

XPO Logistics, Inc.  
Form DEF 14A  
November 21, 2016  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

**SCHEDULE 14A**  
**(RULE 14a-101)**

**INFORMATION REQUIRED IN PROXY STATEMENT**

**SCHEDULE 14A INFORMATION**

**PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**

Filed by the Registrant

Filed by a Party Other Than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to Section 240.14a-12

**XPO LOGISTICS, INC.**

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(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11:

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials:

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount previously paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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Dear Fellow Stockholders:

On behalf of the Board of Directors of XPO Logistics, Inc., a Delaware corporation ( XPO , the Company , we , us or our ), we invite you to join us at a special meeting of stockholders of the Company, which will be held on December 20, 2016 at 9:00 a.m., local time, at Two Greenwich Office Park, Greenwich, Connecticut 06831.

At the special meeting, you will be asked to consider and vote on a proposal to approve the adoption of the XPO Logistics, Inc. 2016 Omnibus Incentive Compensation Plan (the Plan Proposal ). **Our Board of Directors believes that the Plan Proposal is in the best interests of the Company and its stockholders and, therefore, recommends that you vote FOR the Plan Proposal.**

The proxy statement attached to this letter provides you with information about the Plan Proposal and the special meeting of the Company s stockholders. We encourage you to read the entire proxy statement carefully. You may also obtain more information about the Company from documents we have filed with the U.S. Securities and Exchange Commission. See Where You Can Find Additional Information in the accompanying proxy statement.

**Regardless of the number of shares of our common stock you own (including those that you would own if your shares of our Series A Convertible Perpetual Preferred Stock ( Series A Preferred Stock ) had converted into shares of our common stock as of November 17, 2016, the record date for the special meeting), your vote is important. Whether or not you plan to attend the special meeting, please take the time to submit a proxy by following the instructions on your proxy card as soon as possible. You may do so by completing, signing, dating and returning the enclosed proxy card by mail, or you may submit your proxy by telephone or electronically through the Internet, as further described on the proxy card. If your shares of common stock (including those that you would own if your shares of our Series A Preferred Stock had converted into shares of our common stock as of November 17, 2016, the record date for the special meeting) are held in an account at a broker, dealer, commercial bank, trust company or other nominee, you should instruct such broker or other nominee how to vote in accordance with the voting instruction form furnished by such broker or other nominee.**

Voting by proxy will not prevent you from voting your shares in person if you subsequently choose to attend the special meeting.

Thank you for your cooperation and continued support.

Sincerely,

Bradley S. Jacobs  
*Chairman of the Board and Chief Executive Officer*

November 21, 2016

THE ACCOMPANYING PROXY STATEMENT IS DATED NOVEMBER 21, 2016

AND IS FIRST BEING MAILED TO STOCKHOLDERS ON OR ABOUT NOVEMBER 21, 2016.

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**XPO LOGISTICS, INC.**

**FIVE GREENWICH OFFICE PARK**

**GREENWICH, CONNECTICUT 06831**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

**To Be Held on December 20, 2016**

To the Stockholders of XPO Logistics, Inc.:

Notice is hereby given that a special meeting of stockholders of XPO Logistics, Inc. will be held on December 20, 2016 at 9:00 a.m., local time, at Two Greenwich Office Park, Greenwich, Connecticut 06831:

1. To consider and vote on a proposal to approve the adoption of the XPO Logistics, Inc. 2016 Omnibus Incentive Compensation Plan (the **New Plan** ), including, without limitation, the material terms of the 2016 Omnibus Incentive Compensation Plan for purposes of Section 162(m) of the Internal Revenue Code of 1986, as amended (the **Plan Proposal** );
2. To consider and vote on a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies (the **Adjournment Proposal** and together with the **Plan Proposal**, the **Proposals** ); and
3. To transact such other business as may properly come before the special meeting and any adjournment or postponement thereof.

**The Company's Board of Directors recommends that stockholders vote FOR each of the Plan Proposal and the Adjournment Proposal.**

Only stockholders of record of our common stock and our Series A Convertible Perpetual Preferred Stock (the **Series A Preferred Stock** ) as of the close of business on November 17, 2016, the **Record Date**, are entitled to receive notice of, and to vote at, the special meeting and at any adjournment or postponement of the special meeting.

The approval of the **New Plan** requires the affirmative vote of a majority of the shares of our common stock (including those that would be issued if all of our outstanding **Series A Preferred Stock** had converted into shares of our common stock as of the **Record Date**) present, entitled to vote and voted for or against the **Plan Proposal** at the special meeting at which a quorum is present. The approval of the **Adjournment Proposal** requires the affirmative vote of a majority of the shares of our common stock (including those that would be issued if all of our outstanding **Series A Preferred Stock** had converted into shares of our common stock as of the **Record Date**) present, entitled to vote and voted for or against the **Adjournment Proposal** at the special meeting, whether or not a quorum is present.

Please note that, if you plan to attend the special meeting in person, you will need to register in advance and receive an admission card to be admitted. Please follow the instructions on page 2 of the proxy statement.

**Even if you plan to attend the special meeting in person, we request that you submit a proxy by following the instructions on your proxy card as soon as possible and thus ensure that your shares will be represented at the special meeting if you are unable to attend. Please do so by completing, signing, dating and returning the**

**enclosed proxy card by mail, or you may submit your proxy by telephone or electronically through the Internet, as further described on the proxy card. If you sign, date and return your proxy card without indicating how you wish to vote, your vote will be counted as a vote FOR the Plan Proposal (and, if necessary and appropriate, the Adjournment Proposal). If your shares are held in an account at a broker, dealer, commercial bank, trust company or other nominee, you should instruct such broker or other nominee how to vote in accordance with the voting instruction form furnished by such broker or other nominee.**

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Whether you attend the special meeting or not, you may revoke a proxy at any time before your proxy is voted at the special meeting. You may do so by properly delivering a later-dated proxy either by mail, the Internet or telephone or by attending the special meeting in person and voting. You also may revoke your proxy by delivering a notice of revocation to the Company (Attention: Secretary, XPO Logistics, Inc., Five Greenwich Office Park, Greenwich, Connecticut 06831) prior to the vote at the special meeting. If you hold your shares through a broker, dealer, commercial bank, trust company or other nominee, you should follow the instructions of such broker or other nominee regarding revocation of proxies. Furthermore, voting by proxy will not prevent you from voting your shares in person if you subsequently choose to attend the special meeting.

**Your vote is important. Whether or not you plan to attend the special meeting in person, it is important that your shares be represented. We ask that you vote your shares as soon as possible.**

By Order of the Board of Directors,

Gordon E. Devens

*Chief Legal Officer and Secretary*

Greenwich, Connecticut

November 21, 2016

**Important Notice Regarding the Availability of Proxy Materials for the Stockholders Special Meeting To Be Held on December 20, 2016: This proxy statement for the special meeting to be held on December 20, 2016 is available free of charge at [www.edocumentview.com/xpospc](http://www.edocumentview.com/xpospc).**

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**SUMMARY VOTING INSTRUCTIONS**

**Ensure that your shares of our common stock and our Series A Preferred Stock, on an as-converted basis, can be voted at the special meeting by submitting your proxy or contacting your broker, dealer, commercial bank, trust company or other nominee.**

*Registered Stockholders.* If you are a registered stockholder (i.e., you hold your shares in your own name through our transfer agent, Computershare Trust Company, N.A.), you may vote by proxy via the Internet, by telephone, or by mail by following the instructions provided on the proxy card. Stockholders of record who attend the special meeting may vote in person by obtaining a ballot from the inspector of elections.

*Beneficial Owners.* If you are a beneficial owner of shares (i.e., your shares are held in the name of a brokerage firm, bank or a trustee), you may vote by proxy by following the instructions provided in the vote instruction form or other materials provided to you by the brokerage firm, bank, or other nominee that holds your shares. To vote in person at the special meeting, you must obtain a legal proxy from the brokerage firm, bank or other nominee that holds your shares.

**If you sign, date and return your proxy card without indicating how you wish to vote, your vote will be counted as a vote FOR the Plan Proposal and, if necessary and appropriate, the Adjournment Proposal.**

**For additional questions regarding the Plan Proposal, assistance in submitting proxies or voting shares of our common stock (including those you would own if all of your outstanding Series A Preferred Stock had converted into shares of our common stock as of the Record Date), or to request additional copies of the proxy statement or the enclosed proxy card, please contact the proxy solicitation agent, Innisfree M&A Incorporated, by mail at 501 Madison Avenue, 20th Floor, New York, New York 10022 or by telephone toll-free at 888-750-5834. If your shares are held in an account at a broker, dealer, commercial bank, trust company or other nominee, you should also call such broker or other nominee for additional information. Such broker or other nominee may contact Innisfree M&A Incorporated by telephone at 212-750-5833.**



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**Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Stockholders to be Held on December 20, 2016**

This Proxy Statement is available, free of charge, at [www.edocumentview.com/xpospc](http://www.edocumentview.com/xpospc).

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**PROXY STATEMENT**

This proxy statement sets forth information relating to the solicitation of proxies by the Board of Directors of XPO Logistics, Inc. (the Company) in connection with our Company's special meeting or any adjournment or postponement of the special meeting. This proxy statement is being furnished by our Board of Directors for use at the special meeting of stockholders to be held at Two Greenwich Office Park, Greenwich, Connecticut 06831, on December 20, 2016 at 9:00 a.m., local time.

This proxy statement and form of proxy are first being mailed to stockholders on or about November 21, 2016, to our stockholders of record as of the close of business on November 17, 2016 (the Record Date).

**QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE PROPOSALS**

The following questions and answers address briefly some questions you may have regarding the special meeting and the Proposals (as defined below). These questions and answers may not address all questions that may be important to you as a stockholder of the Company. Please refer to the more detailed information contained elsewhere in this proxy statement.

**Q: Why did I receive these proxy materials?**

A: We are providing these proxy materials in connection with the solicitation by our Board of Directors of proxies to be voted at the special meeting in connection with the approval of the adoption of the XPO Logistics, Inc. 2016 Omnibus Incentive Compensation Plan (the New Plan).

Our common stock is listed on the New York Stock Exchange (the NYSE), and we are subject to the rules set forth in the NYSE Listed Company Manual (the NYSE Rules). Sections 303A.08 and Section 312 of the NYSE Rules require shareholder approval of equity compensation plans of the Company.

**Q: What items of business will be voted on at the special meeting?**

A: The business expected to be voted on at the special meeting is the approval of the following proposals:

To consider and vote on a proposal to approve the adoption of the XPO Logistics, Inc. 2016 Omnibus Incentive Compensation Plan (including, without limitation, the material terms of the 2016 Omnibus Incentive Compensation Plan for purposes of Section 162(m) of the Internal Revenue Code of 1986, as amended) (the Plan Proposal);

To consider and vote on a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies (the Adjournment Proposal and together with the Plan Proposal, the Proposals); and

To consider and transact such other business as may properly come before the special meeting and any adjournments or postponements thereof.

**Q: Where and when is the special meeting?**

A: The special meeting will be held at Two Greenwich Office Park, Greenwich, Connecticut 06831, on December 20, 2016 at 9:00 a.m., local time.

**Q: Who can attend and vote at the special meeting?**

A: You are entitled to receive notice of and to attend and vote at the special meeting, or any postponement or adjournment thereof, if, as of the close of business on November 17, 2016 (the Record Date ), you were a holder of record of our common stock or the Company's Series A Convertible Perpetual Preferred Stock (the Series A Preferred Stock ).

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As of the Record Date, there were issued and outstanding 110,865,064 shares of our common stock, each of which is entitled to one vote on each matter to come before the special meeting. In addition, as of the Record Date, there were issued and outstanding 72,485 shares of Series A Preferred Stock. Each share of Series A Preferred Stock is entitled to vote together with our common stock on each matter to come before the special meeting as if the share of Series A Preferred Stock were converted into shares of our common stock as of the Record Date, meaning that each share of Series A Preferred Stock is entitled to approximately 143 votes on each matter to come before the special meeting. As a result, a total of 121,220,064 votes are eligible to be cast at the special meeting based on the number of outstanding shares of our common stock and Series A Preferred Stock, voting together, as a single class.

If you wish to attend the special meeting and your shares are held in an account at a broker, dealer, commercial bank, trust company or other nominee (i.e., in street name), you will need to bring a copy of your voting instruction card or statement reflecting your share ownership as of the Record Date. Street name holders who wish to vote at the special meeting will need to obtain a proxy from the broker, dealer, commercial bank, trust company or other nominee that holds their shares.

### **Q: Do I need a ticket to attend the special meeting?**

A: Yes, you will need an admission card to enter the special meeting. You may request tickets by providing the name under which you hold shares of record or, if your shares are held in the name of a bank, broker or other holder of record, the evidence of your beneficial ownership of the shares, the number of tickets you are requesting and your contact information. You can submit your request in the following ways:

by sending an e-mail to [contact@xpo.com](mailto:contact@xpo.com); or

by calling us toll-free at (855) 976-6951.

Stockholders also must present a form of personal photo identification in order to be admitted to the special meeting.

### **Q: How many shares must be present to conduct business at the special meeting?**

A: A quorum is necessary to hold a valid meeting of stockholders. For each of the Proposals to be presented at the special meeting, the holders of shares of our common stock or Series A Preferred Stock outstanding on the Record Date, representing 60,610,033 votes must be present at the special meeting, in person or by proxy. If you vote including by Internet, telephone or proxy card your shares voted will be counted towards the quorum for the special meeting. Abstentions are counted as present for the purpose of determining a quorum; broker non-votes are not counted for the purpose of determining the presence of a quorum at the special meeting as the Proposals to be considered would not be evaluated as routine by the NYSE.

### **Q: What are my voting choices?**

A: You may vote FOR or AGAINST or you may ABSTAIN from voting on any Proposal to be voted on at the special meeting. Your shares will be voted as you specifically instruct. If you sign your proxy or voting instruction card without giving specific instructions, your shares will be voted in accordance with the recommendations of our Board of Directors and in the discretion of the proxy holders on any other matters that properly come before the meeting.

**Q: What vote is required to approve the Proposals?**

A: The Plan Proposal requires the affirmative vote of a majority of the shares of our common stock (including those that would be issued if all of our outstanding Series A Preferred Stock had converted into shares of our common stock as of the Record Date) present, entitled to vote and voted for or against the Plan Proposal at the special meeting at which a quorum is present. The Adjournment Proposal requires the affirmative vote of a majority of the shares of our common stock (including those that would be issued if all of our

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outstanding Series A Preferred Stock had converted into shares of our common stock as of the Record Date) present, entitled to vote and voted for or against the Adjournment Proposal at the special meeting, whether or not a quorum is present.

**Q: What will happen if the Plan Proposal is not approved?**

A: The effectiveness of the New Plan is conditioned upon approval of the Plan Proposal. Under Section 303A.08 and Section 312 of the NYSE Rules, if the Plan Proposal is not approved, the XPO Logistics, Inc. Amended and Restated 2011 Omnibus Incentive Compensation Plan (the 2011 Plan ) and the Con-way Inc. 2012 Equity and Incentive Plan, which was assumed by the Company in connection with the acquisition of Con-way Inc. in October 2015 (the Con-way Plan ), will not be replaced with the New Plan, and will remain in place pursuant to their respective current terms and an increase in the number of authorized shares available for issuance under the 2011 Plan will not be implemented.

Given that the 2011 Plan has very few shares remaining for issuance and, under the applicable NYSE Rules, the Con-way Plan may only be used for grants to heritage employees of Con-way Inc., we believe that failure to approve the New Plan will have an adverse effect on our ability to attract and retain key employees and other service providers.

**Q: How does the Company's Board of Directors recommend that I vote?**

A: For the reasons described in Proposal 1: Approval of the Adoption of the XPO Logistics, Inc. 2016 Omnibus Incentive Compensation Plan on page 6 of the proxy statement, our Board of Directors, after careful consideration, unanimously recommends that our stockholders vote **FOR** the approval of the Plan Proposal and **FOR** the Adjournment Proposal.

**Q: How will our directors and executive officers vote on the Proposals?**

A: Our directors and current executive officers have informed us that, as of the date of this proxy statement, they intend to vote all of their shares of our common stock and Series A Preferred Stock in favor of the approval of each of the Proposals.

As of the Record Date, excluding any shares issuable upon the exercise of currently outstanding options and warrants, our directors and current executive officers owned, in the aggregate, 11,561,086 shares of our common stock (including 9,882,143 shares that would be issued if all of our outstanding Series A Preferred Stock had converted into shares of our common stock as of the Record Date), representing collectively approximately 9.54% of the votes eligible to be cast at the special meeting.

**Q: What do I need to do now?**

A: We urge you to read this proxy statement carefully and to consider how approving the Proposals affects you. Then just mail your completed, dated and signed proxy card in the enclosed return envelope as soon as possible so that your shares can be voted at the special meeting of our stockholders. Holders of record may also vote by telephone or the Internet by following the instructions on the proxy card.

**Q: What happens if I do not respond or if I respond and fail to indicate my voting preference or if I abstain from voting?**

A: If you fail to sign, date and return your proxy card or fail to vote by telephone or Internet as provided on your proxy card, your shares will not be counted towards establishing a quorum for the special meeting, which requires holders representing a majority of the outstanding shares of our common stock (including those that would be issued if all of our outstanding Series A Preferred Stock had converted into shares of our common stock as of the Record Date) to be present in person or by proxy.

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If you respond and do not indicate your voting preference, we will count your proxy as a vote in favor of the approval of each of the Proposals. Abstentions will have no effect on the Plan Proposal or the Adjournment Proposal.

**Q: If my shares are held in street name by my broker, dealer, commercial bank, trust company or other nominee, will such broker or other nominee vote my shares for me?**

A: You should instruct your broker or other nominee on how to vote your shares using the instructions provided by such broker or other nominee. Absent specific voting instructions, brokers or other nominees who hold shares of Company common stock in street name for customers are prevented by the NYSE Rules from exercising voting discretion in respect of non-routine or contested matters. The Company expects that when the NYSE evaluates the Proposals to be voted on at the special meeting to determine whether each Proposal is a routine or non-routine matter, the Proposals would not be evaluated as routine. Shares not voted by a broker or other nominee because such broker or other nominee does not have instructions or cannot exercise discretionary voting power with respect to one or more Proposals are referred to as broker non-votes. Such broker non-votes may not be counted for the purpose of determining the presence of a quorum at the special meeting in the absence of a routine proposal. It is important that you instruct your broker or other nominee on how to vote your shares of Company common stock held in street name in accordance with the voting instructions provided by such broker or other nominee.

**Q: How do I vote?**

A: If you are a *registered stockholder* (i.e., you hold your shares in your own name through our transfer agent, Computershare Trust Company, N.A. and not through a broker, bank or other nominee that holds shares for your account in street name ), you may vote by proxy via the Internet, by telephone, or by mail by following the instructions provided on the proxy card. Proxies submitted by telephone or through the Internet must be received by 11:59 p.m. New York City time on December 19, 2016. Please see the proxy card provided to you for instructions on how to submit your proxy by telephone or the Internet. Stockholders of record who attend the special meeting may vote in person by obtaining a ballot from the inspector of elections.

If you are a *beneficial owner* of shares (i.e., your shares are held in the name of a brokerage firm, bank or a trustee), you may vote by proxy by following the instructions provided in the vote instruction form or other materials provided to you by the brokerage firm, bank, or other nominee that holds your shares. To vote in person at the special meeting, you must obtain a legal proxy from the brokerage firm, bank or other nominee that holds your shares.

**Q: Can I change my vote after I have mailed my proxy card?**

A: Yes. Whether you attend the special meeting or not, you may revoke a proxy at any time before your proxy is voted at the special meeting. You may do so by properly delivering a later-dated proxy either by mail, the Internet or telephone or by attending the special meeting in person and voting. Please note, however, your attendance at the special meeting will not automatically revoke any prior proxy unless you vote again at the special meeting or specifically request in writing that your prior proxy be revoked. You also may revoke your proxy by delivering a



notice of revocation to the Company (Attention: Secretary, XPO Logistics, Inc., Five Greenwich Office Park, Greenwich, Connecticut 06831) prior to the vote at the special meeting. If you hold your shares through a broker, dealer, commercial bank, trust company or other nominee, you should follow the instructions of such broker or other nominee regarding revocation of proxies.

**Q: Where can I find the results of the voting?**

A: We intend to announce preliminary voting results at the special meeting and will publish final results through a Current Report on Form 8-K to be filed with the U.S. Securities and Exchange Commission ( SEC ) within four business days after the special meeting. The Current Report on Form 8-K will be available on the Internet at our website, [www.xpo.com](http://www.xpo.com).

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**Q: Who will pay for the cost of soliciting proxies?**

A: We will pay for the cost of soliciting proxies. We have engaged Innisfree M&A Incorporated to assist us in soliciting proxies in connection with the special meeting, and have agreed to pay them approximately \$9,000, plus their expenses for providing such services. Our directors, officers and other employees, without additional compensation, may solicit proxies personally, in writing, by telephone, by email or otherwise. As is customary, we will reimburse brokerage firms, fiduciaries, voting trustees, and other nominees for forwarding our proxy materials to each beneficial owner of common stock or preferred stock held of record by them.

**Q: What is householding and how does it affect me?**

A: In accordance with notices to many stockholders who hold their shares through a bank, broker or other holder of record (a street-name stockholder ) and share a single address, only one copy of this proxy statement is being delivered to that address unless contrary instructions from any stockholder at that address were received. This practice, known as householding, is intended to reduce our printing and postage costs. However, any such street-name stockholder residing at the same address who wishes to receive a separate copy of this proxy statement may request a copy by contacting the bank, broker or other holder of record, or by sending a written request to: Investor Relations, XPO Logistics, Inc., Five Greenwich Office Park, Greenwich, Connecticut 06831 or by contacting Investor Relations by telephone at (855) 976-6951. The voting instruction form sent to a street-name stockholder should provide information on how to request (1) householding of future company materials or (2) separate materials if only one set of documents is being sent to a household. A stockholder who would like to make one of these requests should contact us as indicated above.

**Q: Can I obtain an electronic copy of proxy material?**

A: Yes, this proxy statement, the accompanying notice of special meeting and the proxy card are available on the Internet at [www.edocumentview.com/xpospc](http://www.edocumentview.com/xpospc).

**Q: What happens if the special meeting is adjourned or postponed?**

A: Although it is not expected, the special meeting may be adjourned or postponed for the purpose of soliciting additional proxies. Any adjournment or postponement may be made without notice, other than by an announcement made at the special meeting, by approval of the holders of a majority of the outstanding shares of our common stock (including those that would be issued if all of our outstanding Series A Preferred Stock had converted into shares of our common stock as of the Record Date) present, entitled to vote and voted for or against the Adjournment Proposal at the special meeting, whether or not a quorum is present. Any signed proxies received by the Company will be voted in favor of an adjournment or postponement in these circumstances. Any adjournment or postponement of the special meeting for the purpose of soliciting additional proxies will allow Company stockholders who have already sent in their proxies to revoke them at any time prior to their use.

**Q: Who can help answer my other questions?**

A: If you have more questions about the Proposals or voting, you should contact the proxy solicitation agent, Innisfree M&A Incorporated, by mail at 501 Madison Avenue, 20th Floor, New York, New York 10022 or by telephone toll-free at 888-750-5834. If your shares are held in an account at a broker, dealer, commercial bank, trust company or other nominee, you should also call such broker or other nominee for additional information. Such broker or other nominee may contact Innisfree M&A Incorporated by telephone at 212-750-5833.

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The XPO Logistics, Inc. Amended and Restated 2011 Omnibus Incentive Compensation Plan (the **Prior Plan**) was approved by stockholders at our company's May 31, 2012 annual meeting of stockholders. Upon the recommendation of the Compensation Committee of the Board, our Board has unanimously approved, subject to stockholder approval, the 2016 Omnibus Incentive Compensation Plan (the **New Plan**). The New Plan is intended to replace the Prior Plan and the Con-way Inc. 2012 Equity and Incentive Plan (the **Con-way Plan**), the latter of which was assumed by the Company in connection with the acquisition of Con-way Inc. in October 2015. Each of the Prior Plan and the Con-way Plan would be frozen with respect to new grants on the date on which the New Plan is approved by our stockholders (the **Approval Date**). The Prior Plan amended and restated the XPO Logistics, Inc. 2011 Omnibus Incentive Compensation Plan, which previously replaced the Express-1 Expedited Solutions, Inc. Amended and Restated 2001 Stock Option Plan (the **Stock Option Plan**), which was automatically terminated, replaced and superseded by the XPO Logistics, Inc. 2011 Omnibus Incentive Compensation Plan on September 1, 2011. Any awards granted under the Prior Plan and the Con-way Plan and any stock options granted under the Stock Option Plan and the Con-way Plan will remain in effect pursuant to their respective terms. If stockholder approval for the New Plan is not received, the Prior Plan and the Con-way Plan will not be amended and restated, and will remain in place pursuant to their respective current terms and an increase in the number of authorized shares available for issuance under the Prior Plan will not be implemented.

The principal features of the New Plan are summarized below. This summary does not contain all information about the New Plan. A copy of the complete text of the New Plan is attached hereto as Annex A to this proxy statement, and the following description is qualified in its entirety by reference to the text of the New Plan.

The New Plan makes several changes related to the maximum total number of shares of common stock, par value \$0.001 per share (our **common stock**), that we may issue under the New Plan and to certain limits on maximum grants that may be made to any individual under the New Plan in any fiscal year and will enable us to avail ourselves of the performance-based compensation exception to the \$1 million limit on deductibility of compensation for our CEO and certain of our other executive officers under Section 162(m) of the Internal Revenue Code of 1986, as amended (the **Code**). Among the more significant of these changes are the following:

Increase the maximum total number of shares of our common stock we may issue by 3,400,000 shares. You should note that, as of the Record Date, under the Con-way Plan there were approximately 4,160,000 shares available for grant and under the Prior Plan there were 46,792 shares available for grant. **If the New Plan is approved by shareholders, no further awards may be granted under the Con-way Plan or the Prior Plan.** Under the terms of the New Plan, the maximum number of shares will not be increased to the extent that awards previously made under the Prior Plan or the Con-way Plan, or stock options previously made under the Prior Plan, the Stock Option Plan or the Con-way Plan, are forfeited, in each case, following the Approval Date (see the table on page 8 of this proxy statement);

Increase the maximum number of shares of our common stock available to be granted under the New Plan to any participant in any fiscal year from 500,000 to 2,500,000;

Increase the maximum aggregate amount of cash and other property that would be permitted to be paid or delivered under the New Plan to any participant in any fiscal year from \$5,000,000 to \$10,000,000;

Approve the performance goals described below under the subheading *Performance Criteria Applicable to Performance Compensation Awards* under the heading *Performance Compensation Awards* that were approved by stockholders under the Prior Plan; and

Limit the value of shares of our common stock that would be available to be granted pursuant to awards to any non-employee director in the New Plan in any fiscal year to \$350,000 on the date of grant.

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**Highlights of Key Corporate Governance Practices and Provisions under the New Plan**

We believe that the New Plan will promote the interests of our stockholders and is consistent with principles of good corporate governance. The New Plan includes the following practices and provisions:

***Administered by an independent compensation committee.*** Awards under the New Plan will be administered by our Compensation Committee, which is composed entirely of independent directors who meet the SEC and NYSE standards of independence.

***Granting of performance awards.*** Under the New Plan, the Compensation Committee may grant performance-based awards intended to qualify as performance-based compensation under Section 162(m) of the Code.

***Awards require a minimum vesting period.*** Subject to certain exceptions under the New Plan, awards granted to eligible individuals generally require a minimum vesting period of three years with proration available and shorter vesting periods available for performance-based awards as described in more detail below.

***Clawbacks.*** All awards under the New Plan are subject to recoupment or clawback under certain circumstances.

***No liberal share counting.*** The New Plan prohibits the reuse of shares withheld to satisfy the exercise price or tax withholding requirements of an award or share-based awards granted under the New Plan that are settled in cash.

***Cap on awards to non-employee directors.*** The value of shares (as of the date of grant) awarded to a single non-employee director during a fiscal year will not exceed \$350,000.

***No discounted stock options or SARs.*** All stock options and stock appreciation right (or SAR) awards under the New Plan must have an exercise price or base price that is not less than the fair market value of the underlying common stock on the date of grant.

***No repricing of stock options or SARs.*** The New Plan prohibits any repricing of stock options or SARs for shares or cash without stockholder approval.

***No tax gross-ups.*** The New Plan does not include any tax gross-up provisions.

*No reloads.* The New Plan does not permit the grant of stock option reloads.

**Table of Contents****Determination of Number of Shares for the New Plan**

As of November 17, 2016, our capital structure consisted of: (i) 110,865,064 shares of outstanding common stock, (ii) 72,485 shares of preferred stock, which presently are convertible into 10,355,000 shares of our common stock and vote together with our common stock on an as-converted basis on all matters on which the common stock may vote, except as otherwise required by law, and separately as a class with respect to certain matters implicating the rights of holders of preferred stock, (iii) warrants presently exercisable for an aggregate of 10,390,671 shares of our common stock at a price of \$7.00 per share (the Warrants), and (iv) 4.50% Convertible Senior Notes due October 1, 2017 (the Convertible Notes), which are currently convertible into 3,008,443 shares of common stock. Due to our capital structure, when calculating potential dilution, or overhang, in determining a reasonable number of shares of common stock to be reserved for issuance under the New Plan, we assume the preferred stock and the Convertible Notes are converted to shares of common stock and we include the Warrants using the treasury stock method, as shown in the table below.

**Our Fully-Diluted Capitalization:**

Shares of common stock	110,865,064
Shares of common stock issuable upon conversion of preferred stock	10,355,000
Shares of common stock issuable upon exercise of 10,390,671 Warrants (using the treasury method and assuming a price of \$42.35 per share, which was the closing price of our common stock on the NYSE on November 17, 2016)	8,673,205
Shares of common stock issuable upon conversion of Convertible Notes	3,008,443
Fully-Diluted Common Stock Outstanding	132,901,712

The table below represents our potential overhang levels based on our fully-diluted common stock outstanding, as shown above, and our request for 3,400,000 additional shares to be available for awards pursuant to the New Plan.

**Potential Overhang with 3,400,000 Additional Shares:**

Equity awards outstanding as of November 17, 2016 <sup>(1)</sup>	4,627,987
Grants under the Con-way Plan	557,576
Grants under the Prior Plan	4,070,411
Shares available for grant under the Prior Plan or the Con-way Plan <sup>(2)</sup>	0
Additional requested shares	3,400,000
Total Potential Dilution, or Overhang	8,027,987
Potential Dilution as a Percentage of Fully-Diluted Common Stock Outstanding	6.09%

(1) Excludes options to purchase 50,000 shares of our common stock that were granted outside the Prior Plan.

(2) As described elsewhere in this proxy statement, shares available for issuance under the Con-way Plan or the Prior Plan will no longer be available for issuance upon shareholder approval of the New Plan.

The Board and the Compensation Committee considered various factors, including potential burn rate (described below), potential dilution or overhang and historical grant practices, in determining the number of shares to be



available for issuance under the New Plan.

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We actively manage our long-term dilution by limiting the number of shares subject to equity awards that we grant, commonly expressed as a percentage of total shares outstanding and referred to as burn rate. Burn rate is a key measure of dilution that shows how rapidly a company is depleting its shares reserved for equity compensation plans, and differs from annual dilution because it does not take into account cancellations and other shares returned to the reserve. In order to calculate burn rate, we include the number of stock options granted in any given period, plus the number of full value shares earned during the period and divide the total by the weighted average common shares outstanding.

We have calculated the burn rate under the Prior Plan for the past three years (note that our burn rate does not include grants made prior to the merger with Con-way and assumed under the Con-way Plan), as set forth in the following table (share numbers rounded and reported in thousands):

**XPO Burn Rate**

*(Shares reported in thousands)*

	Fiscal Year Ended December 31,			3-Year Average
	2015	2014	2013	
Options Granted	86	50	111	
Restricted Stock Units Granted	330	176	306	
Performance-based Restricted Stock Units Vested	25	0	0	
Weighted Average Common Shares Outstanding	92,756	53,630	22,752	
Volatility Multiplier	2.0	2.0	2.0	
<b>Burn Rate</b>	<b>0.86%</b>	<b>0.75%</b>	<b>3.18%</b>	<b>1.59%</b>

Note: Burn rate is calculated as (options granted + RSUs granted + Performance-based RSUs vested) / weighted average shares outstanding. All RSUs granted and Performance-based RSUs vested are adjusted using a multiplier of 2.0 options per share (based on the ISS methodology and the Company's 3-year average stock price volatility).

The primary purpose of the changes introduced between the Prior Plan and the New Plan is to increase the number of authorized shares available under the New Plan. We estimate, based on historical grant information, that the 3,400,000 additional shares to be made available under the New Plan would provide us sufficient capacity to make awards at historical rates for approximately the next three years. Our Board believes that this increase in authorized shares represents a reasonable amount of potential equity dilution and allows us to continue awarding equity incentives, which are an important component of our overall compensation program. Our Board and the Compensation Committee considered the following material factors, among others, in determining acceptable and targeted levels of dilution: competitive data from relevant peer companies, the current and future accounting expense associated with our equity award practices, stockholder feedback and the influence of certain proxy advisory firms. Our equity programs are revisited at least annually and assessed against these and other measures.

The purpose in seeking renewed approval of the performance goals for purposes of Section 162(m) of the Code is to ensure that the Compensation Committee is afforded the opportunity to maximize the deductibility of executive

compensation if and to the extent it so desires. The purpose of providing limits on the number of shares to non-employee directors in any calendar year is to conform to current practice in corporate governance.

In addition, the purpose of the changes to the individual limits under the New Plan is to provide us appropriate flexibility in making future equity awards.

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### **Purpose of the New Plan**

The New Plan, as approved by our Board, is a flexible omnibus incentive compensation plan that would allow us to use different forms of compensation awards, retain and reward eligible participants under the New Plan and strengthen the alignment of interests between management and our stockholders. The purpose of the New Plan would be to promote our interests and those of our stockholders by (1) attracting and retaining exceptional directors, officers, employees and consultants (including prospective directors, officers, employees and consultants) and (2) enabling such individuals to participate in, and motivating their efforts toward, our long-term growth and financial success.

### **Summary of the New Plan**

#### ***Types of Awards***

The New Plan would provide for the grant of options intended to qualify as incentive stock options ( ISOs ) under Section 422 of the Code, nonqualified stock options ( NSOs ), stock appreciation rights ( SARs ), restricted share awards, restricted stock units ( RSUs ), performance compensation awards, performance units, cash incentive awards, deferred share units and other equity-based and equity-related awards, as well as cash-based awards.

#### ***Plan Administration***

The New Plan would be administered by the Compensation Committee of our Board or such other committee our Board designates to administer the New Plan (the Committee ). Subject to the terms of the New Plan and applicable law, the Committee would have sole authority to administer the New Plan, including, but not limited to, the authority to (1) designate plan participants, (2) determine the type or types of awards to be granted to a participant, (3) determine the number of shares of our common stock to be covered by awards, (4) determine the terms and conditions of awards, (5) determine the vesting schedules of awards and, if certain performance criteria were required to be attained in order for an award to vest or be settled or paid, establish such performance criteria and certify whether, and to what extent, such performance criteria have been attained, (6) interpret, administer, reconcile any inconsistency in, correct any default in and/or supply any omission in, the New Plan, (7) establish, amend, suspend or waive such rules and regulations and appoint such agents as it should deem appropriate for the proper administration of the New Plan, (8) accelerate the vesting or exercisability of, payment for or lapse of restrictions on, awards, and (9) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the New Plan.

#### ***Shares Available For Awards***

Subject to adjustment for changes in capitalization, the aggregate number of shares of our common stock that would be available to be delivered pursuant to awards granted under the New Plan would be 3,400,000, all of which could be granted pursuant to incentive stock options. Awards that are settled in cash would not reduce the number of shares available for delivery under the New Plan. If, after the effective date of the New Plan, any award granted under the New Plan were forfeited, or otherwise expired, terminated or were canceled without the delivery of all shares subject thereto, then the number of shares subject to such award that were not issued would not be treated as issued for purposes of reducing the maximum aggregate number of shares that may be delivered pursuant to the New Plan.

Notwithstanding the foregoing, and for the avoidance of doubt, shares that were surrendered or tendered to us in payment of the exercise price of an award (including with respect to stock-settled SARs) or any taxes required to be withheld in respect of an award and awards based on the fair market value of a share that are settled other than by the delivery of shares (including cash settlement) would not become available again to be delivered pursuant to awards

under the New Plan or increase the number of shares that may be delivered pursuant to ISOs under the New Plan. Subject to adjustment for changes in capitalization, the maximum number of shares

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of our common stock that would be available to be granted pursuant to awards to any participant in the New Plan in any fiscal year would be 2,500,000. In the case of awards settled in cash based on the fair market value of a share, the maximum aggregate amount of cash that would be permitted to be paid pursuant to awards granted to any participant in the New Plan in any fiscal year would be equal to the per-share fair market value as of the relevant vesting, payment or settlement date multiplied by the maximum number of shares which could be granted, as described above (*i.e.*, 2,500,000 shares). The maximum aggregate amount of cash and other property (valued at fair market value) that would be permitted to be paid or delivered pursuant to awards under the New Plan (other than as described in the two immediately preceding sentences) to any participant in any fiscal year would be \$10,000,000. The maximum value of shares of our common stock that would be available to be granted pursuant to awards to any non-employee director in the New Plan in any fiscal year would be \$350,000 as of the date of grant. Subject to adjustment for changes in capitalization, the maximum number of shares of our common stock that would be available to be granted pursuant to ISOs to any participant in the New Plan in any fiscal year would be 2,500,000.

### ***Changes in Capitalization***

In the event of any extraordinary dividend or other extraordinary distribution, recapitalization, rights offering, stock split, reverse stock split, split-up or spin-off affecting the shares of our common stock, the Committee would make equitable adjustments and other substitutions to the New Plan and awards under the New Plan in the manner it determined to be appropriate or desirable. In the event of any reorganization, merger, consolidation, combination, repurchase or exchange of our common stock or other similar corporate transactions, the Committee in its discretion would be permitted to make such adjustments and other substitutions to the New Plan and awards under the New Plan as it deemed appropriate or desirable.

### ***Substitute Awards***

The Committee would be permitted to grant awards in assumption of, or in substitution for, outstanding awards previously granted by us or any of our affiliates or a company that we acquired or with which we combined. Any shares issued by us through the assumption of or substitution for outstanding awards granted by a company that we acquired would not reduce the aggregate number of shares of our common stock available for awards under the New Plan, except that awards issued in substitution for ISOs would reduce the number of shares of our common stock available for ISOs under the New Plan.

### ***Source of Shares***

Any shares of our common stock issued under the New Plan would consist, in whole or in part, of authorized and unissued shares or of treasury shares.

### ***Eligible Participants***

Any director, officer, employee or consultant (including any prospective director, officer, employee or consultant) of our company or our affiliates would be eligible to participate in the New Plan. We currently expect that awards generally will be limited to approximately 300 employees and to non-employee directors (of whom there are currently six eligible directors).

### ***Stock Options***

The Committee would be permitted to grant both ISOs and NSOs under the New Plan. The exercise price for stock options would not be less than the fair market value (as defined in the New Plan) of our common stock on the grant

date. The Committee may not reprice any stock option granted under the New Plan without the approval of our stockholders. All stock options granted under the New Plan would be NSOs unless the applicable award agreement expressly stated that the stock option was intended to be an ISO. Under the proposed New Plan,

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all ISOs and NSOs would be intended to qualify as performance-based compensation under Section 162(m) of the Code. Subject to the provisions of the New Plan and the applicable award agreement, the Committee would determine, at or after the grant of a stock option, the vesting criteria, term, methods of exercise and any other terms and conditions of any stock option. Unless otherwise set forth in the applicable award agreement, each stock option would expire upon the earlier of (i) the tenth anniversary of the date the stock option was granted and (ii) three months after the participant who was holding the stock option ceased to be a director, officer, employee or consultant for us or one of our affiliates. The exercise price would be permitted to be paid with cash (or its equivalent) or, in the sole discretion of the Committee, with previously acquired shares of our common stock or through delivery of irrevocable instructions to a broker to sell our common stock otherwise deliverable upon the exercise of the stock option (provided that there was a public market for our common stock at such time), or, in the sole discretion of the Committee, a combination of any of the foregoing, provided that the combined value of all cash and cash equivalents and the fair market value of any such shares so tendered to us as of the date of such tender, together with any shares withheld by us in respect of taxes relating to a stock option, was at least equal to such aggregate exercise price.

***Stock Appreciation Rights***

The Committee would be permitted to grant SARs under the New Plan. The exercise price for SARs would not be less than the fair market value (as defined in the New Plan) of our common stock on the grant date. The Committee may not reprice any SAR granted under the New Plan without the approval of our stockholders. Upon exercise of a SAR, the holder would receive cash, shares of our common stock, other securities, other awards, other property or a combination of any of the foregoing, as determined by the Committee, equal in value to the excess, if any, of the fair market value of a share of our common stock on the date of exercise of the SAR over the exercise price of the SAR. Under the New Plan, all SARs would be intended to qualify as performance-based compensation under Section 162(m) of the Code. Subject to the provisions of the New Plan and the applicable award agreement, the Committee would determine, at or after the grant of a SAR, the vesting criteria, term, methods of exercise, methods and form of settlement and any other terms and conditions of any SAR. Unless otherwise set forth in the applicable award agreement, each SAR would expire upon the earlier of (i) the tenth anniversary of the date the SAR was granted and (ii) three months after the participant who was holding the SAR ceased to be a director, officer, employee or consultant for us or one of our affiliates. Under certain circumstances, the Committee would have the ability to substitute, without the consent of the affected participant, SARs for outstanding NSOs. No SAR granted under the New Plan could be exercised more than 10 years after the date of grant.

***Restricted Shares and Restricted Stock Units***

Subject to the provisions of the New Plan, the Committee would be permitted to grant restricted shares and RSUs. Restricted shares and RSUs would not be permitted to be sold, assigned, transferred, pledged or otherwise encumbered except as provided in the New Plan or the applicable award agreement, except that the Committee could determine that restricted shares and RSUs would be permitted to be transferred by the participant for no consideration. Restricted shares could be evidenced in such manner as the Committee would determine.

An RSU would be granted with respect to one share of our common stock or have a value equal to the fair market value of one such share. Upon the lapse of restrictions applicable to an RSU, the RSU could be paid in cash, shares of our common stock, other securities, other awards or other property, as determined by the Committee, or in accordance with the applicable award agreement. In connection with each grant of restricted shares, except as provided in the applicable award agreement, the holder would be entitled to the rights of a stockholder (including the right to vote and receive dividends) in respect of such restricted shares. The Committee would be permitted to, on such terms and conditions as it might determine, provide a participant who holds RSUs with dividend equivalents, payable in cash, shares of our common stock, other securities, other awards or other property. If a restricted share or RSU were



intended to qualify as performance-based

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compensation under Section 162(m) of the Code, the requirements described below in Performance Compensation Awards would be required to be satisfied in order for such restricted share or RSU to be granted or vest.

***Performance Units***

Subject to the provisions of the New Plan, the Committee would be permitted to grant performance units to participants. Performance units would be awards with an initial value established by the Committee (or that was determined by reference to a valuation formula specified by the Committee) at the time of the grant. In its discretion, the Committee would set performance goals that, depending on the extent to which they were met during a specified performance period, would determine the number and/or value of performance units that would be paid out to the participant. The Committee, in its sole discretion, would be permitted to pay earned performance units in the form of cash, shares of our common stock or any combination thereof that would have an aggregate fair market value equal to the value of the earned performance units at the close of the applicable performance period. The determination of the Committee with respect to the form and timing of payout of performance units would be set forth in the applicable award agreement. The Committee would be permitted to, on such terms and conditions as it might determine, provide a participant who holds performance units with dividends or dividend equivalents, payable in cash, shares of our common stock, other securities, other awards or other property. If a performance unit were intended to qualify as performance-based compensation under Section 162(m) of the Code, the requirements below described in Performance Compensation Awards would be required to be satisfied.

***Cash Incentive Awards***

Subject to the provisions of the New Plan, the Committee would be permitted to grant cash incentive awards to participants. In its discretion, the Committee would determine the number of cash incentive awards to be awarded, the duration of the period in which, and any condition under which, the cash incentive awards would vest or be forfeited, and any other terms and conditions applicable to the cash incentive awards. Subject to the provisions of the New Plan, the holder of a cash incentive award would receive payment based on the number and value of the cash incentive award earned, which would be determined by the Committee, in its discretion, based on the extent to which performance goals or other conditions applicable to the cash incentive award have been achieved. If a cash incentive award were intended to qualify as performance-based compensation under Section 162(m) of the Code, the requirements described below in Performance Compensation Awards would be required to be satisfied.

***Other Stock-Based Awards***

Subject to the provisions of the New Plan, the Committee would be permitted to grant to participants other equity-based or equity-related compensation awards, including vested stock. The Committee would be permitted to determine the amounts and terms and conditions of any such awards. If such an award were intended to qualify as performance-based compensation under Section 162(m) of the Code, the requirements described below in Performance Compensation Awards would be required to be satisfied.

***Performance Compensation Awards***

The Committee would be permitted to designate any award granted under the New Plan (other than ISOs, NSOs and SARs) as a performance compensation award in order to qualify such award as performance-based compensation under Section 162(m) of the Code. Awards designated as performance compensation awards would be subject to the following additional requirements:

*Recipients of Performance Compensation Awards.* The Committee would, in its sole discretion, designate within the first 90 days of a performance period (or, if shorter, within the maximum period allowed under Section 162(m) of the Code) the participants who would be eligible to receive

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performance compensation awards in respect of such performance period. The Committee would also determine the length of performance periods, the types of awards to be issued, the performance criteria that would be used to establish the performance goals, the kinds and levels of performance goals and any objective performance formula used to determine whether a performance compensation award had been earned for the performance period.

*Performance Criteria Applicable to Performance Compensation Awards.* The performance criteria would be limited to the following: (1) share price, (2) net income, earnings or earnings before or after taxes (including earnings before interest and taxes, earnings before interest, taxes, depreciation and amortization), in each case, for the avoidance of doubt, on an adjusted basis, (3) operating income, operating profit or economic profit, (4) capital efficiency, (5) cash flow (including specified types or categories thereof including, but not limited to, operating cash flow and free cash flow), (6) cash flow return on capital, (7) revenues (including specified types or categories thereof), (8) return on stockholders' equity, (9) return on investment or capital, (10) return on assets, (11) gross or net profitability/profit margins, (12) objective measures of productivity or operating efficiency, (13) costs (including specified types or categories thereof), (14) budgeted expenses (operating and capital), (15) market share (in the aggregate or by segment), (16) level or amount of acquisitions (in terms of size, number of transactions or otherwise), (17) economic value-added, (18) enterprise value, (19) book value, (20) working capital, (21) safety and accident rates, (22) days sales outstanding, (23) customer satisfaction, (24) overall or selected premium or sales, (25) expense ratio, (26) gross or unit margin, or (27) total stockholder return. These performance criteria would be permitted to be applied on an absolute basis or be relative to one or more peer companies or indices or any combination thereof or, if applicable, be computed on an accrual or cash accounting basis, or be calculated on a per share basis. These performance criteria would be permitted to be applied on overall corporate results, or on results of a subsidiary or business unit, provided that these results are able to be established and certified in a manner that satisfies the requirements of Section 162(m) of the Code. The performance goals and periods could vary from participant to participant and from time to time. To the extent required under Section 162(m) of the Code, the Committee would, within the first 90 days of the applicable performance period (or, if shorter, within the maximum period allowed under Section 162(m) of the Code), define in an objective manner the method of calculating the performance criteria it selected to use for the performance period.

*Modification of Performance Goals.* The Committee would be permitted to adjust or modify the calculation of performance goals for a performance period in the event of, in anticipation of, or in recognition of, any unusual or extraordinary corporate item, transaction, event or development or any other unusual or nonrecurring events affecting us, any of our affiliates, subsidiaries, divisions or operating units (to the extent applicable to such performance goal) or our financial statements or the financial statements of any of our affiliates, or changes in applicable rules, rulings, regulations or other requirements of any governmental body or securities exchange, accounting principles, law or business conditions, so long as that adjustment or modification did not cause a performance compensation award intended to qualify as performance based compensation under Section 162(m) of the Code to fail to qualify as performance-based compensation under Section 162(m) of the Code.

*Requirements to Receive Payment for 162(m) Awards.* Except as otherwise permitted by Section 162(m) of the Code, in order to be eligible for payment in respect of a performance compensation award for a particular performance period, participants would be required to be employed by us on the last day of the performance period, the performance goals for such period would be required to be satisfied and certified by the

Committee and the performance formula would be required to determine that all or some portion of the performance compensation award had been earned for such period.

*Negative Discretion.* The Committee would be permitted to, in its sole discretion, reduce or eliminate the amount of a performance compensation award earned in a particular performance period, even if applicable performance goals had been attained and without regard to any employment agreement between us and a participant.

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*Limitations on Committee Discretion.* Except as otherwise permitted by Section 162(m) of the Code, in no event could any discretionary authority granted to the Committee under the New Plan be used, to the extent that the Committee intends that an award qualify as qualified performance-based compensation under Section 162(m) of the Code, to grant or provide payment in respect of performance compensation awards for which performance goals had not been attained, increase a performance compensation award for any participant at any time after the first 90 days of the performance period (or, if shorter, within the maximum period allowed under Section 162(m) of the Code) or increase a performance compensation award above the maximum amount payable under the underlying award.

*Form of Payment.* Performance compensation awards (other than restricted shares, RSUs and other stock-based awards) would be payable in cash or in restricted stock, RSUs or fully vested shares of equivalent value and would be paid on the terms determined by the Committee in its discretion. Any shares of restricted stock or RSUs would be subject to the terms of the New Plan or any successor equity compensation plan and any applicable award agreement. The number of shares of restricted stock, RSUs or fully vested shares that is equivalent in value to a particular dollar amount would be determined in accordance with a methodology specified by the Committee within the first 90 days of a plan year (or, if shorter, the maximum period allowed under Section 162(m) of the Code).

***Clawbacks***

The Company may clawback awards provided to eligible employees to the extent required by applicable law and as otherwise determined by the Compensation Committee and set forth in an award agreement.

***Minimum Vesting Period***

Subject to the terms of the New Plan and the applicable award agreement, all awards granted hereunder other than SARs, options or cash incentive awards are subject to a vesting period of at least three years following the date of grant, except that (1) a vesting period of at least one year following the date of grant is permissible if vesting is conditioned upon the achievement of performance goals, (2) any award may vest in part prior to the expiration of any vesting period (except that in no event will any portion of such awards vest prior to the first anniversary of the date of grant), and (3) up to five percent of shares available for grant under the New Plan may be granted without regard to these requirements and the Committee may accelerate the vesting with respect to any such awards.

***Amendment and Termination of the New Plan***

Subject to any applicable law or government regulation, to any requirement that must be satisfied if the New Plan were intended to be a stockholder-approved plan for purposes of Section 162(m) of the Code and to the rules of the applicable national stock exchange or quotation system on which the shares of our common stock may be listed or quoted, the New Plan would be permitted to be amended, modified or terminated by our Board without the approval of our stockholders, except that stockholder approval would be required for any amendment that would (i) increase the maximum number of shares of our common stock available for awards under the New Plan or increase the maximum number of shares of our common stock that could be delivered pursuant to ISOs granted under the New Plan, (ii) change the class of employees or other individuals eligible to participate in the New Plan, (iii) amend or decrease the exercise price of any option or SAR, (iv) cancel or exchange any option or SAR at a time when its exercise price exceeds the fair market value of the underlying shares, (v) allow repricing of any option or SAR without stockholder approval, or (vi) constitute a material increase in the benefits to be provided to eligible employees within the meaning of the New York Stock Exchange rules as of the date hereof. Under these provisions, stockholder approval would not be required for all possible amendments that might increase the cost of the New Plan. No modification, amendment or

termination of the New Plan that would materially and adversely impair the rights of any participant would be effective without the consent of the affected participant, unless otherwise provided by the Committee in the applicable award agreement.

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The Committee would be permitted to waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate any award previously granted under the New Plan, the Prior Plan or the Stock Option Plan, prospectively or retroactively. However, unless otherwise provided by the Committee in the applicable award agreement or in the New Plan, any such waiver, amendment, alteration, suspension, discontinuance, cancellation or termination that would materially and adversely impair the rights of any participant to any award previously granted would not be effective without the consent of the affected participant.

The Committee would be authorized to make adjustments in the terms and conditions of awards in the event of any unusual or nonrecurring corporate event (including the occurrence of a change of control of our company) affecting us, any of our affiliates or our financial statements or the financial statements of any of our affiliates, or of changes in applicable rules, rulings, regulations or other requirements of any governmental body or securities exchange, accounting principles or law whenever the Committee, in its discretion, determined that those adjustments were appropriate or desirable, including providing for the substitution or assumption of awards, accelerating the exercisability of, lapse of restrictions on, or termination of, awards or providing for a period of time for exercise prior to the occurrence of such event and, in its discretion, the Committee would be permitted to provide for a cash payment to the holder of an award in consideration for the cancellation of such award.

### ***Change of Control***

The New Plan would provide that, unless otherwise provided in an award agreement, in the event of a change of control of our company, awards will be assumed and replaced by awards of equivalent value in connection with the change of control and that such assumed awards would have so-called "double trigger" vesting provisions, such that the awards will vest in full and become immediately exercisable upon qualifying terminations of employment during the two-year period following the change of control. However, in the event that awards are not replaced with awards of equivalent value the vesting of the awards will generally accelerate immediately prior to the change of control.

Unless otherwise provided pursuant to an award agreement, a change of control would be defined to mean any of the following events, generally:

during any period, a change in the composition of a majority of the board of directors, as constituted on the first day of such period, that was not supported by a majority of the incumbent board of directors;

consummation of certain mergers or consolidations of our company with any other corporation following which our stockholders hold 50% or less of the combined voting power of the surviving entity;

the stockholders approve a plan of complete liquidation or dissolution of our company; or

an acquisition by any individual, entity or group of beneficial ownership of a percentage of the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors that was equal to or greater than 30%.

Although award agreements may provide for a different definition of change of control than is provided for in the New Plan, except in the case of a transaction described in the third bullet above, any definition of change of control set forth in any award agreement would provide that a change of control would not occur until consummation or



effectiveness of a change of control of our company, rather than upon the announcement, commencement, stockholder approval or other potential occurrence of any event or transaction that, if completed, would result in a change of control of our company.

***Term of the New Plan***

No award would be permitted to be granted under the New Plan after the tenth anniversary of the Approval Date.

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**Table of Contents****Certain Federal Tax Aspects of the New Plan**

The following summary describes the U.S. Federal income tax treatment associated with options awarded under the New Plan. The summary is based on the law as in effect on the date of this filing. The summary does not discuss state, local and foreign tax consequences.

***Incentive Stock Options***

Neither the grant nor the exercise of an ISO results in taxable income to the optionee for regular U.S. federal income tax purposes. However, an amount equal to (i) the per-share fair market value on the exercise date minus the exercise price at the time of grant multiplied by (ii) the number of shares with respect to which the ISO is being exercised will count as alternative minimum taxable income which, depending on the particular facts, could result in liability for the alternative minimum tax or AMT. If the optionee does not dispose of the shares issued pursuant to the exercise of an ISO until the later of the two-year anniversary of the date of grant of the ISO and the one-year anniversary of the date of the acquisition of those shares, then (a) upon a later sale or taxable exchange of the shares, any recognized gain or loss would be treated for tax purposes as a long-term capital gain or loss and (b) we would not be permitted to take a deduction with respect to that ISO for federal income tax purposes.

If shares acquired upon the exercise of an ISO were disposed of prior to the expiration of the two-year and one-year holding periods described above (a disqualifying disposition), generally the optionee would realize ordinary income in the year of disposition in an amount equal to the lesser of (i) any excess of the fair market value of the shares at the time of exercise of the ISO over the amount paid for the shares or (ii) the excess of the amount realized on the disposition of the shares over the participant's aggregate tax basis in the shares (generally, the exercise price). A deduction would be available to us equal to the amount of ordinary income recognized by the optionee. Any further gain realized by the optionee would be taxed as short-term or long-term capital gain and would not result in any deduction by us. A disqualifying disposition occurring in the same calendar year as the year of exercise would eliminate the alternative minimum tax effect of the ISO exercise.

Special rules may apply where all or a portion of the exercise price of an ISO is paid by tendering shares, or if the shares acquired upon exercise of an ISO are subject to substantial forfeiture restrictions. The foregoing summary of tax consequences associated with the exercise of an ISO and the disposition of shares acquired upon exercise of an ISO assumes that the ISO is exercised during employment or within three months following termination of employment. The exercise of an ISO more than three months following termination of employment will result in the tax consequences described below for NSOs, except that special rules apply in the case of disability or death. An individual's stock options otherwise qualifying as ISOs will be treated for tax purposes as NSOs (and not as ISOs) to the extent that, in the aggregate, they first become exercisable in any calendar year for stock having a fair market value (determined as of the date of grant) in excess of \$100,000.

***Nonqualified Stock Options***

An NSO (that is, a stock option that does not qualify as an ISO) would result in no taxable income to the optionee or deduction to us at the time it is granted. An optionee exercising an NSO would, at that time, realize taxable compensation equal to (i) the per-share fair market value on the exercise date minus the exercise price at the time of grant multiplied by (ii) the number of shares with respect to which the stock option is being exercised. If the NSO was granted in connection with employment, this taxable income would also constitute wages subject to withholding and employment taxes. A corresponding deduction would be available to us. The foregoing summary assumes that the shares acquired upon exercise of an NSO option are not subject to a substantial risk of forfeiture.

***Section 162(m)***

Section 162(m) of the Code currently provides that if, in any year, the compensation that is paid to our Chief Executive Officer or to any of our three other most highly compensated executive officers (excluding our Chief

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Financial Officer under currently applicable rules) exceeds \$1,000,000 per person, any amounts that exceed the \$1,000,000 threshold will not be deductible by us for federal income tax purposes, unless the compensation qualifies for an exception to Section 162(m) of the Code. Certain performance-based awards under plans approved by stockholders are not subject to the deduction limit. Stock options that would be awarded under the New Plan are intended to be eligible for this performance-based exception.

***Section 409A***

Section 409A of the Code imposes restrictions on nonqualified deferred compensation. Failure to satisfy these rules results in accelerated taxation, an additional tax to the holder in an amount equal to 20% of the deferred amount, and a possible interest charge. Stock options granted with an exercise price that is not less than the fair market value of the underlying shares on the date of grant will not give rise to deferred compensation for this purpose unless they involve additional deferral features. Stock options that would be awarded under the New Plan are intended to be eligible for this exception.

**Required Vote**

The affirmative vote of shares of our common stock or preferred stock, voting together as a single class, representing a majority of votes cast thereon at the annual meeting or any adjournment or postponement thereof is required to approve this Plan Proposal.

**Recommendation**

**Our Board unanimously recommends a vote FOR this Plan Proposal.**

Table of Contents**NEW PLAN BENEFITS****Equity Grants Under the XPO Logistics, Inc. Amended and Restated 2016 Omnibus Incentive Compensation Plan**

The following table discloses the benefits or amounts that will be received by or allocated to each of the following under the New Plan to the extent determinable as of the date hereof.

<b>Name and Position</b>	<b>Dollar Value (\$)</b>	<b>Number of Restricted Stock Units</b>
Bradley S. Jacobs	0	0
<i>Chairman and Chief Executive Officer</i>		
John J. Hardig	0	0
<i>Chief Financial Officer</i>		
Troy A. Cooper	0	0
<i>Chief Operating Officer</i>		
Gordon E. Devens	0	0
<i>Chief Legal Officer</i>		
Scott B. Malat	0	0
<i>Chief Strategy Officer</i>		
Executive Group	0	0
Non-Executive Director Group	0	0
Non-Executive Officer Employee Group <sup>(1)</sup>	\$ 3,400,281 <sup>(2)</sup>	80,290

(1) Represents the grant of 80,290 performance-based restricted stock units approved by the Compensation Committee under the New Plan as of November 10, 2016, to recently hired employees. These awards are subject to approval of the Plan Proposal.

(2) Calculated based on a closing price on the New York Stock Exchange of \$42.35 on November 17, 2016.

**Table of Contents****EQUITY COMPENSATION PLAN INFORMATION**

The following table gives information as of November 17, 2016, with respect to the Company's compensation plans under which equity securities are authorized for issuance.

<b>Plan Category</b>	<b>Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)</b>	<b>Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights<sup>(1)</sup> (b)</b>	<b>Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) (c)</b>
Equity compensation plans approved by security holders	4,627,987 <sup>(2)</sup>	\$ 13.45	4,207,206 <sup>(3)</sup>
Equity compensation plans not approved by security holders	130,290 <sup>(4)</sup>	\$ 14.09	0
<b>Total</b>	<b>4,758,277</b>	<b>\$ 13.48</b>	<b>4,207,206</b>

(1) The weighted average exercise price is based solely on the outstanding options.

(2) Includes 961,255 stock options outstanding under the XPO Logistics, Inc. Amended and Restated 2011 Omnibus Incentive Compensation Plan, 62,561 stock options outstanding under the Segmentz, Inc. 2001 Stock Option Plan, and 91,737 stock options outstanding under the Con-way Inc. 2006 Equity and Incentive Plan. Also includes an aggregate of 3,046,595 restricted stock units and performance-based restricted stock units granted under the XPO Logistics, Inc. Amended and Restated 2011 Omnibus Incentive Compensation Plan and 465,839 restricted stock units granted under the Con-way Inc. 2012 Equity and Incentive Plan. The weighted average remaining contractual life for these stock options outstanding is 4.68. Excludes 22,306 restricted stock units and 22,306 performance-based restricted stock units that were granted to former Con-way executives on November 18, 2016, under the Con-way Plan.

(3) Includes 46,792 securities available for issuance under the XPO Logistics, Inc. Amended and Restated 2011 Omnibus Incentive Compensation Plan and 4,160,414 securities available for issuance under the Con-way Inc. 2012 Equity and Incentive Plan. The securities available for grant under the Con-way Inc. 2012 Equity and Incentive Plan cannot be granted to employees who were employees of XPO Logistics, Inc. or its subsidiaries prior to the closing of the Con-way acquisition.

(4) Includes 50,000 stock options granted to our Chief Financial Officer in February 2012 outside the security holder-approved plan as employee inducement grants. Also includes 80,290 performance-based restricted stock units approved by the Compensation Committee for grant under the New Plan as of November 10, 2016 to recently hired employees. These awards of performance-based restricted stock units are subject to approval of the Plan Proposal.



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**ADJOURNMENT PROPOSAL APPROVAL OF THE ADJOURNMENT OR POSTPONEMENT OF  
THE SPECIAL MEETING**

The Company's stockholders are being asked to consider and vote on a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies. The Board of Directors believes this proposal to be in the best interests of the Company's stockholders because it gives the Company flexibility to solicit the vote of additional holders of the Company's voting securities to vote on matters the Board of Directors deems important to the Company. **The Board of Directors of the Company recommends that stockholders vote FOR the Proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.**



**Table of Contents****SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth information concerning the beneficial ownership of our voting securities as of the Record Date by (i) each person who is known by us, based solely on a review of public filings, to be the beneficial owner of more than 5% of any class of our outstanding voting securities, (ii) each director, (iii) each named executive officer and (iv) all executive officers and directors as a group. None of the foregoing persons beneficially owned any shares of equity securities of our subsidiaries as of the Record Date.

Under applicable SEC rules, a person is deemed to be the beneficial owner of a voting security if such person has (or shares) either investment power or voting power over such security or has (or shares) the right to acquire such security within 60 days by any of a number of means, including upon the exercise of options or warrants or the conversion of convertible securities. A beneficial owner's percentage ownership is determined by assuming that options, warrants and convertible securities that are held by the beneficial owner, but not those held by any other person, and which are exercisable or convertible within 60 days, have been exercised or converted.

Unless otherwise indicated, we believe that all persons named in the table below have sole voting and investment power with respect to all voting securities shown as being owned by them. Unless otherwise indicated, the address of each beneficial owner in the table below is care of XPO Logistics, Inc., Five Greenwich Office Park, Greenwich, Connecticut 06831.

Name of Beneficial Owner	Shares of Common Stock Beneficially Owned	Percentage of Class Outstanding <sup>(1)</sup>	Shares of Series	
			A Preferred Stock Beneficially Owned <sup>(2)</sup>	Percentage of Class Outstanding
<b>Beneficial Ownership of 5% or more</b>				
Jacobs Private Equity, LLC	19,285,714 <sup>(3)</sup>	14.8%	67,500	92.6%
Orbis Investment Management Limited <sup>(4)</sup>				
Orbis House, 25 Front Street				
Hamilton Bermuda HM11	16,404,627	14.8%		
Coral Blue Investment Pte. Ltd <sup>(5)</sup>				
168 Robinson Road #37-01, Capital				
Tower, Singapore 068912	10,937,278	9.9%		
Ontario Teachers Pension Plan Board <sup>(6)</sup>				
5650 Yonge Street, 3rd Floor				
Toronto, ON M2M 4H5	7,706,021	7.0%		
The Vanguard Group <sup>(7)</sup>	6,504,076	5.9%		
100 Vanguard Blvd.				

Malvern, PA 19355

Spruce House Investment Management  
LLC<sup>(8)</sup>

435 Hudson Street, 8th Floor

New York, NY 10014

6,047,055

5.5%

Wellington Management Group LLP<sup>(9)</sup>

280 Congress Street

Boston, MA 02210

5,612,844

5.1%

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Name of Beneficial Owner	Shares of Common Stock Beneficially Owned	Percentage of Class Outstanding <sup>(1)</sup>	Shares of Series	
			A Preferred Stock Beneficially Owned <sup>(2)</sup>	Percentage of Class Outstanding
<b>Directors:</b>				
Gena L. Ashe				
Louis DeJoy	1,119,074 <sup>(10)</sup>	1.0%		
Michael G. Jesselson	341,723 <sup>(11)</sup>	*	725 <sup>(12)</sup>	1.0%
Adrian P. Kingshott	127,972 <sup>(13)</sup>	*	300	*
Jason D. Papastavrou	236,847 <sup>(14)</sup>	*	650 <sup>(15)</sup>	*
Oren G. Shaffer	60,758 <sup>(16)</sup>	*		
<b>Named Executive Officers:</b>				
Bradley S. Jacobs+	19,662,175 <sup>(17)</sup>	15.1%	67,500	92.6%
Troy A. Cooper	124,768 <sup>(18)</sup>	*		
John J. Hardig	130,749 <sup>(19)</sup>	*		
Gordon E. Devens	172,506 <sup>(20)</sup>	*		
Scott B. Malat	124,420 <sup>(21)</sup>	*		
<b>Current Executive Officers and Directors as a Group (12 People)</b>	<b>22,300,077<sup>(22)</sup></b>	<b>17.0%</b>	<b>69,175</b>	<b>95.4%</b>

\* Less than 1%

+ Director and Executive Officer

- (1) For purposes of this column, the number of shares of the class outstanding reflects the sum of (i) 110,865,064 shares of our common stock that were outstanding as of the Record Date, (ii) the number of shares of our common stock into which the outstanding shares of our preferred stock held by the relevant person, if any, were convertible on the Record Date, (iii) the number of shares of our common stock, if any, which the relevant person could acquire on exercise of options or warrants within 60 days of the Record Date and (iv) the number of restricted stock units ( RSUs ), if any, held by the relevant person that are or will become vested within 60 days of the Record Date.
- (2) Each share of our Series A Preferred Stock that was outstanding on the Record Date has an initial liquidation preference of \$1,000 per share and is convertible into approximately 143 shares of our common stock at an effective conversion price of \$7.00 per share of our common stock. Our Series A Preferred Stock votes together as a single class with our common stock on an as-converted basis, except with respect to certain matters that impact the rights of holders of our Series A Preferred Stock, in which case our Series A Preferred Stock votes separately as a single class.
- (3) Consists of 9,642,857 shares of our common stock issuable upon the exercise of 9,642,857 warrants at an exercise price of \$7.00 per share of common stock, and 9,642,857 shares of our common stock issuable upon conversion of 67,500 shares of our Series A Preferred Stock.
- (4) Based on the Schedule 13G, filed February 16, 2016, filed by Orbis Investment Management Limited ( OIML ), Orbis Investment Management (U.S.), LLC ( OIMUS ) and Orbis Asset Management Limited ( OAML ), which reported that, as of December 31, 2015, OIML beneficially owned 15,914,012 shares, OIMUS beneficially owned 411,455 shares, and OAML beneficially owned 79,160 shares. The group has sole voting and sole dispositive power over such shares.
- (5) Based on the Form 4, filed August 10, 2016, filed by Coral Blue Investment Pte. Ltd. and GIC Private Limited, which reported that, as of August 8, 2016, Coral Blue Investment Pte. Ltd. beneficially owned 10,937,278 shares

of common stock and shares voting and dispositive power over such shares of common stock with GIC Private Limited.

- (6) Based on the Schedule 13G, filed February 11, 2016, filed by Ontario Teachers Pension Plan Board, which reported that, as of December 31, 2015, Ontario Teachers Pension Plan Board beneficially owned 7,706,021 shares with sole voting and sole dispositive power over such shares.

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- (7) Based on the Schedule 13G, filed February 11, 2016, filed by The Vanguard Group, which reported that, as of December 31, 2015, The Vanguard Group beneficially owned 6,504,076 shares with sole voting power over 155,228 shares, shared voting power over 4,300 shares, sole dispositive power over 6,350,548 shares and shared dispositive power over 153,528 shares.
- (8) Based on the Schedule 13G/A, filed February 16, 2016, filed by Spruce House Investment Management LLC, Spruce House Capital LLC, The Spruce House Partnership LP, Zachary Sternberg, and Benjamin Stein, which reported that, as of December 31, 2015, Spruce House Investment Management LLC beneficially owned 6,000,000 shares, Spruce House Capital LLC beneficially owned 6,000,000 shares, The Spruce House Partnership LP beneficially owned 6,000,000 shares, Zachary Sternberg beneficially owned 6,045,000 shares and Benjamin Stein beneficially owned 6,047,055 shares. Benjamin Stein has sole voting power over 47,055 shares, shared voting power over 6,000,000 shares, sole dispositive power over 47,055 shares and shared dispositive power over 6,000,000 shares. Zachary Sternberg has sole voting power over 45,000 shares, shared voting power over 6,000,000 shares, sole dispositive power over 45,000 shares and shared dispositive power over 6,000,000 shares.
- (9) Based on the Schedule 13G, filed February 11, 2016, filed by Wellington Management Group LLP, Wellington Group Holdings LLP, and Wellington Investment Advisors Holdings LLP, which reported that, as of December 31, 2015, the group beneficially owned 5,612,844 shares with shared voting power over 4,477,940 shares and shared dispositive power over 5,612,844 shares.
- (10) Includes (i) 192,086 shares of our common stock beneficially owned by The Louis DeJoy Family Partnership, LLC, of which Mr. DeJoy is the managing member, (ii) 484,340 shares of our common stock owned by the Louis DeJoy and Aldona Z. Wos Family Foundation, of which Mr. DeJoy is the president, and (iii) 6,501 RSUs that are or will become vested within 60 days of the Record Date.
- (11) Includes (i) 12,000 shares of our common stock beneficially owned by the Michael G. Jesselson and Linda Jesselson 3/12/84 Trust, of which Mr. Jesselson is a trustee, (ii) 12,000 shares of our common stock beneficially owned by the Michael G. Jesselson and Linda Jesselson 11/26/85 Trust, of which Mr. Jesselson is a trustee, (iii) 12,000 shares of our common stock beneficially owned by the Michael G. Jesselson and Linda Jesselson 3/31/87 Trust, of which Mr. Jesselson is a trustee, (iv) 10,000 shares of our common stock beneficially owned by the Michael G. Jesselson and Linda Jesselson 6/30/93 Trust, of which Mr. Jesselson is a trustee, (v) 10,000 shares of our common stock owned by Mr. Jesselson's spouse, (vi) 103,572 shares of our common stock issuable upon the exercise of 103,572 warrants at an exercise price of \$7.00 per share of our common stock, which warrants are beneficially owned by the Michael G. Jesselson 12/18/80 Trust and the Michael G. Jesselson 4/8/71 Trust, of which trusts Mr. Jesselson is the beneficiary, (vii) 21,322 shares of our common stock issuable upon the exercise of 21,322 warrants at an exercise price of \$7.00 per share of our common stock, which warrants are beneficially owned by the Michael G. Jesselson and Linda Jesselson, Trustees UID 6/30/93 FBO Maya Ariel Ruth Jesselson, of which Mr. Jesselson is the beneficiary, (viii) 103,570 shares of our common stock issuable upon conversion of 725 shares of our Series A Preferred Stock, which shares of our Series A Preferred Stock are beneficially owned by the Michael G. Jesselson 12/18/80 Trust and the Michael G. Jesselson 4/8/71 Trust, of which trusts Mr. Jesselson is the beneficiary, (ix) 24,000 shares of our common stock issuable upon the exercise of options that are or will become exercisable within 60 days of the Record Date, and (x) 6,501 RSUs that are or will become vested within 60 days of the Record Date.
- (12) See clause (viii) of footnote (12).
- (13) Includes (i) 42,857 shares of our common stock issuable upon the exercise of 42,857 warrants at an exercise price of \$7.00 per share of our common stock, (ii) 42,857 shares of our common stock issuable upon conversion of 300 shares of our Series A Preferred Stock, (iii) 24,000 shares of our common stock issuable upon the exercise of options that are or will become exercisable on within 60 days of the Record Date, and (iv) 10,758 RSUs that are or will become vested within 60 days of the Record Date.
- (14) Includes (i) 1,375 shares of our common stock beneficially owned by the Brett A. Athans Declaration of Trust, of which Dr. Papastavrou is the trustee, (ii) 92,857 shares of our common stock issuable upon the exercise of 92,857

warrants at an exercise price of \$7.00 per share of our common stock, which warrants are beneficially owned by Springer Wealth Management LLC, of which Dr. Papastavrou is the owner of 100% of the equity securities, (iii) 92,857 shares of our common stock issuable upon conversion of 650 shares of

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- our Series A Preferred Stock, which shares of Series A Preferred Stock are beneficially owned by Springer Wealth Management LLC, of which Dr. Papastavrou is the owner of 100% of the equity securities, (iv) 24,000 shares of our common stock issuable upon the exercise of options that are or will become exercisable within 60 days of the Record Date and (v) 15,758 RSUs that are or will become vested within 60 days of the Record Date.
- (15) See clause (iii) of footnote (15).
- (16) Includes (i) 8,500 shares of our common stock issuable upon the exercise of 8,500 warrants at an exercise price of \$7.00 per share of common stock, (ii) 24,000 shares of our common stock issuable upon the exercise of options that are or will become exercisable within 60 days of the Record Date and (iii) 15,758 RSUs that are or will become vested within 60 days of the Record Date.
- (17) Mr. Jacobs has indirect beneficial ownership of the shares of our common stock and our Series A Preferred Stock beneficially owned by JPE as a result of being its Managing Member. See footnote (3). Also includes 250,000 shares of our common stock issuable upon the exercise of options that are or will become exercisable within 60 days of the Record Date.
- (18) Includes (i) 10,000 shares of common stock issuable upon the exercise of 10,000 warrants at an exercise price of \$7.00 per share of common stock and (ii) 25,000 shares of our common stock issuable upon the exercise of options that are or will become exercisable within 60 days of the Record Date.
- (19) Includes 50,000 shares of our common stock issuable upon the exercise of options that are or will become exercisable within 60 days of the Record Date.
- (20) Includes (i) 20,000 shares of our common stock issuable upon the exercise of 20,000 warrants at an exercise price of \$7.00 per share of common stock and (ii) 125,000 shares of our common stock issuable upon the exercise of options that are or will become exercisable within 60 days of the Record Date.
- (21) Includes (i) 12,750 shares of our common stock issuable upon the exercise of 12,750 warrants at an exercise price of \$7.00 per share of common stock, and (ii) 48,000 shares of our common stock issuable upon the exercise of options that are or will become exercisable within 60 days of the Record Date.
- (22) Includes (i) 9,954,715 shares of our common stock issuable upon the exercise of 9,954,715 warrants at an exercise price of \$7.00 per share of our common stock, (ii) 9,882,143 shares of our common stock issuable upon conversion of 69,175 shares of our preferred stock, (iii) 729,000 shares of our common stock issuable upon the exercise of options that are or will become exercisable within 60 days of the Record Date, and (iv) 55,276 RSUs that are or will become vested within 60 days of the Record Date.

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**STOCKHOLDER PROPOSALS**

Stockholder proposals will be eligible for consideration for inclusion in the proxy statement and form of proxy for the Company's 2017 annual meeting of stockholders in accordance with Rule 14a-8 under the U.S. Securities Exchange Act of 1934, as amended (the Exchange Act), and the Company's Amended and Restated Bylaws (the Bylaws), as described below.

As more specifically provided in our Bylaws, no business may be brought before an annual meeting of our stockholders unless it is specified in the notice of the annual meeting or is otherwise brought before the annual meeting by or at the direction of our Board or by a stockholder entitled to vote who has delivered proper notice to us not less than 90 days or more than 180 days prior to the earlier of the date of the annual meeting and the first anniversary of the preceding year's annual meeting. Accordingly, assuming that our 2017 annual meeting of stockholders is held on or after May 11, 2017, any stockholder proposal to be considered at the 2017 annual meeting, including nominations of persons for election to our Board, must be properly submitted to us not earlier than November 12, 2016 nor later than February 10, 2017. Detailed information for submitting stockholder proposals or nominations of director candidates will be provided upon written request to: Secretary, XPO Logistics, Inc., Five Greenwich Office Park, Greenwich, Connecticut 06831.

The foregoing requirements are separate from the SEC's requirements that a stockholder must meet in order to have a stockholder proposal included in our proxy statement for the 2017 annual meeting of stockholders. Stockholders interested in submitting a proposal for inclusion in our proxy materials for the 2017 annual meeting may do so by following the procedures set forth in Rule 14a-8 under the Exchange Act. To be eligible for inclusion in such proxy materials pursuant to such rule, stockholder proposals must be received by our Secretary not later than December 10, 2016.



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**OTHER MATTERS**

No business other than that set forth in the attached notice of special meeting is expected to come before the special meeting. However, should any other matters requiring a vote of stockholders arise, the persons named in the accompanying proxy will vote thereon according to their best judgment in the interest of the Company.

**SOLICITATION OF PROXIES**

It is expected that the solicitation of proxies will be primarily by mail. Proxies may also be solicited personally by regular employees of the Company, by telephone or by other means of communication at nominal cost. The Company will bear the cost of such solicitation. It will reimburse banks, brokers and trustees, or their nominees, for reasonable expenses incurred by them in forwarding proxy material to beneficial owners of stock in accordance with the NYSE schedule of charges. In addition, the Company has retained Innisfree M&A Incorporated to assist us in soliciting proxies and verifying the records relating to the solicitations in connection with the special meeting. Innisfree M&A Incorporated will receive approximately \$9,000, plus their reasonable and customary expenses for providing such services.

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**WHERE YOU CAN FIND MORE INFORMATION**

We are subject to the informational requirements of the Exchange Act. We file reports, proxy statements and other information with the SEC. You may read and copy these reports, proxy statements and other information at the SEC's Public Reference Section at 100 F Street, N.E., Washington, D.C. 20459. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an internet website, located at [www.sec.gov](http://www.sec.gov), which contains reports, proxy statements and other information regarding companies and individuals that file electronically with the SEC.

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**Annex A**

**XPO LOGISTICS, INC.**

**2016 OMNIBUS INCENTIVE COMPENSATION PLAN**

SECTION 1. Purpose. The purpose of this XPO Logistics, Inc. 2016 Omnibus Incentive Compensation Plan (the Plan ) is to promote the interests of the Company and its stockholders by (a) attracting and retaining exceptional directors, officers, employees and consultants (including prospective directors, officers, employees and consultants) of the Company (as defined below) and its Affiliates (as defined below) and (b) enabling such individuals to participate in the long-term growth and financial success of the Company. This Plan is intended to replace the Prior Company Plan and the Prior Con-way Plan (each as defined below and, together, the Prior Plans ), which Prior Plans shall be frozen with respect to future grants on the Approval Date (as defined below). The Prior Company Plan (as originally adopted and prior to its amendment and restatement in 2012) previously replaced and superseded the Option Plan (as defined below). Notwithstanding the foregoing, any awards granted under the Prior Plans or the Option Plan shall remain in effect pursuant to their respective terms.

SECTION 2. Definitions. As used herein, the following terms shall have the meanings set forth below:

Affiliate means (a) any entity that, directly or indirectly, is controlled by, controls or is under common control with, the Company and/or (b) any entity in which the Company has a significant equity interest, in either case, as determined by the Committee.

Approval Date means December 20, 2016, the date on which the Plan is approved by the Company's stockholders.

Award means any award that is permitted under SECTION 6 and was granted under the Plan or the Prior Plans and any award that is permitted under Article 6 of the Option Plan and was granted under the Option Plan.

Award Agreement means any written or electronic agreement, contract or other instrument or document evidencing any Award, which may (but need not) require execution or acknowledgment by a Participant.

Applicable Exchange means the New York Stock Exchange LLC or any other national stock exchange or quotation system on which the Shares may be listed or quoted.

Board means the Board of Directors of the Company.

Cash Incentive Award means an Award (a) that is granted pursuant to SECTION 6(g) of the Plan, (b) that is settled in cash and (c) the value of which is set by the Committee and is not calculated by reference to the Fair Market Value of Shares.

Change of Control shall (a) have the meaning set forth in an Award Agreement; provided, however, that except in the case of a transaction described in subparagraph (b)(iii) below, any definition of Change of Control set forth in an Award Agreement shall provide that a Change of Control shall not occur until consummation or effectiveness of a change in control of the Company, rather than upon the announcement, commencement, stockholder approval or other potential occurrence of any event or transaction that, if completed, would result in a change in control of the Company, or (b) if there is no definition set forth in an Award Agreement, mean the occurrence of any of the following events:

(i) during any period, individuals who were directors of the Company on the first day of such period (the Incumbent Directors ) cease for any reason to constitute a majority of the Board; provided, however, that any individual becoming a director subsequent to the first day of such period whose election, or nomination by the Board for election by the Company's stockholders, was approved by a vote of at least a majority of the Incumbent Directors shall be considered as though such individual were an Incumbent Director, but

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excluding for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board (including without limitation any settlement thereof);

(ii) the consummation of (A) a merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company (each of the events referred to in this clause (A) being hereinafter referred to as a Reorganization ) or (B) the sale or other disposition of all or substantially all of the assets of the Company to an entity that is not an Affiliate (a Sale ), in each case, if such Reorganization or Sale requires the approval of the Company's stockholders under the law of the Company's jurisdiction of organization (whether such approval is required for such Reorganization or Sale or for the issuance of securities of the Company in such Reorganization or Sale), unless, immediately following such Reorganization or Sale, (1) individuals and entities who were the beneficial owners (as such term is defined in Rule 13d-3 under the Exchange Act (or a successor rule thereto)) of the securities eligible to vote for the election of the Board (Company Voting Securities ) outstanding immediately prior to the consummation of such Reorganization or Sale continue to beneficially own, directly or indirectly, more than 50% of the combined voting power of the then outstanding voting securities of the corporation or other entity resulting from such Reorganization or Sale (including a corporation that, as a result of such transaction, owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) (the Continuing Company ) in substantially the same proportion as the voting power of such Company Voting Securities among the holders thereof immediately prior to the Reorganization or Sale (excluding, for such purposes, any outstanding voting securities of the Continuing Company that such beneficial owners hold immediately following the consummation of the Reorganization or Sale as a result of their ownership prior to such consummation of voting securities of any corporation or other entity involved in or forming part of such Reorganization or Sale other than the Company), (2) no person (as such term is used in Section 13(d) of the Exchange Act) (each, a Person ) (excluding (x) any employee benefit plan (or related trust) sponsored or maintained by the Continuing Company or any corporation controlled by the Continuing Company and (y) any one or more Specified Stockholders) beneficially owns, directly or indirectly, 30% or more of the combined voting power of the then outstanding voting securities of the Continuing Company and (3) at least 50% of the members of the board of directors of the Continuing Company (or equivalent body) were Incumbent Directors at the time of the execution of the definitive agreement providing for such Reorganization or Sale or, in the absence of such an agreement, at the time at which approval of the Board was obtained for such Reorganization or Sale;

(iii) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company unless such liquidation or dissolution is part of a transaction or series of transactions described in paragraph (ii) above that does not otherwise constitute a Change of Control; or

(iv) any Person, corporation or other entity or group (as used in Section 14(d)(2) of the Exchange Act) (other than (A) the Company, (B) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or an Affiliate, (C) any company owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of the voting power of the Company Voting Securities or (D) any one or more Specified Stockholders, including any group in which a Specified Stockholder is a member) becomes the beneficial owner, directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company Voting Securities; provided, however, that for purposes of this subparagraph (iv), the following acquisitions shall not constitute a Change of Control: (w) any acquisition directly from the Company, (x) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or an Affiliate, (y) any acquisition by an underwriter temporarily holding such Company Voting Securities pursuant to an offering of such securities or any acquisition by a pledgee of Company Voting Securities holding such securities as collateral or temporarily holding such securities upon foreclosure of the underlying obligation or (z) any

acquisition pursuant to a Reorganization or Sale that does not constitute a Change of Control for purposes of subparagraph (ii) above.

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Code means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto, and the regulations promulgated thereunder.

Committee means the Compensation Committee of the Board or a subcommittee thereof, or such other committee of the Board as may be designated by the Board to administer the Plan.

Company means XPO Logistics, Inc., a corporation organized under the laws of Delaware, together with any successor thereto.

Deferred Share Unit means a deferred share unit Award that represents an unfunded and unsecured promise to deliver Shares in accordance with the terms of the applicable Award Agreement.

Exchange Act means the Securities Exchange Act of 1934, as amended from time to time, or any successor statute thereto, and the regulations promulgated thereunder.

Exercise Price means (a) in the case of each Option, the price specified in the applicable Award Agreement as the price-per-Share at which Shares may be purchased pursuant to such Option or (b) in the case of each SAR, the price specified in the applicable Award Agreement as the reference price-per-Share used to calculate the amount payable to the applicable Participant pursuant to such SAR.

Fair Market Value means, except as otherwise provided in the applicable Award Agreement, (a) with respect to any property other than Shares, the fair market value of such property determined by such methods or procedures as shall be established from time to time by the Committee and (b) with respect to Shares as of any date, (i) the closing per-share sales price of the Shares as reported by the Applicable Exchange for such stock exchange for such date or if there were no sales on such date, on the closest preceding date on which there were sales of Shares or (ii) in the event there shall be no public market for the Shares on such date, the fair market value of the Shares as determined in good faith by the Committee.

Incentive Stock Option means an option to purchase Shares from the Company that (a) is granted under SECTION 6(b) of the Plan and (b) is intended to qualify for special Federal income tax treatment pursuant to Sections 421 and 422 of the Code, as now constituted or subsequently amended, or pursuant to a successor provision of the Code, and which is so designated in the applicable Award Agreement.

Independent Director means a member of the Board (a) who is neither an employee of the Company nor an employee of any Affiliate, and (b) who, at the time of acting, is a Non-Employee Director under Rule 16b-3.

Nonqualified Stock Option means an option to purchase Shares from the Company that (a) is granted under SECTION 6(b) of the Plan and (b) is not an Incentive Stock Option.

Option means an Incentive Stock Option or a Nonqualified Stock Option or both, as the context requires.

Option Plan means the Express-1 Expedited Solutions, Inc. Amended and Restated 2001 Stock Option Plan.

Participant means any director, officer, employee or consultant (including any prospective director, officer, employee or consultant) of the Company or its Affiliates who is eligible for an Award under SECTION 5 and who is selected by the Committee to receive an Award under the Plan or who receives a Substitute Award pursuant to SECTION 4(c).

Performance Compensation Award means any Award designated by the Committee as a Performance Compensation Award pursuant to SECTION 6(e) of the Plan.

Performance Criteria means the criterion or criteria that the Committee shall select for purposes of establishing the Performance Goal(s) for a Performance Period with respect to any Performance Compensation Award, Performance Unit or, if applicable, Cash Incentive Award under the Plan.

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Performance Formula means, for a Performance Period, the one or more objective formulas applied against the relevant Performance Goal to determine, with regard to the Performance Compensation Award, Performance Unit or, if applicable, Cash Incentive Award of a particular Participant, whether all, some portion but less than all, or none of such Award has been earned for the Performance Period.

Performance Goal means, for a Performance Period, the one or more goals established by the Committee for the Performance Period based upon the Performance Criteria.

Performance Period means the one or more periods of time as the Committee may select over which the attainment of one or more Performance Goals shall be measured for the purpose of determining a Participant's right to and the payment of a Performance Compensation Award, Performance Unit or, if applicable, Cash Incentive Award.

Performance Unit means an Award under SECTION 6(f) of the Plan that has a value set by the Committee (or that is determined by reference to a valuation formula specified by the Committee or the Fair Market Value of Shares), which value may be paid to the Participant by delivery of such property as the Committee shall determine, including without limitation, cash or Shares, or any combination thereof, upon achievement of such Performance Goals during the relevant Performance Period as the Committee shall establish at the time of such Award or thereafter.

Prior Company Plan means the XPO Logistics, Inc. Amended and Restated 2011 Omnibus Incentive Compensation Plan.

Prior Con-way Plan means the Con-way Inc. 2012 Equity and Incentive Plan.

Restricted Share means a Share that is granted under SECTION 6(d) of the Plan that is subject to certain transfer restrictions, forfeiture provisions and/or other terms and conditions specified herein and in the applicable Award Agreement.

RSU means a restricted stock unit Award that is granted under SECTION 6(d) of the Plan and is designated as such in the applicable Award Agreement and that represents an unfunded and unsecured promise to deliver Shares, cash, other securities, other Awards or other property in accordance with the terms of the applicable Award Agreement.

Rule 16b-3 means Rule 16b-3 as promulgated and interpreted by the SEC under the Exchange Act or any successor rule or regulation thereto as in effect from time to time.

SAR means a stock appreciation right Award that is granted under SECTION 6(c) of the Plan and that represents an unfunded and unsecured promise to deliver Shares, cash, other securities, other Awards or other property equal in value to the excess, if any, of the Fair Market Value per Share over the Exercise Price per Share of the SAR, subject to the terms of the applicable Award Agreement.

SEC means the Securities and Exchange Commission or any successor thereto and shall include the staff thereof.

Shares means shares of common stock of the Company, \$0.001 par value, or such other securities of the Company (a) into which such shares shall be changed by reason of a recapitalization, merger, consolidation, split-up, combination, exchange of shares or other similar transaction or (b) as may be determined by the Committee pursuant to SECTION 4(b).

Specified Stockholder means Bradley S. Jacobs, Jacobs Private Equity LLC and its Affiliates, or any other entity or organization controlled, directly or indirectly, by Bradley S. Jacobs.

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Subsidiary means any entity in which the Company, directly or indirectly, possesses 50% or more of the total combined voting power of all classes of its stock.

Substitute Awards shall have the meaning specified in SECTION 4(c).

Treasury Regulations means all proposed, temporary and final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

SECTION 3. Administration.

(a) Composition of the Committee. The Plan shall be administered by the Committee, which shall be composed of one or more directors, as determined by the Board; provided that, to the extent necessary to comply with the rules of the Applicable Exchange and Rule 16b-3 and to satisfy any applicable requirements of Section 162(m) of the Code and any other applicable laws or rules, the Committee shall be composed of two or more directors, all of whom shall be Independent Directors and all of whom shall (i) qualify as outside directors under Section 162(m) of the Code and (ii) meet the independence requirements of the Applicable Exchange.

(b) Authority of the Committee. Subject to the terms of the Plan and applicable law, and in addition to the other express powers and authorizations conferred on the Committee by the Plan, the Committee shall have sole and plenary authority to administer the Plan, including the authority to (i) designate Participants, (ii) determine the type or types of Awards to be granted to a Participant, (iii) determine the number of Shares to be covered by, or with respect to which payments, rights or other matters are to be calculated in connection with, Awards, (iv) determine the terms and conditions of any Awards, (v) determine the vesting schedules of Awards and, if certain performance criteria must be attained in order for an Award to vest or be settled or paid, establish such performance criteria and certify whether, and to what extent, such performance criteria have been attained, (vi) determine whether, to what extent and under what circumstances Awards may be settled or exercised in cash, Shares, other securities, other Awards or other property, or canceled, forfeited or suspended and the method or methods by which Awards may be settled, exercised, canceled, forfeited or suspended, (vii) determine whether, to what extent and under what circumstances cash, Shares, other securities, other Awards, other property and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the holder thereof or of the Committee, (viii) interpret, administer, reconcile any inconsistency in, correct any default in and/or supply any omission in, the Plan and any instrument or agreement relating to, or Award made under, the Plan, the Prior Plans or the Option Plan, (ix) establish, amend, suspend or waive such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan, (x) accelerate the vesting or exercisability of, payment for or lapse of restrictions on, Awards, (xi) amend an outstanding Award or grant a replacement Award for an Award previously granted under the Plan, the Prior Plans or the Option Plan if, in its sole discretion, the Committee determines that (A) the tax consequences of such Award to the Company or the Participant differ from those consequences that were expected to occur on the date the Award was granted or (B) clarifications or interpretations of, or changes to, tax law or regulations permit Awards to be granted that have more favorable tax consequences than initially anticipated and (xii) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan.

(c) Committee Decisions. Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations and other decisions under or with respect to the Plan or any Award shall be within the sole and plenary discretion of the Committee, may be made at any time and shall be final, conclusive and binding upon all Persons, including the Company, any Affiliate, any Participant, any holder or beneficiary of any Award and any stockholder.

(d) Indemnification. No member of the Board, the Committee or any employee of the Company (each such person, a Covered Person ) shall be liable for any action taken or omitted to be taken or any determination made in good faith

with respect to the Plan or any Award. Each Covered Person shall be indemnified and held harmless

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by the Company from and against (i) any loss, cost, liability or expense (including attorneys' fees) that may be imposed upon or incurred by such Covered Person in connection with or resulting from any action, suit or proceeding to which such Covered Person may be a party or in which such Covered Person may be involved by reason of any action taken or omitted to be taken under the Plan or any Award Agreement and (ii) any and all amounts paid by such Covered Person, with the Company's approval, in settlement thereof, or paid by such Covered Person in satisfaction of any judgment in any such action, suit or proceeding against such Covered Person; provided that the Company shall have the right, at its own expense, to assume and defend any such action, suit or proceeding, and, once the Company gives notice of its intent to assume the defense, the Company shall have sole control over such defense with counsel of the Company's choice. The foregoing right of indemnification shall not be available to a Covered Person to the extent that a court of competent jurisdiction in a final judgment or other final adjudication, in either case not subject to further appeal, determines that the acts or omissions of such Covered Person giving rise to the indemnification claim resulted from such Covered Person's bad faith, fraud or willful criminal act or omission or that such right of indemnification is otherwise prohibited by law or by the Company's Restated Certificate of Incorporation or Amended and Restated Bylaws, in each case, as may be amended from time to time. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which Covered Persons may be entitled under the Company's Restated Certificate of Incorporation or Amended and Restated Bylaws, as a matter of law, or otherwise, or any other power that the Company may have to indemnify such persons or hold them harmless.

(e) Delegation of Authority to Officers. The Committee may delegate, on such terms and conditions as it determines in its sole and plenary discretion, to one or more officers of the Company the authority to make grants of Awards to officers (other than any officer subject to Section 16 of the Exchange Act), employees and consultants of the Company and its Affiliates (including any prospective officer (other than any such officer who is expected to be subject to Section 16 of the Exchange Act), employee or consultant) and all necessary and appropriate decisions and determinations with respect thereto.

(f) Awards to Independent Directors. Notwithstanding anything to the contrary contained herein, the Board may, in its sole and plenary discretion, at any time and from time to time, grant Awards to Independent Directors or administer the Plan with respect to such Awards. In any such case, the Board shall have all the authority and responsibility granted to the Committee herein.

#### SECTION 4. Shares Available for Awards; Cash Payable Pursuant to Awards.

(a) Shares and Cash Available. Subject to adjustment as provided in SECTION 4(b), the maximum aggregate number of Shares that may be delivered pursuant to Awards granted under the Plan shall be equal to 3,400,000, (the Plan Share Limit), of which 3,400,000 Shares may be delivered pursuant to Incentive Stock Options granted under the Plan (such amount, the Plan ISO Limit). If, after the effective date of the Plan, any Award is forfeited (or otherwise expires, terminates or is canceled without the delivery of all Shares subject thereto), then, in any such case, any number of Shares subject to such Award that were not issued with respect to such Award shall not be treated as issued for purposes of reducing the Plan Share Limit. Notwithstanding the foregoing and for the avoidance of doubt, if Shares issued upon exercise, vesting or settlement of an Award are, or Shares owned by a Participant are, surrendered or tendered to the Company in payment of the Exercise Price of an Award (including any SAR) or any taxes required to be withheld in respect of an Award or if any Award based on the Fair Market Value of a Share is settled other than wholly by delivery of Shares (including cash settlement), in any such case, in accordance with the terms and conditions of the Plan and any applicable Award Agreement, such surrendered or tendered Shares or Awards not settled with Shares shall *not* again become available to be delivered pursuant to Awards under the Plan or increase the Plan ISO Limit. With respect to Awards that are intended to qualify as qualified performance-based compensation under Section 162(m) of the Code, subject to adjustment as provided in SECTION 4(b), (1) in the case of Awards that are settled in Shares, the maximum aggregate number of Shares with respect to which Awards may be granted to any

Participant in any fiscal year of the Company under the Plan shall be 2,500,000 (such amount, the Annual Individual Plan Share Limit ), and (2) in the case of Awards that are settled in cash based on the Fair Market Value of a Share,

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the maximum aggregate amount of cash that may be paid pursuant to Awards granted to any Participant in any fiscal year of the Company under the Plan shall be equal to the per-Share Fair Market Value as of the relevant vesting, payment or settlement date multiplied by the Annual Individual Plan Share Limit. In the case of all Awards other than those described in the preceding sentence, the maximum aggregate amount of cash and other property (valued at its Fair Market Value) other than Shares that may be paid or delivered pursuant to Awards under the Plan to any Participant in any fiscal year of the Company shall be equal to \$10,000,000. The maximum value of Shares available to be granted pursuant to Awards to any Independent Director under the Plan in any fiscal year of the Company shall be equal to \$350,000 as of the applicable date of grant. Subject to adjustment as provided in Section 4(b), the maximum number of Shares available to be granted under the Plan pursuant to Incentive Stock Options to any Participant in any fiscal year of the Company shall be equal to 2,500,000 (the Annual Individual ISO Limit ).

(b) Adjustments for Changes in Capitalization and Similar Events.

(i) In the event of any extraordinary dividend or other extraordinary distribution (whether in the form of cash, Shares, other securities or other property), recapitalization, rights offering, stock split, reverse stock split, split-up or spin-off, the Committee shall equitably adjust any or all of (A) the number of Shares or other securities of the Company (or number and kind of other securities or property) with respect to which Awards may be granted, including (1) the Plan Share Limit, (2) the Plan ISO Limit, (3) the Annual Individual Plan Share Limit, and (4) the Annual Individual ISO Limit, and (B) the terms of any outstanding Award, including (1) the number of Shares or other securities of the Company (or number and kind of other securities or property) subject to outstanding Awards or to which outstanding Awards relate and (2) the Exercise Price, if applicable, with respect to any Award; provided, however, that the Committee shall determine the method and manner in which to effect such equitable adjustment.

(ii) In the event that the Committee determines that any reorganization, merger, consolidation, combination, repurchase or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event affects the Shares (including any Change of Control) such that an adjustment is determined by the Committee in its discretion to be appropriate or desirable, then the Committee may (A) in such manner as it may deem appropriate or desirable, equitably adjust any or all of (1) the number of Shares or other securities of the Company (or number and kind of other securities or property) with respect to which Awards may be granted, including (W) the Plan Share Limit, (X) the Plan ISO Limit, (Y) the Annual Individual Plan Share Limit, and (Z) the Annual Individual ISO Limit, and (2) the terms of any outstanding Award, including (X) the number of Shares or other securities of the Company (or number and kind of other securities or property) subject to outstanding Awards or to which outstanding Awards relate and (Y) the Exercise Price, if applicable, with respect to any Award, (B) if deemed appropriate or desirable by the Committee, make provision for a cash payment to the holder of an outstanding Award in consideration for the cancelation of such Award, including, in the case of an outstanding Option or SAR, a cash payment to the holder of such Option or SAR in consideration for the cancelation of such Option or SAR in an amount equal to the excess, if any, of the Fair Market Value (as of a date specified by the Committee) of the Shares subject to such Option or SAR over the aggregate Exercise Price of such Option or SAR and (C) if deemed appropriate or desirable by the Committee, cancel and terminate any Option or SAR having a per-Share Exercise Price equal to, or in excess of, the Fair Market Value of a Share subject to such Option or SAR without any payment or consideration therefor.

(c) Substitute Awards. Awards may, in the discretion of the Committee, be granted under the Plan in assumption of, or in substitution for, outstanding awards previously granted by the Company or any of its Affiliates or a company acquired by the Company or any of its Affiliates or with which the Company or any of its Affiliates combines (Substitute Awards ); provided, however, that in no event may any Substitute Award be granted in a manner that would violate the prohibitions on repricing of Options and SARs, as set forth in clauses (i), (ii) and (iii) of SECTION 7(b). The number of Shares underlying any Substitute Awards shall be counted against the Plan Share Limit;

provided, however, that Substitute Awards issued in connection with the assumption of, or in

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substitution for, outstanding awards previously granted by an entity that is acquired by the Company or any of its Affiliates or with which the Company or any of its Affiliates combines shall not be counted against the Plan Share Limit; provided further, however, that Substitute Awards issued in connection with the assumption of, or in substitution for, outstanding stock options intended to qualify for special tax treatment under Sections 421 and 422 of the Code that were previously granted by an entity that is acquired by the Company or any of its Affiliates or with which the Company or any of its Affiliates combines shall be counted against the maximum aggregate number of Shares available for Incentive Stock Options under the Plan.

(d) Sources of Shares Deliverable Under Awards. Any Shares delivered pursuant to an Award may consist, in whole or in part, of authorized and unissued Shares or of treasury Shares.

SECTION 5. Eligibility. Any director, officer, employee or consultant (including any prospective director, officer, employee or consultant) of the Company or any of its Affiliates shall be eligible to be designated a Participant.

SECTION 6. Awards.

(a) Types of Awards. Awards may be made under the Plan in the form of (i) Options, (ii) SARs, (iii) Restricted Shares, (iv) RSUs, (v) Deferred Share Units, (vi) Performance Compensation Awards, (vii) Performance Units (viii) Cash Incentive Awards and (ix) other equity-based or equity-related Awards that the Committee determines are consistent with the purpose of the Plan and the interests of the Company. Awards may be granted in tandem with other Awards. No Incentive Stock Option (other than an Incentive Stock Option that may be assumed or issued by the Company in connection with a transaction to which Section 424(a) of the Code applies) may be granted to a person who is ineligible to receive an Incentive Stock Option under the Code.

(b) Options.

(i) Grant. Subject to the provisions of the Plan, the Committee shall have sole and plenary authority to determine (A) the Participants to whom Options shall be granted, (B) subject to SECTION 4(a), the number of Shares subject to each Option to be granted to each Participant, (C) whether each Option shall be an Incentive Stock Option or a Nonqualified Stock Option and (D) the terms and conditions of each Option, including the vesting criteria, term, methods of exercise and methods and form of settlement. In the case of Incentive Stock Options, the terms and conditions of such grants shall be subject to and comply with such rules as may be prescribed by Section 422 of the Code and any regulations related thereto, as may be amended from time to time. Each Option granted under the Plan shall be a Nonqualified Stock Option unless the applicable Award Agreement expressly states that the Option is intended to be an Incentive Stock Option. If an Option is intended to be an Incentive Stock Option, and if, for any reason, such Option (or any portion thereof) shall not qualify as an Incentive Stock Option, then, to the extent of such nonqualification, such Option (or portion thereof) shall be regarded as a Nonqualified Stock Option appropriately granted under the Plan; provided that such Option (or portion thereof) otherwise complies with the Plan's requirements relating to Nonqualified Stock Options.

(ii) Exercise Price. The Exercise Price of each Share covered by each Option shall be not less than 100% of the Fair Market Value of such Share (determined as of the date the Option is granted); provided, however, in the case of each Incentive Stock Option granted to an employee who, at the time of the grant of such Option, owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Affiliate, the per-Share Exercise Price shall be no less than 110% of the Fair Market Value per Share on the date of the grant. Each Option is, unless otherwise specified by the Committee, intended to qualify as "qualified performance-based compensation" under Section 162(m) of the Code.

(iii) Vesting and Exercise. Each Option shall be vested and exercisable at such times, in such manner and subject to such terms and conditions as the Committee may, in its sole and plenary discretion, specify in the applicable Award Agreement or thereafter. Except as otherwise specified by the Committee in the applicable Award Agreement, each Option may only be exercised to the extent that it has already vested at

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the time of exercise. Each Option shall be deemed to be exercised when written or electronic notice of such exercise has been given to the Company in accordance with the terms of the Award by the person entitled to exercise the Award and full payment pursuant to SECTION 6(b)(iv) for the Shares with respect to which the Award is exercised has been received by the Company. Exercise of each Option in any manner shall result in a decrease in the number of Shares that thereafter may be available for sale under the Option and, except as expressly set forth in SECTION 4(a) and SECTION 4(c), in the number of Shares that may be available for purposes of the Plan, by the number of Shares as to which the Option is exercised. The Committee may impose such conditions with respect to the exercise of each Option, including any conditions relating to the application of Federal or state securities laws, as it may deem necessary or advisable.

(iv) Payment.

(A) No Shares shall be delivered pursuant to any exercise of an Option until payment in full of the aggregate Exercise Price therefor is received by the Company, and the Participant has paid to the Company (or the Company has withheld in accordance with SECTION 9(d)) an amount equal to any Federal, state, local and foreign income and employment taxes required to be withheld. Such payments may be made in cash (or its equivalent) or, in the Committee's sole and plenary discretion, (1) by exchanging Shares owned by the Participant (which are not the subject of any pledge or other security interest), (2) if there shall be a public market for the Shares at such time, subject to such rules as may be established by the Committee, through delivery of irrevocable instructions to a broker to sell the Shares otherwise deliverable upon the exercise of the Option and to deliver cash promptly to the Company, (3) by having the Company withhold Shares from the Shares otherwise issuable pursuant to the exercise of the Option or (4) through any other method (or combination of methods) as approved by the Committee; provided that the combined value of all cash and cash equivalents and the Fair Market Value of any such Shares so tendered to the Company, together with any Shares withheld by the Company in accordance with this SECTION 6(b)(iv) or SECTION 9(d), as of the date of such tender, is at least equal to such aggregate Exercise Price and the amount of any Federal, state, local or foreign income or employment taxes required to be withheld, if applicable.

(B) Wherever in the Plan or any Award Agreement a Participant is permitted to pay the Exercise Price of an Option or taxes relating to the exercise of an Option by delivering Shares, the Participant may, subject to procedures satisfactory to the Committee, satisfy such delivery requirement by presenting proof of beneficial ownership of such Shares, in which case the Company shall treat the Option as exercised without further payment and shall withhold such number of Shares from the Shares acquired by the exercise of the Option.

(v) Expiration. Except as otherwise set forth in the applicable Award Agreement, each Option shall expire immediately, without any payment, upon the earlier of (A) the tenth anniversary of the date the Option is granted (or, in the case of each Incentive Stock Option granted to an employee who, at the time of the grant of such Option, owns stock representing more than 10% of the voting power of all classes of stock of the Company or any Affiliate, the fifth anniversary of the date the Option is granted) and (B) three months after the date the Participant who is holding the Option ceases to be a director, officer, employee or consultant of the Company or one of its Affiliates. In no event may an Option be exercisable after the tenth anniversary of the date the Option is granted.

(c) SARs.

(i) Grant. Subject to the provisions of the Plan, the Committee shall have sole and plenary authority to determine (A) the Participants to whom SARs shall be granted, (B) subject to SECTION 4(a), the number of SARs to be granted to each Participant, (C) the Exercise Price thereof and (D) the conditions and limitations applicable to the exercise thereof.

(ii) Exercise Price. The Exercise Price of each Share covered by a SAR shall be not less than 100% of the Fair Market Value of such Share (determined as of the date the SAR is granted). Each SAR is, unless otherwise specified by the Committee, intended to qualify as qualified performance-based compensation under Section 162(m) of the Code.

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(iii) Vesting and Exercise. Each SAR shall entitle the Participant to receive an amount upon exercise equal to the excess, if any, of the Fair Market Value of a Share on the date of exercise of the SAR over the Exercise Price thereof. The Committee shall determine, in its sole and plenary discretion, whether a SAR shall be settled in cash, Shares, other securities, other Awards, other property or a combination of any of the foregoing. Each SAR shall be vested and exercisable at such times, in such manner and subject to such terms and conditions as the Committee may, in its discretion, specify in the applicable Award Agreement or thereafter.

(iv) Other Terms and Conditions. Subject to the terms of the Plan and any applicable Award Agreement, the Committee shall determine, at or after the grant of a SAR, the vesting criteria, term, methods of exercise, methods and form of settlement and any other terms and conditions of any SAR; provided, however, that in no event may any SAR be exercisable after the tenth anniversary of the date the SAR is granted. Any determination by the Committee that is made pursuant to this SECTION 6(c)(iv) may be changed by the Committee from time to time and may govern the exercise of SARs granted or exercised thereafter.

(v) Substitution SARs. The Committee shall have the ability to substitute, without the consent of the affected Participant or any holder or beneficiary of SARs, SARs settled in Shares (or SARs settled in Shares or cash in the Committee's discretion) (Substitution SARs) for outstanding Nonqualified Stock Options (Substituted Options); provided that (A) the substitution shall not otherwise result in a modification of the terms of any Substituted Option, (B) the number of Shares underlying the Substitution SARs shall be the same as the number of Shares underlying the Substituted Options and (C) the Exercise Price of the Substitution SARs shall be equal to the Exercise Price of the Substituted Options. If, in the opinion of the Company's auditors, this provision creates adverse accounting consequences for the Company, it shall be considered null and void.

(vi) Expiration. Except as otherwise set forth in the applicable Award Agreement, each SAR shall expire immediately, without any payment, upon the earlier of (A) the tenth anniversary of the date the SAR is granted and (B) three months after the date the Participant who is holding the SAR ceases to be a director, officer, employee or consultant of the Company or one of its Affiliates. In no event may a SAR be exercisable after the tenth anniversary of the date the SAR is granted.

(d) Restricted Shares and RSUs.

(i) Grant. Subject to the provisions of the Plan, the Committee shall have sole and plenary authority to determine (A) the Participants to whom Restricted Shares and RSUs shall be granted, (B) subject to SECTION 4(a), the number of Restricted Shares and RSUs to be granted to each Participant, (C) the duration of the period during which, and the conditions, if any, under which, the Restricted Shares and RSUs may vest or may be forfeited to the Company and (D) the terms and conditions of each such Award, including the vesting criteria, term, methods of exercise and methods and form of settlement.

(ii) Transfer Restrictions. Restricted Shares and RSUs may not be sold, assigned, transferred, pledged or otherwise encumbered except as provided in the Plan or as may be provided in the applicable Award Agreement; provided, however, that the Committee may in its discretion, determine that Restricted Shares and RSUs may be transferred by the Participant for no consideration. Each Restricted Share may be evidenced in such manner as the Committee shall determine. If certificates representing Restricted Shares are registered in the name of the applicable Participant, such certificates must bear an appropriate legend referring to the terms, conditions and restrictions applicable to such Restricted Shares, and the Company may, at its discretion, retain physical possession of such certificates until such time as all applicable restrictions lapse.

(iii) Payment/Lapse of Restrictions. Each RSU shall be granted with respect to a specified number of Shares (or a number of Shares determined pursuant to a specified formula) or shall have a value equal to the Fair Market Value of a specified number of Shares (or a number of Shares determined pursuant to a specified formula). RSUs shall be paid in cash, Shares, other securities, other Awards or other property, as determined in the sole and plenary discretion of the Committee, upon the lapse of restrictions applicable thereto, or

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otherwise in accordance with the applicable Award Agreement. If a Restricted Share or an RSU is intended to qualify as qualified performance-based compensation under Section 162(m) of the Code, unless the grant of such Restricted Share or RSU is contingent on satisfaction of the requirements for the payment of qualified performance-based compensation under Section 162(m) of the Code (whether pursuant to SECTION 6(e) of this Plan or any other plan), all requirements set forth in SECTION 6(e) must be satisfied in order for the restrictions applicable thereto to lapse.

**(e) Performance Compensation Awards.**

(i) **General.** The Committee shall have the authority, at the time of grant of any Award, to designate such Award (other than an Option or SAR) as a Performance Compensation Award in order for such Award to qualify as qualified performance-based compensation under Section 162(m) of the Code. Options and SARs granted under the Plan shall not be included among Awards that are designated as Performance Compensation Awards under this SECTION 6(e).

(ii) **Eligibility.** The Committee shall, in its sole discretion, designate within the first 90 days of a Performance Period (or, if shorter, within the maximum period allowed under Section 162(m) of the Code) which Participants shall be eligible to receive Performance Compensation Awards in respect of such Performance Period. However, designation of a Participant as eligible to receive an Award hereunder for a Performance Period shall not in any manner entitle such Participant to receive payment in respect of any Performance Compensation Award for such Performance Period. The determination as to whether or not such Participant becomes entitled to payment in respect of any Performance Compensation Award shall be decided solely in accordance with the provisions of this SECTION 6(e). Moreover, designation of a Participant as eligible to receive an Award hereunder for a particular Performance Period shall not require designation of such Participant as eligible to receive an Award hereunder in any subsequent Performance Period and designation of one person as a Participant eligible to receive an Award hereunder shall not require designation of any other person as a Participant eligible to receive an Award hereunder in such period or in any other period.

(iii) **Discretion of the Committee with Respect to Performance Compensation Awards.** With regard to a particular Performance Period, the Committee shall have discretion to select (A) the length of such Performance Period, (B) the type(s) of Performance Compensation Awards to be issued, (C) the Performance Criteria that shall be used to establish the Performance Goal(s), (D) the kind(s) and/or level(s) of the Performance Goal(s) that is (are) to apply to the Company or any of its Subsidiaries, Affiliates, divisions or operational units, or any combination of the foregoing, and (E) the Performance Formula; provided that any such Performance Formula shall be objective and non-discretionary. Within the first 90 days of a Performance Period (or, if shorter, within the maximum period allowed under Section 162(m) of the Code), the Committee shall, with regard to the Performance Compensation Awards to be issued for such Performance Period, exercise its discretion with respect to each of the matters enumerated in the immediately preceding sentence and record the same in writing.

(iv) **Performance Criteria.** Notwithstanding the foregoing, the Performance Criteria that shall be used to establish the Performance Goal(s) with respect to Performance Compensation Awards shall be based on the attainment of specific levels of performance of the Company or any of its Subsidiaries, Affiliates, divisions or operational units, or any combination of the foregoing, and shall be limited to the following (whether per share or otherwise): (A) share price, (B) net income, earnings or earnings before or after taxes (including earnings before interest and taxes ( EBIT ) or earnings before interest, taxes, depreciation and amortization ( EBITDA )) including, in each case, for the avoidance of doubt, on an adjusted basis, (C) operating income, profit, operating profit or economic profit, (D) capital efficiency, (E) cash flow (including specified types or categories thereof including, but not limited to, operating cash flow and free cash flow), (F) cash flow return on capital, (G) revenues (including specified types or categories thereof), (H) return on stockholders' equity, (I) return on investment or capital, (J) return on assets, (K) gross or net profitability/profit margins, (L) objective measures of productivity or operating efficiency, (M) costs (including

specified types or categories thereof), (N) budgeted expenses (operating and capital), (O) market share (in the

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aggregate or by segment), (P) level or amount of acquisitions (in terms of size, number of transactions or otherwise), (Q) economic value-added, (R), enterprise value, (S) book value, (T) working capital, (U) safety and accident rates, (V) days sales outstanding, (W) customer satisfaction, (X) overall or selected premium or sales, (Y) expense ratio, (Z) gross or unit margin, and (AA) total stockholder return. Such Performance Criteria may be applied on an absolute basis, be relative to one or more peer companies of the Company or indices or any combination thereof or, if applicable, be computed on an accrual or cash accounting basis. To the extent required under Section 162(m) of the Code, the Committee shall, within the first 90 days of the applicable Performance Period (or, if shorter, within the maximum period allowed under Section 162(m) of the Code), define in an objective manner the method of calculating the Performance Criteria it selects to use for such Performance Period.

(v) Modification of Performance Goals. The Committee is authorized to adjust or modify the calculation of a Performance Goal for a Performance Period to the extent permitted under Section 162(m) of the Code (A) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event or development affecting the Company, or any of its Affiliates, Subsidiaries, divisions or operating units (to the extent applicable to such Performance Goal) or (B) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Company or any of its Affiliates, Subsidiaries, divisions or operating units (to the extent applicable to such Performance Goal), or the financial statements of the Company or any of its Affiliates, Subsidiaries, divisions or operating units (to the extent applicable to such Performance Goal), or of changes in applicable rules, rulings, regulations or other requirements of any governmental body or securities exchange, accounting principles, law or business conditions.

(vi) Payment of Performance Compensation Awards.

(A) Condition to Receipt of Payment. A Participant must be employed by the Company or one of its Subsidiaries on the last day of a Performance Period to be eligible for payment in respect of a Performance Compensation Award for such Performance Period. Notwithstanding the foregoing and to the extent permitted by Section 162(m) of the Code, in the discretion of the Committee, Performance Compensation Awards may be paid to Participants who have retired or whose employment has terminated prior to the last day of the Performance Period for which a Performance Compensation Award is made, or to the designee or estate of a Participant who died prior to the last day of a Performance Period.

(B) Limitation. Except as otherwise permitted by Section 162(m) of the Code, a Participant shall be eligible to receive payments in respect of a Performance Compensation Award only to the extent that (1) the Performance Goal(s) for the relevant Performance Period are achieved and certified by the Committee in accordance with SECTION 6(e)(vi)(C) and (2) the Performance Formula as applied against such Performance Goal(s) determines that all or some portion of such Participant's Performance Compensation Award has been earned for such Performance Period.

(C) Certification. Following the completion of a Performance Period, the Committee shall certify in writing whether, and to what extent, the Performance Goals for the Performance Period have been achieved and, if so, to calculate and certify in writing that amount of the Performance Compensation Awards earned for the period based upon the objective Performance Formula. The Committee shall then determine the actual amount of each Participant's Performance Compensation Award for the Performance Period and, in so doing, may apply negative discretion as authorized by SECTION 6(e)(vi)(D).

(D) Negative Discretion. In determining the actual amount of an individual Performance Compensation Award for a Performance Period, the Committee may, in its sole and plenary discretion, reduce or eliminate the amount of the Award earned in the Performance Period, even if applicable Performance Goals have been attained and without regard to any employment agreement between the Company and a Participant.

(E) Discretion. Except as otherwise permitted by Section 162(m) of the Code, in no event shall any discretionary authority granted to the Committee by the Plan be used to (1) grant or provide payment in

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respect of Performance Compensation Awards for a Performance Period if the Performance Goals for such Performance Period have not been attained, (2) increase a Performance Compensation Award for any Participant at any time after the first 90 days of the Performance Period (or, if shorter, the maximum period allowed under Section 162(m) of the Code) or (3) increase the amount of a Performance Compensation Award above the maximum amount payable under SECTION 4(a) of the Plan. For the avoidance of doubt, the provisions of this Section 6(e), including without limitation this Section 6(e)(vi)(E), shall only apply to Awards (other than Options or SARs) that the Committee intends to qualify as qualified performance-based compensation under Section 162(m) of the Code

(F) **Form of Payment.** In the case of any Performance Compensation Award other than a Restricted Share, RSU or other equity-based Award that is subject to performance-based vesting conditions, such Performance Compensation Award shall be payable, in the discretion of the Committee, in cash or in Restricted Shares, RSUs or fully vested Shares of equivalent value and shall be paid on such terms as determined by the Committee in its discretion. Any Restricted Shares and RSUs shall be subject to the terms of this Plan (or any successor equity-compensation plan) and any applicable Award Agreement. The number of Restricted Shares, RSUs or Shares that is equivalent in value to a dollar amount shall be determined in accordance with a methodology specified by the Committee within the first 90 days of the relevant Performance Period (or, if shorter, within the maximum period allowed under Section 162(m) of the Code).

(f) **Performance Units.**

(i) **Grant.** Subject to the provisions of the Plan, the Committee shall have sole and plenary authority to determine the Participants to whom Performance Units shall be granted.

(ii) **Value of Performance Units.** Each Performance Unit shall have an initial value that is established by the Committee at the time of grant. The Committee shall set Performance Goals in its discretion which, depending on the extent to which they are met during a Performance Period, will determine in accordance with SECTION 4(a) the number and/or value of Performance Units that will be paid out to the Participant.

(iii) **Earning of Performance Units.** Subject to the provisions of the Plan, after the applicable Performance Period has ended, the holder of Performance Units shall be entitled to receive a payout of the number and value of Performance Units earned by the Participant over the Performance Period, to be determined by the Committee, in its sole and plenary discretion, as a function of the extent to which the corresponding Performance Goals have been achieved.

(iv) **Form and Timing of Payment of Performance Units.** Subject to the provisions of the Plan, the Committee, in its sole and plenary discretion, may pay earned Performance Units in the form of cash or in Shares (or in a combination thereof) that have an aggregate Fair Market Value equal to the value of the earned Performance Units at the close of the applicable Performance Period. Such Shares may be granted subject to any restrictions in the applicable Award Agreement deemed appropriate by the Committee. The determination of the Committee with respect to the form and timing of payout of such Awards shall be set forth in the applicable Award Agreement. If a Performance Unit is intended to qualify as qualified performance-based compensation under Section 162(m) of the Code, all requirements set forth in SECTION 6(e) must be satisfied in order for a Participant to be entitled to payment.

(g) **Cash Incentive Awards.**

(i) **Grant.** Subject to the provisions of the Plan, the Committee, in its sole and plenary discretion, shall have the authority to determine (A) the Participants to whom Cash Incentive Awards shall be granted, (B) subject to SECTION 4(a), the number of Cash Incentive Awards to be granted to each Participant, (C) the duration of the period during which, and the conditions, if any, under which, the Cash Incentive Awards may vest or may be forfeited to the

Company and (D) the other terms and conditions of the Cash Incentive Awards. Each Cash Incentive Award shall have an initial value that is established by the Committee at the time of grant. The Committee shall set performance goals or other payment conditions in its discretion, which,

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depending on the extent to which they are met during a specified performance period, shall determine the number and/or value of Cash Incentive Awards that shall be paid to the Participant.

(ii) Earning of Cash Incentive Awards. Subject to the provisions of the Plan, after the applicable vesting period has ended, the holder of Cash Incentive Awards shall be entitled to receive a payout of the number and value of Cash Incentive Awards earned by the Participant over the specified performance period, to be determined by the Committee, in its sole and plenary discretion, as a function of the extent to which the corresponding performance goals or other conditions to payment have been achieved.

(iii) Payment. If a Cash Incentive Award is intended to qualify as qualified performance-based compensation under Section 162(m) of the Code, all requirements set forth in SECTION 6(e) must be satisfied in order for a Participant to be entitled to payment.

(h) Other Stock-Based Awards. Subject to the provisions of the Plan, the Committee shall have the sole and plenary authority to grant to Participants other equity-based or equity-related Awards (including, but not limited to, Deferred Share Units and fully vested Shares) (whether payable in cash, equity or otherwise) in such amounts and subject to such terms and conditions as the Committee shall determine; provided that any such Awards must comply, to the extent deemed desirable by the Committee, with Rule 16b-3 and applicable law.

(i) Dividends and Dividend Equivalents. In the sole and plenary discretion of the Committee, an Award, other than an Option or SAR or a Cash Incentive Award, may provide the Participant with dividends or dividend equivalents, payable in cash, Shares, other securities, other Awards or other property, on a current or deferred basis, on such terms and conditions as may be determined by the Committee in its sole and plenary discretion, including, (i) payment directly to the Participant, (ii) withholding of such amounts by the Company subject to vesting of the Award or (iii) reinvestment in additional Shares, Restricted Shares or other Awards.

(j) Minimum Vesting Provision. Subject to the terms of the Plan and any applicable Award Agreement, all Awards granted hereunder other than SARs, Options or Cash Incentive Awards are subject to a vesting period of at least three years following the date of grant, except that (1) a vesting period of at least one year following the date of grant is permissible if vesting is conditioned upon the achievement of performance goals, (2) any award may vest in part prior to the expiration of any vesting period (except that in no event will any portion of such awards vest prior to the first anniversary of the date of grant), and (3) up to five percent of shares available for grant under the Plan may be granted without regard to these requirements and the Committee may accelerate the vesting with respect to any such awards.

**SECTION 7. Amendment and Termination.**

(a) Amendments to the Plan. Subject to any applicable law or government regulation, to any requirement that must be satisfied if the Plan is intended to be a stockholder-approved plan for purposes of Section 162(m) of the Code and to the rules of the Applicable Exchange, the Plan may be amended, modified or terminated by the Board without the approval of the stockholders of the Company, except that stockholder approval shall be required for any amendment that would (i) increase the Plan Share Limit or the Plan ISO Limit, (ii) change the class of employees or other individuals eligible to participate in the Plan, (iii) constitute a material increase in the benefits to be provided to eligible employees within the meaning of the New York Stock Exchange rules as of the date hereof, or (iv) result in the amendment, cancellation or action described in clause (i), (ii) or (iii) of the second sentence of SECTION 7(b) being permitted without approval by the Company's stockholders; provided, however, that any adjustment under SECTION 4(b) shall not constitute an increase for purposes of SECTION 7(a)(i). No amendment, modification or termination of the Plan may, without the consent of the Participant to whom any Award shall theretofore have been granted, materially and adversely affect the rights of such Participant (or his or her transferee) under such Award,

unless otherwise provided by the Committee in the applicable Award Agreement.

(b) Amendments to Awards. The Committee may waive any conditions or rights under, amend any terms of, or alter, suspend, discontinue, cancel or terminate any Award theretofore granted, prospectively or retroactively;

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provided, however, that, except as set forth in the Plan, unless otherwise provided by the Committee in the applicable Award Agreement, any such waiver, amendment, alteration, suspension, discontinuance, cancelation or termination that would materially and adversely impair the rights of any Participant or any holder or beneficiary of any Award theretofore granted shall not to that extent be effective without the consent of the applicable Participant, holder or beneficiary. Notwithstanding the preceding sentence, in no event may any Option or SAR (i) be amended to decrease the Exercise Price thereof, (ii) be cancelled at a time when its Exercise Price exceeds the Fair Market Value of the underlying Shares in exchange for another Option or SAR or any Restricted Share, RSU, other equity-based Award, award under any other equity-compensation plan or any cash payment or (iii) be subject to any action that would be treated, for accounting purposes, as a repricing of such Option or SAR, unless such amendment, cancellation or action is approved by the Company's stockholders. For the avoidance of doubt, an adjustment to the Exercise Price of an Option or SAR that is made in accordance with SECTION 4(b) or SECTION 8 shall not be considered a reduction in Exercise Price or repricing of such Option or SAR.

(c) Adjustment of Awards Upon the Occurrence of Certain Unusual or Nonrecurring Events. Subject to SECTION 6(e)(v) and the final sentence of SECTION 7(b), the Committee is hereby authorized to make adjustments in the terms and conditions of, and the criteria included in, Awards in recognition of unusual or nonrecurring events (including, without limitation, the events described in SECTION 4(b) or the occurrence of a Change of Control) affecting the Company, any Affiliate, or the financial statements of the Company or any Affiliate, or of changes in applicable rules, rulings, regulations or other requirements of any governmental body or securities exchange, accounting principles or law (i) whenever the Committee, in its sole and plenary discretion, determines that such adjustments are appropriate or desirable, including, without limitation, providing for a substitution or assumption of Awards, accelerating the exercisability of, lapse of restrictions on, or termination of, Awards or providing for a period of time for exercise prior to the occurrence of such event, (ii) if deemed appropriate or desirable by the Committee, in its sole and plenary discretion, by providing for a cash payment to the holder of an Award in consideration for the cancelation of such Award, including, in the case of an outstanding Option or SAR, a cash payment to the holder of such Option or SAR in consideration for the cancelation of such Option or SAR in an amount equal to the excess, if any, of the Fair Market Value (as of a date specified by the Committee) of the Shares subject to such Option or SAR over the aggregate Exercise Price of such Option or SAR and (iii) if deemed appropriate or desirable by the Committee, in its sole and plenary discretion, by canceling and terminating any Option or SAR having a per-Share Exercise Price equal to, or in excess of, the Fair Market Value of a Share subject to such Option or SAR without any payment or consideration therefor.

**SECTION 8. Change of Control.**

(a) General. The provisions of this Section 8 shall, subject to Section 4(b), apply notwithstanding any other provision of the Plan to the contrary, except to the extent the Committee specifically provides otherwise in an Award Agreement.

(b) Impact of Change of Control. Upon the occurrence of a Change of Control, except as otherwise provided in Section 8(e), each Award shall be replaced pursuant to Section 4(b) with an award that meets the requirements of this Section 8(b) (any award meeting the requirements of this Section 8(b), a Replacement Award and any award intended to be replaced by a Replacement Award, a Replaced Award). An Award shall meet the conditions of this Section 8(b) (and hence qualify as a Replacement Award) if: (i) it is of the same type as the Replaced Award; (ii) it has a value equal to the value of the Replaced Award as of the date of the Change of Control; (iii) if the underlying Replaced Award was an equity-based award, it relates to publicly traded equity securities of the Company or the entity surviving the Company following the Change of Control; (iv) it contains terms relating to vesting (including with respect to a termination of employment or service) that are substantially identical to those of the Replaced Award; and (v) its other terms and conditions are not less favorable to the Participant than the terms and conditions of the

Replaced Award (including the provisions that would apply in the event of a subsequent Change of Control) as of the date of the Change of Control. Without limiting the

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generality of the foregoing, a Replacement Award may take the form of a continuation of the applicable Replaced Award if the requirements of the preceding sentence are satisfied. If a Replacement Award is granted, the Replaced Award shall not vest upon the Change of Control. The determination whether the conditions of this Section 8(b) are satisfied shall be made by the Committee, as constituted immediately before the Change of Control, in its sole discretion.

(c) **Termination of Employment.** Upon a termination of employment or service of a Participant occurring upon or during the two years immediately following the date of a Change of Control by reason of death, disability, by the Company without Cause (as defined in Section 8(d)), or, only to the extent specified in an Award Agreement, by the Participant for Good Reason (as defined in Section 8(d)), (i) all Replacement Awards held by such Participant shall vest in full, be free of restrictions, and be earned in an amount equal to the full value of such Replacement Award, and (ii) unless otherwise provided in the applicable Award Agreement, notwithstanding any other provision of the Plan to the contrary, any Option or SAR held by the Participant as of the date of the Change of Control that remains outstanding as of the date of such termination of employment or service may thereafter be exercised, until (A) in the case of Incentive Stock Options, the last date on which such Incentive Stock Options would be exercisable in the absence of this Section 8(c), and (B) in the case of Nonqualified Stock Options and SARs, the later of (x) the last date on which such Nonqualified Stock Option or SAR would be exercisable upon the relevant termination of employment in the absence of this Section 8(c) and (y) the earlier of (1) the first anniversary of such termination of employment or service and (2) expiration of the term of such Nonqualified Stock Option or SAR.

(d) **Definitions.** The following terms shall have the following meanings for purposes of this Section 8 only:

(i) Unless otherwise determined by the Committee and set forth in an applicable Award Agreement, Cause shall mean (A) the Participant's dereliction of duties or gross negligence or failure to perform his duties or refusal to follow any lawful directive of the officer to whom he reports; (B) the Participant's abuse of or dependency on alcohol or drugs (illicit or otherwise) that adversely affects his performance of duties for the Company; (C) the Participant's commission of any fraud, embezzlement, theft or dishonesty or any deliberate misappropriation of money or other assets of the Company; (D) the Participant's breach of any fiduciary duties of the Company; (E) any act, or failure to act, by the Participant in bad faith to the detriment of the Company; (F) the Participant's failure to cooperate in good faith with a governmental or internal investigation of the Company or any of its directors, managers, officers or employees, if the Company requests the Participant's cooperation; (G) the Participant's failure to follow Company policies, including the Company's code of conduct and/or ethics policy, as may be in effect from time to time; or (H) the Participant's conviction of, or plea of nolo contendere to, a felony or any serious crime; provided that in cases where cure is possible, the Participant shall first be provided with a 15-day cure period.

(ii) Unless otherwise determined by the Committee and set forth in an applicable Award Agreement, Good Reason shall mean (A) a material breach by the Company of the Participant's applicable Award Agreement or (B) a reduction in the Participant's base salary; *provided* that the Company shall first be provided with a 30-day cure period following receipt of written notice from the Participant setting forth in reasonable detail the specific conduct of the Company that is alleged to constitute Good Reason, to cease and to cure, any conduct specified in such written notice; *provided, further,* that such notice shall be provided to the Company within 45 days of the occurrence of the conduct alleged to constitute Good Reason and if, at the end of the cure period, the circumstance alleged to constitute Good Reason has not been remedied the Participant will be entitled to terminate his employment for Good Reason during the 30-day period that follows the end of the cure period. If the Participant does not terminate employment or service during such 30-day period, he will not be permitted to terminate his employment for Good Reason as a result of such event or condition.

(e) Awards not Replaced. Notwithstanding the foregoing, unless otherwise provided in the applicable Award Agreement, in the event that an Award shall not be replaced pursuant to Section 4(b) with a Replacement Award meeting the requirements of Section 8(b), any such Award that is (i) an outstanding Option or SAR then held by

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a Participant that is unexercisable or otherwise unvested shall automatically become exercisable or otherwise vested, as the case may be, as of immediately prior to the Change of Control, (ii) a Performance Unit, Cash Incentive Award or Award designated as a Performance Compensation Award shall be paid out as if the date of the Change of Control were the last day of the applicable Performance Period and target performance levels had been attained and (iii) not described in clause (i) or (ii) of this Section 8(e) then held by a Participant that is unexercisable, unvested or still subject to restrictions or forfeiture, shall automatically be exercisable and vested and all restrictions and forfeiture provisions related thereto shall lapse as of immediately prior to such Change of Control. Notwithstanding the foregoing, if any Award is subject to Section 409A of the Code, this Section 8 shall be applicable only to the extent specifically provided in the Award Agreement and permitted pursuant to Section 11(e). Nothing in this Section 8 shall preclude the Company from settling upon a Change of Control an Award if it is not replaced by a Replacement Award, to the extent effectuated in accordance with Treas. Reg. § 1.409A-3(j)(ix).

**SECTION 9. General Provisions.**

(a) Nontransferability. Except as otherwise specified in the applicable Award Agreement, during the Participant's lifetime each Award (and any rights and obligations thereunder) shall be exercisable only by the Participant, or, if permissible under applicable law, by the Participant's legal guardian or representative, and no Award (or any rights and obligations thereunder) may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Participant otherwise than by will or by the laws of descent and distribution, and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any Affiliate; provided that (i) the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance and (ii) the Board or the Committee may permit further transferability, on a general or specific basis, and may impose conditions and limitations on any permitted transferability; provided, however, that Incentive Stock Options shall not be transferable in any way that would violate Section 1.422-2(a)(2) of the Treasury Regulations and in no event may any Award (or any rights and obligations thereunder) be transferred in any way in exchange for value. All terms and conditions of the Plan and all Award Agreements shall be binding upon any permitted successors and assigns.

(b) No Rights to Awards. No Participant or other Person shall have any claim to be granted any Award, and there is no obligation for uniformity of treatment of Participants or holders or beneficiaries of Awards. The terms and conditions of Awards and the Committee's determinations and interpretations with respect thereto need not be the same with respect to each Participant and may be made selectively among Participants, whether or not such Participants are similarly situated.

(c) Share Certificates. All certificates for Shares or other securities of the Company or any Affiliate delivered under the Plan pursuant to any Award or the exercise thereof shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan, the applicable Award Agreement or the rules, regulations and other requirements of the SEC, the Applicable Exchange and any applicable Federal or state laws, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

(d) Withholding.

(i) Authority to Withhold. A Participant may be required to pay to the Company or any Affiliate, and the Company or any Affiliate shall have the right and is hereby authorized to withhold from any Award, from any payment due or transfer made under any Award or under the Plan or from any compensation or other amount owing to a Participant, the amount (in cash, Shares, other securities, other Awards or other property) of any applicable withholding taxes in respect of an Award, its exercise or any payment or transfer under an Award or under the Plan and to take such other

action as may be necessary in the opinion of the Committee or the Company to satisfy all obligations for the payment of such taxes.

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(ii) Alternative Ways to Satisfy Withholding Liability. Without limiting the generality of clause (i) above, subject to the Committee's discretion, a Participant may satisfy, in whole or in part, the foregoing withholding liability by delivery of Shares owned by the Participant (which are not subject to any pledge or other security interest) having a Fair Market Value equal to such withholding liability or by having the Company withhold from the number of Shares otherwise issuable pursuant to the exercise of the Option or SAR, or the lapse of the restrictions on any other Award (in the case of SARs and other Awards, if such SARs and other Awards are settled in Shares), a number of Shares having a Fair Market Value equal to such withholding liability.

(e) Section 409A.

(i) It is intended that the provisions of the Plan comply with Section 409A of the Code, and all provisions of the Plan shall be construed and interpreted in a manner consistent with the requirements for avoiding taxes or penalties under Section 409A of the Code. Each payment under any Award shall be treated as a separate payment for purposes of Section 409A of the Code. In no event may a Participant, directly or indirectly, designate the calendar year of any payment to be made under any Award.

(ii) No Participant or the creditors or beneficiaries of a Participant shall have the right to subject any deferred compensation (within the meaning of Section 409A of the Code) payable under the Plan to any anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment. Except as permitted under Section 409A of the Code, any deferred compensation (within the meaning of Section 409A of the Code) payable to any Participant or for the benefit of any Participant under the Plan may not be reduced by, or offset against, any amount owing by any such Participant to the Company or any of its Affiliates.

(iii) If, at the time of a Participant's separation from service (within the meaning of Section 409A of the Code), (A) such Participant shall be a specified employee (within the meaning of Section 409A of the Code and using the identification methodology selected by the Company from time to time) and (B) the Company shall make a good faith determination that an amount payable pursuant to an Award constitutes deferred compensation (within the meaning of Section 409A of the Code) the payment of which is required to be delayed pursuant to the six-month delay rule set forth in Section 409A of the Code in order to avoid taxes or penalties under Section 409A of the Code, then the Company shall not pay such amount on the otherwise scheduled payment date but shall instead pay it on the first business day after such six-month period. Such amount shall be paid without interest, unless otherwise determined by the Committee, in its sole discretion, or as otherwise provided in any applicable employment agreement between the Company and the relevant Participant.

(iv) Notwithstanding any provision of the Plan to the contrary, in light of the uncertainty with respect to the proper application of Section 409A of the Code, the Company reserves the right to make amendments to any Award as the Company deems necessary or desirable to avoid the imposition of taxes or penalties under Section 409A of the Code. In any case, a Participant shall be solely responsible and liable for the satisfaction of all taxes and penalties that may be imposed on such Participant or for such Participant's account in connection with an Award (including any taxes and penalties under Section 409A of the Code), and neither the Company nor any of its Affiliates shall have any obligation to indemnify or otherwise hold such Participant harmless from any or all of such taxes or penalties.

(f) Award Agreements. Each Award hereunder shall be evidenced by an Award Agreement, which shall be delivered to the Participant and shall specify the terms and conditions of the Award and any rules applicable thereto, including the effect on such Award of the death, disability or termination of employment or service of a Participant and the effect, if any, of such other events as may be determined by the Committee.

(g) No Limit on Other Compensation Arrangements. Nothing contained in the Plan shall prevent the Company or any Affiliate from adopting or continuing in effect other compensation arrangements, which may, but need not,

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provide for the grant of options, restricted stock, shares, other types of equity-based awards (subject to stockholder approval if such approval is required) and cash incentive awards, and such arrangements may be either generally applicable or applicable only in specific cases.

(h) No Right to Employment. The grant of an Award shall not be construed as giving a Participant the right to be retained as a director, officer, employee or consultant of or to the Company or any Affiliate, nor shall it provide a Participant with any rights to continued service on the Board. Further, the Company or an Affiliate may at any time dismiss a Participant from employment or discontinue any directorship or consulting relationship, free from any liability or any claim under the Plan, unless otherwise expressly provided in the Plan or in any Award Agreement.

(i) No Rights as a Stockholder. No Participant or holder or beneficiary of any Award shall have any rights as a stockholder with respect to any Shares to be distributed under the Plan until he or she has become the holder of such Shares. In connection with each grant of Restricted Shares, except as provided in the applicable Award Agreement, the Participant shall be entitled to the rights of a stockholder (including the right to vote) in respect of such Restricted Shares. Except as otherwise provided in SECTION 4(b), SECTION 7(c) or the applicable Award Agreement, no adjustments shall be made for dividends or distributions on (whether ordinary or extraordinary, and whether in cash, Shares, other securities or other property), or other events relating to, Shares subject to an Award for which the record date is prior to the date such Shares are delivered.

(j) Governing Law. The validity, construction and effect of the Plan and any rules and regulations relating to the Plan and any Award Agreement shall be determined in accordance with the laws of the State of Delaware, without giving effect to the conflict of laws provisions thereof.

(k) Severability. If any provision of the Plan or any Award is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction or as to any Person or Award, or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to the applicable laws, or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award, such provision shall be construed or deemed stricken as to such jurisdiction, Person or Award and the remainder of the Plan and any such Award shall remain in full force and effect.

(l) Other Laws; Restrictions on Transfer of Shares. The Committee may refuse to issue or transfer any Shares or other consideration under an Award if, acting in its sole and plenary discretion, it determines that the issuance or transfer of such Shares or such other consideration might violate any applicable law or regulation or entitle the Company to recover the same under Section 16(b) of the Exchange Act, and any payment tendered to the Company by a Participant, other holder or beneficiary in connection with the exercise of such Award shall be promptly refunded to the relevant Participant, holder or beneficiary. Without limiting the generality of the foregoing, no Award granted hereunder shall be construed as an offer to sell securities of the Company, and no such offer shall be outstanding, unless and until the Committee in its sole and plenary discretion has determined that any such offer, if made, would be in compliance with all applicable requirements of the Federal and any other applicable securities laws.

(m) No Trust or Fund Created. Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any Affiliate, on one hand, and a Participant or any other Person, on the other. To the extent that any Person acquires a right to receive payments from the Company or any Affiliate pursuant to an Award, such right shall be no greater than the right of any unsecured general creditor of the Company or such Affiliate.

(n) Recoupment of Awards. Any Award Agreement may provide for recoupment by the Company of all or any portion of an Award if the Company's financial statements are required to be restated due to noncompliance with any

financial reporting requirement under the Federal securities laws or as otherwise determined by the Committee. This SECTION 9(n) shall not be the Company's exclusive remedy with respect to such matters.

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(o) No Fractional Shares. No fractional Shares shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional Shares or whether such fractional Shares or any rights thereto shall be canceled, terminated or otherwise eliminated.

(p) Requirement of Consent and Notification of Election Under Section 83(b) of the Code or Similar Provision. No election under Section 83(b) of the Code (to include in gross income in the year of transfer the amounts specified in Section 83(b) of the Code) or under a similar provision of law may be made unless expressly permitted by the terms of the applicable Award Agreement or by action of the Committee in writing prior to the making of such election. If an Award recipient, in connection with the acquisition of Shares under the Plan or otherwise, is expressly permitted under the terms of the applicable Award Agreement or by such Committee action to make such an election and the Participant makes the election, the Participant shall notify the Committee of such election within ten days of filing notice of the election with the Internal Revenue Service (or any successor thereto) or other governmental authority, in addition to any filing and notification required pursuant to regulations issued under Section 83(b) of the Code or any other applicable provision.

(q) Requirement of Notification Upon Disqualifying Disposition Under Section 421(b) of the Code. If any Participant shall make any disposition of Shares delivered pursuant to the exercise of an Incentive Stock Option under the circumstances described in Section 421(b) of the Code (relating to certain disqualifying dispositions) or any successor provision of the Code, such Participant shall notify the Company of such disposition within ten days of such disposition.

(r) Headings and Construction. Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision thereof. Whenever the words include , includes or including are used in this Plan, they shall be deemed to be followed by the words but not limited to .

**SECTION 10. Term of the Plan.**

(a) Effective Date. The Plan shall be effective as of the Approval Date.

(b) Expiration Date. No Award shall be granted under the Plan after the tenth anniversary of the Approval Date. Unless otherwise expressly provided in the Plan or in an applicable Award Agreement, any Award granted hereunder, and the authority of the Board or the Committee to amend, alter, adjust, suspend, discontinue or terminate any such Award or to waive any conditions or rights under any such Award, shall nevertheless continue thereafter.

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**Electronic Voting Instructions**

**Available 24 hours a day, 7 days a week!**

Instead of mailing your proxy, you may choose one of the voting methods outlined below to vote your proxy. VALIDATION DETAILS ARE LOCATED BELOW IN THE TITLE BAR.

**Proxies submitted by the Internet or telephone must be received by 11:59 P.M., New York Time, on December 19, 2016.**

**Vote by Internet**

Go to  
**[www.envisionreports.com/XPOspc](http://www.envisionreports.com/XPOspc)**

Or scan the QR code with your  
smartphone

Follow the steps outlined on the secure  
website

**Vote by telephone**

Call toll free 1-800-652-VOTE (8683) within the  
USA, US territories

& Canada on a touch tone telephone

Follow the instructions provided by the recorded  
message

Using a **black ink** pen, mark your votes with  
an **X** as shown in

this example. Please do not write outside the  
designated areas.

q **IF YOU HAVE NOT VOTED VIA THE INTERNET OR TELEPHONE, FOLD ALONG THE PERFORATION, DETACH AND RETURN THE BOTTOM PORTION IN THE ENCLOSED ENVELOPE.** q

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**A** **Proposals** **UNLESS OTHERWISE MARKED, THIS PROXY WILL BE VOTED IN ACCORDANCE WITH THE BOARD OF DIRECTORS' RECOMMENDATIONS. THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR PROPOSALS 1 AND 2.**

- |   |            |                |                |
|---|------------|----------------|----------------|
| 1. To consider and vote on a proposal to approve the XPO Logistics, Inc. 2016 Omnibus Incentive Compensation Plan.              | <b>For</b> | <b>Against</b> | <b>Abstain</b> |
| 2. To consider and vote on a proposal to adjourn or postpone the special meeting, if necessary, to solicit additional proxies.  | <b>For</b> | <b>Against</b> | <b>Abstain</b> |
| 3. To transact such other business as may properly come before the special meeting and any adjournment or postponement thereof. |            |                |                |

**B** **Non-Voting Items**

**Change of Address** Please print new address below.

**Comments** Please print your comments below.

**C Authorized Signatures** This section must be completed for your vote to be counted. **Date and Sign Below**  
Please date and sign exactly as your name(s) appear(s) hereon. When signing as Executor, Administrator, Trustee, Guardian or Attorney, please give full title as such. If a corporation, please sign in full corporate name by president or other authorized corporate officer. If a partnership, please sign in partnership name by authorized person. Joint owners should each sign.

Date (mm/dd/yyyy) Please print date below.

Signature 1 Please keep  
signature within the box.

Signature 2 Please keep  
signature within the box.

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**YOUR VOTE IS IMPORTANT**

Regardless of whether you plan to attend the Special Meeting of Stockholders, you can be sure your shares are represented at the Meeting by promptly returning your proxy in the enclosed envelope.

**Important Notice Regarding the Availability of Proxy Materials for the  
Special Meeting of Stockholders to be Held on December 20, 2016.**

This Proxy Statement is available at

[www.edocumentview.com/xpospc](http://www.edocumentview.com/xpospc).

q **IF YOU HAVE NOT VOTED VIA THE INTERNET OR TELEPHONE, FOLD ALONG THE  
PERFORATION, DETACH AND RETURN THE BOTTOM PORTION IN THE ENCLOSED  
ENVELOPE.** q

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**Proxy XPO LOGISTICS, INC.**

**PROXY FOR THE SPECIAL MEETING OF STOCKHOLDERS TO BE HELD ON DECEMBER 20, 2016  
THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS OF XPO LOGISTICS, INC.**

The undersigned hereby acknowledges receipt of the XPO Logistics, Inc. Notice of Special Meeting and Proxy Statement and hereby constitutes and appoints Bradley S. Jacobs and Gordon E. Devens, and each of them, its true and lawful agents and proxies, with full power of substitution in each, to attend the Special Meeting of Stockholders of XPO Logistics, Inc. on December 20, 2016, and any adjournment or postponement thereof, and to vote on the matters indicated all the shares of Common Stock, par value \$0.001 per share, or Series A Convertible Perpetual Preferred Stock, par value \$0.001 per share, that the undersigned would be entitled to vote if personally present.

**THIS PROXY WHEN PROPERLY EXECUTED WILL BE VOTED IN THE MANNER DIRECTED HEREIN. IF NO DIRECTION IS MADE, THIS PROXY WILL BE VOTED IN ACCORDANCE WITH THE BOARD OF DIRECTORS RECOMMENDATIONS.**

**CONTINUED AND TO BE SIGNED ON REVERSE SIDE**

**PLEASE PROMPTLY COMPLETE, DATE, SIGN AND MAIL THIS PROXY IN THE ENCLOSED POSTAGE-PAID ENVELOPE.**