ConsensusDocs™ 301
BUILDING INFORMATION MODELING (BIM) ADDENDUM

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ConsensusDocs 301

BUILDING INFORMATION MODELING (BIM) ADDENDUM

Attachment

GENERAL PRINCIPLES

1.1. This Addendum does not effectuate or require a restructuring of contractual relationships or shifting of risks between or among the Project Participants other than as specifically required per the Addendum and its Attachments.

1.2. This Addendum is not intended to create privity of contract among any Project Participants beyond that which otherwise exists at law or by the terms of the Governing Contract.

1.3. Each Party to the Governing Contract shall append or incorporate, and shall cause each Project Participant with which it is in privity to append or incorporate, this identical Addendum in all contracts for which any other Project Participants are to perform obligations to be modeled. All such contracts shall contain flow-down provisions requiring that the provisions of this Addendum be passed downstream to subconsultants and subcontractors, as applicable.

1.4. Nothing in this Addendum shall relieve the Design Professional from its obligation, nor diminish the role of the Design Professional, as the person responsible for and in charge of the design of the Project.

1.5. Nothing in this Addendum shall diminish the extent to which, under applicable law, the Owner warrants to any Party the adequacy and/or sufficiency of the design.

1.6. Participation of the Contractor or its subcontractors and suppliers in Contributions to a Model shall not constitute the performance of design services.

1.7. Unless otherwise agreed in the BIM Execution Plan, a Design Model is not intended to provide the level of detail needed in order to extract precise material or object quantities.

1.8. In the event of a conflict between the contents of a Design Model and any other Model, the Design Model shall take precedence.

1.9. If any Project Participant becomes aware of a discrepancy between a Model and either another Model or another Contract Document, such Project Participant shall promptly notify the other Party or Parties to that Project Participant's Governing Contract and the Information Manager (IM).

1.10. Unless otherwise agreed in the BIM Execution Plan, the dimensional tolerances provided by the Contract Documents in the Governing Contract shall apply to dimensions in a Model.

1.11. In the event of an inconsistency between this Addendum and the Governing Contract, this Addendum shall take precedence.

2. DEFINITIONS

2.1. Affiliated Contract means any contract relating to the Project to which an identical Addendum is attached and in which that identical Addendum is incorporated, other than the Governing Contract.

2.2. Construction Model means a Model that (a) consists of those aspects of the Project that are to be modeled as specified in the BIM Execution Plan prepared pursuant to this Addendum; (b) utilizes data imported from a Design Model or, if none, from a designer's Construction Documents; and (c) contains the equivalent of shop drawings and other information useful for construction.

2.3. Contract Documents, as defined in the Governing Contract, is modified to include all Design Models, unless otherwise specified in the BIM Execution Plan.

2.4. Contribution means the expression, design, data or information that a Project Participant (a) creates or prepares, and (b) incorporates, distributes, transmits, communicates or otherwise shares with other Project Participant(s) for use in or in connection with a Model for the Project.

2.5. Contributor means a Project Participant who makes a Contribution.

2.6. Design Model means a Model of those aspects of the Project that (a) are to be modeled as specified in the BIM Execution Plan prepared pursuant to this Addendum and (b) have reached the stage of completion that would customarily be expressed by an Design Professional in two-dimensional Construction Documents. This shall not include Models such as analytical evaluations, preliminary designs, studies, or renderings. A Model prepared by an Design Professional that has not reached the stage of completion specified in this definition is referred to as a Model.

2.7. Drawings means (a) those two-dimensional plans, sketches or other drawings that are Contract Documents under the Governing Contract and are created separately from, and are not derived from,

a Model and (b) those two-dimensional projections derived from a Model supplemented with independent graphics and annotations specified by the Parties to be Contract Documents.

2.8. Federated Model means a Model consisting of linked but distinct component Models, drawings derived from the Models, texts, and other data sources that do not lose their identity or integrity by being so linked, so that a change to one component Model in a Federated Model does not create a change in another component Model in that Federated Model.

2.9. Full Design Model means a Model consisting of coordinated structural, architectural, MEP and other Design Models designated in the BIM Execution Plan to be produced by the design team.

2.10. Governing Contract means the agreement to which this Addendum is attached and in which it is incorporated, but excludes an Affiliated Contract.

2.11. Information Management means measures that protect and defend information and information systems with respect to their availability, integrity, authentication, confidentiality, and nonrepudiation. These measures include providing for restoration of information systems by incorporating protection, detection, and reaction capabilities.

2.12. Information Manager or IM means one or more individuals responsible for the BIM's Information Management program.

2.13. MEP means mechanical, electrical and plumbing.

2.14. Model means a three-dimensional representation in electronic format of building elements representing solid objects with true-to-scale spatial relationships and dimensions. A Model may include additional information or data.

2.15. Project Model means a Model consisting of the federation of a Full Design Model and one or more Construction Models designated in the BIM Execution Plan to be produced by Project Participants.

2.16. Project Participant shall be, and Project Participants shall include, each Party to the Governing Contract and each Party to an Affiliated Contract.

3. INFORMATION MANAGEMENT

3.1. The Owner or its designated representative shall appoint one or more IM(s) for the Project. Unless otherwise agreed upon in the BIM Execution Plan, all compensation and related costs for the Information Manager(s) shall be paid by the Owner. The Project Participant whose box is checked as indicated below shall serve as IM until replaced. The Owner may replace the IM at its own discretion.

[_____] Design Professional
[_____] X Contractor/Construction Manager
[_____] Other [_____] (specify).

3.2. The role and responsibility of the IM with respect to a Federated Model for the Project, including the Project Model, shall be to perform or procure from a third party acceptable to the Owner the following functions (exclude any functions that do not apply):

3.2.1. Create, delete, modify and maintain user accounts;

3.2.2. Assign, delete and modify access rights to users;

3.2.3. Apply access controls to users so that only authorized users of the Model can access only the data they are authorized to access;

3.2.4. If appropriate, establish and maintain encryption-at-rest measures and encryption-during-transmissions measures;

3.2.5. Record, at a minimum, the following information about each data entry by Model users in the Federated Model (including downloading of Models to the Federated Model):
   a) User name;
   b) User role;
   c) Contact information;
   d) Date/time entered;
   e) Any additional information required to be recorded for each data entry as set forth in the BIM Execution Plan;

3.2.6. Backup and restore data;

3.2.7. Routinely run information system scans to maintain Model security;

3.2.8. Maintain and monitor information system logs so that only authorized users are accessing the Model and to ensure that there are no functional problems associated with the Model;

3.2.9. Install patches to close documented vulnerabilities in the Model;

3.2.10. Document and report any incident relating to the Model (including but not limited to an incident originating outside the Model that results in the Model being the victim of an attack) and take action to protect the Model;

3.2.11. Transfer unconditionally to a successor IM, at such times as directed by the Owner, all tangible and intangible property and information that came into its possession, custody or control in its capacity as IM;

3.2.12. Provide authorized users with access instructions and system requirements;

3.2.13. Respond to requests by authorized users for assistance in maintaining access; and

3.2.14. Perform any and all other responsibilities or functions as required of it in the BIM Execution Plan.

4. BIM/VDC EXECUTION PLAN

4.1. As soon as is practicable, but in no event later than thirty (30) days after the latter of the execution of the Contract between the Owner and the Design Professional or execution of the Contract between the Owner and the Contractor or Construction Manager, all Project Participants shall meet, confer and use their best efforts to agree upon the terms of or modifications to a BIM/VDC Execution Plan. When agreed upon, the BIM/VDC Execution Plan and any modifications shall

become an amendment to this Addendum. As soon as is practicable, but in no event later than thirty (30) days after the execution of a Contract with any other Project Participants, all Project Participants shall meet, confer and use their best efforts to agree upon any necessary modifications to a BIM/VDC Execution Plan.

4.2. Unless otherwise agreed, the IM shall schedule and chair all such meetings.

4.3. The BIM/VDC Execution Plan shall address the following elements, but may include additional elements:

4.3.1. Contact information for each Project Participant;

4.3.2. Identification of what Models are to be created, the purpose(s) each Model is intended to serve, and which Project Participant(s) is(are) responsible for creating each Model;

4.3.3. A definition of what Design Model or Models, if any, shall not constitute Contract Documents;

4.3.4. The spatial portions or areas of the Project to be modeled in each Model and the spatial portions or areas of the Project not to be modeled;

4.3.5. The expected content of each Model and the required level of detail at various Project milestones, which content includes:

        a. geometric and spatial data;
        b. object property data;
        c. object constitution data;
        d. provision for object parameters as place holders for cost and schedule data; or
        e. authoritative source information;

4.3.6. A schedule for initial delivery of each Model to the IM;

4.3.7. A schedule for updating of each Model and preservation of versions of each Model and its constituent Models;

4.3.8. A definition of what Model or Models shall constitute part of the record documents for the Project;

4.3.9. Procedures and protocols for submission, for approval of Models including electronic stamping, for designating a Model as a Design Model, and for notification of action on a request for approval;

4.3.10. Procedures and protocols for designating two-dimensional projections derived from a Model as Contract Documents;

4.3.11. Contributor's Dimensional Accuracy Representation Selection of one, but only one, of the following representations applicable to the dimensional accuracy of any Contribution of or to a Model. Any such representation is:

        1. . limited to the other parties to the Governing Contract,

2. in accordance with the standard of care applicable to the Contributor for such Contribution, and
3. effective at the time the Model has been developed to the same stage of completion as two-dimensional Construction Documents.

[_____] X Each Contributor represents that the dimensions in its Contribution to a Model are accurate and take precedence over the dimensions called out in the Drawings or inferred from the Drawings. Details and components that are not represented in a Contribution to a Model must be retrieved from the Drawings;

[_____] Each Contributor represents that the dimensions in its Contribution to a Model are accurate to the extent that the BIM Execution Plan specifies dimensions to be accurate, and all other dimensions must be retrieved from the Drawings;

[_____] Contributors make no representation with respect to the dimensional accuracy of the Contributor's Contribution to a Model. A Model can be used for reference only and all dimensions must be retrieved from the Drawings; or

[_____] Other: [_____];

4.3.12. Establishment of a common coordinate system;

4.3.13. Establishment of conventions as to units;

4.3.14. Conventions for defining critical dimensions and critical Model content;

4.3.15. File format to be used;

4.3.16. File-naming and object-naming conventions to be used;

4.3.17. File structure to be used;

4.3.18. Software to be utilized;

4.3.19. Measures needed to achieve interoperability of applications;

4.3.20. Two-dimensional reference Drawings;

4.3.21. Utilization of BIM for the RFI process, response protocol and timing, incorporation of responses into any Model;

4.3.22. Utilization of BIM for the Change Order process, response protocol and timing, incorporation of responses into any Model;

4.3.23.4.3.21. A schedule for BIM development, coordination and clash detection meetings among the Project Participants;

4.3.24.4.3.22. Engagement of the IM in these processes;

4.3.25.4.3.23. Utilization of a Project BIM website;

4.3.26 4.3.24. Procedures and protocols for confirmation of field changes through an as-built Project Model;

4.3.27 4.3.25. Specification of Project close-out and final deliverables;

4.3.28 4.3.26. The extent, if any, to which Project Participants or specified staff for each will be co-located; and

4.3.29 4.3.27. Any changes or additions to the Governing Contract or an Affiliated Contract relating to BIM-related compensation and costs.

5. RISK ALLOCATION

5.1. Each Party shall be responsible for any Contribution that it makes to a Model or that arises from that Party's access to that Model. Such responsibility includes any Contribution or access to a Model by a Project Participant in privity with that Party and of a lower tier than that Party. Nothing in this section shall expand the scope of any representation stated in the BIM Execution Plan pursuant to Section 4.3.11 4.3.11.

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5.2. With respect to the issue of a waiver of consequential damages:

    a. The Governing Contract shall govern the issue of any waiver of consequential damages arising from a Contribution; and

    b. Each Party waives claims against the other Parties to the Governing Contract for consequential damages arising out of or relating to the use of or access to a Model, including but not limited to damages for loss of use of the Project, rental expenses, loss of income or profit, costs of financing, loss of business, principal office overhead and expenses, loss of reputation or insolvency.

5.3. To the extent that any or all Design Models are included as Contract Documents, Project Participants may rely upon the accuracy of information in those Design Models; provided, however, that regardless of whether any Design Models are included as Contract Documents, the selection in Section 4.3.11 4.3.11 shall control a Project Participant's right to rely on the dimensional accuracy of a Contribution or Model.

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5.4. The standard of care applicable to each Party regarding that Party's Contributions to or use of a Model shall be in accordance with that Party's Governing Contract or common law, as applicable.

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    5.4.1 All parties acknowledge and agree that interim models exchanged represent work-in-progress and as such, are in the developmental stage, may not be dimensionally accurate, are subject to change, and may not contain all of the elements required for complete Documents.

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5.5. Each Party shall use its best efforts to minimize the risk of claims and liability arising from the use of or access to its Model or the Project Model. Such efforts shall include promptly reporting to the relevant Project Participants any errors, inconsistencies, or omissions it discovers in its Model or the Project Model; however, nothing in this section shall relieve any Party of liability it would otherwise bear under Section 5.1 5.1.

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7

5.6. No Party involved in creating a Model shall be responsible for costs, expenses, liabilities, or damages which may result from use of its Model beyond the uses set forth in this Addendum or fully executed amendments hereto.

5.7. Unless agreed otherwise in the BIM Execution Plan, each Party shall (a) procure and maintain valuable papers and records insurance coverage, with limits no less than $[_____], $1,000,000, covering all of the Party's Contributions or intended Contributions; (b) include this requirement in its contracts with any other Project Participant; and (c) provide the other with a certificate of insurance demonstrating compliance with this requirement by that Party and such other Project Participants.

5.8.5.7. A defect in the software used in the creation, modification, federation or other use of a Model, including the Project Model, shall entitle a Party to a time extension or other excuse from performance, but only to the extent that the Party could not have avoided any delay or loss by the exercise of reasonable care. In addition, a Party has the duty to mitigate any such delay or loss.

6. INTELLECTUAL PROPERTY RIGHTS IN MODELS

6.1. Each Party warrants to the other Parties to the Governing Contract that either (a) that Party is the owner of all copyrights in all of that Party's Contributions, or (b) that Party is licensed or otherwise authorized by the holders of copyrights of expression contained in the Contribution to make such Contribution under the terms of this Addendum. Subject to waiver of subrogation clauses, if any, contained in the Governing Contract, each Party agrees to indemnify and hold such other Parties harmless for claims of third parties arising out of, or relating to, claims or demands relating to infringement or alleged infringement of expression contained in that Party's Contribution. Nothing in this Addendum is intended to limit, transfer, or otherwise affect any of the intellectual property rights that a Party may have with respect to any Contribution, except for the licenses or permissions expressly granted by this Addendum or the Governing Contract.

6.2. Subject to the provisions of Section 6.16.1, each Party grants to the other Party or Parties to the Governing Contract (a) a limited, non-exclusive license to reproduce, distribute, display, or otherwise use that Party's Contributions for purposes of this Project only; (b) a limited, non-exclusive sublicense to reproduce, distribute, display, or otherwise use, for purposes of this Project only, the Contributions of those other Project Participants who have granted that Party an identical license or sublicense; (c) the right to grant an identical sublicense to any other Project Participants with which the licensee has an Affiliated Contract in which this Addendum is incorporated by reference; and (d) a limited, non-exclusive license to reproduce, distribute, display, or otherwise use any Model containing such Contributions, or any other Model with which the Model containing such Contributions is federated or otherwise related, in each case for the sole purpose of carrying out the Project Participants' respective duties and obligations relating to this Project and to display the Model for project promotion and marketing purposes. This limited license shall include any archival purposes permitted hereunder or in the Governing Contract, but does not allow the licensee to reproduce, distribute, display, or otherwise reuse all or part of any other Party's Contributions except as permitted herein or in the Governing Contract. This limited, non-exclusive license is in addition to any other licenses or usage rights that also may be granted under the Governing Contract.

6.3. If a Party to the Governing Contract is the holder of copyrights in another Project Participant's Contribution or is the grantee of an exclusive license with respect to such Contribution, then such holder or exclusive licensee hereby grants to such other Party or Parties the right to grant to other Project Participants with which the other Party has or Parties have Affiliated Contracts in which this Addendum is incorporated, a limited license in the form set forth in Section 6.26.2.

6.4. The Project Owner's entitlement to use the Full Design Model after completion of the Project shall be governed by the Contract between the Owner and the Design Professional.

6.5. Unless otherwise limited herein or by express license-limiting terms in the Governing Contract, the non-exclusive license granted in this BIM Addendum shall remain in effect as permitted by law. In addition, after final completion of the Project, the non-exclusive license shall be limited to keeping an archival copy of Project-related Contributions.

6.6. In the absence of express language to the contrary in the Governing Contract or in this Addendum, nothing in this Addendum, and no act by a Project Participant in furtherance of this Addendum, shall be deemed or construed to deprive or dispossess a Contributor of copyrights or license rights held by that Contributor in its respective underlying Contribution to any Model. Other Parties, Project Participants, persons, or entities that provide Contributions to a Model shall not be deemed to be co-authors in the Contributions of other Project Participants. Except where otherwise stated, no Contributor shall possess rights in a Model containing a Contribution greater than those granted by the non-exclusive license provided in this Addendum, as that license may be further limited in this Part 6. Nothing in this Addendum shall grant a right to a Party to use all or part of another Party's Contribution for any purpose other than performance of the Project Participant on this Project and as is otherwise expressly stated in the Governing Contract or in this Addendum.

6.7. Terms of the Governing Contract pertaining to non-payment by the Project Owner notwithstanding, the Project Owner's non-exclusive license granted herein to reproduce, distribute, display, or otherwise reuse the Contributions and Models shall not be limited to construction or maintenance of this Project. However, if the Project Owner fails materially in its Project-related payment obligations to a Contributor, and that material failure is so adjudged against the Project Owner by the decision of a court of law or arbitration (an Adjudication), then any Project-related licenses to the Project Owner from that Contributor shall be terminated as of the time of such Adjudication. Notwithstanding the foregoing, the Parties hereto (and all Contributors by virtue of Affiliated Contracts) waive any rights to claim contributory, direct, or vicarious copyright infringement, to assert claims of misappropriation or like claims, to revoke licenses granted herein, or to pursue equitable remedies under the Copyright Act or under applicable law against other Parties and Contributors who are not found liable in the Adjudication (for failure to pay or otherwise). This applies to their respective obligations, if any, to the Contributor unpaid by the Project Owner, and the non-liable Parties' licenses granted herein shall survive the termination of the Owner's license due to the Adjudication.

9