



Whose Data Is It, Anyway?

BIM and Electronic Files Transfer

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 for Your Contracts

Here is some sample language you can use in your agreements to define the intent for the use of digital data on your projects.

To Limit Use of Electronic Files

Example language: It is expressly understood that CAD 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.

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To Define Ownership of Electronic Files:

Example language: 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.

[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.

Templates for each are on the following pages.

ELECTRONIC FILES TRANSFER RELEASE AGREEMENT

DESIGN FIRM IDENTIFICATION

The content of this document is for general informational purposes only. Please consult your attorney for use in any specific circumstance and for compliance with laws and regulations in effect in the location of your practice and the project.

Design Professional Firm Name: [DESIGN PROFESSIONAL FIRM NAME]

Project: [PROJECT NAME, LOCATION] DP Project Number: [XXXX.XX]

Date: [DATE OF TRANSFER]

Electronic Files Author: [NAME, PHONE, EMAIL ADDRESS]

Electronic Files Transferred: [NAME, FILE FORMAT]

DEFINITIONS:

- **Electronic Files** refers to the copyrighted 2-dimensional and/or 3-dimensional CAD files and/or 3-dimensional Building Information Model files (BIM files) that are digital representations of the physical and functional characteristics of the Project.
- The **Author** refers to the creator and owner of the Electronic Files which, unless noted otherwise, is [DESIGN PROFESSIONAL FIRM NAME].
- The **User** refers to the users of the Electronic Files, which may include the Owner, Owner's consultants, Contractor and the Contractor's subcontractors. User is responsible for their consultants and subcontractors. Any use or reuse of the Electronic Files is at the sole risk of the User without liability or legal exposure to the Author.

ELECTRONIC FILE LICENSE AND OWNERSHIP:

- Unless otherwise provided, Author grants User a limited license to use the Electronic Files specifically for the construction of the Project. Any further transmittal of the Electronic Files by User shall be under the same terms and conditions defined herein. The contract documents and Electronic Files, whether hard copy or machine readable form, represent instruments of service and shall remain the copyrighted property of the Author.

ELECTRONIC FILE PERMISSIONS:

- The Electronic Files provided to the User are not contract documents and are strictly for the User's convenience and use. Such uses may include logistics, analysis, scheduling, construction system design, submittal preparation, and coordination of MEP and other construction trades. Users shall use at their sole risk and without liability to the Electronic Files' Author.
- It is understood that differences may exist between the Electronic Files and contract documents. The User will check, confirm, and coordinate all dimensions and details, take field measurements, verify field conditions and coordinate its Work and services with other Contractors, subcontractors, and consultants. The User agrees to verify all information and dimensions indicated in the Electronic Files by comparison to the Contract Documents. Where conflicts are found in the Electronic Files, the User will promptly notify the Author by RFI requesting specific clarifications. Upon notification by RFI the Author shall act with reasonable promptness to answer the RFI inquiry.

ELECTRONIC FILES TRANSFER RELEASE AGREEMENT

ELECTRONIC FILE ALTERATIONS:

- The Electronic Files may undergo model validation and development (such as identifying and adjusting content for existing conditions, layout, and clash detection) by the User. The diagrammatic model(s) may be modified into a constructible model(s) by the User. Revisions may be made to the Electronic Files by the User, but these shall not be considered modifications to the contract documents.

CONDITIONS OF USE:

In response to the User's request to obtain Electronic Files produced by the Author for the above referenced project, **[DESIGN PROFESSIONAL FIRM NAME]** agrees to provide such Electronic Files with the following conditions:

User to initial each condition in the space provided.

- _____ 1. These Electronic Files are only for the use of the User, and only as an aid in the production of the User's portion of the Work or services on this project.
- _____ 2. All title blocks, professional stamps and other references to **[DESIGN PROFESSIONAL FIRM NAME]**, other Consultants, and the Owner shall be removed.
- _____ 3. This User shall remove all notes, text, and detail cuts from the Electronic Files prior to use.
- _____ 4. This User agrees to the aforementioned Electronic File Ownership, Permissions, Alteration terms and conditions and furthermore agrees to the following indemnification. **Indemnification:** In consideration of the User's use of Author's copyrighted Electronic File documents, the User agrees that it shall make no claim against **[DESIGN PROFESSIONAL FIRM NAME]** and shall further hold harmless, indemnify, and defend **[DESIGN PROFESSIONAL FIRM NAME]** from and against any and all claims, costs, and expenses resulting from the User's use of the Author's copyrighted electronic file documents contained therein.

USER: **[Company Name]**

OFFICER AND TITLE: **[Printed Name and Title]**

SIGNED: **[Signature]**

DATE: **[Date]**

BIM TRANSFER TO GENERAL CONTRACTOR

DESIGN FIRM IDENTIFICATION

The content of this document is for general informational purposes only. Please consult your attorney for use in any specific circumstance and for compliance with laws and regulations in effect in the location of your practice and the project.

PROJECT: [PROJECT NAME, LOCATION]

DATE: [DATE OF THIS AGREEMENT]

CONTRACTOR: [CONTRACTOR NAME]
[CONTRACTOR ADDRESS]
ATTN: [CONTACT NAME]

RE: AGREEMENT FOR USE OF [DESIGN PROFESSIONAL FIRM NAME AND APPLICABLE CONSULTANTS], COLLECTIVELY "DESIGN TEAM," REVIT MODEL (BIM) BY CONTRACTOR FOR [SPECIFIC USE, IF ANY]

As per your request, [DESIGN PROFESSIONAL FIRM NAME] is prepared to provide [CONTRACTOR NAME] with copies of its Building Information Model ("BIM") files for the above mentioned project. However, it is expressly understood that the BIM files are being issued only as supplemental information for convenience to the Contractor. BIM files, like any electronic data, transferred in any manner or translated from the system and format used by all of 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 BIM files transferred are made herein. As the accuracy of the BIM 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 BIM files and the contract documents, the physical contract documents must be relied upon.

The BIM 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 BIM files. All BIM 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 BIM files for any other purpose other than for supplemental information for convenience in the bidding process is prohibited.

By signing the release below you are acknowledging that 1) [OWNER'S NAME] ("Owner") and the Design Team shall be held harmless from any and all claims, liabilities, damages, losses, or expenses arising out the contractor's use of the BIM files and cannot be held responsible for any errors or omissions within the BIM files, 2) the BIM files are to be read in conjunction with all construction documents, addenda, and supplemental contract documents, and 3) the BIM files are not to be used for fabrication or construction of any kind.

[DESIGN FIRM] REPRESENTATIVE: Signature: _____ Date: _____

Printed Name: _____

ACCEPTED BY [CONTRACTOR NAME]: Signature: _____ Date: _____

Printed Name: _____

About Berkley Design Professional

Berkley Design Professional was started in 2013 by a team of people with deep roots in underwriting, loss prevention and claims handling for the Design Professional community. The genesis of Berkley DP was the combination of our team's passion for bringing fresh ideas to the products and services Design Professionals need together with W. R. Berkley Corporation's desire to commit its superior financial strength and A+ rated paper to this industry segment. Berkley DP's motto is: "Better by Design." By this we mean that our policyholders are better businesses because we've designed comprehensive coverage and current risk management solutions that make their practice less susceptible to loss.

For more information, contact:

Andrew D. Mendelson, FAIA
Senior Vice President,
Chief Risk Management Officer
amendelson@berkleydp.com

Diane P. Mika
Vice President,
Director of Risk Management Education
dmika@berkleydp.com



berkleydp.com | 855.534.7285

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