

**CONTRACT APPENDIX REGARDING DESIGN FOR FREEDOM**

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**FOR CONSTRUCTION FIRM TO GIVE TO OWNER/CLIENT**

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**FOR PROJECTS IN THE UNITED STATES**

*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.*

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

*Legal Landscape*

Since the 1930s, the **U.S. 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 and UFLPA, without appropriate investigation in building materials supply chains, as outlined in the 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].

As of the date of the [insert title of project agreement], and notwithstanding anything to the contrary stated in the [insert title of project agreement], it is not necessarily within the expected standard of care for a contractor to take precautions related to TFTEA and UFLPA,

nor is it possible to guarantee compliance therewith. However, following the steps outlined in the attached Design for Freedom proposal 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 a part of the scope of work included in 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.

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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 part of the Contractor's scope of work in 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 part of the scope of work 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].

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Owner Signature