

**THE 1987 CHANGES IN AIA DOCUMENT B141  
OWNER – ARCHITECT AGREEMENT**

**SECTION I**

**By**

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V: ARTICLE1

THE NEW AIA CONTRACT DOCUMENTS

AIA Document B141

I. ARTICLE 1 - ARCHITECT'S RESPONSIBILITIES

In 1987, Article 1, which identified and described the Architect's responsibilities and basic services, was revised and limited to define only the Architect's responsibilities. The scope of the Architect's basic services are now set forth in Article 2.

A. Additions

1. Subparagraph 1.1.1 - Basically a definition provision, this section was added to describe the Architect's services requiring compensation under the B141 as those set forth in Article 1 (Basic Services), Article 3 (Additional Services) and Article 12, a new article allowing the Architect and Owner to fill in other specially negotiated services in the space provided. These services include those performed by the Architect, his consultants and employees.

Comment: The categorization of the services into basic, additional and other services was included to address the Architects' complaints that they were not getting paid for basic or additional services. The ambiguity in the 1977 form as to which services warranted more than basic compensation was construed against Architects in their claims for compensation. Subparagraph 1.1.1 aims to correct this problem. Further, by clearly defining which services are "additional" and require extra compensation, Owners will be better able to decide if they wish to contract to pay for these services.

2. Subparagraph 1.1.3 - Added a provision subjecting the Architect's services to time limitations set forth in subparagraph 11.5.1. 11.5.1 specifies that the Architect will get additional compensation if he continues services beyond the "end" of the Project, as defined in sub-

paragraph 2.6.1 This gives greater protection to the Architect as it provides that the Architect will get paid for "additional services" provision requiring more than the basic fee if completion of the project is delayed beyond these time limits. However, the Architect must not have caused the delay to receive the "additional services" compensation.

B. Revisions/Deletions

1. Subparagraph 1.1.2 - Incorporates the provision previously set forth in subparagraph 1.8.1 in the 1977 form requiring the Architect to establish a time schedule to be approved by the Owner and to perform services expeditiously according to it. Previously, the schedule had to be adjusted as the Project progressed. Adjustment of the schedule is now discretionary in the 1987 form. The 1987 revision additionally prohibits the Owner, not only the Architect, from exceeding time limits established in the schedule.

C. Cross-reference of Article 1 to 1977 B141:

<u>1977 B141</u>	<u>1987 B141</u>
Article 1 (Architect's Services and Responsibilities)	1.1
1.8.1 (Time)	1.1.2

II. ARTICLE 2 - SCOPE OF ARCHITECT'S BASIC SERVICES

As noted above, Article 2 now contains the scope of the Architect's basic services previously described in Article 1 in the 1977 form. Some substantive changes were made within each phase (i.e., Schematic Design Phase). Additionally, the term "statement of probable construction costs" used in the first four phases, was clarified and replaced with "Preliminary Estimate of Construction Costs". Note, also, that with regard to services performed during the Schematic Design and Design Development Phases, substantial or inconsistent changes by the Owner will result in payment of additional compensation as a "Contingent Additional Service" to

the Architect under subparagraph 3.3. This revision was made to ensure that Owners did not take advantage of Architects by making substantial changes in the early stages and not paying for them.

A. Schematic Design Phase - Revisions

1. Subparagraph 2.2.1 (formerly 1.1.1) - Was revised to require the Owner and Architect to come to a "mutual" agreement regarding the program requirements (design services) that the Architect will provide. Both must review alternate approaches to design and construction. This revision requires the Owner to allow the Architect more input and will hopefully result in less litigation over ambiguities in the Architect's duties and disputes between the Owner and Architect as to what compensation will be required for the services.

2. Subparagraph 2.2.2 (formerly 1.1.2) - This section was amended to require the Architect's review of the Owner's schedule, in addition to the program and budget. While this will allow the Architect to object to unreasonable time limits, it will also bind the Architect to the agreed time frames in the schedule. The review of the schedule is also subject to the unchanged liability limitations in subparagraph 5.2.1 (previously 3.2.1), preventing claims against the Architect for inaccuracy.

B. Design Development and Construction Documents Phases - Revisions

1. Subparagraphs 2.2.4 and 2.3.1 (formerly 1.1.4 and 1.2.1, respectively) - The 1987 revision increases the Owner's responsibility to provide a schedule to the Architect in addition to a construction (previously "project") budget. While Owners may initially balk at this added responsibility, the schedule will, in fact, force the Architect to adhere to project time limitations. Furthermore, as the Architect has reviewed this schedule (see 2.2.2 in Schematic Design Phase), it may eliminate the Architect's defense that the time constraints therein were burdensome.

2. Subparagraphs 2.3.2 and 2.4.3 (formerly 1.2.2 and 1.3.3) - These revisions omit the mandatory requirement of a formal, revised estimate of construction costs for

the Project. The Architect now only has to inform the Owner of any revisions to the original estimate. This gives the Architect more independence from the Owner by allowing him the discretion to approve increases to the estimate without the Owner's consent. It will also eliminate delays caused by waiting for the Owner's approval of such revisions. By alleviating a formal revision, this will prevent Architect-Owner disputes as to whether these revisions require additional compensation to the Architect.

## C. Construction Phase

### 1. Additions

a. Subparagraph 2.6.8 - This new section requires the Owner and Contractor to communicate through the Architect unless otherwise expressly provided. Essentially, this is a rewording of subparagraph 1.5.3 in the 1977 form.

### 2. Revisions

a. Subparagraph 2.6.1 (formerly 1.5.1) - The dates signaling the end of the Architect's duty to provide basic services remain the same, although the parties now may extend this time, provided the Architect receives additional payment pursuant to subparagraph 10.3.3.

b. Subparagraph 2.6.3 (formerly 1.5.16) - In addition to the existing requirement of written consent by the Owner, Contractor and Architect to extend or modify the Architect's duties, the Architect's role may not now be "restricted" without such consent. In other words, all three parties must agree in writing to eliminate any of the Architect's duties set forth in the B141. The new form also imposes a standard of reasonableness when withholding consent.

c. Subparagraph 2.6.4 (formerly 1.5.3) - The Architect now acts as the Owner's representative, not only during construction, but also during the correction period, thus increasing the Owner's

(and Architect's) exposure to liability. While this revision extends the Architect's authority, Subparagraph 2.6 expresses a caveat to all parties that this authority is limited to those periods expressly stated in B141. Any services performed during this warranty or correction period entitles the Architect to compensation as an additional service. However, should the correction be necessary due to the Architect's design defects, no additional compensation will be allowed.

d. Site Visit Provisions

1. Subparagraph 2.6.5 (formerly 1.5.4) - This revision decreases the Architect's responsibility and liability during site visits. The Architect is now only responsible for insuring that the work being done, "when completed, will be in accordance with the contract documents", rather than determining that the work at the time of the visit conforms with the terms of the contract. The amendment shifts the focus towards the accuracy of the completed project. A clause has also been inserted to clarify that more extensive site visitation is an "Additional Service" requiring compensation.

COMMENT: The 1987 revision reflects the growing concern amongst Architects regarding their potential liability for the work progress failing to comply with safety laws, a burden better borne by the Contractor.

2. Subparagraph 2.6.6 (formerly 1.5.5) - Clarifies that the Architect will not be responsible for the duties of the Contractor, his employees or subs, or for their means, techniques or methods of construction; nor will he or she be responsible for the Contractor's schedule.

3. Subparagraph 2.6.10 (formerly 1.5.8) - Like 2.6.6, this revision clarifies that with regard to the Architect's certifications for payment to the Contractor, the Architect will not be liable for the Contractor's failure to perform duties pursuant to the contract.

4. Subparagraph 2.6.11 (formerly 1.5.12) - Reaffirms the Architect's authority under the 1977 form to reject work, but now establishes that neither the exercise nor failure to exercise such authority will make the Architect liable to the Contractor or other third parties performing work or providing materials or supplies to the project.

5. Subparagraph 2.6.12 (formerly 1.5.13) - The Architect still must "review and approve" submittals by the Contractor (such as shop drawings or samples), but the 1987 B141 greatly restricts the Architect's liability for this task and places it on the Contractor. Specifically, review of the submittals does not warrant that the Architect finds them correct, nor the means to implement them safe. Furthermore, the Architect has a "right of reliance" upon any professional certification of "performance characteristics" accompanying the submittals.

6. Subparagraph 2.6.13 (formerly 1.5.14) - This revision imposes mandatory preparation of "Construction Change Directives" by the Architect, in addition to the existing requirement to draft change orders. However, should the Architect decide that additional drawings or other documents are necessary to prepare them, the Owner must compensate him for these extra services pursuant to subparagraph 3.3.3.

7. Subparagraph 2.6.14 (formerly 1.5.15) - In addition to certification for final payment, Architects must now also render a Certificate of Substantial Completion.

e. Settlement of Owner - Contractor Disputes

1. Subparagraphs 2.6.15 through .19 (formerly 1.5.9 through .11) - While the Architect still must decide Owner/Contractor disputes, the Architect now takes a much more passive role. This is compatible with the lessening of responsibility for other duties within the Construction Phase. Architects no longer "judge" these disputes under the new form and must be requested i

writing to intervene. All Architect decisions regarding Owner-Contractor disagreements are subject to arbitration except those regarding "aesthetics", which are precluded from review (2.6.17 and .19). Note that the 1987 form replaced "artistic" with "aesthetic", presumably to broaden the Architect's discretion. Additionally, 2.6.16 provides the Architect immunity from liability for "interpretation or decision" of Owner-Contractor disputes when rendered in good faith. However, the deletion of the "judicial" function of the Architect's could remove the Architect's cloak of immunity when B141 is read in conjunction with the parallel provision in A201 (§4.4.1)

D. Cross-reference of Article 2 to 1977 B141:

<u>1977 B141</u>	<u>1987 B141</u>
1.1 - 1.1.5 (Schematic Design Phase)	Transferred to 2.2 - 2.2.5
1.2 - 1.2.2 (Design Development Phase)	Transferred to 2.3 - 2.3.2
1.3 - 1.3.4 (Construction Documents Phase)	Transferred to 2.4 - 2.4.4
1.4 - 1.4.1 (Bidding or Negotiation Phase)	Transferred to 2.5 - 2.5.1
1.5 - 1.5.11 (Construction Phase)	Transferred to 2.6 - 2.6.19

III. ARTICLE 3 - ADDITIONAL SERVICES

Subparagraph 3.1 (formerly 1.7) - Formerly discussed under Article 1 in the 1977 B141, the 1987 form deals with additional services under Article 3 to clarify exactly what services are considered extra and will require additional compensation.



Article 3 further divides these services into "Contingent Additional Services" (subparagraph 3.3), those services performed by the Architect should a specific set of events occur; and "Optional Additional Services", non-essential services which may be agreed to by the Owner. Although both categories require additional compensation, the Owner must expressly contract to pay for "Optional Additional Services" to be responsible for them.

Article 3 also designates additional compensation for extraordinary site representation by the Architect, formerly discussed under subparagraph 1.6 in the 1977 form, now discussed in 3.2.

A. Subparagraph 3.1.1 (formerly 1.7) - This new section establishes that the services discussed in Article 3 require additional compensation unless identified as "basic services" in Article 12. Furthermore, additional site representation (subparagraph 3.2) and "Optional Additional Services" (subparagraph 3.4) will now only be provided if the Owner gives written authorization for them, thus ensuring that the Owner agrees to pay for them. With regard to "Contingent Additional Services" (subparagraph 3.3), if the Architect determines they are necessary due to circumstances beyond his control, he must first inform the Owner before beginning the services. The Owner must then inform the Architect, in writing, if he does not believe these services are required. The architect may begin performing the services and is entitled to additional compensation if the Owner fails to inform him that they will not be necessary.

B. Subparagraph 3.2 - Project Representation Beyond Basic Services

1. Subparagraphs 3.2.1 and .2 (formerly 1.6.1 and .2) - Should the Owner wish extensive site representation, or more than "at intervals appropriate to the stage of construction", the Owner must agree to compensate the Architect for this Additional Service. The Architect may still select "Project Representatives" to perform these services, but now they will be governed by the provisions of AIA Document B352<sup>1</sup>, unless otherwise specified.

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<sup>1</sup>AIA Document B352, "Duties, Responsibilities and Limitations of Authority of the Architect's Project Representative" should be used whenever an Architect employs a project representative.

C. Subparagraph 3.3 - Contingent Additional Services - As mentioned above, Article 3 now identifies separately what are considered "contingent additional services". These were previously combined with the basic services and listed under Article 1 in the 1977 form.

1. Subparagraph 3.3.1 (formerly 1.7.12) - Revision of Design Documents now includes those services required because of changes in the Owner's "Project Budget or Program" and those caused by the Owner's delay in decision-making.

2. Subparagraph 3.3.2 (formerly 1.7.17) - The Architect is still allowed extra compensation for Additional Services caused by significant project changes as in the 1977 form, but not if the lowest bid exceeds the set Construction Cost limit and the Owner opts to revise the Project to reduce the budget under subparagraph 5.2.4. If the Owner so modifies the Project, the Architect must amend the Contract Documents in accordance with the revised budget at no charge (5.2.5).

3. Subparagraph 3.3.3 (formerly 1.7.13) - Drawings and other data necessary to prepare Change Order Directives now give rise to additional compensation.

4. Subparagraph 3.3.8 (formerly 1.7.20) - Services performed in connection with legal matters require additional compensation, provided that the Architect is not a party to the litigation.

D. New Services Requiring Additional Compensation

1. Subparagraphs 3.3.4 and .7 - These sections were added to include Architectural services for review and revision of Contractor-recommended substitutions, and for review of excessive claims submitted by the Contractor.

2. Unchanged Provisions - Subparagraphs 3.3.5, 3.3.6 and 3.3.9 (formerly 1.7.15, .16 and .6) remain essentially unchanged except for revisions in punctuation.

E. Subparagraph 3.4 - Optional Additional Services

Most of the Optional Additional Services remain the same as set forth in the 1977 Bl41; however, some have now been separated and listed individually. This reflects the architectural profession's current concerns with clarity in the description of services. Other services delineated as "optional" in the 1977 form are now "contingent additional services" requiring compensation.

Revisions to 1977 Form:

1. Subparagraph 1.7.3 (planning surveys, site evaluations and documents required for governmental approval) - Now in subparagraphs 3.4.3 and 3.4.4 in the 1987 form.
2. Subparagraph 1.7.9 (in-depth cost analyses and inventories) - Now in subparagraphs 3.4.10, 3.4.11 and 3.4.12.
3. Subparagraph 1.7.12 (revisions required because Owner's changes are inconsistent with original instructions or due to change in code) - Now a "Contingent Additional Service" under subparagraph 3.3.1 of the 1987 form.
4. Subparagraph 1.7.15 (consultation re: fire damaged work) - Now a Contingent Additional Service under subparagraph 3.3.5.
5. Subparagraph 1.7.16 (services required because of Contractor's default, etc.) - Now a Contingent Additional Service under 3.3.6.
6. Subparagraph 1.7.20 (expert witness services) - Now combined with 3.3.20 as a Contingent Additional Service.

F. Cross Reference of Article 3 to 1977 B141

<u>1977 B141</u>	<u>1987 B141</u>
1.6 - 1.6.3 (Project Representation Beyond Basic Services)	3.2 - 3.2.3
1.7 (Additional Services)	3.1 - 3.1.1
1.7.1 (Optional Additional Services)	3.4.1
1.7.2	3.4.2
1.7.3	3.4.3 and .4
1.7.4	3.4.5
1.7.5	3.4.6
1.7.6	3.3.9
1.7.7	3.4.8
1.7.8	3.4.9
1.7.9	3.4.10 - .12
1.7.10	3.4.13
1.7.11	3.4.14
1.7.12	3.3.1
1.7.13	3.3.3
1.7.14	3.4.15

1977 B141

1987 B141

1.7.15

3.3.5

1.7.16

3.3.6

1.7.17

3.3.2 and 3.4.16

1.7.18

3.4.17

1.7.19

3.4.18

1.7.20

3.3.8

1.7.21

3.4.19

1.7.22

3.4.20

IV. ARTICLE 4 - OWNER'S RESPONSIBILITIES

A. Additions

1. Subparagraph 4.6.1 - A new provision requiring Owners to bring in (and pay for) additional consultants at the Architect's request, as long as they are reasonably necessary to the project.

Comment: This will have a significant financial impact on Owners by increasing their responsibility for design costs.

2. Subparagraph 4.11 - This addition imposes stricter requirements and time limits upon Owners regarding certificates for Architects' approval. 4.11 requires the Owner to allow the Architect two weeks for review and approval. Furthermore, it prohibits Owners from submitting certificates which involve matters outside the Architect's expertise. This aims to prevent third parties from holding Architects liable for Owner

procrastination in submitting certificates and for matters clearly outside the scope of the Architect's knowledge and duties.

B. Revisions

1. Subparagraph 4.1 (formerly 2.1) The 1987 revision to this section adds the requirement that the Owner provide a schedule during the Design Development and Construction Documents phases, as reflected in subparagraphs 2.2.4 and 2.3.1.

2. Subparagraph 4.2 (formerly 2.2) - This revision imposes mandatory preparation of a budget upon the Owner, as distinguished from the discretionary language ("if the Owner provides a budget) in the 1977 B141. Additionally, the 1987 form deletes the requirement that the Owner include bidding contingency costs. However, these costs may be deemed to be mandatory pursuant to the broader language in the 1987 form regarding inclusion of "Owners' other costs and reasonable contingencies".

3. Subparagraph 4.3 (formerly a portion of 2.2) - The Owner's responsibility to furnish evidence of financial solvency pursuant to the Architect's request, is now set forth in its own subparagraph to prevent Owner claims that this provision was hidden within fine print in the agreement and thus not binding. This provision parallels the Contractor's right to such evidence from the Owner in the 1987 A201, subparagraph 2.2.1.

4. Subparagraph 4.5 (formerly 2.4) - The 1987 Edition clarifies what must be included in the Owner's survey. In addition to those items listed in the 1977 form, the survey must disclose the sites for utilities, legal limitations on the property and physical characteristics of the land; structures and adjacent drainage must be included. The survey must also include a written legal description. Further, the 1987 form imposes a mandatory requirement that the survey information be "referenced to a project benchmark".

5. Subparagraph 4.6 (formerly 2.5) - The Owner's responsibility to pay for the services of "soil" engineers has been broadened to include "geotechnical" engineers. Additionally, public environmental consciousness led to

the inclusion of Owner responsibility for determinations by such engineers regarding content of hazardous materials beneath the Project's surface.

6. Subparagraph 4.7 (formerly 2.6) - As in subparagraph 4.6, the Owner is now responsible for toxic material evaluations, air and water pollution tests and other evaluations referencing environmental factors.

Comment: The assertions in 4.6 and 4.7 regarding the Owner's responsibility for environmental hazards was intended to prevent liability claims against the Architect's insurers and against Architect's personally, as many insurers began deleting coverage for these types of tort claims.

C. Deletions

1. Subparagraph 2.10 of the 1977 form has been deleted as redundant. The requirement in 2.10 for the Owner to provide necessary information and services, and expeditiously approve and make decisions to ensure the Architect's timely progress, is now incorporated in other provisions throughout the document.

D. Cross Reference of Article 4 to 1977 B141

<u>1977 B141</u>	<u>1987 B141</u>
2.1	4.1
2.2	4.2 and 4.3
2.3	4.4
2.4	4.5
2.5	4.6
2.6	4.7

2.7	4.8
2.8	4.9
2.9	4.10

V. ARTICLE 5 - CONSTRUCTION COST

A. Subparagraph 5.1 - Definition Section - Revisions.

1. Subparagraph 5.1.2 (formerly 3.1.2) - Revised to clarify what is included in the "construction cost". This cost includes the cost of the Architect's equipment, materials and labor supplied by the Owner, and a "reasonable allowance" for profit and overhead of the Contractor. The 1987 edition also requires that fluctuating market conditions be taken into account during the bidding phase, along with construction changes. These factors must be considered by the Architect in rendering estimates for projects, whether or not they are in fact completed.

B. Subparagraph 5.2 - Responsibility for Construction Cost - Revisions

Subparagraph 5.24 - The revision to this section now references, along with subparagraphs 2.2.2 and 4.2, the Owners mandatory responsibility to provide a project budget. Additionally, the 1987 revision inserts precautionary language to prevent Architects from being held responsible for "preliminary estimates of construction cost".

2. Subparagraph 5.2.5 (formerly 3.2.4) - The 1987 B141 reaffirms that the Architect's responsibility to modify his plans without charge should the fixed limit of construction costs be exceeded by the lowest bid (see subparagraph 5.2.4) and the Owner opts to redesign accordingly. However, the requirement that the Architect modify "drawings and specifications" has been replaced with "contract documents", presumably to restrict this modification to those services which would generally be considered "basic" and not "additional".



Comment: The clarifying language inserted in 1987 in both of these sections aims to restrict the Architect's liability. 5.2.1 prevents Owners from suing Architects for erroneous cost estimates through its disclaimer of any warranty of correctness. This disclaimer precludes a "cost condition" (a promise that the estimate is correct) from being imposed upon the Architect and disallowance of the Architect's fee. Previously, judges generally allowed Owners to impose these cost conditions against Architect.

5.2.5 limits the Architect's responsibility to revision of the Contract Documents when the Owner reduces the budget according to bids. Although this language seeks to prevent claims against the Architect for inaccuracy in the revisions, courts may still allow Owners to collect for expenses incurred due to an Architect's negligence.

C. Cross-Reference of Article 5 to 1977 B141

<u>1977 B141</u>	<u>1987 B141</u>
3.1 - 3.1.3 (Definition of Construction Cost)	5.1 - 5.1.3
3.2.1 - 3.2.4 (Responsibility for Construction Cost)	5.2.1 - 5.2.5

VI. ARTICLE 6 - USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS.

This provision, previously discussed under the Article 8 "Ownership" clause in the 1977 B141, seeks to provide more protection to the Architect by carefully outlining the Architect's ownership rights to the documents and limiting the Owner's right to use them on future projects.

1. Subparagraph 6.1 (formerly 8.1) - This revision broadens the scope of the Architect's ownership to include all related documents drafted by the Architect for the project, in addition to the drawings and specifications. Generally, this grants the Owner a limited license for use. The revision also precludes

"others" besides the Owner from using the documents, unless the Architect is in default.

2. Subparagraph 6.2 (formerly 8.2) - Remains basically unchanged.

#### VII. ARTICLE 7 - ARBITRATION

Article 7 (formerly Article 9 in the 1977 form) remains virtually the same, except for the separation of former subparagraph 9.1 into two sections.

Cross Reference of Article 7 to 1977 B141.

<u>1977 B141</u>	<u>1987 B141</u>
9.1	7.1 and 7.2
9.2	7.3
9.3	7.4

#### VIII. ARTICLE 8 - TERMINATION, SUSPENSION OR ABANDONMENT

Article 8 incorporates Article 10, the provision in the 1977 B141 which protected the Architect's right to payment for his services in the event of the termination of the agreement or abandonment of the project. Article 8 now also protects the Architect if the Owner suspends the project. (See subparagraph 8.2). Article 8 also sets forth the Architect's right to suspend performance should the Owner fail to make payment. (New subparagraph 8.5).

A. Additions - The following provisions were added to provide remedies to the Architect in the event the Owner defaults on payment.

1. Subparagraph 8.4 - This provision was added to establish that the Owner's failure to pay the Architect

for basic, additional or, if agreed to, optional services, constitutes a material breach. In the event of such a breach, the Architect may terminate the agreement.

2. Subparagraph 8.5 - This addition allows the Architect suspension as an alternative remedy to termination should the Owner fail to pay. The Architect may give the Owner a 7-day written notice following the Owner's failure to pay the Architect's services or expenses. Should the Owner refuse to pay after the expiration of the 7 days, the Architect may suspend his services. Additionally, 8.5 provides that the Architect's suspension under these circumstances will not give rise to liability to the Owner for damage or delay caused by the suspension.

COMMENT: The 1987 edition of these sections provide two sorely needed remedies to the Architect to use in the event of Owner default. If the project is in the early stages when the Owner defaults on payment, the Architect may wish to elect termination of the agreement under 8.4. Termination would allow the Architect to cut his losses early and move on to other projects, particularly if it appears that the Owner will never be able to pay the Architect or will be repeatedly delinquent. On the other hand, if the Architect has invested substantial time and the project is in the middle to final phases, the Architect may wish to follow the suspension procedure. This suspension period will allow the Architect to evaluate whether the Owner is merely having temporary financial difficulty or is seriously insolvent. The policies underlying the additions of these sections are three-fold: (1) to protect Architects from non-payment by giving them remedies; (2) to discourage delinquent payment by Owners; and (3) to protect Architects from liability in the event Owners incur damage or delays because of Architects' suspensions.

While the inclusion of 8.4 and 8.5 greatly benefit Architects, they will have a severe impact on Owners, particularly subparagraph 8.4. For example, 8.4 does not state how long the Owner must be delinquent before the Architect may terminate services. This could lead to great abuse of the termination privilege and be too harsh a penalty for Owners having financial difficulty, but making a good faith attempt to pay workers and finish the project. On the other hand, in contrast to 8.5, 8.4 does not expressly state that the Architect will be immune from Owners' claims for delay or damage caused by the

Architect's termination. By negative implication, Owners might be able to collect for these injuries.

B. Revisions

1. Subparagraph 8.2 (formerly 6.4.1) - The 1987 form shortens the Owner's suspension time from "3 months" to "30 days". After 30 consecutive days of suspension, the Owner must compensate the Architect for expenses incurred in the interruption and resumption of the Architect's services. The compensation is an "equitable adjustment" of the Architect's normal compensation under the agreement.

Comment: The shortening of the suspension time to 30 days will prevent long suspensions by Owners. However, it should be noted that the 1987 form requires 30 consecutive days of suspension, which may induce Owners to suspend many times but for short periods.

2. Subparagraph 8.3 (formerly 10.2) - Under this provision, the Owner still retains the right to terminate if the project is abandoned and he gives the Architect 7 days notice. The 1987 revision adds a new clause giving the Architect a similar right to terminate. An Architect may now terminate his services by giving written notice to the Owner after the project has been abandoned for more than 90 consecutive days.

Comment: Subparagraph 8.3 now clarifies how long an Architect must wait before terminating his services if the Owner fails to give the requisite notice of abandonment.

3. Subparagraph 8.7 (formerly 8.4) - The 1987 version of the termination expenses provision has no substantial changes from the 1977 form. The only amendment of any importance is to 8.7.1, regarding compensation due to the Architect in the first "trimester" of the project. Now, an Architect is entitled to compensation if the Owner terminates "before or during pre-design or site analysis". Previously, the Owner did not incur the responsibility for termination expenses unless he terminated during the schematic design phase; any time prior did not entitle the Architect to compensation.

Because the Owner must compensate for 20% of the Architect's total fee if he terminates during these early stages, this revision will have a significant financial impact on Owners.

## ARTICLE 9 - MISCELLANEOUS PROVISIONS

Formerly Article 11, Article 9 of the 1987 B141 is the "catch-all" article. Three new subparagraphs have been added, all three with the intention of providing Architect's further protection from liability. Article 9 incorporates both Article 12 and Article 13 from the 1977 B141.

### A. Additions

1. Subparagraph 9.7 - This new provision precludes actions based upon a third-party beneficiary of contract theory.

Comments: This addition will have a far-reaching effect on all parties working on the project in that Architects can not be held liable to anyone except the Owner. Courts may find this provision too restricting on parties who had no opportunity to contract away their right to sue, especially in those jurisdictions which have been holding Architects liable for negligent work to parties not in privity.

2. Subparagraph 9.8 - Reflecting the concern in the profession regarding liability for environmental hazards, 9.8 was added to give Architects immunity from being sued for the "discovery, presence, handling, removal or disposal of or exposure of persons to" dangerous substances at the project. This will properly place the burden of liability on Owners, who have a greater duty to locate and clean up the toxics.

3. Subparagraph 9.9 - This provision protects the Architects right to use project drawings and photographs to advertise his work. The addition of this clause is consistent with the revision of Article 6.1, restricting the Owner's use of the Architect's documents. Both these provisions seek to clarify and protect Architects' ownership rights to their documents. However, 9.8 also

protects the Owner, prohibiting the Architect from promoting his services with documents which are the Owner's proprietary or confidential information. The Owner must give written notice to the Architect regarding the nature of this information.

B. Cross Reference of Article 9 to 1987 B141

<u>1977 B141</u>	<u>1987 B141</u>
11.1	9.1
11.2	9.2
11.3	9.3
11.4	9.4
12.1	9.5
13.1	9.6

X. ARTICLE 10 - PAYMENTS TO THE ARCHITECT

Article 10, covering expenses payable to the Architect, now includes direct personnel (former Article 4) and reimbursable expenses (former Article 5), payments to the Architect (former Article 6) and the Architect's accounting records (former Article 7). The revisions to the "expense Article" are minor.

A. Additions

1. Subparagraph 10.2.1.6 - This provision was added to include expenses incurred by the Architect when using computers for drawing and design.

B. Revisions

1. Subparagraph 10.2.1.2 (formerly 5.1.2) - This revision deletes the clause in the 1977 B141 excluding xerox copies made for the in-house use of the Architect and his consultants.

C. Deletions

1. Former Subparagraph 5.1.3 in the 1977 form, allowing reimbursement for data processing and photographic production expenses incurred in connection with additional services, has been deleted.

D. Cross Reference of Article 10 to 1977 B141

<u>1977 B141</u>	<u>1987 B141</u>
Article 4 (Direct Personnel Expense)	10.1
4.1	10.1.1
Article 5 (Reimbursable Expenses)	10.2
5.1	10.2.1
5.1.1 (Transportation)	10.2.1.1
5.1.2 (Xerox and Postage)	10.2.1.2
5.1.4 (Overtime)	10.2.1.3
5.1.5 (Renderings & Models)	10.2.1.4
5.1.6 (Additional Insurance)	10.2.1.5
6.1 (Payments on Account of Basic Services)	10.3

6.1.1 - .4	10.3.1 - .4
6.2 (Payments on Account of Additional Services)	10.4
6.2.1	10.4.1
6.3 (Payments Withheld)	10.5
6.3.1	10.5.1
Article 7 (Architect's Accounting Records)	10.6
7.1	10.6.1

## XI. ARTICLE 11 - BASIS OF COMPENSATION

The Compensation Article, formerly Article 14, has very few changes from the 1977 form. However, the revision to Subparagraph 11.5.1, which allows extra compensation for the extension of basic services is detrimental and of great concern to Owners. Additionally, the initial payment by the Owner to the Architect (subparagraph 11.1) is now credited to the Owner's account at final payment regardless of what type of services or expenses were being reimbursed, as distinguished from former Article 14.

### A. Additions

1. Subparagraph 11.5.3 - This provision was added to deal with the Architect's compensation for Additional Services. 11.5.3 requires that the rates must be adjusted annually "in accordance with normal salary review practices of the Architect". The addition of this provision will help protect Architects in long-term contracts from receiving the same rate as they did 5 years or so previous when they entered into the Bl41 with the Owner. On the other hand, 11.5.3 will have a harsh effect on Owners who enter into a Bl41 immediately before the Architect's yearly salary review.



B. Revisions

1. Subparagraph 11.5.1 (formerly 14.7.2) - This provision was revised to provide Architects' compensation for Additional Services when completion time for the project is extended. Previously, the Architect was entitled to an "equitable adjustment" of his or her fee.

C. Cross Reference of Article 11 to 1977 B141

<u>1977 B141</u>	<u>1987 B141</u>
Article 14 - 14.1 (Basis of Compensation)	Article 11 - 11.1
11.2 - 11.2.2 (Basic Compensation)	14.2 - 14.2.2
14.3 , 14.4 - 14.4.2 (Compensation for Additional Services)	11.3 - 11.3.3
14.5 (Reimbursable Expenses)	11.4 - 11.3.3
14.7.2 & 14.6 (Additional Provisions)	11.5 - 11.5.2

VII. ARTICLE 12 - OTHER CONDITIONS OR SERVICES

Essentially the same as Article 14 in the 1977 B141, Article 12 provides a space for the parties to insert specially negotiated services. Article 12 adds parenthetical instructions to the parties to identify modifications to compensation. Additional Services are to be paid according to "Basic Compensation".