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## USING CONTRACTOR-SUPPLIED ELECTRONIC INFORMATION

The transfer of electronic information to or from contractors or subcontractors raises many questions. The three major questions seem to be the following: For whose benefit are the files being shared or transferred? Does the design professional or contractor have the legal right to transfer such information since by contract or operation of law the information may be owned by the client or another party? Does the contractor or design professional have direct rights generated by a transfer agreement or the argument of detrimental reliance should the information in the electronic file be incorrect or inadequate for the intended, and known or obvious, use?

One method is to treat electronic information in the same way that you treat other information provided to you and for which you have no contractual or professional obligation to examine for accuracy and suitability for use. The following is an example of the type of language a legal advisor might recommend:

*Design Professional shall have no responsibility for the information or components of the Project created or provided by the Owner or someone providing services or products through the Owner and shall not be required to review or verify the information or the design of such components for compliance with applicable laws, statutes, ordinances, codes, rules and regulations. The Owner, its officers and representatives waive any claim against Design Professional, as a firm or individual, and agree to release, defend, indemnify and hold Design Professional, as a firm or individual, harmless from any claim or liability for injury, loss or damage allegedly arising from, or in any way connected with, any aspect of the Project other than the negligence of the Design Professional in providing its services under this Agreement. Further, the Owner agrees to compensate Design Professional, as a firm or individual, for any time spent or expenses incurred in defense of any such claim or liability resulting from the use of information provided by others, with such compensation to be based upon the fee schedule and expense reimbursement policy then in effect for Design Professional.*

This is written only from the perspective of a professional liability insurance carrier in an effort to inform a policyholder of risk management options and should not be construed to be legal advice.

Firms should also be aware that when transferring information electronically to a contractor or subcontractor for their use it might be worthwhile to include a note on the documents, the transfer medium or in the electronic information such as the following:

*The delivery of this drawing in electronic format is for the benefit of the client for whom the design services have been performed. This delivery constitutes a nonexclusive, limited license for the recipient to use the information in the electronic file as for the specific purpose of responding to the requirements of the Contract Documents for this Project. Nothing in this transfer should be construed to create any right of the contractor or any party providing services to the contractor to rely on the information provided or that the use of this electronic information implies the review and approval by the design professional of any drawing based on the information. It is our professional opinion that this electronic information provides design information current as of the date of its release. Any use of this information is at the sole risk and liability of the user who retains the responsibility of meeting the requirements of the Contract Documents. The recipient also is solely responsible for updating the information to reflect any changes in the design following the preparation date of this information.*