WAIVER OF RIGHTS AND/OR PRIVILEGES INCONSISTENT WITH THE SELECTED PROCESS

“The parties hereto wish [neutral] to serve in both phases of a hybrid [med–arb] [arb–med] dispute-resolution process described herein, and consent to such dual service. By their signatures below, the parties waive any right to complain of ex parte (private) contact between [med–arbiter] and the opposing party or counsel, and waive their respective right to have any arbitration award or mediation agreement based wholly or partly ex parte information communicated to the neutral set aside on these grounds, whether under Cal. R. Ct 3.823 or on some other basis.

The parties hereto acknowledge that information so communicated during mediation may be received by the neutral in confidence, and may not be disclosed to the adverse party. It is further acknowledged that such information, which the absent and adverse party may believe to be false, may influence the decision of the neutral when the neutral acts as arbitrator [T]he parties hereby waive any defect in the procure and the right to oppose confirmation or to seek vacatur of any award rendered by the neutral [on these grounds].

The parties also acknowledge that the fact that the neutral presided as a mediator shall not provide a basis to seek the disqualification of the neutral as an arbitrator.”

Finally, the parties, their counsel, and the neutral each acknowledge that they have or may have rights and/or privileges under state and or Federal law to preclude on the basis of mediation privilege the use of mediation-related communication in arbitration. Recognizing that it may be impossible to completely avoid the influence of previously–learned information despite efforts to do so, the parties, their counsel, and the neutral each waive any such right or privilege.