SUMMARY OF GENERAL PRINCIPLES REGARDING EVALUATION OF EVIDENCE

1. BURDEN OF PROOF AND STANDARD OF PROOF

In an arbitration hearing, the Complainant has the burden of establishing by a preponderance of the evidence all of the facts and elements necessary to prove the case against the Respondent.

2. WEIGHING CONFLICTING TESTIMONY

You are not bound to decide in conformity with the testimony of a number of witnesses, which does not produce conviction in your mind, as against the testimony of a lesser number or other evidence, which appeals to your mind with more convincing force. The testimony of one witness worthy of belief is sufficient for the proof of any fact. This does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice, or from a desire to factor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witness's, but in the relative convincing force of the evidence.

3. FAILURE TO PRODUCE AVAILABLE STRONGER EVIDENCE

If weaker and less satisfactory evidence is offered by a party, when it was within their power to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

4. WILLFUL SUPPRESSION OF EVIDENCE

If you should find that a party willfully suppressed evidence in order to prevent its being presented in this hearing, you may consider such suppression in determining what inferences to draw from the evidence or facts in the case against them.

5. FAILURE TO DENY OR EXPLAIN ADVERSE EVIDENCE

In determining what inferences to draw from the evidence or facts in the case against a party, you may consider, among other things, the party's failure to explain or to deny by their testimony such evidence or facts.

6. CREDIBILITY OF WITNESS

You are the sole and exclusive judges of the credibility of the witnesses who have testified in this case. In determining the credibility of a witness, you may consider any matter that has a tendency in reason to prove or disapprove the truthfulness of their testimony, including but not limited to the following:

Their demeanor while testifying and the manner in which he testifies; The character of their testimony;

The extent of their capacity to perceive, to recollect, or to communicate any matter about which he testifies;

The extent of his opportunity to perceive any matter about which they testify;

Their character for honesty or veracity or their opposites;
The existence or nonexistence of a bias, interest, or other motive;
A statement previously made by them that is consistent with their testimony; The existence or nonexistence of any fact testified to by them;
Their attitude toward the action in which they testified or toward the giving of testimony;
Their admission of untruthfulness.

7. DISCREPANCIES IN TESTIMONY

Discrepancies in a witness's testimony or between their testimony and that of others (if there were any) do not necessarily mean that the witness should be discredited. Failure to recollect is a common experience, and innocent mis-recollection is not uncommon. It is fact, also, that when two persons witness an incident or a transaction often they will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

8. WITNESS WILLFULLY FALSE

A witness false in one part of their testimony is to be distrusted in others; that is to say, you may reject the whole testimony of a witness who willfully has testified falsely as to a material point, unless, from all the evidence, you shall believe that the probability of truth favors his testimony in other particulars.

9. EXTRAJUDICIAL ADMISSION – CAUTIONARY INSTRUCTIONS

Evidence of the oral admissions of a party, other than their own testimony in this hearing, ought to be viewed by you with caution.

10. EXPERT TESTIMONY – QUALIFICATIONS OF EXPERT

A witness who has special knowledge, skill experience, training or education in a particular science, procession, or occupation may give their opinion as an expert as to any matter in which they are skilled. In determining the weight to be given such opinion, you should consider the qualifications and credible of the expert and the reasons given for their opinions. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

11. WEIGHING CONFLICTING EXPERT TESTIMONY

In resolving any conflict that may exist in the testimony of expert witnesses, you should weigh the opinion of one expert against that of another. In doing this, you should consider the relative qualifications and credibility of the expert witness, as well as the reasons for each opinion and the facts and other matters upon which it was based.

12. STATEMENTS OF COUNSEL – EVIDENCE STRICKEN OUT – INSINUATIONS OF QUESTIONS

You must not consider as evidence any statement of counsel made during the hearing; however, if counsel for the parties has stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively proved as to the party or parties making the stipulation or admission.
As to any question to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection.
You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the chairman; such matter is to be treated as though you had never known of it.
You must never speculate that any insinuation suggested by a question is true. A question is not evidence and may be considered only as it supplies meaning to the answer.

13. TRIBUNAL DELIBERATIONS

When you adjourn to discuss this case, it is your duty to discuss the case for the purpose of reaching an agreement if you can do so.
Each of you must decide the case for yourself, but should do so only after a consideration of the case with the other members.
You should not hesitate to change an opinion if you are convinced it is erroneous. However, you should not be influenced to decide any question in a particular way simply because another member favors such a decision.

14. HOW TRIBUNAL SHOULD APPROACH THEIR TASK

The attitude and conduct of a Tribunal at the onset of their deliberations are matters of considerable importance. It is rarely productive or good for a member, upon entering the deliberation room, to make an emphatic expression of their opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, their sense of pride may be aroused, and the may hesitate to recede from an announced position if shown that it is wrong. Remember that you are not partisans or advocates in this matter, but are judges.

15. SEVERAL RESPONDENTS – VERDICT AS TO SOME AND DISAGREEMENT AS TO OTHERS

In this case, you must decide separately whether each of the (two) (several) Respondents is guilty or not guilty. If you cannot agree upon a decision as to (both) (all) the Respondents but do agree upon a verdict as to one (or more) of them, you must render a decision as to the one (or more) upon which you agree.

16. INDIVIDUAL OPINION REQUIRED – DUTY TO DELIBERATE

Both the Complainant and the Respondent are entitled to the opinion of each Tribunal member.
It is the duty of each of you to consider the evidence for the purpose of arriving at a decision if you can do so. Each of you must decide the case for yourself, but should do so only after a discussion of the evidence and instructions with the other members of the Tribunal.

You should not hesitate to change an opinion if you are convinced it is erroneous. However, you should not be influenced to decide any question in a particular way because one member, or any of them, favor such a decision.