the terms of this Agreement are the proprietary information and property of the Design Team, who shall maintain all copyright and intellectual property rights in the Digital Data files. All Digital Data files shall be treated as confidential and are not to be disclosed to or shared with others without the Design Team’s written consent. The use of the Digital Data files for any purpose other than for supplemental information for convenience in the bidding and building process is prohibited.
Providing Electronic Data to Other Parties

Because your contract is typically with the project owner, you need to establish additional protection when releasing your electronic data to other parties. Whether you are transferring CAD files or a BIM model, it is important to specify the allowable use and limitations of the files, to assert copyright and ownership of the intellectual property, to secure an indemnity from the recipient, and to prohibit the use of the files for anything other than the specific project.

We have prepared two transfer agreements for your consideration:

**Electronic Files Transfer Agreement**

This document is for a wide array of electronic files and provides definitions, addresses license and ownership rights, specifies permissions and conditions of use, and contains an indemnification of the design professional. [Click here](#) to open the EFT Agreement.

**BIM Transfer to General Contractor**

Specifically for transferring BIM model to the contractor, this document affirms that the model is supplemental information only (not a Contract Document) and is provided for the convenience of the contractor. It offers a disclaimer concerning the accuracy of the files, asserts the design professional’s ownership of the files, and includes a hold-harmless provision protecting both the owner and design professional. [Click here](#) to open the BIM Transfer document.

For additional information and more comprehensive agreement and protocol forms, [click here](#) to view the Guide, Instructions and Commentary to the 2013 AIA Digital Practice Documents.

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