

Each day registered and licensed Architects, licensed Engineers, and licensed Contractors complete, share, and review work thru their business entities' choice of "Instruments of Service," implemented to facilitate building design, construction, commissioning, and to evaluate a building's operation, maintenance, and warranties. Models; whether physical or digital, drawings; whether CADD or printed, and project asset specifications, all coalesce within shared and siloed, "Instruments of Service." These 'instruments' are actively utilized in completing 'work' within the project prime agreements.

Before rushing headlong into technology implementations, it is prudent, productive, and ultimately profitable to review how we understand this fundamental term; "Instruments of Service" within Architecture, Engineering, and Construction (AEC);

*'Thomson Reuters' Practical Law, Glossary defines the "**Instruments of Service**" as 'Any expression, whether tangible or intangible, of creative work performed by design professional for a project, such as: 1. Models, 2. Sketches and drawings, 3. Specifications.'*

***Instruments of Service** are also known as design documents. Ownership of a project's **Instruments of Service** is an important point of contract negotiation because typically: Owners want to: 1) preserve a project's distinctive qualities by preventing their use in another owner's projects; and 2) retain the right to replicate the work without paying additional fees to the design professional. Design professionals want to: 1) protect their artistic expression from modification or duplication; 2) continue to receive compensation for their work; and 3) control the design's implementation in other projects to minimize the risk of liability for misapplication of, or errors in, the design, for which the design professional may otherwise be liable.'*

'CA Business & Professional Code – BPC % 5536.1(c)

*The preparation of plans, specifications, or **Instruments of Service** for any building, except the buildings described in Section 5537, by any person who is not licensed to practice architecture in this state, is a misdemeanor punishable as provided in Section 5536.'*

The digitization of project documentation falls under the purview of contractually utilized 'Instruments of Service' requiring greater management attention than previously required when the term 'Instruments of Service' was regulated to the equally important discussions of copyrights and licenses. The AIA Document B101-2017 provides definition

guidance in Article 7 and Article 9 for copyrights. Further to contractual performance, the AIA Document B101-2017 provides clarity to the definition of the term 'Instruments of Service' in the following Articles;

§ 1.3 The parties shall agree upon protocols governing the transmission and use of **Instruments of Service** or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 4.2.1.2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared **Instruments of Service**;

§ 4.2.1.3 Changing or editing previously prepared **Instruments of Service** necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the **Instruments of Service** when those **Instruments of Service** were prepared in accordance with the applicable standard of care;

§ 4.2.2.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of **Instruments of Service**;

§ 4.2.2.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to **Instruments of Service** resulting there from.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's **Instruments of Service**.

While the Copyright and Licensing aspect of 'Instruments of Service' requires consideration within each agreement, the defining and the management of 'Instruments of Service' selected for implementation to ultimately perform the project work contractually agreed upon, holds greater significance for each party bound to the project agreements.

It is difficult to proceed with a discussion or review of technology in architectural practice without pausing to reflect upon the most essential manifestation of architectural technology utilized for completing contracted architectural services. Highlighting this fundamental term of architectural practice provides a focus for reviewing effective project delivery and a review of the overhead costs for technologies implemented to provide and complete agreed upon services. As the limits of what is possible continues to expand thru technology, the focal term 'Instruments of Service' reduces unforeseen consequences and unanticipated effects, thru the contractual elaboration of shared terms and definitions.

-Lewis Matthew Miller, AIA
AIA WY TAP Representative