

Computing AIA Digital Practice Documents

Since the American Institute of Architects (AIA) first included the word ‘electronic’ in its documents a decade ago, professional practice has embraced the transmission of information by electronic means. Whether by e-mail, file transfer protocol (FTP), compact disc, or other electronic methods, digital transmission of data is widespread.

Unfortunately, many design professionals have relied on archaic agreements or simple transmittals in an attempt to mitigate risk associated with the transmission of this information and to limit its subsequent use.

As part of its release of over 50 new documents in 2007, AIA published two new documents in April for the transmission of digital data: AIA C106-2007, *Digital Data Licensing Agreement*, and AIA E201-2007, *Digital Data Protocol Exhibit*. As defined in these documents, Digital Data is “information, communications, drawings, or designs created or stored for the project in digital form.” While similar in content, the documents have their specific and respective uses.

AIA C106-2007

AIA C106-2007 is intended for parties not otherwise bound by the licensing provisions of AIA design services and construction agreements. This document grants a limited, non-exclusive license to use digital data on a project, establishes procedures for transmitting that data, and restricts the scope of the license granted. Since AIA C106-2007 is for use between two parties that do not otherwise have an agreement, it also allows the transmitting party to collect a licensing fee in consideration for the use of the data.

AIA C106-2007 is not needed for transmission of digital data to the owner or to the architect’s consultants, provided the owner/architect or architect/consultant agreement incorporates AIA A201-1997, *General Conditions of the Contract for Construction*, and its license terms. AIA C106-2007 may be used instead, for example, for the transmission of an architect’s instruments of service to another design professional or contractor for use on a project on which the architect will not render professional services. In such a situation, the architect may wish to include an indemnification provision in its favor under Article 3 of the document for such use.

AIA E201-2007

AIA E201-2007 is different from AIA C106-2007 in that it is not a stand-alone agreement and does not create a license to use digital data. Instead, this document is incorporated into existing agreements for design services or construction as an exhibit, and modifies the licensing provisions of the underlying agreement by establishing the protocols the contracting parties will follow for the transmission of digital data. Thus, it has priority over the underlying agreement as to those protocols.

The key feature of AIA E201-2007 is the Project Protocol Table. It includes fixed headings governing types of digital data to be transmitted for the project, data formats used, identities of transmitting and receiving parties, permitted uses of the data, and customized instructions. With this matrix format, the parties can tailor the document to meet the individual needs of a specific project at a very detailed level.

This document also requires the parties incorporate it into other design and construction agreements for the project. The digital data protocols are unified for the entire project.

AIA E201-2007 will be referenced in the soon-to-be-released AIA B101-2007, *Standard Form of Agreement Between Owner and Architect*. It is intended to be an integral part of professional practice.

Confidential information

Both documents define confidential information as “Digital Data that the transmitting party has designated as confidential and clearly marked with an indication such as ‘confidential’ or ‘business proprietary’.” This designation allows the transmitting party to restrict the future disclosure of digital data to others. That is, the recipient of the confidential information agrees under either document to not disclose the data to anyone except its employees, those who require it for the performance of project-related services, or a consultant or contractor whose contract includes a similar restriction on the transmission of the confidential information.

Reliance and indemnification

Greater accountability comes with the transmission of digital data. Arguably, the transmitting party is responsible for the accuracy of the information it provides. No longer can a design professional rely on the interpretation of a paper document to cover drafting errors and other inaccuracies.

The potential liability of the design professional is limited, however, by the indemnification provisions of AIA C106-2007 and AIA E201-2007. To the fullest extent allowed by law, the documents require the recipient of digital data to indemnify and defend the transmitting party from and against all claims arising from or related to the recipient’s modification to or unlicensed use of the digital data it receives. Both documents limit the recipient’s use of the digital data to the project named on the document. The standard indemnification provisions do not apply to permitted uses of the data.

Conclusion

The American Institute of Architects recognizes the evolution of professional practice and the digital transmission needs of project participants. AIA C106-2007 and AIA E201-2007 are strides toward standardization in the face of ever-changing technological advances. AIA will continue to update these documents as necessary—even before the typical 10-year revision cycle—to respond to paradigm shifts in data delivery. An additional digital practice document relating to advanced integrated practice and building information modeling (BIM) is slated for release in the near future.

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