

# ConsensusDOCS Guidebook



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by

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## **Introduction to the ConsensusDOCS Guidebook**

ConsensusDOCS is the product of leading construction associations, dedicated to identifying and utilizing best practices in the construction industry for standard construction contracts. The 21 participating associations represent Designers, Owners, Contractors, Subcontractors, and Sureties that literally spell the DOCS in ConsensusDOCS. If you are looking for documents that are pro-Owner or pro-Contractor, you should not use these documents. ConsensusDOCS contracts and forms attempt to fairly and appropriately allocate risks to the Party in the position to manage and control the risk. The practices articulated in the documents are forward-thinking, and may not always represent the status quo, but rather a better path forward. The goal of the multidisciplinary drafters was to create documents that best place the Parties to a construction contract in a position to complete a project on time and on budget with the highest possibility of avoiding claims.

By starting with better standard documents that possess unprecedented buy-in, you reduce your transaction time and costs in reaching a final Agreement. Many “fill-in-the-blanks” are intended to lead to productive discussions about how particular risks should be allocated on specific projects before a contract is finalized. Also, the ConsensusDOCS catalog includes complete “families” of documents for each project delivery method that provide a coordinated set of Agreements and complimentary administrative forms. There also are short form Agreements that address the Owner-Contractor (205), the Owner-Design Professional (245), and the Contractor-Subcontractor contractual relationships in a more abbreviated manner than do the standard Agreements (ConsensusDOCS 200, 240, and 750 respectively).

In this Guidebook you will find comments by individual associations regarding ConsensusDOCS 200.2. The overview sections highlight issues and innovative features of the documents generally. Association comments are expressions by an association to its association membership. These comments highlight provisions or alert their membership to consider possible project-specific modifications to a consensus standard Agreement or form. ConsensusDOCS contracts covered in the initial release of the complete Guidebook (others will be added later) include the 200; 200.1; 200.2; 240; 300; 410; 750.

# **Comments and Recommendations regarding ConsensusDOCS 200.2\***

## **Electronic Communications Protocol Addendum**

### **Overview**

The Electronic Communications Protocol Addendum is unique in the construction industry, comprehensively setting standards, processes and protocols that Parties will use to facilitate the accurate and secure transmittal of Electronic Communications among them during their Project. It is ideally intended to be completed no later than at the time the Owner and Contractor are preparing their Agreement, but may be entered into by amendment to an existing contract at any time. The 200.2 is a flexible document that can be used in any ConsensusDOCS Agreement or in other contract Agreements.

The Addendum sets expectations about who will be required to comply with Addendum requirements in Section 2.0. If Subcontractors and Material Suppliers will be required to conform their communications to this Addendum, the Contractor should make sure to attach a complete copy of it as an Exhibit to the Agreement between Contractor and Subcontractor (ConsensusDOCS 750).

The Agreement places the primary responsibility for shaping Electronic Communications exchange on three representatives designated by the Contractor, Architect and Owner respectively. These may be in-house employees knowledgeable about computer usage or experts retained for the Project, as needed. In Section 3.0, this IT Management Team is given the power to develop means and methods of handling Electronic Communications during the Project consistent with the overall requirements imposed in the rest of the Addendum.

Section 4.0 helps the Parties to thoroughly explore and identify what types of files will be shared among them, the hardware and operating systems on which electronic communications will be exchanged, the software types and versions, backup protocols and transmission and access requirements, including the types of devices that may be used to gain access to Project records kept electronically. The Parties will need to know what software will be used for various Project activities and identify the hardware and other system configuration that is necessary to run that software so that everyone using the Electronic Communications can access the data generated in the desired format(s). The Addendum does not presume any specific package of System Parameters will be used, but rather allows the Parties to sculpt them based on their needs. If all

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communications on the Project will be exchanged electronically via a tiered-access Project website with a real-time webcam, and virtual modeling will be used as the primary design tool, a much more elaborate system will need to be described than if the Parties want to simply exchange securely transmitted e-mails among themselves and that is the extent of the Electronic Communications.

If the Parties retain a Third Party Service Provider, the process of archiving or keeping copies of Electronic Communications exchanged among them may be part of the package of services being purchased. If not, in Section 6.0., the Parties should pay particular attention to developing backup copies of their Electronic Communications – both to protect against loss of data as a result of their computer systems failing during the Project, as well as to ensure compliance with recently updated Federal laws regarding retention of electronically generated records.

The Parties should discuss in Section 7.0 how they can revise documents capable of being revised after they are originally created and shared, and how they will keep track of those revisions. Some software programs allow for detailed metadata to be generated that automatically tracks changes and the Party generating them. Where this is not the case, an express transmittal record confirming Version Control Information as provided in Section 7.2 will be extremely important or limits should be placed on each Party's ability to revise others' documents and data.

Under Section 8.0, each Party is responsible for complying with the System Parameters and for the accuracy of data and documents furnished as part of their own Electronic Communications. The Addendum is silent about responsibility for errors that occur in spite of compliance with all System Parameters and other Addendum requirements.

## **Comments from AGC on ConsensusDOCS 200.2:**

(Additional comments on this document can be found on AGC's website at [www.agc.org/contracts](http://www.agc.org/contracts))

Introduction (Section 1.0): Even if a Contractor wishes to rely only on information transmitted by e-mail and fax, a Contractor should strongly consider use of this document. Otherwise Contractors would be operating at their own risk in relying on e-mails and faxes.

IT Management Coordinator (Section 3.3): The person appointed in this section is the day-to-day supervisor and administrator of Electronic Communications and is charged with assisting the Parties to cause their Electronic Communications system to comply with the Addendum requirements. Unless the Contractor's computer knowledge is quite limited, the Contractor should consider having the person appointed as Coordinator within the Contractor's employ, although the Contractor typically will want to pass the costs for such duties to the Owner in Section 3.3.2 or include them elsewhere as part of recoverable general conditions expenses in the Agreement between Owner and Contractor. The Coordinator will work with any Third Party Service Providers (who furnish Internet software programs or hosted site services used by the Parties), the Webmaster (who handles the operation of the Project website), and the Model Facilitator (who updates model data for virtual design or building information (3-D) modeling), if any on this particular Project.

Security/Encryption Requirements (Section 4.6): These provisions should be carefully considered. If the Contractor does not have knowledgeable in-house staff capable of developing firewalls or other protections, the Contractor may want to recommend outsourcing the development of these protections.

Contract Documents (Section 5.0): This section identifies which types of Contract Documents will be exchanged via electronic means and be binding on the Parties. The Contractor can take advantage of being able to rely on the comparatively swift method of e-mail exchange to bind the Owner to Change Orders, or the Architect to responses to requests for information, by making sure those types of documents may be exchanged electronically. The level to which hard copy should thereafter be exchanged will vary with the sophistication of the Parties (and their lenders, title companies, etc.) and with the sophistication of the System Parameters selected. If the Contractor's Subcontractors are not required to have a computer system compliant with the System Parameters, but design documents will be conveyed solely electronically, for example, the Contractor will need to think through providing access to a compliant computer terminal at the Project site or the Contractor's home office to which the Subcontractors can have access.

The Contractor will want to carefully discuss their role in the evolution of Project virtual modeling or other shared Electronic Communications tools with the Owner and Architect and reflect responsibilities relating specifically to its use by modifying Section 7.1.1 as needed.

Responsibility for Compliance (Section 8.0): Contractors and all Parties may prefer to expressly waive liability among them where such an event occurs as a means of inducing the Parties to robustly rely on Electronic Communications.

If a Third Party Service Provider will be used, their contract for the Project should be attached to the Addendum so any specific requirements for use of their services or website are made known and all Parties are bound to comply with them.