Construction and design contracts come in many forms representing many different delivery methods. They are complicated legal instruments. Before you rely on this form, please seek legal counsel from your own construction lawyer. This form is not intended for projects outside the United States.

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**Owner's Election or Waiver of
Design for Freedom Principles
Regarding Anti-Forced Labor and Anti-Trafficking Laws**

Legal Landscape

In the United States, since the 1930s, the **Smoot Hawley Tariff Act** has prohibited the importation of any goods or materials manufactured in whole or in part with forced labor. However, for decades, many in the United States relied on a workaround provision that allowed an exception when the goods or materials did not meet the "consumptive demands" of the United States.

In 2016, the United States Congress closed that loophole entirely when it passed the **Trade Facilitation and Trade Enforcement Act ("TFTEA")**. Regardless of intent, therefore, and without exception, TFTEA prohibits the importation of anything manufactured with any amount of forced labor into the United States. This prohibition includes building materials.

In addition, the **Uyghur Forced Labor Prevention Act ("UFLPA")**, enacted in 2021 with a 2022 effective date, creates a rebuttable presumption that goods mined, produced, or manufactured wholly or in part in Xinjiang or by an entity on the UFLPA list are prohibited from U.S. importation.

As a result of TFTEA, without appropriate investigation in building materials supply chains, as outlined in the underlined attached Design for Freedom proposal, it is more likely that any building materials ordered by the Contractor or any of its Subcontractors could inadvertently fall into a prohibited category, leading to seizure at the border or a "withhold release order" ("WRO") issued by United States Customs and Border Protection. A WRO can negatively impact the substantial completion deadline in the [insert title of project agreement].

While the Architect will procure the professional liability insurance required under the [insert title of project agreement], such insurance generally covers only negligent acts and omissions committed by the Architect, or those that are not compliant with the relevant standard of care. In general, professional liability policies do not cover independent breaches of contract. As of the date of the [insert title of project agreement], consultation and investigation regarding compliance with TFTEA and UFLPA is not necessarily within an architect's standard of care. As such, there is a risk that any damages associated with a WRO or violation of TFTEA caused in whole or in part by the Architect's Instruments of Service will not be covered by the professional liability policy. However, following the steps outlined in the <u>attached Design for Freedom proposal</u> can mitigate such risk.

Election or Waiver

Election of Design for Freedom Principles

_____In response to the foregoing, and notwithstanding anything to the contrary contained in the [insert title of project agreement], the Owner hereby elects to include the Design for Freedom proposal as Supplemental Service to the [insert title of project agreement]. The Owner hereby acknowledges that such election shall not guarantee full compliance with TFTEA or UFLPA, as such strict compliance remains elusive.

_____
Owner Signature

Waiver of Design for Freedom Principles

_____The Owner hereby acknowledges receipt of the foregoing and elects not to include the Design for Freedom proposal as a Supplemental Service to the [insert title of project agreement]. Notwithstanding anything to the contrary contained in the [insert title of project agreement], the Owner hereby acknowledges that failure to include the Design for Freedom proposal as a Supplemental Service increases the likelihood of a violation of TFTEA or UFLPA which could potentially negatively impact the substantial completion deadline identified in the [insert title of project agreement].

_____
Owner Signature