

The Xerox Business Services Dispute Resolution Plan & Rules

September 2012



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The Xerox Business Services Dispute Resolution Plan and Rules

(“DRP”)
Revised September 2012

Xerox Business Services Dispute Resolution Plan (“Plan”)

1. Purpose and Construction

The DRP is designed to provide a program for the quick, fair, accessible, and inexpensive resolution of all Disputes, as defined hereafter, between the Company and Xerox Services’ Employees and Applicants for employment, including but not limited to those Disputes related to or arising out of a current, former or potential employment relationship with Xerox Services. The DRP is intended to create an exclusive and mandatory procedural mechanism for the final resolution of all Disputes falling within its terms. It is not intended either to abridge or enlarge substantive rights available under applicable law, provided however that the Parties forego any right they may have to trial by court (including a jury trial) on matters relating in any way to any Dispute. No part of the DRP alters the “at-will” employment relationship between Xerox Services and its Employees. The DRP should be interpreted in accordance with these purposes.

2. Definitions

- A. “**AAA**” means the American Arbitration Association.
- B. The “**Act**” means the Federal Arbitration Act, 9 U.S.C. §1, et seq., as amended from time to time.
- C. “**Applicant**” means any person who agrees to this September 2012 revised version of the DRP as a condition of employment while seeking or under consideration for employment with Xerox Services. Persons under consideration for employment include, but are not limited to, persons employed by companies that are acquisition candidates or prospective or actual outsourcing clients.

- D. **"Company"** means Sponsor and every subsidiary (first tier and downstream) of Sponsor, every parent corporation or affiliate, predecessor, and all of their directors, officers, employees, attorneys and agents, every plan of benefits, whether or not tax-exempt, established or maintained by any such entity, the fiduciaries, agents and employees of all such plans, and the successors and assigns of all such entities, plans and persons.
- E. **"Dispute"** means all legal and equitable claims, demands, and controversies, of whatever nature or kind, whether in contract, tort, under statute, regulation, or ordinance, or some other law, between persons (which include Employees, Applicants and the Company) bound by the DRP or by an agreement to resolve Disputes under the DRP, or between a person bound by the DRP and a person or entity otherwise entitled to its benefits, including, but not limited to, any matters with respect to:
1. The DRP, including any challenge regarding the interpretation, applicability, or enforceability, of the DRP or any agreement to arbitrate under its terms including but not limited to any claim that all or part of the DRP or the arbitration agreement is void or voidable;
 2. The employment or potential reemployment of an Employee, including but not limited to the terms, conditions, or termination of such employment with Xerox Services;
 3. Employee benefits or incidents of employment with the Company (except claims under an employee benefit or pension plan that either (i) specifies that its claims procedure shall culminate in an arbitration procedure different than this one; or (ii) is under-written by a commercial insurer which decides claims);
 4. An Applicant's application for employment and the Company's actions, inactions, and/or decisions regarding such application;
 5. Any prior resolution or settlement of a Dispute between Parties subject to the DRP;
 6. Any personal injury or death; and
 7. Any other matter related to or concerning the relationship between the Applicant and the Company and/or the Employee and the Company alleging violation of any federal, state or other governmental law, statute, regulation, or ordinance, or common law, or contract violation, including but not limited to the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Family Medical Leave Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act ("ERISA"), the Uniformed Services Employment Reemployment Rights Act ("USERRA"), and the Worker Adjustment Retraining and Notification Act ("WARN"), including, by way of example and without limitation, allegations of: unlawful retaliation, including whistleblower retaliation, discrimination or harassment based on race, sex, religion, creed, color, marital status, sexual orientation, citizenship, national origin, age, veteran or military status, disability status, or other legally protected characteristics; wrongful discharge; constructive discharge; workers' compensation retaliation; defamation; fraud; invasion of privacy; infliction of emotional distress; promissory estoppel; equitable estoppel; negligence, negligent misrepresentation; breach of contract; quasi-contract; equitable relief; failure to pay wages including

overtime; claims for benefits, or membership with regard to any employee benefit plan;

8. Any legal claim that the Company may have against any Party whether the claims are contract, tort, or statutory claims, including but not limited to: breach of contract, tortious interference with contract or business relations, negligence, breach of contractual or common law duties, breach of fiduciary duty, misappropriation of property or trade secrets, or unfair competition.
9. All matters listed in subparagraphs E 1-7 of this section regardless of when the events on which they are based occurred, including matters based on events occurring before the Employee became subject to this DRP (unless a claim accrued or became known to the Company while the Employee was bound by a prior version of the DRP in which case the prior version will continue to apply to that Dispute) or after termination of the employment relationship.

Disputes do not include, and the DRP does not apply to, claims (1) for workers' compensation benefits, for benefits under the On-The-Job Injury Program or for unemployment compensation benefits; (2) arising out of or related to matters which applicable law precludes from being resolved by final and binding arbitration; or (3) where application of the DRP is otherwise prohibited by law.

In addition, Disputes do not include litigation pending in court as of the Effective Date of the DRP, including but not limited to purported class, collective, consolidated or representative litigation.

- F. **"Effective Date"** of the DRP for an (i) Applicant is the date that the Applicant agrees to be bound by the DRP, and (ii) Employee is thirty (30) days after that Employee receives notice of the DRP.
- G. **"Employee"** means any person who is or has been in the employment of Xerox Services on or after the Effective Date of the DRP, whether or not employed at the time a claim is brought with respect to a Dispute, residing in the United States, or otherwise subject to the laws of the United States or any state, municipality, or other political subdivision of the United States.
- H. **"JAMS"** means the entity that was formerly known as Judicial Arbitration and Mediation Services.
- I. **"Party"** means with respect to a particular Dispute, affected persons and/or entities bound by the DRP.
- J. **"Plan"** means the Xerox Business Services Dispute Resolution Plan component of the DRP, as amended from time to time.
- K. **"Rules"** means the Xerox Business Services Dispute Resolution Rules component of the DRP, as amended from time to time.
- L. **"Sponsor"** means Xerox Business Services, LLC.
- M. **"Xerox Services"** means Xerox Business Services, LLC, its subsidiaries, and/or their predecessors.

3. Name, Application and Coverage

- A. The Xerox Business Services Dispute Resolution Plan and Rules is referred to as the “DRP”, the “Xerox Business Services Dispute Resolution Plan”, the “Xerox Services Dispute Resolution Plan” or the “Dispute Resolution Program”.
- B. Until revoked or modified pursuant to this DRP, this DRP applies to and binds the Company, each Employee and Applicant and the estate, heirs, beneficiaries and assigns of any such person or entity; provided, however, that this DRP does not apply to any Employee in a unit of Employees represented by a labor organization, or to the Company with respect to such Employees, except to the extent permitted in an applicable collective bargaining agreement or otherwise lawfully imposed by the Company when no collective bargaining agreement is in effect.
- C. Except as provided for herein, this DRP applies to any Dispute.
- D. Mediation and arbitration under the DRP are only available for Disputes involving allegations of conduct which would, if proven, establish a violation of a legally protected right.
- E. Notwithstanding any other provision hereof, to preserve the status quo or return the Parties to their positions as they existed prior to any alleged improper conduct, any Party may seek temporary relief, i.e., temporary restraining orders and preliminary injunctions, from a court of competent jurisdiction over the Parties, and such court may issue such relief, if the requirements under applicable law are met. Notwithstanding any other provision hereof, an Applicant or Employee may file an administrative charge or complaint with a federal, state, or other governmental agency. In the case of agency adjudication, the DRP will apply to the extent permitted by law.
- F. The enforceability and scope of the DRP shall be governed by the Act and federal law.

4. Resolution of Disputes

- A. Prior to resolution by binding arbitration, the Parties may use the Open Door process, the Internal Conference option, the services of the Ombudsman, or Mediation. Any Dispute involving a legally protected right, may, at the request of any Party, proceed directly to arbitration.
- B. All Disputes not otherwise resolved by the Parties shall be finally and conclusively resolved through arbitration under this DRP, instead of through trial before a court (including a jury trial). The Parties forego any right they may have to a bench trial or jury trial on a Dispute.
- C. (i) To the extent allowed under the law, each Dispute not otherwise resolved by the Parties shall be arbitrated on an individual basis. Except for Disputes asserted by named plaintiffs or putative plaintiffs in a class, collective, consolidated or representative action pending in court before the Effective Date, neither an Employee nor the Company may initiate or participate in a Dispute on a class, collective, or consolidated basis, or in a representative capacity on behalf of other persons or entities that are claimed to be similarly situated. An Applicant may not participate in a class, collective, consolidated or representative

Dispute that has been filed against the Company before the Applicant's first day of employment. The arbitrator shall have no authority to arbitrate a Dispute as a consolidated, class, collective or representative action.

(ii) Notwithstanding the procedural limitation in subparagraph C (i) of this section or any other limitations within this DRP, if an adjudicative body other than an arbitrator allows a Party to pursue a class, collective or consolidated action or otherwise act in a representative capacity, then, as there is no provision for other than individual actions under the DRP, the DRP shall not apply with respect to that class, collective, consolidated or representative action. If the adjudicative body, however, ultimately denies the Party's request to proceed on a class, collective, consolidated or representative basis, then the Party's individual Dispute(s) shall be subject to the DRP and arbitration pursuant to the DRP's terms. In the event that the adjudicative body certifies, or refuses certification, to a class, collective, consolidated or representative action as to some but not all claims or individuals in a Dispute, those claims or individuals not certified shall be subject to the DRP and arbitration pursuant to the DRP's terms.

(iii) Nothing in the DRP is intended to impair the ability of an Employee or Applicant from exercising the right to engage in concerted activities for the purpose of mutual aid and protection under Section 7 of the National Labor Relations Act. Although the Company will not retaliate against Employees for concertedly challenging the validity of any agreement to arbitrate, the Company may lawfully seek to have a concerted action dismissed on the ground that one or more purported class members is bound by his or her agreement to arbitrate.

(iv) Institution of putative class, collective, consolidated or representative proceedings by other Employees or Applicants under the DRP or in court shall not toll the deadline for an Employee or Applicant to file a timely demand under the DRP in his or her individual capacity in order to preserve his or her rights under the DRP.

5. Confidentiality

A. DRP Administrator and Staff. The Dispute Resolution Plan Administrator and staff administering the DRP ("the Administrators") shall not be considered to be Parties. The Administrators administering the DRP may, in consultation with a Party, designate communications or documents as confidential where such designation will assist in resolving a Dispute. The confidential designation may be subsequently waived by the Administrators. The Administrators cannot testify or be subpoenaed or called to testify in any internal or external investigation, administrative hearing, or arbitration or litigation proceeding with respect to any such confidential communications.

B. Ombudsman. As part of the DRP, Employees have access to an Ombudsman who functions independent of management and may attempt to resolve any Dispute prior to the initiation of arbitration. In order for the Ombudsman and his/her office to perform their duties, the Ombudsman has sole discretion to determine and assign confidentiality or restrictions on the dissemination of information or documents provided to the Ombudsman by the Company or any other Party or person, or to subsequently waive that designation. All Parties to this DRP agree to respect the Ombudsman's determinations as to confidentiality and shall not attempt to obtain or compel the production of information or documents from the Ombudsman without the consent of the Ombudsman. The Ombudsman and his/her staff cannot be compelled to testify or be subpoenaed or called to testify as to any matters determined to be confidential by the Ombudsman.

6. Amendment

The DRP may be amended by Sponsor at any time by giving at least thirty (30) days' notice to current Employees, provided however that no amendment shall apply to a Dispute that was made known to the Company prior to the time the amendment becomes effective. The version of the DRP that was in effect with respect to a particular Applicant or Employee on the date that the Employee's claim was made known to the Company shall apply to that Applicant or Employee's Dispute.

7. Termination

The DRP may be terminated by Sponsor at any time by giving at least thirty (30) days' notice of termination to current Employees. However, termination shall not apply to a Dispute that accrued or became known to the Company prior to the effective date of termination.

8. Applicable Law

- A. Except to the extent, if any, that federal law requires the application of state law, the Act and federal law, including federal procedural law (except as provided in 4.C i-iii) and rules concerning the conflicts of law, shall apply to the DRP, and any proceedings under the DRP, including any actions to compel, enforce, vacate or confirm proceedings, awards, orders of an arbitrator, or settlements under the DRP. In any case in which the arbitrator must make a decision as to applicable law, the arbitrator's authority to decide the applicable law should be guided and determined by the law that would be applied by a U.S. District Court sitting at the place of the arbitration hearing. Nothing in this DRP shall be interpreted to prevent application of applicable state law permitting state courts to stay arbitration or judicial proceedings.
- B. Other than as expressly provided in the DRP, the substantive legal rights, remedies, and defenses of all Parties are preserved. The arbitrator shall have the authority to determine the applicable law and to award any and all relief, legal or equitable, including punitive damages, attorneys' fees, expenses and costs which a Party could obtain from a court of competent jurisdiction on the basis of the claims made in the proceeding. Where permitted or required by applicable law, the arbitrator may or shall, respectively, take into account in granting relief the extent of a Party's mitigation or a Party's failure to mitigate.
- C. The DRP shall not be construed to grant or enlarge substantive, legal, or contractual rights, remedies or defenses which would not be applied by a court of competent jurisdiction in the absence of the DRP unless expressly authorized by these provisions.

9. Administrative Proceedings

- A. The DRP shall apply to a Dispute subject to the jurisdiction of any local, state or federal administrative body or administrative court unless prohibited by law. However, the DRP is not intended to limit any person's right to file an administrative complaint or charge with, or to participate in the investigation of an administrative complaint or charge by, any governmental agency if giving this DRP such effect would be contrary to law (e.g., this DRP does not limit a person's right to file a charge with the Equal Employment Opportunity Commission or National Labor Relations Board or a complaint with the

Department of Labor). This DRP also does not apply to any unfair labor practice proceedings before the National Labor Relations Board or subordinate tribunals.

- B. Where the applicable law requires a Party to exhaust administrative remedies prior to applying to a court of law for relief, the Party must exhaust administrative remedies before requesting mediation or arbitration under the DRP. A finding, recommendation, or decision by an administrative body on the merits of a Dispute shall have the same legal weight or effect in an arbitration proceeding under the DRP as it would in a court of competent jurisdiction.
- C. Participation in any administrative, judicial, or quasi-judicial proceeding by an Employee, Applicant or the Company shall not affect the applicability of the DRP to any such Dispute upon the stay or termination of the administrative, judicial, or quasi-judicial proceeding.

10. Exclusive Remedy

Unless otherwise required by law, proceedings under the DRP shall be the exclusive method by which Disputes are resolved. Arbitration under the DRP shall be final and binding, subject only to review as provided for in the Act.

11. Effective Date

The original effective date of the DRP was April 13, 2002, except as to the DFAS Cleveland and Denver operations for which the original effective date of this Plan was January 28, 2002. The DRP was substantively revised and rolled out to Employees and Applicants in September 2012. The Effective Date of the DRP for an Applicant is the date that the Applicant agrees to be bound by the DRP. The Effective Date of the DRP for an Employee is thirty (30) days after that Employee receives notice of the DRP.

12. Severability

The terms of the DRP are severable. The invalidity or unenforceability of any provision or term therein shall not affect the application of any other provision or term. Where possible, consistent with the purposes of the DRP, any otherwise invalid provision or term of the DRP may be reformed and, as reformed, enforced.

13. Administration

Sponsor shall appoint one or more persons to administer the DRP who shall be known as the "Dispute Resolution Plan Administrator." The Dispute Resolution Plan Administrator shall be responsible for the management and administration of the DRP.

14. Assent; Consideration

Employment, consideration for employment, or continued employment, and other valuable consideration after the applicable Effective Date of the DRP constitute consideration and consent to be bound by the DRP, including its mandatory arbitration provisions, by the Applicant and/or Employee, on the one hand, and the Company, on the other hand, during and after the employment relationship. Submission of an application, regardless of form, for employment constitutes consent by both the Applicant and the Company to be bound by the DRP, as well as consideration. Extension of an offer by the Company constitutes additional

independent consideration. The Parties' mutual promises to be bound by the DRP also constitute adequate and sufficient consideration to be bound by the DRP.

15. Powers of the Arbitrator and Court.

The Arbitrator, and not any federal, state, or local court or agency shall have the exclusive authority to resolve any Dispute relating to the interpretation, applicability, enforceability, or formation of this DRP or any associated agreement to arbitrate under its terms, including but not limited to any claim that all or part of this DRP or associated arbitration agreement is void or voidable.

Judicial review of an arbitrator's award pursuant to the DRP shall be governed by the Act, 9 U.S.C. §§ 9-13. The United States District Court for the district in which the hearing was held shall be considered as the district in which the award was made for venue purposes. An action for confirmation, vacation, or modification may be brought within that district or any other United States District Court of proper venue.

Xerox Business Services Dispute Resolution Rules

1. Definitions

All definitions included in the Plan apply to these Rules.

2. Application

- A. Except as otherwise provided in the DRP, the then current version of the DRP shall apply in the form in effect at the time the demand for arbitration is received by AAA or JAMS.
- B. To the extent consistent with the DRP, the arbitrator is expected to apply the Federal Rules of Civil Procedure to arbitration proceedings governed by the DRP.
- C. If within thirty (30) days after commencement of administration by AAA or JAMS, an Applicant, Employee or the Company seeks judicial intervention with respect to a pending arbitration and provides AAA or JAMS with documentation that judicial intervention has been sought, AAA or JAMS will suspend administration for sixty (60) days to permit such Party to obtain a stay of arbitration from the court.

3. Initiation of the Process

- A. A Party may initiate mediation or arbitration proceedings under the DRP at any time, subject to any defenses including those applicable to the exhaustion of administrative remedies and/or the timeliness of the claim, e.g., limitations (see Section 34 of these Rules) and laches.
- B. A Party may initiate mediation or arbitration proceedings by serving a written request to initiate such proceedings on AAA or JAMS and tendering the appropriate filing fee.
- C. AAA or JAMS shall serve copies of an Applicant's or Employee's request on the Company or the Company's request on an Applicant or Employee. The request shall describe the nature of the Dispute, the amount involved, if any, the remedy sought, and the proceeding locale requested.
- D. Mediation or arbitration proceedings may also be initiated by an Employee or Applicant by serving a written request to initiate such proceedings on the Company's Dispute Resolution Plan Administrator. In such a case, the Dispute

Resolution Plan Administrator shall promptly forward any properly served request and filing fee it has received to AAA or JAMS.

4. Appointment of Arbitrator

When providing arbitrator candidates at any time under the DRP, AAA or JAMS shall ensure that the arbitrators have been prescreened by the Case Manager for subject matter knowledge and conflicts of interest, and the Case Manager shall provide the Parties with a description of each arbitrator's background and experience. AAA or JAMS shall also ensure that the arbitrators reside in the geographic region of the United States bearing the most significant relationship to the Parties' Dispute. If the proper region is in dispute, AAA or JAMS shall make the final determination based on the location of the Parties, the underlying events, and the location of the witnesses. Before making the determination, AAA or JAMS shall provide the Parties notice and an opportunity to be heard.

Immediately after payment of the \$50 (fifty) filing fee, the Case Manager of AAA or JAMS shall simultaneously send each Party an identical list of five (5) arbitrator candidates selected in accordance with the above rules, together with the names, addresses, and phone numbers of the representatives of the Parties.

The Parties shall have ten (10) calendar days from the transmittal date to select an arbitrator by mutual agreement. Upon the request of any Party, this arbitrator selection step can be bypassed, and the next step, involving strike lists, can be initiated.

If the Parties do not agree on an arbitrator, the Case Manager shall send the Parties a strike list of at least five (5) arbitrator candidates selected in accordance with the above rules. Within ten (10) calendar days of transmittal of the strike list, each Party may strike any names objected to, number the remaining names, if any, in order of preference, and return the list to the Case Manager. From the persons who have been approved by all Parties, and in accordance with the order of mutual preference, AAA or JAMS shall invite the arbitrator to serve. If all the arbitrators are struck by the Parties, the Case Manager shall provide each Party with a second list of at least five (5) arbitrator candidates selected in accordance with the above rules. Within ten (10) calendar days of transmittal of the second strike list, each Party may strike two (2) names, and shall rank the remaining candidates in order of preference. If there is more than one (1) candidate remaining after the Parties strike, the candidate with the highest total ranking by the Parties will become the arbitrator. Any ties will be resolved in the favor of the Employee or Applicant. If a Party does not return the list within the time specified, all candidates shall be deemed acceptable to that Party, and the strike list of the other Party shall be utilized.

AAA or JAMS shall not unilaterally appoint an arbitrator in any Dispute unless exhaustion of all steps prescribed above fail to result in an arbitrator's appointment.

5. Qualifications of the Arbitrator

No person shall serve as an arbitrator unless he or she is a licensed attorney experienced in the field of employment law. No person shall serve as an arbitrator in any matter in which that person has any financial or personal interest. Prior to accepting appointment, the prospective arbitrator shall disclose any circumstance likely to prevent a prompt hearing or create a presumption of bias. Upon receipt of such information from the arbitrator or any other source, AAA or JAMS will disqualify that person and notify the Parties. If based on the disclosures made by the prospective arbitrator, a Party objects to the appointment of the arbitrator, the objecting Party must communicate promptly the basis for the objection to AAA or JAMS and the opposing Party. The non-objecting Party may then promptly submit a response. Thereafter, based on the comments submitted by both Parties, AAA or JAMS may disqualify that person, and its decision shall be conclusive.

6. Vacancies

If a vacancy occurs for any reason (including disqualification pursuant to Rule 5 above) or if an appointed arbitrator is unable to serve promptly, the appointment procedure in Section 4 shall apply to the selection of a substitute arbitrator.

7. Date, Time and Place of Arbitration Hearings

- A. The arbitrator shall set the date, time and place of any arbitration hearing.
- B. Notice of any hearing shall be given at least ten (10) calendar days in advance, unless the arbitrator determines or the Parties agree that a shorter time is necessary.
- C. In selecting a hearing location, the arbitrator shall apply the same factors determining personal jurisdiction and venue which would be applied by a United States District Court sitting at the location of the arbitrator.

8. Conferences

At the request of AAA or JAMS or of a Party or on the initiative of the arbitrator, the arbitrator or AAA or JAMS may notice and hold conferences for the discussion and determination of any matter which will expedite the arbitration proceeding, including:

- A. Venue;
- B. Clarification of issues;
- C. Determination of preliminary issues, including summary determination of dispositive legal issues;
- D. Summary (i.e., pre-hearing) determination, upon written motion of either Party and after opportunity for response by the non-moving Party, of legal issues that dispose of the entire Dispute or any aspect of the Dispute.
- E. Discovery;
- F. Protective orders concerning confidential information or other sensitive information belonging to either Party or any third-party or the improper use of publicity to coerce or influence a particular outcome;
- G. Interim legal or equitable relief authorized by applicable law;
- H. Motions deadlines;
- I. Pre- or post-hearing memoranda;
- J. Stipulations; and/or
- K. Any other matter of substance or procedure.

9. Mode of Hearings and Conferences

In the discretion of the arbitrator or by agreement of the Parties, conferences and hearings may be conducted by telephone or by written submission, as well as in person.

10. Pre-Hearing Discovery and Motion Practice

- A. On any schedule determined by the arbitrator, each Party shall submit in advance, the names and addresses of the witnesses it intends to produce and any documents it intends to present.
- B. The arbitrator shall have discretion to determine the form, amount and frequency of discovery by the Parties.
- C. Discovery may take any form permitted by the Federal Rules of Civil Procedure, as amended from time to time, subject to any restrictions imposed by the arbitrator.
- D. Motion practice in any form permitted by the Federal Rules of Civil Procedure, including but not limited to the filing of dispositive motions under Rule 12 and/or Rule 56, and offers of Judgment under Rule 68, is expressly allowed. The arbitrator shall be required to rule on any pending Rule 12 and/or Rule 56 motions at least 30 days prior to the commencement of the hearing. The arbitrator will apply the same standard as a court in ruling on these motions. This rule supersedes any AAA or JAMS rules applying a heightened pleading standard.

11. Representation

Any Party may be represented by a licensed attorney or by any other authorized representative.

12. Attendance at Hearings

The arbitrator shall maintain the privacy of hearings to the extent permitted by law. Any person having a direct interest in the matter is entitled to attend the proceedings. The arbitrator shall otherwise have the power to exclude any witness, other than a Party or other essential person, during the testimony of any other witness. The arbitrator shall determine whether any other person may attend the proceeding. Upon the request of any Party, the arbitrator shall exclude any witness during the testimony of any other witness.

13. Postponement

- A. The arbitrator, for good cause shown by a Party, or on agreement of the Parties, may postpone any hearing or conference.
- B. Except as otherwise provided in the DRP, the pendency of judicial proceedings related to the same matter as the Dispute is not good cause for postponement.

14. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if required by law or requested by any Party, shall do so.

15. Record of Hearings

There shall be no stenographic, audio, or video record of a hearing unless either requested by one of the Parties or specified by the arbitrator. The Party requesting the record shall bear the entire cost of producing the same, unless the arbitrator, in his/her discretion, based on financial

condition, requirement of law, or other good cause, orders otherwise. If the transcript is agreed by the Parties, or determined by the arbitrator to be the official record of the hearing, it must be provided to the arbitrator and made available to the other Parties for inspection, at a date, time, and place determined by the arbitrator.

16. Procedure

The Parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their Disputes had been brought in court.

Witnesses for each Party shall submit to direct and cross-examination.

With the exception of the legal standards regarding the allocation of the burdens of proof and going forward with the evidence, the arbitrator has the authority to set the legal standards for the conduct of the proceedings and shall exercise that authority to afford a full and equal opportunity to all Parties to present any evidence that the arbitrator deems material and relevant to the resolution of the Dispute. When deemed appropriate, the arbitrator may also allow for the presentation of evidence by alternative means including web conferencing, internet communication, telephonic conferences and means other than an in-person presentation of the evidence. Such alternative means must still afford a full and equal opportunity to all Parties to present any evidence that the arbitrator deems material and relevant to the resolution of the Dispute and when involving the witnesses, provide that such witnesses submit to direct and cross-examination.

The arbitrator, in exercising his or her discretion, shall conduct hearings with a view toward expediting the resolution of the Dispute, may direct the order of proof, bifurcate proceedings, and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

Documentary and other forms of physical evidence, when offered by either Party, may be received in evidence by the arbitrator.

All aspects of the arbitration, including without limitation the record of hearings may be treated as confidential upon agreement of the Parties, and as approved by the Arbitrator.

17. Arbitration in the Absence of a Party

The arbitrator may proceed in the absence of Parties or representatives who, after due notice, fail to be present or fail to obtain a postponement. An award shall not be made solely on the default of a Party. The arbitrator shall require any Party who is present to submit such evidence as the arbitrator may require for the making of an award.

18. Evidence

- A. The arbitrator shall be the sole judge of the relevancy, materiality, and admissibility of evidence offered. Strict conformity to legal rules of evidence shall not be necessary, except that the arbitrator shall apply applicable law relating to privileges and work product. However, the arbitrator may be guided by the Federal Rules of Evidence.
- B. The arbitrator may subpoena witnesses or documents at the request of a Party or on the arbitrator's own initiative.
- C. The arbitrator may consider the evidence of witnesses by affidavit or declaration, but shall give it only such weight as the arbitrator deems appropriate after consideration of any objection made to its admission.

- D. The arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all Parties are afforded the opportunity to present material and relevant evidence.

19. Post-Hearing Submissions

All documentary evidence to be considered by the arbitrator shall be filed at the hearing unless the arbitrator finds good cause to permit a post-hearing submission. All Parties shall be afforded an opportunity to examine and comment on any post-hearing evidence. The arbitrator shall permit the filing of post-hearing briefs at the request of a Party and shall determine the procedure and timing of such filings.

20. Closing and Reopening of Hearings

- A. When the arbitrator is satisfied that the record is complete, including the submission of any post-hearing briefs or documents permitted by the arbitrator, the arbitrator shall declare the hearing closed.
- B. The hearing may be reopened on the arbitrator's initiative or upon application of a Party at any time before the award is made.

21. Waiver of Procedures

Any Party who fails to object in writing, after knowledge that any provision or requirements of the DRP have not been complied with, shall be deemed to have waived the right to object.

22. Service of Notices and Papers

Any papers, notices, or process necessary or proper for the initiation or continuation of any proceeding under the DRP (including the award of the arbitrator, any court action in connection therewith, or the entry of judgment on an award made under these procedures) may be served on a Party by mail addressed to the Party or his or her representative at the last known address or by personal service. AAA or JAMS, the Parties, and the arbitrator may also use facsimile transmission, telegram, email, or other written forms of electronic communication to give any notices required by the DRP.

23. Communications with AAA or JAMS and the Company

- A. Any Party may notice, serve or communicate with AAA by contacting:

American Arbitration Association
Employment Department
1750 Two Galleria Tower
13455 Noel Road
Dallas, Texas 75240
Phone: (800) 426-8792 or (972) 702-8222
Fax: (972) 490-9008
Website: www.adr.org

Or with JAMS by contacting:

JAMS
8401 North Central Expressway, Suite 610
Dallas, Texas 75225
Phone: (800) 352-5267 or (214) 744-5267

Fax: (214) 720-6010
Website: www.jamsadr.com

- B. Any Party may notice, serve or communicate with the Company by contacting:

Dispute Resolution Plan
Plan Administrator
Xerox Business Services
Mailstop R382-LV301
1303 Ridgeview
Lewisville, Texas 75057

24. Communication with the Arbitrator

There shall be no communication between a Party and the arbitrator other than at any hearings or conferences. Any other oral or written communications from the Parties to the arbitrator shall be directed to AAA or JAMS (and copied to the Parties) for transmission to the arbitrator, unless the Parties and the arbitrator agree otherwise.

25. Time of Award

The award shall be promptly made by the arbitrator, unless otherwise agreed by the Parties or specified by applicable law, no later than thirty (30) days from the later of (1) the closing of the hearing; or (2) the submission of post-hearing briefs.

26. Form of Award

The award shall be in writing and shall be signed by the arbitrator. The arbitrator shall write an award that contains the names of the Parties, a summary of issues in controversy, a statement of the essential findings of fact and conclusions of law on which the award is based and a description of the award issued. The award shall be executed in any manner required by applicable law.

27. Modification of Award

On order of a court of competent jurisdiction, or on agreement of the Parties, the arbitrator shall modify any award. The arbitrator may modify an award on the motion of a Party if the arbitrator finds that the award, as rendered, is ambiguous or defective in form, or if the award requires an illegal or impossible act. These are the only circumstances under which an arbitrator shall have jurisdiction to withdraw or modify an award.

28. Settlement

If the Parties settle their Dispute during the course of the arbitration, the arbitrator may set out the terms of the settlement in a consent award or settlement agreement.

29. Scope of Arbitrator's Authority

Except as otherwise provided in the DRP, the arbitrator's authority shall be limited to the resolution of legal Disputes between the Parties.

Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which arbitration is sought and the DRP, and who are proper Parties to the arbitration, shall be submitted to and ruled on by the arbitrator. The arbitrator does not have the authority to hear class, collective, representative, or consolidated actions.

A Party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim no later than the filing of the answering statement to the claim that gives rise to the objection.

The arbitrator shall be bound by and shall apply applicable law. The arbitrator shall not have the authority either to abridge or enlarge substantive rights available under applicable law.

The arbitrator may also grant emergency or temporary relief which is or would be authorized by applicable law.

The arbitrator shall be bound by and shall comply with the provisions of the DRP. The arbitrator shall resolve disputes about the interpretation and applicability of the DRP and conduct of the arbitration hearing.

30. Judicial Proceedings and Exclusion of Liability

- A. Neither AAA or JAMS nor any arbitrator is a necessary Party in any judicial proceedings relating to proceedings under the DRP.
- B. Neither AAA or JAMS nor any arbitrator shall be liable to any Party for any act or omission in connection with any proceedings within the scope of the DRP.
- C. Any court with jurisdiction over the Parties may compel a Party to proceed under the DRP at any place and may enforce any award made.
- D. Parties to an arbitration proceeding under the DRP shall be deemed to have consented that judgment upon the award of the arbitrator may be entered and enforced in any federal or state court having jurisdiction of the Parties.
- E. Initiation of, participation in, or removal of a judicial proceeding shall not constitute waiver of the right to proceed under the DRP.
- F. Any court with jurisdiction over the Parties may issue any temporary relief to preserve the status quo or return the Parties to their positions as they existed prior to any alleged improper conduct (including temporary restraining orders and preliminary injunctions) if the necessary requirements under applicable law are met pending the initiation of arbitration proceedings or while arbitration proceedings are pending under the DRP.

31. Fees and Expenses

- A. The expenses of witnesses shall be borne by the Party producing such witnesses, except as otherwise provided by law or in the award of the arbitrator.
- B. All attorneys' fees shall be borne by the Party incurring them except as otherwise provided by law, or in the award of the arbitrator.
- C. Discovery costs (e.g., court reporter fees for original transcripts) shall be borne by the Party initiating the discovery. The cost of copies of deposition transcripts or other discovery shall be borne by the Party ordering the copy except as otherwise provided by law, or in the award of the arbitrator.
- D. The fees and expenses of experts, consultants and others retained or consulted by a Party shall be borne by the Party utilizing those service except as otherwise provided by law, or in the award of the arbitrator.
- E. The Employee or Applicant shall pay a \$50 (fifty) filing fee if he or she initiates arbitration or mediation. If applicable law does not permit payment of a fee to access arbitration, this fee will be waived. A filing fee paid by the Employee or

Applicant to institute arbitration proceedings shall be returned to the Employee or Applicant if the arbitrator's award states that a legally-protected right has been violated. Otherwise, and other than as set out in the other subparts of this section, Employee or Applicant Parties shall not be responsible for payment of fees and expenses of arbitration or mediation proceedings under the DRP including required travel of an arbitrator or a mediator, expenses of an arbitrator, mediator, or AAA or JAMS, and the cost of any proof produced at the discretion of an arbitrator. The Company, the Dispute Resolution Plan Administrator, the arbitrator, AAA or JAMS may consider a claim of financial hardship related to paying the fee(s) and expenses described in this Rule 31(E) and may waive such fee or expense, in which case it will be paid by the Company.

- F. If the demand for mediation or arbitration is initiated by the Company, such fees will be paid by the Company.
- G. Except as otherwise provided by law or in the award of the arbitrator, all other expenses, fees and costs of arbitration and mediations under the DRP shall be borne equally by the Parties who are not Employees or Applicants.

32. Interpretation and Application of the DRP

The arbitrator shall interpret and apply the DRP insofar as it relates to the arbitrator's powers and duties.

33. Applicable Law

- A. Arbitration and mediation proceedings under the DRP and any judicial review of awards shall be governed by the Act and federal law. Except where otherwise provided by these rules, the substantive and procedural law applied shall be the same law that would be applied by a U.S. District Court sitting at the place of the arbitration hearing.

34. Limitations

- A. A Party must initiate mediation or arbitration proceedings under the DRP within the time allowed by applicable law for the filing of a judicial complaint. Failure to do so will bar the claim.
- B. Except as provided for in 4.C.(iv) of the Plan, in the event a Party initiates judicial proceedings rather than proceeding under the DRP and thereafter is ordered by the court or the Parties agree to submit the Dispute to arbitration under the DRP, the Party must initiate arbitration proceedings under the DRP within ninety (90) days of entry of the court's order (or date of the Parties' agreement) or the disposition of any immediate appeal of such order, or within the remaining time allowed by applicable law for the filing of a complaint in a court of competent jurisdiction based on the event which gives rise to the Dispute, whichever is longer.

35. Mediation

At any time before the proceeding is closed, the Parties may agree to mediate their Dispute by notifying AAA or JAMS. The Parties may agree to mediation procedures, or in the absence of such agreement, AAA or JAMS shall determine what procedures apply to any such mediation.