WHAT IS EVIDENCE:

STIPULATIONS
INTERROGATORIES
DEPOSITIONS
JUDICIAL NOTICE

You are to decide the facts solely from the evidence admitted in this case, and not from suspicion or conjecture about matters not admitted into evidence. The evidence consists of the testimony of witnesses, as you recall it, any documents or items that were marked as exhibits which you will have with you in the deliberation room, and any fact on which the attorneys have agreed or which I have told you that you may accept as proved. You alone will decide the weight, that is the value and importance, of the testimony and exhibits to help you make your ultimate judgment about whether the plaintiff has proved (his / her / their / its) case. You are not required to believe or disbelieve something simply because it is written on a piece of paper or appears in a photograph. Whether to believe what an exhibit purports to show and how much weight to give the exhibit is entirely for you to decide.

Of course, the quality or strength of the proof is not determined by the sheer volume of evidence or the number of witnesses or exhibits. It is the *weight* of the evidence, its strength in tending to prove the issue at stake, that is important. You might find that a smaller number of witnesses who testify to a particular fact are more believable than a larger number of witnesses who testify to the opposite or vice-versa.

Optional:

Picture in your minds that all of the evidence – [(testimony) (exhibits) (stipulations)] **– went into a box. That box is now closed**. **Your verdict(s) must be based on what is in the box, together with any reasonable inferences you choose to draw from it.**

Your determination of the facts must not be based on speculation or conjecture. During your deliberations one of you might say, "what about this?" or "what about that?" Well, if the "this" or the "that" is not in the box – if it is mere guesswork – don't consider it.

In short, base your verdict on the evidence and any

reasonable inferences you choose to draw from it, but do not guess or speculate about things about which there is no evidence.

Some things that occur during a trial are *not* evidence and you may *not* consider them as evidence in deciding the facts of this case. A question put to a witness, no matter how artfully phrased, is never evidence; only the answers are evidence. Also, you may not consider any answer that I struck from the record and told you to disregard. Do not consider such answers. You may not consider any item that was marked for identification but was never received in evidence as an exhibit. Anything that you may have read or seen or heard when the court was not in session is not evidence.

The opening statements and the closing arguments of the attorneys are not evidence. They are only intended to assist you in understanding the positions and the contentions of the parties. My instructions on the law and anything that I have said or done during the trial are not evidence. If the attorneys or I have referred to the

evidence in a way that differs from your memory, it is your collective recollection that controls.

Consider the evidence as a whole. Do not make up your mind about what the verdict should be until after you have gone to the jury room to deliberate and discuss the case among your fellow jurors. Keep an open mind until then.

SUPPLEMENTAL INSTRUCTIONS

1. *If there are stipulations of fact.* **The plaintiff and the defendant have agreed, or stipulated, that, _____. This means that they both agree that this is a fact. You are therefore to treat this fact as undisputed and you need not deliberate about it.**

2. *If there is agreed testimony.* **The plaintiff and the defendant have agreed that if [witness] were called as a witness at trial, (he / she / they) would testify that _____. Both parties have agreed that [witness] would give that testimony if called as a witness, but they have *not* agreed that [witness's] testimony is true. You should consider that testimony in the**

same way as if it had been given here in court. As with all witnesses, it is for you to determine how believable and how significant that testimony is.

3. *If portions of depositions have been read into evidence*. **A deposition is testimony that was given out of court by a witness under oath, in response to questions asked by either of the attorneys. You are to treat a deposition in the same way as if the testimony had been given here in court. As with all witnesses, it is for you to determine how believable and how significant that testimony is.**

Mass. R. Civ. P. 30, 30A, 32.

4. *If there are interrogatories as evidence*. **Interrogatories are written answers under oath to written questions submitted by the opposing side's attorney. You are to treat interrogatory answers in the same way as if the testimony had been given here in court. As with all the witnesses, it is for you to determine how believable and how significant that testimony is.**

If interrogatories are used at trial to impeach or rehabilitate a witness, the jury should be instructed on Impeachment by Prior Inconsistent Statement (Instruction 2.04) or Rehabilitation by Prior Consistent Statement (Instruction 2.05), as appropriate.

5. *Judicial notice.* **The law permits me to take notice of certain facts that are not subject to reasonable dispute. I have decided to accept as proved the fact that _____. Therefore, you must accept this fact as true, even though no evidence has been introduced about it.**

See Mass. G. Evid. § 201(e) (2023) ("In a civil case, the court must instruct the jury to accept the noticed fact as conclusive.").