AUTODESK. UNIVERSITY

Sharing Data in Cloud Based Platforms: Avoiding Risks, Liability and Expensive Disputes

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About the speaker

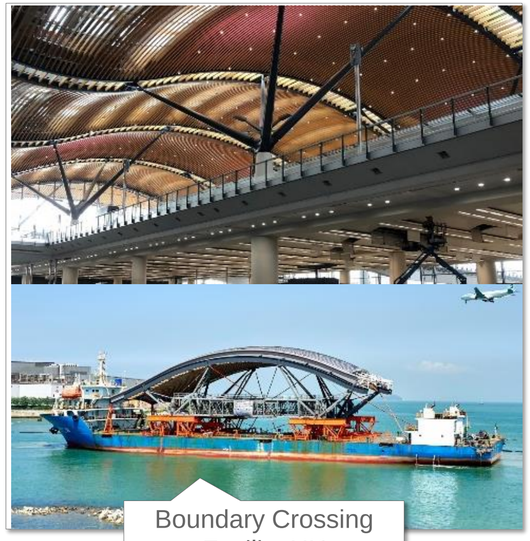
May Winfield, BuroHappold

Head of Commercial and Legal for Cities and Digital

Senior construction lawyer. Recognised legal specialist in BIM and construction technology, speaking at events worldwide. Co-authored various reports, guidance and standard documents, e.g. the ISO19650-compliant BIM Information Protocol and accompanying guidance. Chair of BIM4Legal, and UK BIM Alliance Ambassador.

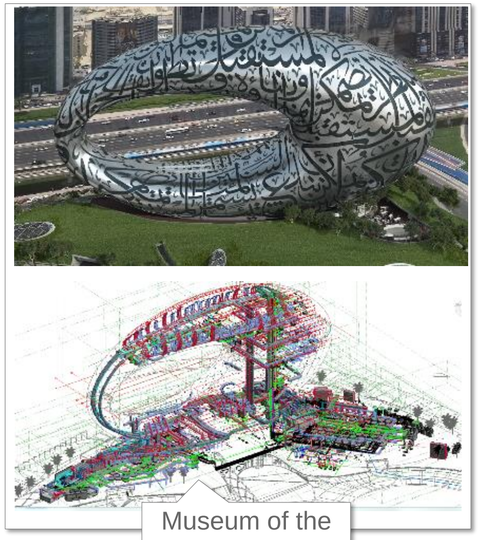
BuroHappold – A Snapshot

Haramain High Speed Rail (Mecca, Medina, Jeddah, KAEC stations



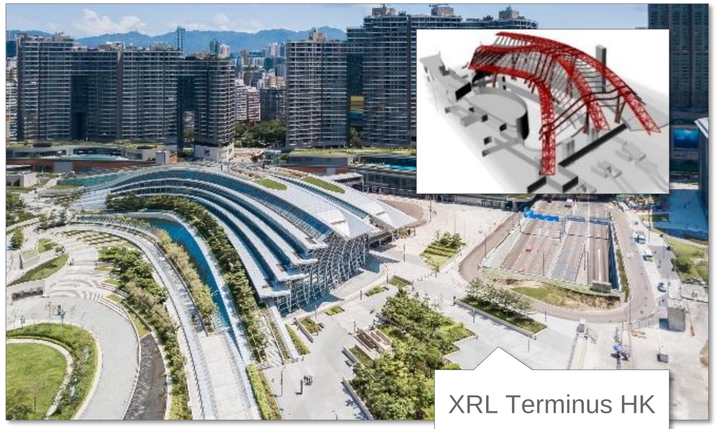
Boundary Crossing Facility HK

Olaya Metro Station



Museum of the Future

KAFD Metro Station

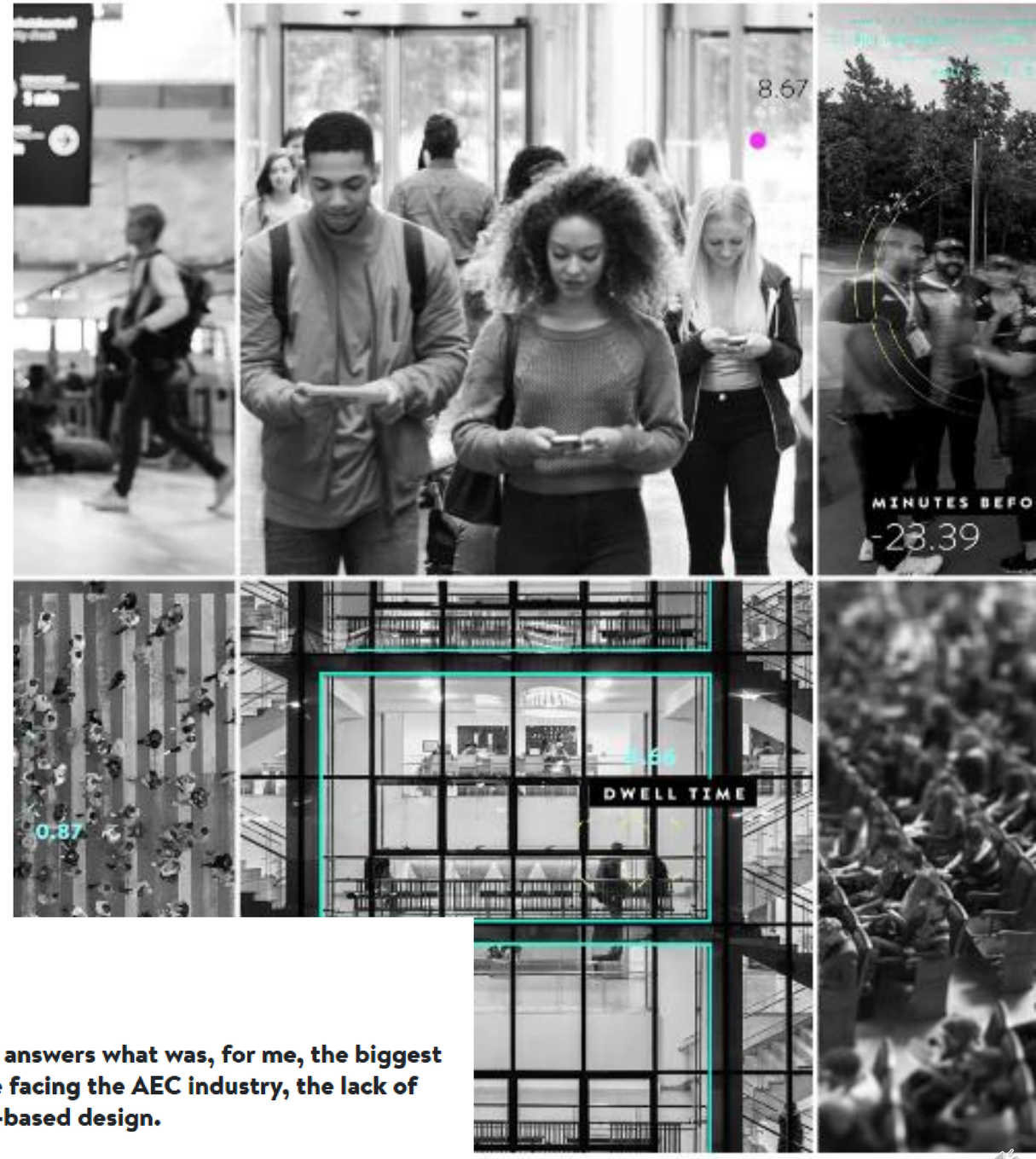


XRL Terminus HK

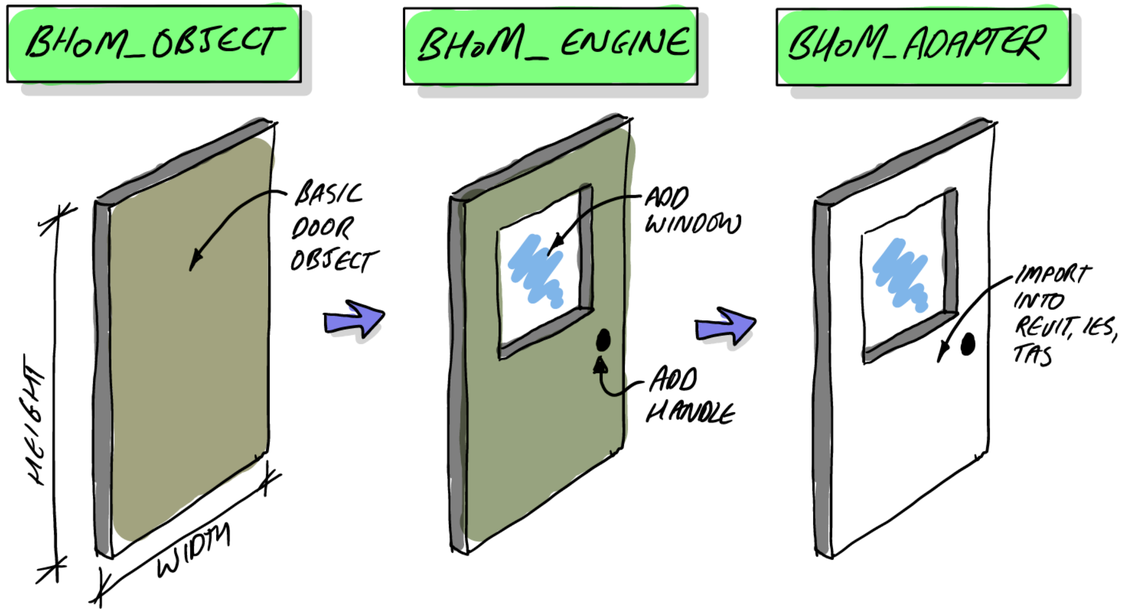
OVG Manchester

Analytics Engine

- Powerful data analysis, predictive modelling and optioneering engine
- Evaluate design changes and revisions in real time
- Insights into human behaviour from years of research and data
- Combining BIM, GIS, IoT and Agent Based Modelling
- *https://www.burohappold.com/specialisms/analytics/workplace-analytics/*

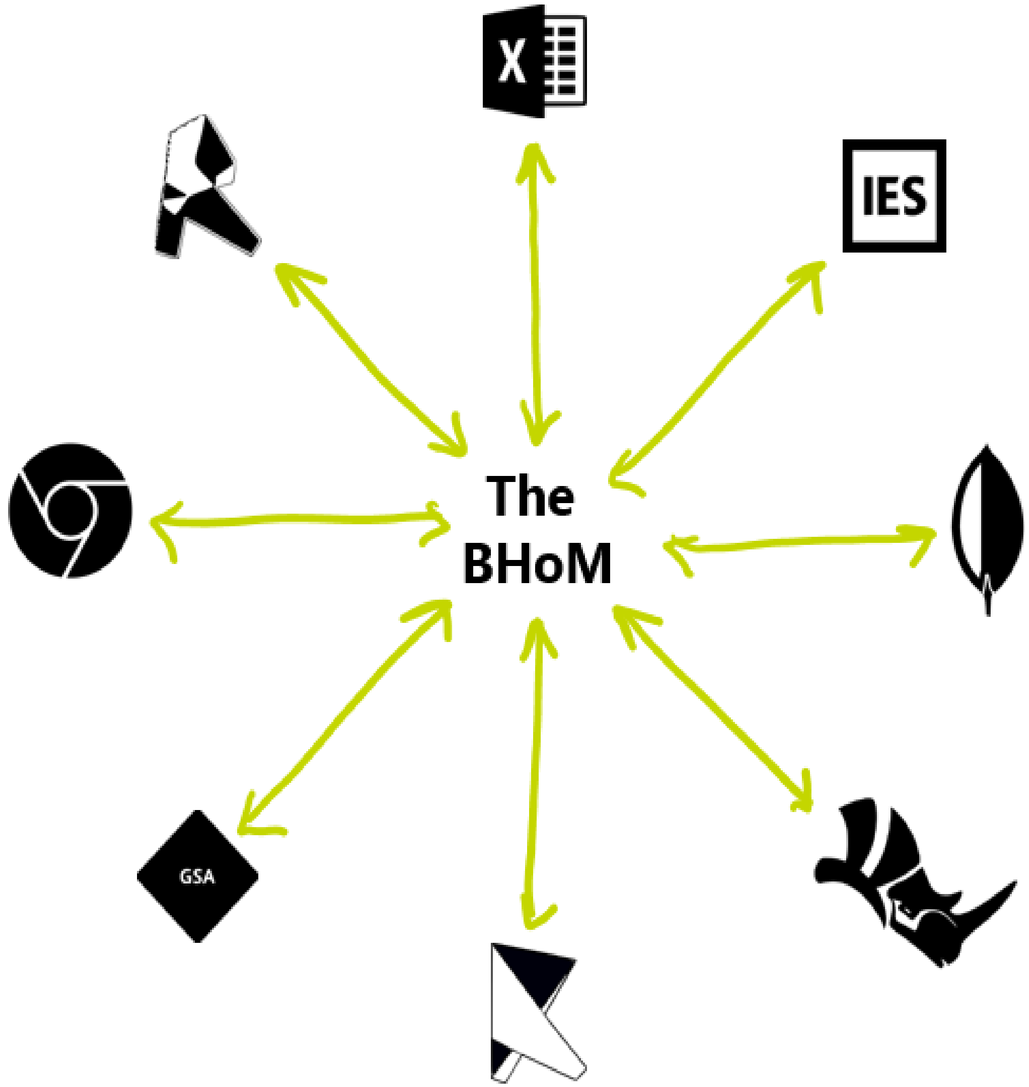


Analytics answers what was, for me, the biggest challenge facing the AEC industry, the lack of evidence-based design.



BHoM – Buildings and Habitats Object Model

- **Open-source model for project architecture, co-creation and planning.**
- **Collaborative computational development project**
- ***https://github.com/BHoM/documentation/wiki***



Setting the Scene…
Categories of Cloud Computing Services

- ***Infrastructure as a Service (IaaS):*** **Remote computing and storage**
- ***Software as a Service (SaaS):*** **Access to services without installation of additional software, enabling data-intensive operations being executed in the cloud**
- ***Platform as a Service (PaaS):*** **Remote access to development platforms for software without implementing the software and hardware oneself, i.e. application builders not limited by their own server power**

Companies that adopt the cloud well bring new capabilities to market more quickly, innovate more easily, and scale more efficiently—while also reducing technology risk

McKinsey Insights, 15 Sept 2020

SIEMENS

Learning Objectives

DOCUMENTS

Preparing documents that avoid legal and contractual risks of sharing data to external parties using cloud platforms

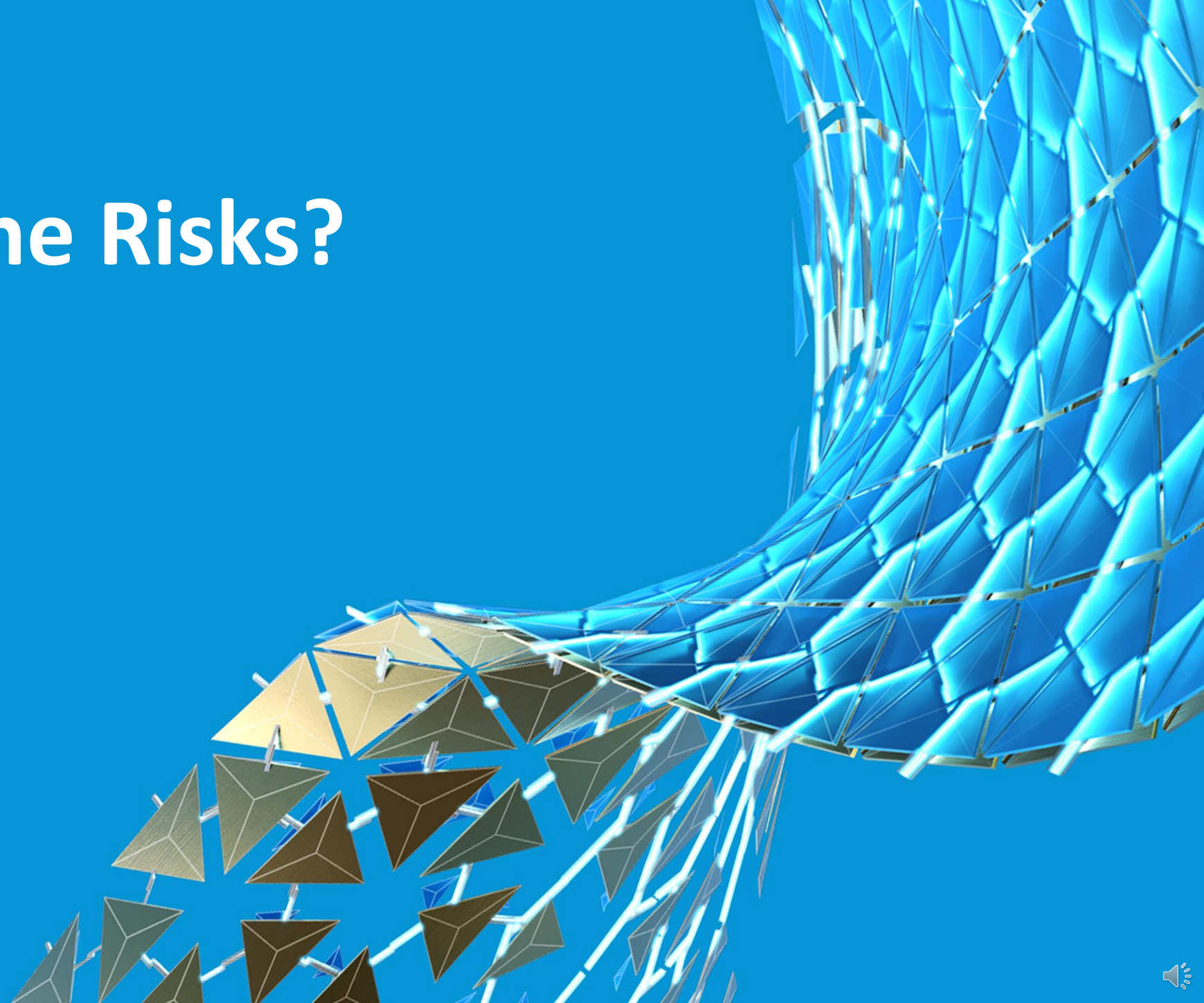
INTERNAL AND EXTERNAL PROCESSES

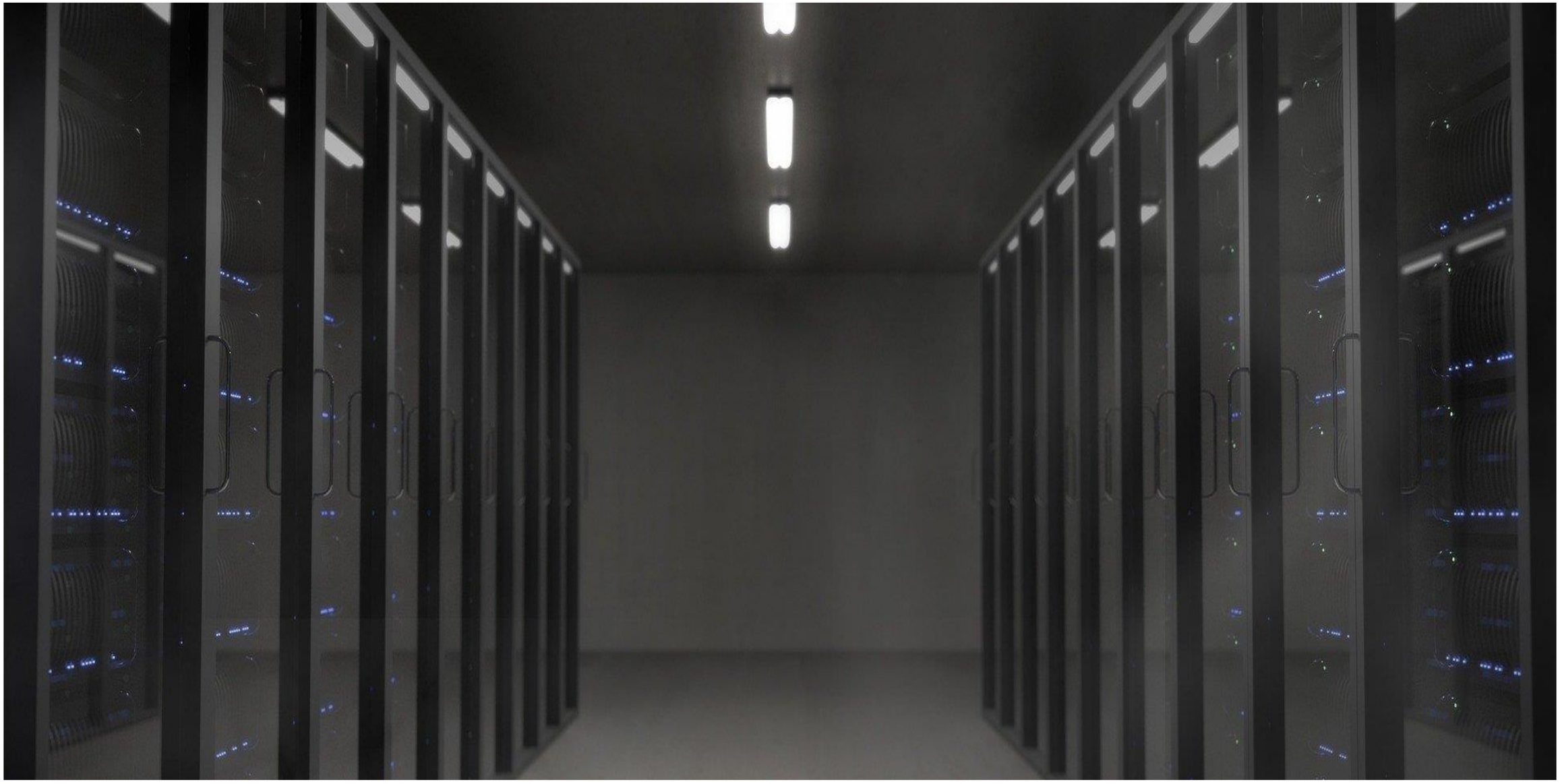
Implementing processes that avoid legal and contractual risks of internal data sharing and risks of external data sharing using cloud platforms

IMPROVING EFFICIENCY AND REDUCING RISKS

Improving efficiency and reducing legal and contractual risks of using cloud platforms like BIM360

What are the Risks?

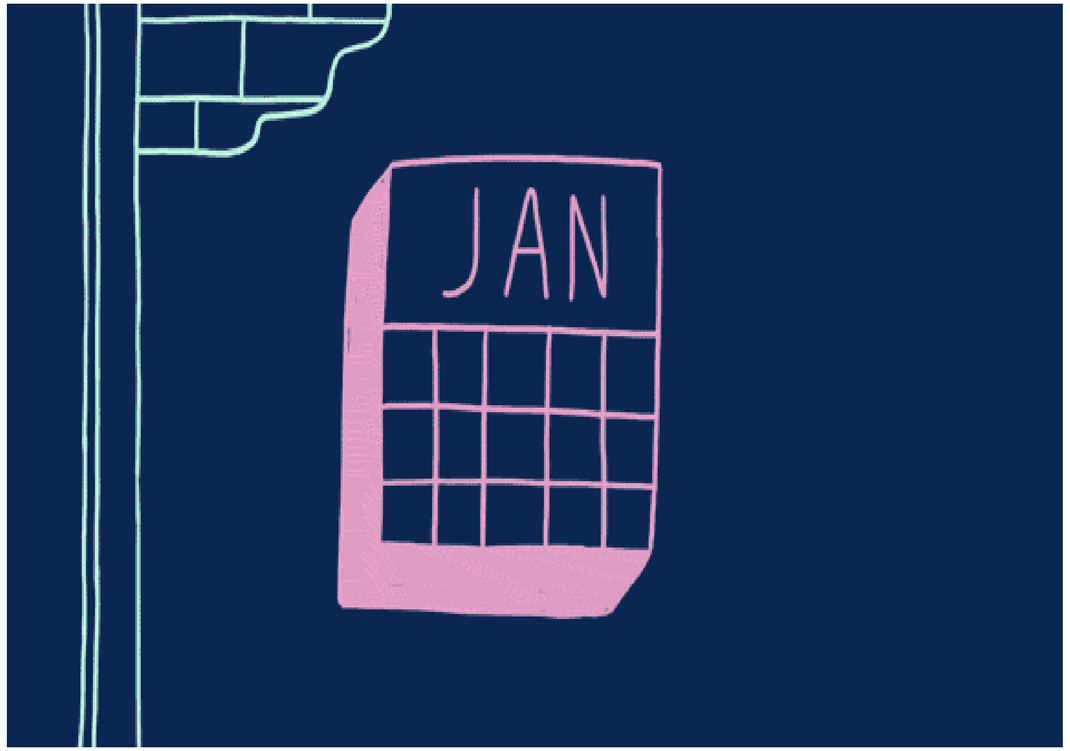




Process and Data

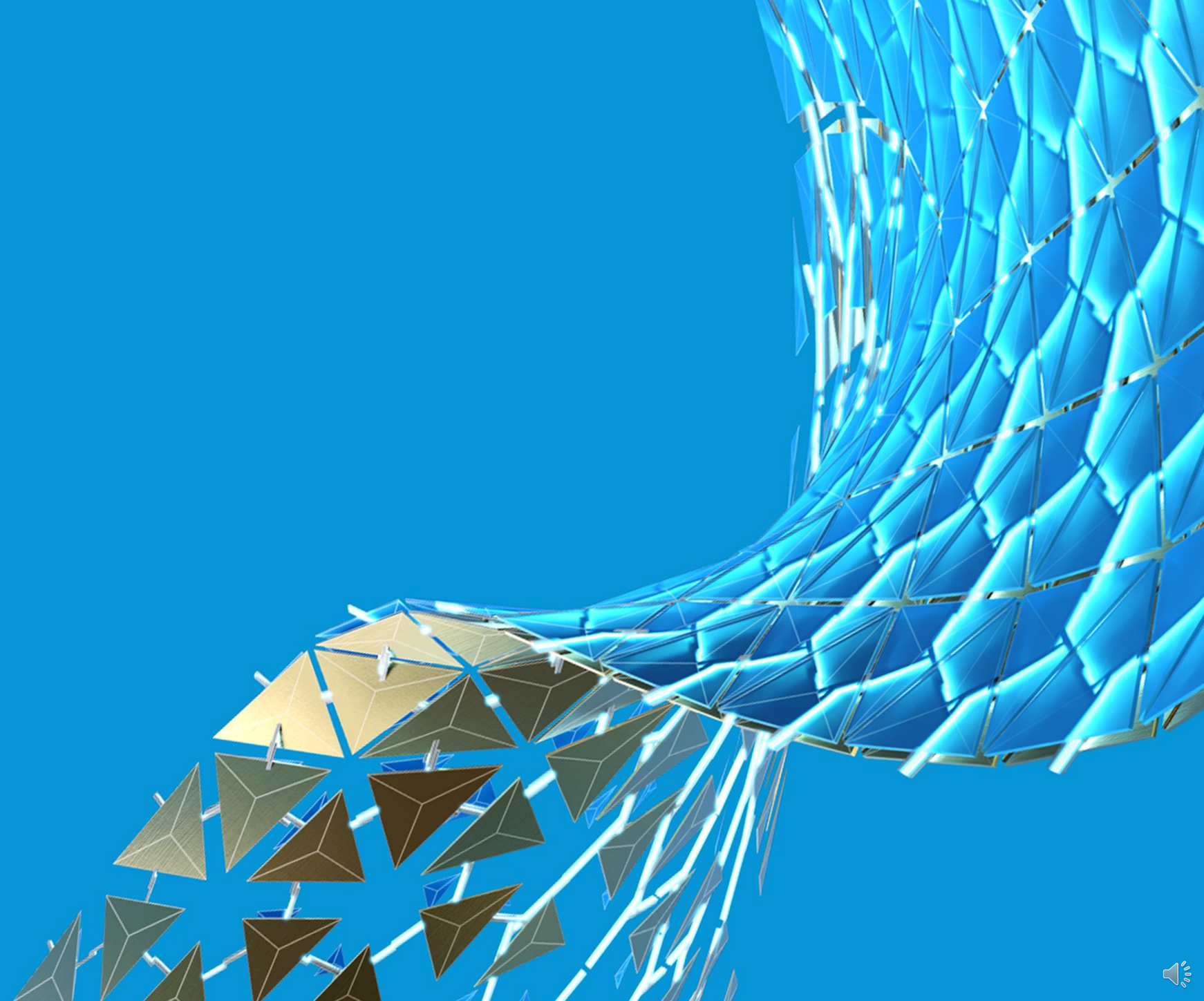
Copyright and ownership

Programme and Costs



Security, Confidentiality and Access

Documents



Start with a List to Avoid Gaps

What

- Process
- Tasks
- Could go wrong

Who

- Should bear risk/liability
- Should mitigate

How

- Process
- Records
- Insurance
- That’s their problem

Size

- Unlikely or likely risk
- Large or small loss

Supply Chain Contracts

Think of what standard terms would give clarity/reduce risk

- **Obligations**
  - Giving access
  - Sufficient Autodesk accounts to access
  - Necessary infrastructure/resources throughout
- **Rights**
  - Revoking access
  - Indemnity for loss and damage
  - Using content

- **Responsibility**
  - Others relying on content
  - Errors and corruption
  - Misuse- Liability for wrongful access (and consequences)
- **Limitations**
  - Delays/Unavailability of platform
  - Failure to access
  - Sharing access/Access by third parties
  - Confidentiality

Contract with Client

What additional issues

- **Who pays for licences**
  - My staff and theirs
  - Length of time
- **What is the scope**
  - Purpose and permitted uses
- **Whose platform(s) = important impact**
  - Clear purposes/processes for each platform
  - Delay and additional costs
  - Relying on content
  - Duration of access

Don’t Forget Impact Of Other Contract Terms

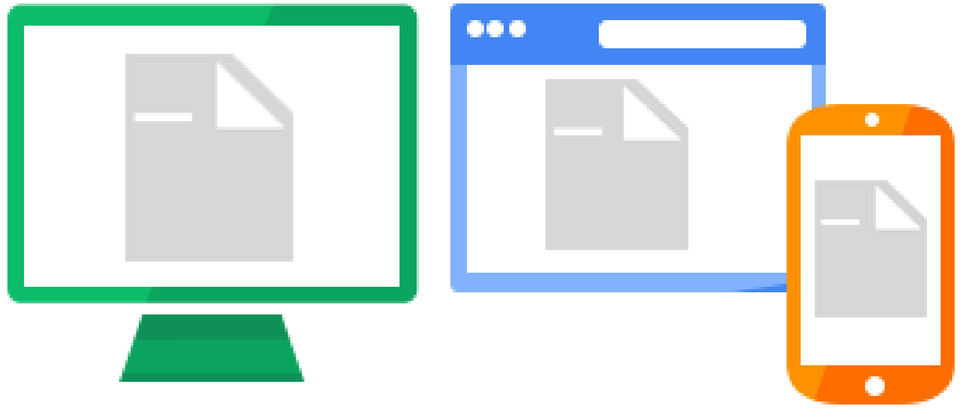
Image caption goes here

Data Privacy & Location

- Issue 1 – Personal data
- Issue 2 – Location of cloud servers

Auditing

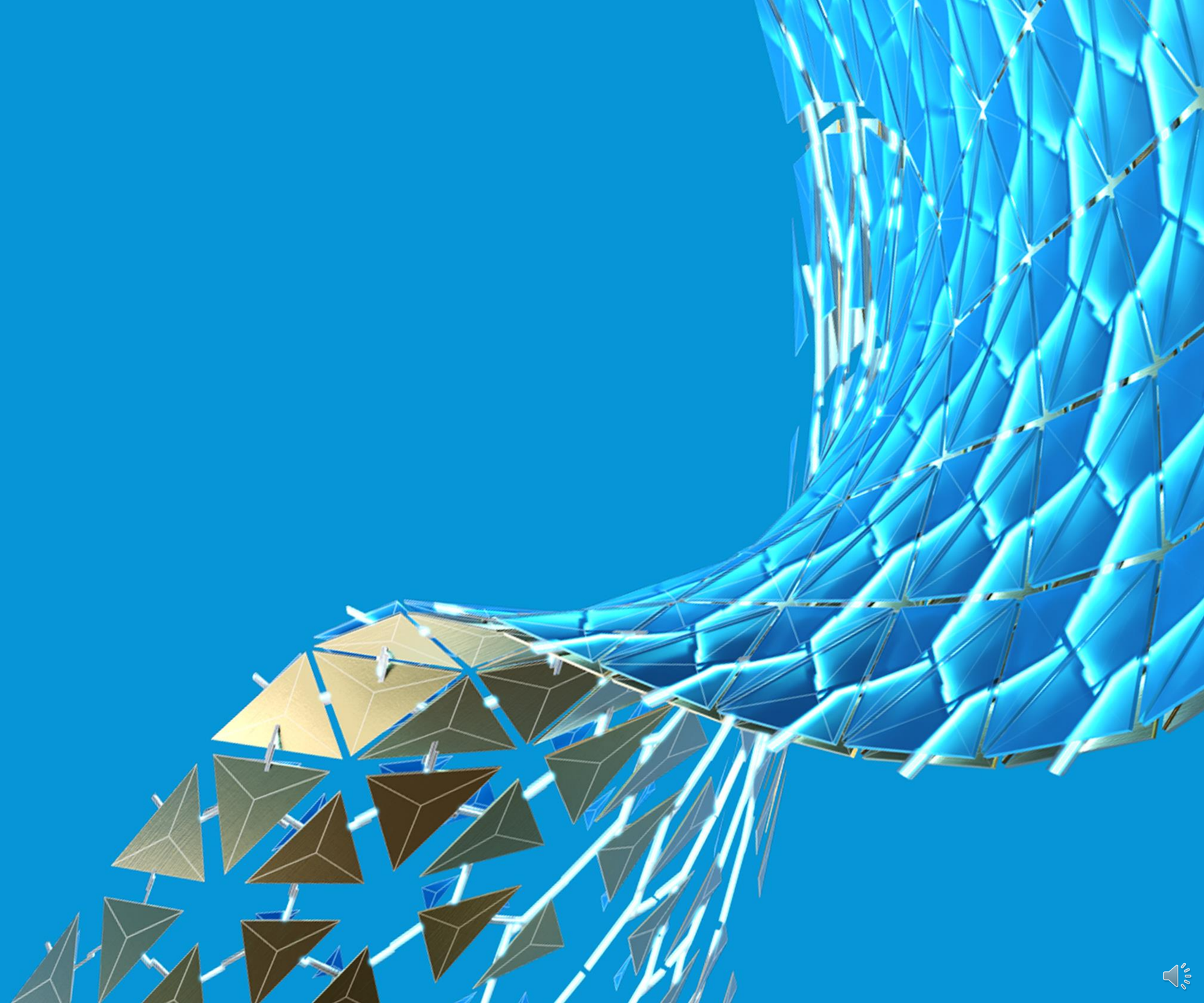
- Issue of contractual obligations
- Issue of access practicalities
- Issue of future archiving



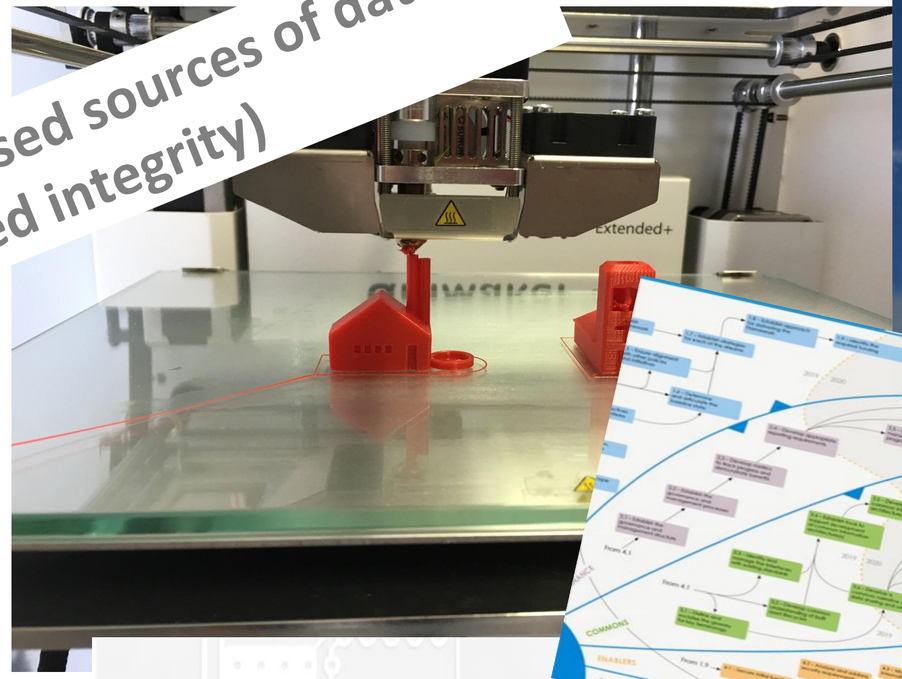
Risk management via the documents/applications themselves

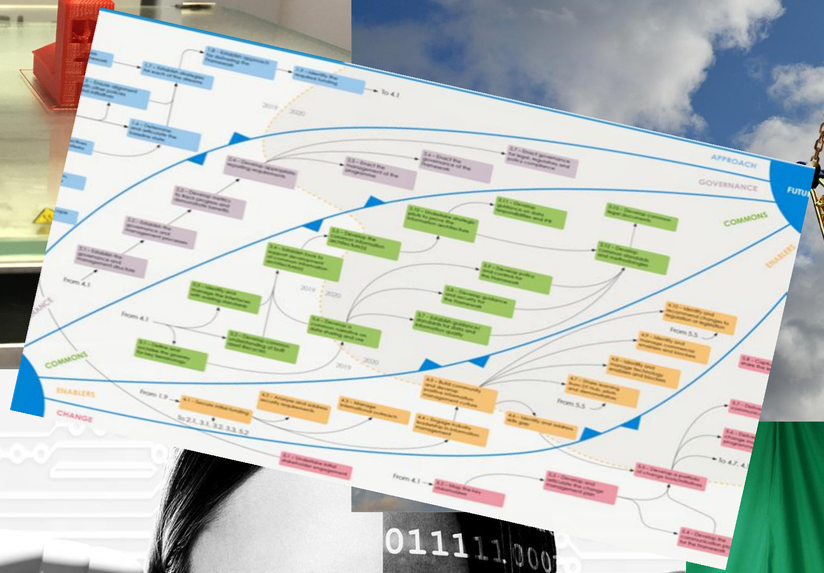
- Splash screens
- Exclusions and limitations in the documents
- Disclaimer Documents

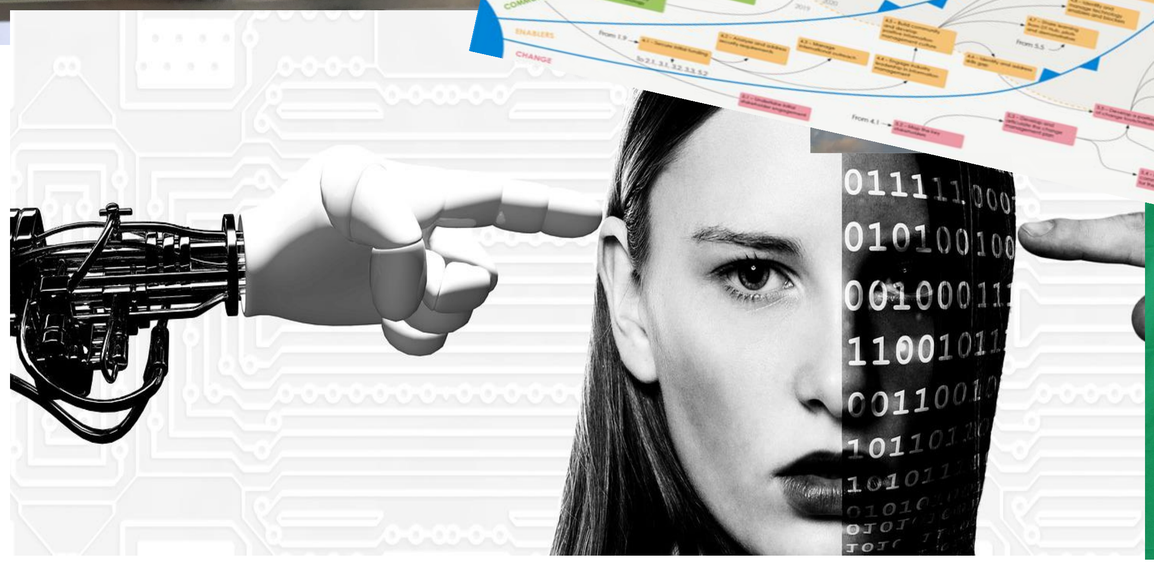
Processes



Increased sources of data
(varied integrity)







https://www.cdbb.cam.ac.uk/DFTG/DFTGRoadmap

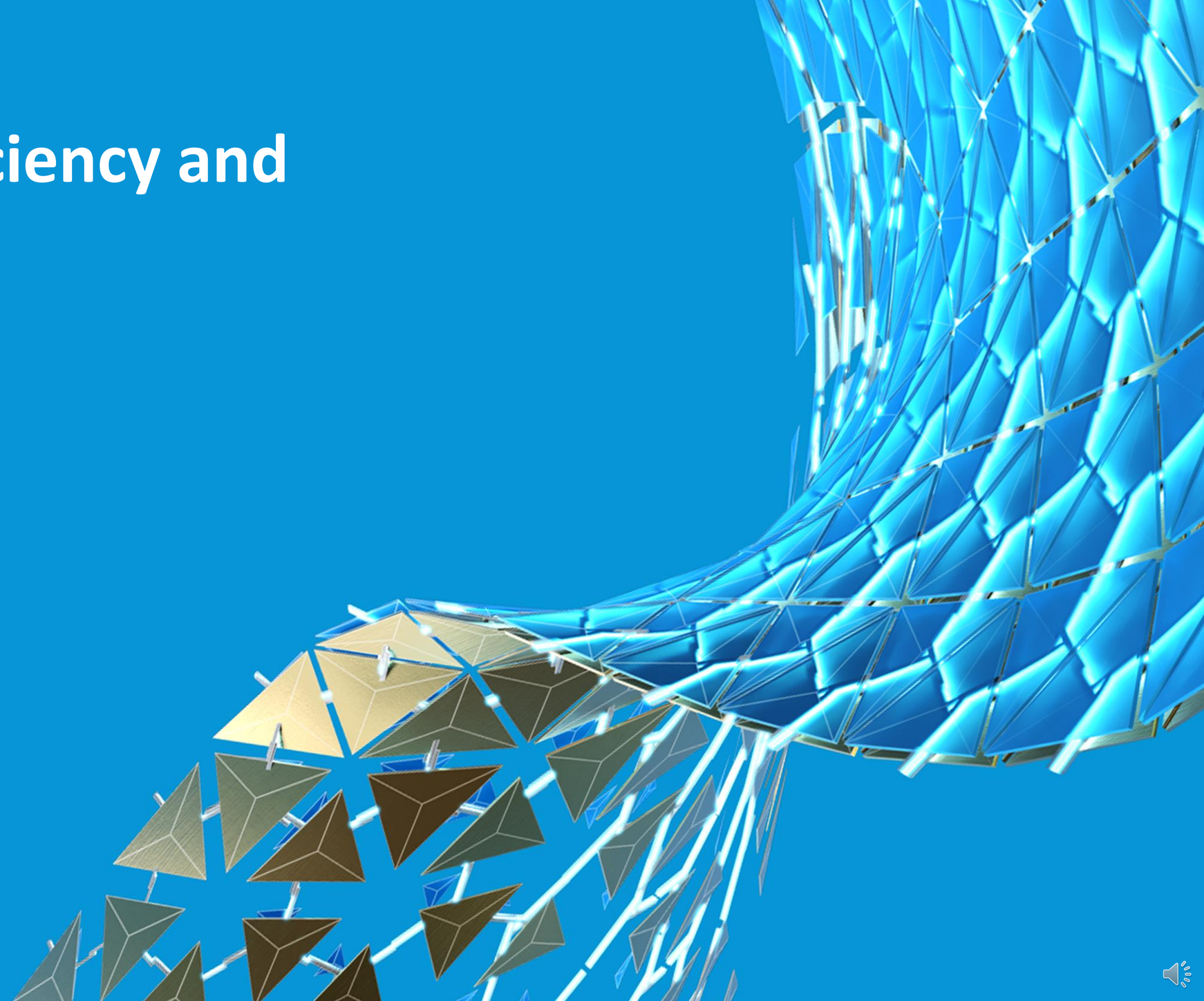
Knowledge is Power

- Training
- Standardisation of access and use
- Guidance and checklists

Don’t Get Caught Out

- Sufficient infrastructure and bandwidth for duration
- Who is doing what and when
- Who has access
- What happens when employees leave

Improving efficiency and reducing risks



Meetings and Records

Some questions to resolve

- Back-ups
- Changes/new data
- Awareness of data
- Data security
- Process

…Where is this all recorded (internally and externally)

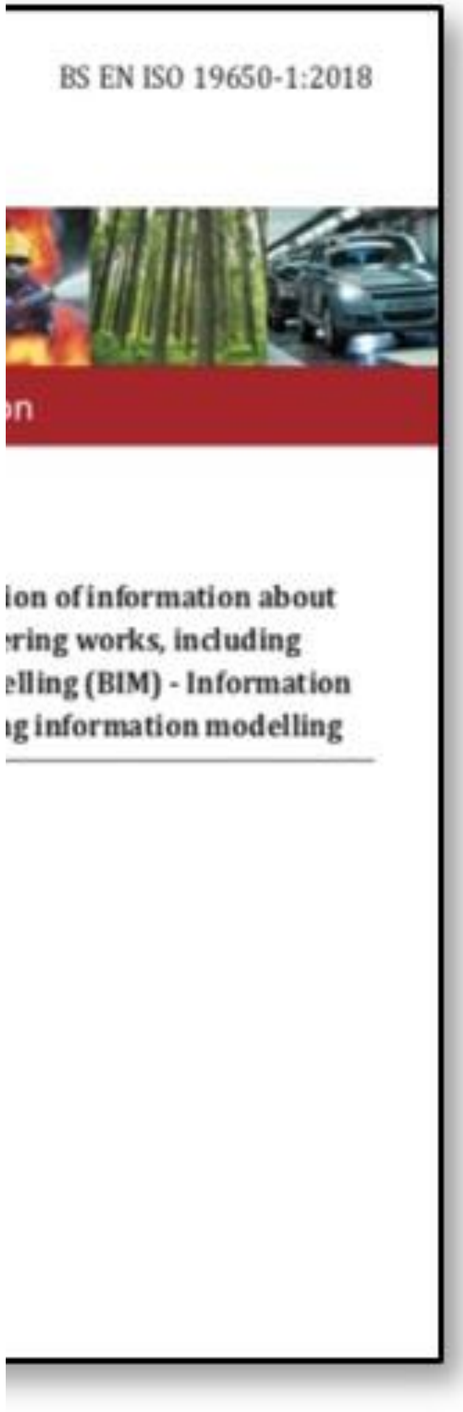
Increased security

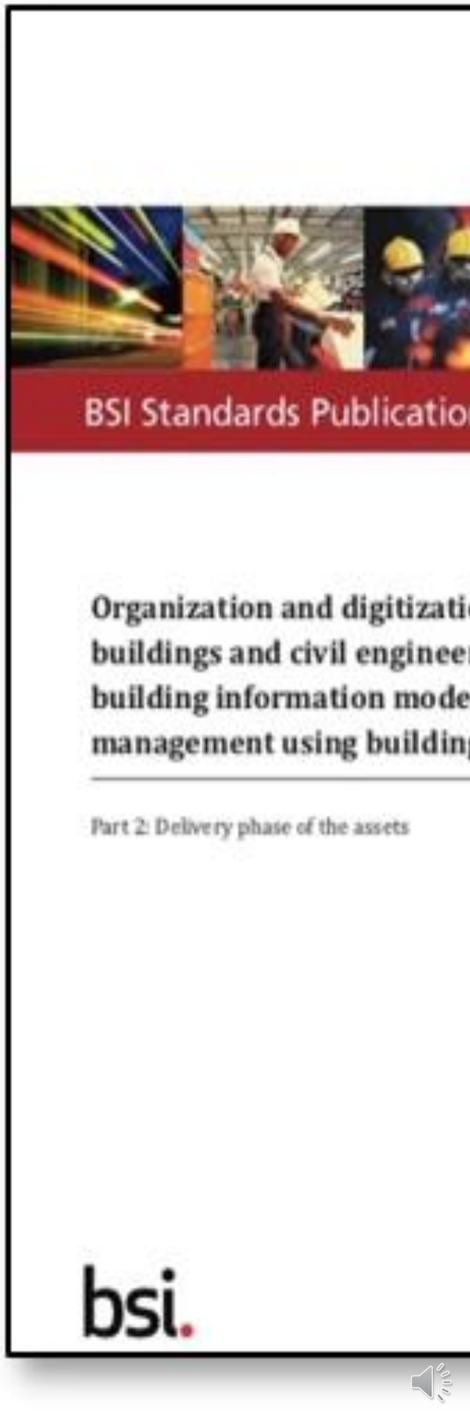
- What are the realistic safeguards
- Who grants/monitors access
- Prohibiting sharing passwords/access
- Limiting/Avoiding downloads to external storage
- What data/information is unsuitable for the cloud
- Awareness, Mindset and Training
- See ISO19650-5

Learning from the Standards

The purpose of the ISO19650 series is better electronic information management

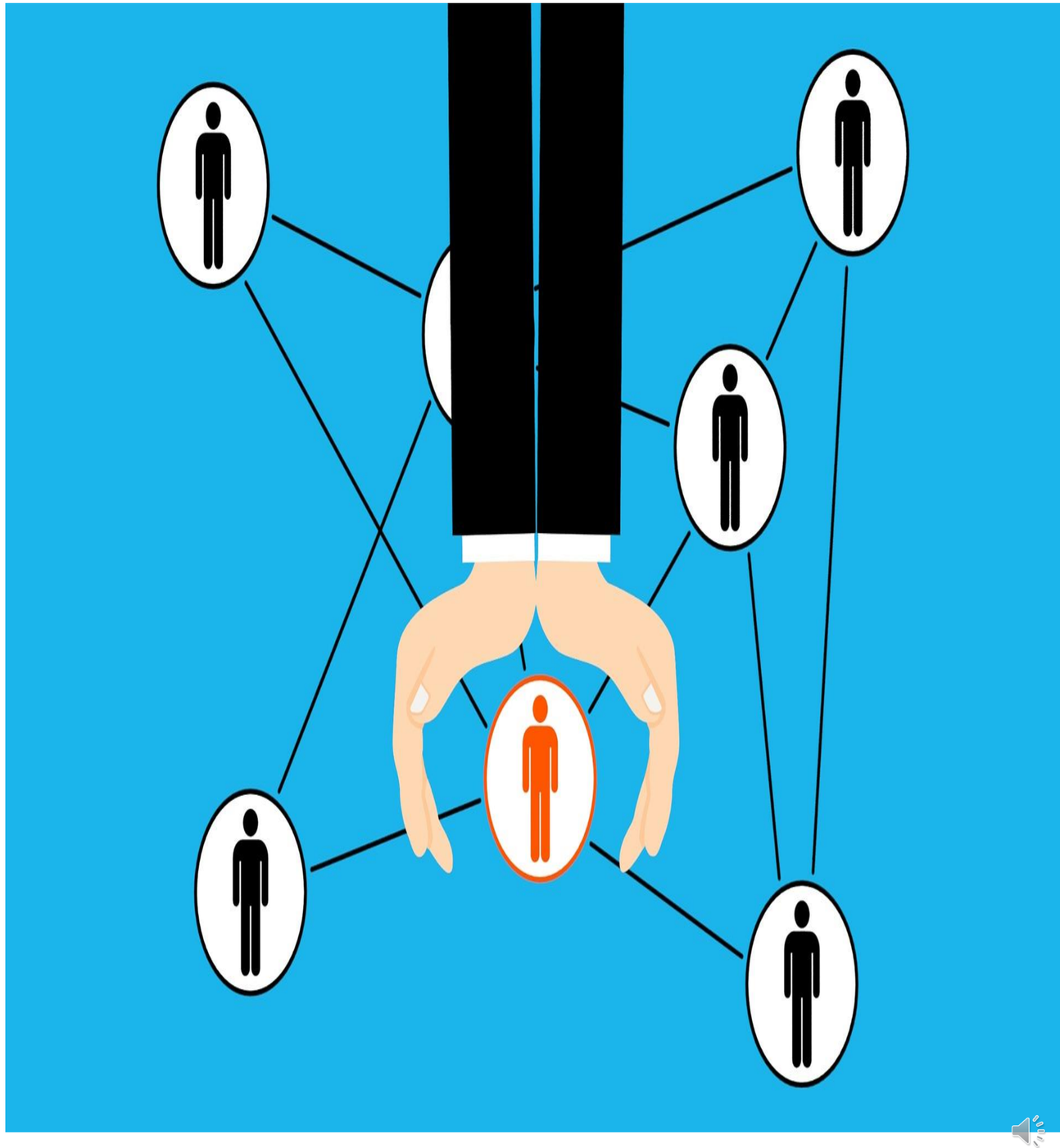
- Envisages a CDE
- The Client provides the CDE
- ‘Distributed CDE’ for WIP development
- Risks and issues of project team hosting the CDE
- What happens at the end of the contract/project
- Project’s CDE Archive and Archive Journal
- See UK BIM Framework website (https://ukbimframework.org/)





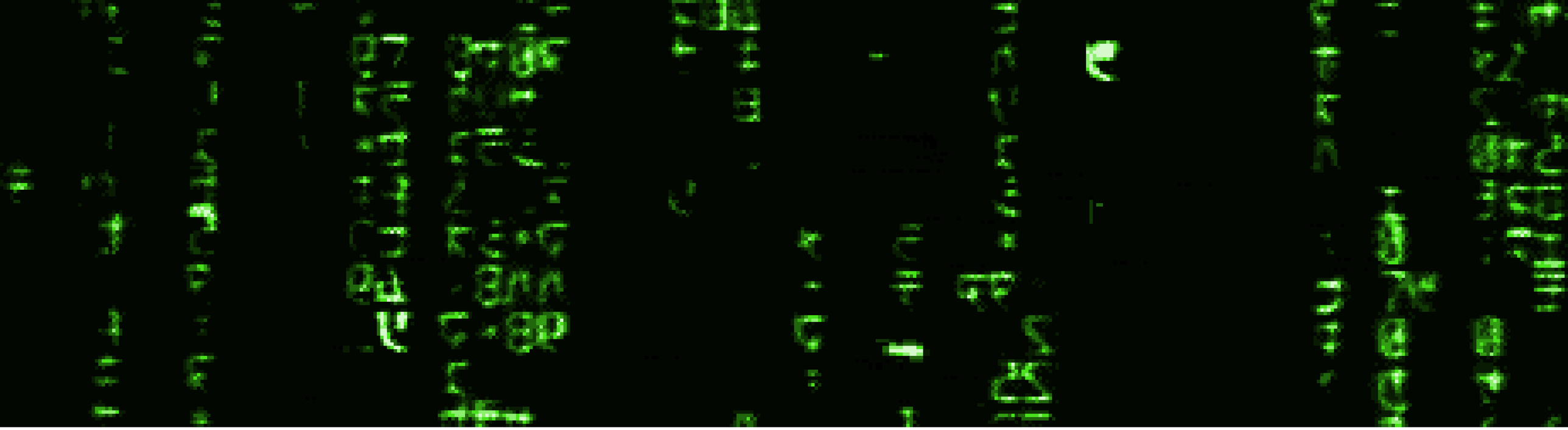
Insurance

- If hosting, does your insurance cover this?
- Do all parties have relevant insurance (e.g. cyber risks cover)
- Is it clear who’s insurance is intended to respond in likely scenarios
- Does your insurance exclude/limit any aspects



What about at the end of the contract or project?

- Continuing access
- Taking copies (if contractually permitted)
- Ownership of data stored
- Responsibility for archiving and recording
- Valid evidence in the event of claims/disputes



Don’t simply move to cloud-based platforms

“The cloud is a means, not an end. Success in modernizing IT through the cloud is driven by a complete standardization and automation strategy…Just taking legacy applications and moving them to the cloud—“lift-and-shift”—will not automatically yield the benefits that cloud infrastructure and systems can provide”

McKinsey Insights, 12 April 2018

Summary Checklist

1. Does the cloud solution comply with legal and contractual requirements?
2. Do the documents state who is responsible for main aspects of setup, maintenance and access?
3. Do the documents state who bears the likely/common risks and problems?
4. Do the documents clearly limit or exclude liability?
5. Are internal processes in place and enforced, e.g. access, use and withdrawal of access?
6. Are there internal records and/or back-ups?
7. Is there a plan for the end of the project, i.e. records and archiving
8. Is there sufficient/the right insurance?

Every kid coming out of Harvard, every kid coming out of school now thinks he can be the next Mark Zuckerberg, and with these new technologies like cloud computing, he actually has a shot.

Marc Andreesen, Netscape co-founder

Thank You

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