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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-8**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

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**Cobalt International Energy, Inc.**

(Exact Name of Registrant as Specified in its Charter)

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Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

27-0821169  
(I.R.S. Employer  
Identification No.)

920 Memorial City Way, Suite 100  
Houston, TX 77024  
(713) 579-9100  
(Address of Principal Executive Offices)

Cobalt International Energy, Inc. Second Amended and Restated Non-Employee Directors Compensation Plan  
(Full Title of the Plan)

Jeffrey A. Starzec  
Executive Vice President and General Counsel  
920 Memorial City Way, Suite 100  
Houston, TX 77024  
(713) 579-9100  
(Telephone Number, Including Area Code, of Agents for Service)

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*With a copy to:*

Jean M. McLoughlin  
Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017  
(212) 450-4000

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company)

Accelerated filer   
Smaller reporting company   
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to Be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee(3)
Common Stock, par value \$0.01, to be issued under the Cobalt International Energy, Inc. Amended and Restated Non-Employee Directors Compensation Plan	3,000,000	\$0.30	\$900,000	\$104.31
Total	3,000,000	\$0.30	\$900,000	\$104.31

- (1) This Registration Statement on Form S-8 (this "**Registration Statement**") covers shares of Common Stock, par value \$0.01 per share ("**Common Stock**"), of Cobalt International Energy, Inc. (the "**Company**" or the "**Registrant**") (i) issuable pursuant to the Cobalt International Energy, Inc. Second Amended and Restated Non-Employee Directors Compensation Plan (the "**Plan**"), (ii) to be issued in the future under the Plan and (iii) pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "**Securities Act**"), any additional shares of Common Stock that become issuable under the Plan by reason of any stock dividend, stock split, or other similar transaction.
- (2) Estimated pursuant to Rule 457(h) and Rule 457(c) under the Securities Act, solely for the purpose of computing the registration fee, based on the average of the high and low prices reported for a share of Common Stock on the New York Stock Exchange on May 4, 2017.
- (3) Rounded up to the nearest penny.

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## PART I

The information specified in Item 1 and Item 2 of Part I of Form S-8 is omitted from this filing in accordance with the provisions of Rule 428 under the Securities Act and the introductory note to Part I of the Form S-8 instructions. The document containing the information specified in Part I will be delivered to the participants in the Plan as required by Rule 428(b)(1).

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The following documents are incorporated herein by reference:

(a) The Company's Annual Report on Form 10-K for the year ended December 31, 2016 (File No. 001-34579) (the "**Annual Report**"), as filed by the Registrant on March 14, 2017;

(b) The Company's Quarterly Report on Form 10-Q for the period ended March 31, 2017 (File No. 001-34579), as filed by the Registrant on May 8, 2017;

(c) All other reports filed by the Registrant pursuant to Section 13(a) or 15(d) of the Securities Act since the end of the fiscal year covered by the Annual Report; and

(d) The description of the Company's capital stock which is contained in the Company's Registration Statement on Form 8-A (File No. 001-34579), dated December 11, 2009, including any amendments or supplements thereto.

In addition, all documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein (or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein) modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

#### Item 4. Description of Securities.

Not applicable.

#### Item 5. Interests of Named Experts and Counsel.

Not applicable.

#### Item 6. Indemnification of Directors and Officers.

The Company's certificate of incorporation and director indemnification agreements provide that each person who was or is made a party or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or an officer of the Company or, in the case of a director, is or was serving at our request as a director, officer, or trustee of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, whether the basis of such proceeding is alleged action in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by us to the fullest extent authorized by the Delaware General Corporation Law against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such.

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Section 145 of the Delaware General Corporation Law permits a corporation to indemnify any director or officer of the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any action, suit or proceeding brought by reason of the fact that such person is or was a director or officer of the corporation, if such person acted in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, if he or she had no reason to believe his or her conduct was unlawful. In a derivative action, (*i.e.*, one brought by or on behalf of the corporation), indemnification may be provided only for expenses actually and reasonably incurred by any director or officer in connection with the defense or settlement of such an action or suit if such person acted in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be provided if such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine that the defendant is fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

Pursuant to Section 102(b)(7) of the Delaware General Corporation Law, Article Seven of our certificate of incorporation eliminates the liability of a director to us for monetary damages for such a breach of fiduciary duty as a director, except for liabilities arising:

- from any breach of the director's duty of loyalty to the Company;
- from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- under Section 174 of the Delaware General Corporation Law; and
- from any transaction from which the director derived an improper personal benefit.

The Company carries insurance policies insuring its directors and officers against certain liabilities that they may incur in their capacity as directors and officers.

The Company has entered into a Director Indemnification Agreement with each of its directors. Under the terms of that agreement, the Company agrees to indemnify the director to the fullest extent permitted by applicable law. The Company specifically agrees to pay expenses actually and reasonably incurred by the director in any claims in which the director is successful, which is deemed to include termination of proceedings by dismissal. If successful with regards to only some, but not all, claims in a proceeding, the director shall be indemnified with regards to expenses for those successful claims. The director is also indemnified with regards to any proceeding in which the director is asked to participate or act as witness by reason of his or her corporate status. Where the director is entitled to only a portion of expenses under the agreement, the Company shall indemnify as to that portion.

The Company is not obligated to indemnify the director under the Director Indemnification Agreement in respect of a proceeding by the Company against the director for an accounting of profits from the purchase or sale of Company securities pursuant to Section 16(b) of the Exchange Act. Nor is the Company obligated to indemnify the director in respect of a proceeding initiated by the director against the Company, unless such proceeding is (i) authorized by the board of directors, (ii) provided by the Company pursuant to applicable law, or (iii) required under the Delaware General Corporation Law. The Company is also not obligated to indemnify the director for claims or proceedings by the Company in which the director is adjudged to be liable to the Company, unless the relevant court determines otherwise.

Under the Director Indemnification Agreement, the Company agrees to advance any expenses actually and reasonably incurred by the director, without regard to the director's ability to repay such expenses or the director's ultimate entitlement to indemnification for such expenses. The situations outlined in the preceding paragraph in which the Company is not obligated to indemnify the director are also situations in which the Company is not obligated to advance the expenses of the director. In the event that a court of competent jurisdiction, in a final judgment not subject to appeal, finds that the director is not entitled to indemnification, the director is required to reimburse the Company. The Form of Director Indemnification Agreement is filed as Exhibit 10.19 to the Company's Registration Statement on Form S-1 filed on November 27, 2009, as amended (File No. 333-161734).

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**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

<u>Exhibit Number</u>	
4.1	Second Amended and Restated Certificate of Incorporation of the Company (incorporated herein by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q (File No. 001-34579) filed with the SEC on May 8, 2017)
4.2	Amended and Restated Bylaws of the Company, effective as of October 27, 2016 (incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K (File No. 001-34579) filed with the SEC on November 2, 2016)
5	Opinion of Davis Polk & Wardwell LLP
23.1	Consent of Ernst & Young LLP
23.2	Consent of Davis Polk & Wardwell LLP (included in Exhibit 5)
99.1	Cobalt International Energy, Inc. Second Amended and Restated Non-Employee Directors Compensation Plan

**Item 9. Undertakings.**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement;

(iii) To include any material information with respect to the Plan not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

*provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant, Cobalt International Energy, Inc., certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Houston, Texas, on the 8th day of May, 2017.

Cobalt International Energy, Inc.

By: /s/ David D. Powell

Name: David D. Powell

Title: Chief Financial Officer

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Timothy J. Cutt and David D. Powell, and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and any and all additional registration statements pursuant to Rule 462(b) of the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agents full power and authority to do and perform each and every act in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or either of them or their or his or her substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed this 8th day of May, 2017 by the following persons in the following capacities.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Timothy J. Cutt</u> Timothy J. Cutt	Chief Executive Officer (Principal Executive Officer)	May 8, 2017
<u>/s/ David D. Powell</u> David D. Powell	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	May 8, 2017
<u>/s/ Jack E. Golden</u> Jack E. Golden	Director	May 8, 2017
<u>/s/ John E. Hagale</u> John E. Hagale	Director	May 8, 2017
<u>/s/ Kay Bailey Hutchison</u> Kay Bailey Hutchison	Director	May 8, 2017
<u>/s/ Jon A. Marshall</u> Jon A. Marshall	Director	May 8, 2017
<u>/s/ Kenneth W. Moore</u> Kenneth W. Moore	Director	May 8, 2017
<u>/s/ Myles W. Scoggins</u> Myles W. Scoggins	Director	May 8, 2017
<u>/s/ D. Jeff van Steenberg</u> D. Jeff van Steenberg	Director	May 8, 2017
<u>/s/ William P. Utt</u> William P. Utt	Director	May 8, 2017

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**EXHIBIT INDEX**

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New York  
Menlo Park  
Washington DC  
São Paulo  
London

Paris  
Madrid  
Tokyo  
Beijing  
Hong Kong



Davis Polk & Wardwell LLP  
450 Lexington Avenue  
New York, NY 10017

May 8, 2017

Cobalt International Energy, Inc.  
920 Memorial City Way, Suite 100  
Houston, TX 77024

Ladies and Gentlemen:

We have acted as special counsel for Cobalt International Energy, Inc. (the "**Company**") in connection with the filing of a Registration Statement on Form S-8 under the Securities Act of 1933, as amended, relating to 3,000,000 shares (the "**Shares**") of the Company's common stock, par value \$0.01 per share, deliverable pursuant to the Cobalt International Energy, Inc. Second Amended and Restated Non-Employee Directors Compensation Plan (the "**Plan**").

We have examined such documents and such matters of fact and law as we have deemed necessary for the purposes of rendering the opinion expressed herein.

Upon the basis of the foregoing, we are of the opinion that the Shares, when delivered in accordance with the Plan upon receipt by the Company of adequate consideration therefor, will be validly issued, fully paid and nonassessable.

We are members of the Bar of New York, and the foregoing opinion is limited to the laws of the State of New York, the federal laws of the United States of America, and the General Corporation Law of the State of Delaware.

We consent to the filing of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/ Davis Polk & Wardell LLP

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Cobalt International Energy, Inc. Second Amended and Restated Non-Employee Directors Compensation Plan of our reports dated March 14, 2017, with respect to the consolidated financial statements of Cobalt International Energy, Inc. and the effectiveness of internal control over financial reporting of Cobalt International Energy, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2016, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Houston, Texas  
May 8, 2017

**COBALT INTERNATIONAL ENERGY, INC.**  
**SECOND AMENDED AND RESTATED**  
**NON-EMPLOYEE DIRECTORS COMPENSATION PLAN**  
**(as of May 2, 2017)**

Section 1. *Purpose.* The purpose of the Cobalt International Energy, Inc. Second Amended and Restated Non-Employee Directors Compensation Plan (the “**Plan**”) is to attract and retain the services of experienced non-employee directors for Cobalt International Energy, Inc. (the “**Company**”) by providing them with compensation for their services in the form of cash and/or shares of the Company’s common stock, thereby furthering the best interests of the Company and its stockholders.

Section 2. *Definitions.* As used in the Plan, the following terms shall have the meanings set forth below:

(a) “**Affiliate**” means (i) any entity that, directly or indirectly, is controlled by the Company and (ii) any entity in which the Company has a significant equity interest, in each case as determined by the Board.

(b) “**Award**” means any Option, RSU, Other Stock-Based Award or Retainer granted under the Plan.

(c) “**Award Document**” means any agreement, contract or other instrument or document evidencing any Award granted under the Plan, which may, but need not, be executed or acknowledged by a Participant.

(d) “**Beneficiary**” means a person entitled to receive payments or other benefits or exercise rights that are available under the Plan in the event of a Participant’s death. If no such person is named by a Participant, or if no Beneficiary designated by such Participant is eligible to receive payments or other benefits or exercise rights that are available under the Plan at such Participant’s death, such Participant’s Beneficiary shall be such Participant’s estate.

(e) “**Board**” means the board of directors of the Company.

(f) “**Change in Control**” means the occurrence of any one or more of the following events:

(i) any “person” (as defined in Section 13(d) of the Exchange Act), other than an employee benefit plan or trust maintained by the Company, becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s outstanding securities entitled to vote generally in the election of directors;

(ii) at any time during a period of 12 consecutive months, individuals who at the beginning of such period constituted the Board and any new member of the Board whose election or nomination for election was approved by a vote of at least a majority of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was so approved, cease for any reason to constitute a majority of members of the Board; or

(iii) the consummation of (A) a merger or consolidation of the Company or any of its subsidiaries with any other corporation or entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity or, if applicable, the ultimate parent thereof) at least 50% of the combined voting power and total fair market value of the securities of the Company or such surviving entity or parent outstanding immediately after such merger or consolidation, or (B) any sale, lease, exchange or other transfer to any Person (other than an Affiliate of the Company) of assets of the Company and/or any of its subsidiaries, in one transaction or a series of related transactions, having an aggregate fair market value of more than 50% of the fair market value of the Company and its subsidiaries (the “**Company Value**”) immediately prior to such transaction(s), but only to the extent that, in connection with such transaction(s) or within a reasonable period thereafter, the Company’s stockholders receive distributions of cash and/or assets having a fair market value that is greater than 50% of the Company Value immediately prior to such transaction(s).

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Notwithstanding the foregoing, in no event shall a Change in Control be deemed to have occurred with respect to a Participant if the Participant is part of a “group” within the meaning of Section 13(d)(3) of the Exchange Act that consummates the Change in Control transaction. In addition, for purposes of the definition of Change in Control, a person engaged in business as an underwriter of securities shall not be deemed to be the beneficial owner of, or to beneficially own, any securities acquired through such person’s participation in good faith in a firm commitment underwriting until the expiration of 40 days after the date of such acquisition.

(g) “**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the rules, regulations and guidance thereunder. Any reference to a provision in the Code shall include any successor provision thereto.

(h) “**Effective Date**” means the date on which the Plan is approved by the Company’s stockholders.

(i) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended from time to time, and the rules, regulations and guidance thereunder. Any reference to a provision in the Exchange Act shall include any successor provision thereto.

(j) “**Fair Market Value**” means with respect to Shares, the closing price of a Share on the date in question (or, if there is no reported sale on such date, on the last preceding date on which any reported sale occurred) on the principal stock market or exchange on which the Shares are quoted or traded, or if Shares are not so quoted or traded, fair market value as determined by the Board, and 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 Board.

(k) “**Option**” means an option representing the right to purchase Shares from the Company, granted pursuant to Section 6.

(l) “**Other Stock-Based Award**” means an Award granted pursuant to Section 8.

(m) “**Participant**” means the recipient of an Award granted under the Plan.

(n) “**Prior Plan**” means the Cobalt International Energy, Inc. Non-Employee Directors Compensation Plan.

(o) “**Replacement Award**” means an Award granted in assumption of, or in substitution for, an outstanding award previously granted by a company acquired by the Company or with which the Company combines.

(p) “**Retainer**” means an annual cash retainer payable pursuant to Section 9 for service as (i) a member of the Board or a committee of the Board or (ii) chair or lead director of the Board or chair of any such committee.

(q) “**RSU**” means a contractual right granted pursuant to Section 7 that is denominated in Shares. Each RSU represents a right to receive the value of one Share (or a percentage of such value) in cash, Shares or a combination thereof. Awards of RSUs may include the right to receive dividend equivalents.

(r) “**Shares**” means shares of the Company’s common stock.

Section 3. *Eligibility.* Each member of the Board who is not (i) a full-time or part-time officer or employee of the Company or (ii) an equity partner or service provider of any of the private equity sponsors of the Company shall be eligible to receive Awards under the Plan.

#### Section 4. *Administration.*

(a) The Plan shall be administered by the Board. The Board may issue rules and regulations for administration of the Plan. The Board shall meet at such times and places as it may determine.

(b) Subject to the terms of the Plan and applicable law, the Board shall have full power and authority to: (i) designate Participants; (ii) determine the type or types of Awards (including Replacement Awards) to be granted to each Participant under the Plan; (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 Award; (v) determine whether, to what extent and under what circumstances Awards may be settled or exercised in cash, Shares, other Awards, other property, or any combination thereof, or canceled, forfeited or suspended, and the method or methods by which

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Awards may be settled, exercised, canceled, forfeited or suspended; (vi) determine whether, to what extent and under what circumstances cash, Shares, other Awards, other property and other amounts payable with respect to an Award under the Plan shall be deferred either automatically or at the election of the holder thereof or of the Board; (vii) interpret and administer the Plan and any instrument or agreement relating to, or Award made under, the Plan; (viii) 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; and (ix) make any other determination and take any other action that the Board deems necessary or desirable for the administration of the Plan.

(c) *Clawback.* The Board shall have full authority to implement any policies and procedures necessary or desirable to comply with Section 10D of the Exchange Act and any rules promulgated thereunder. Without limiting the foregoing, the Board may provide in any Award Document that, in event of a financial restatement that reduces the amount of previously awarded incentive compensation that would not have been earned had results been properly reported, outstanding Awards will be cancelled and the Company may clawback (i.e., recapture) realized Option gains and realized value for vested RSUs within 12 months preceding the financial restatement. All Awards shall be subject to the Company's compensation recoupment policy as such policy may be in effect from time to time.

(d) All decisions of the Board shall be final, conclusive and binding upon all parties, including the Company, its stockholders and the Participants and any Beneficiaries thereof.

Section 5. *Shares Available for Awards.*

(a) Subject to adjustment as provided in Section 5(d) and except for Replacement Awards, the maximum number of Shares available for issuance under the Plan shall not exceed 4,750,000 Shares (taking into account shares authorized for issuance under the Prior Plan).

(b) No Participant may, during any calendar year, be granted Awards with an aggregate value greater than \$500,000, subject to adjustment as provided in Section 5(d).

(c) Any Shares subject to an Award, including Awards granted under the Prior Plan, (other than a Replacement Award), that expires, is canceled, forfeited or otherwise terminates without the delivery of such Shares, including (i) the number of Shares surrendered or withheld in payment of any grant, purchase, exercise or hurdle price of an Award or taxes related to an Award and (ii) any Shares subject to an Award to the extent that Award is settled without the issuance of Shares, shall again be, or shall become, available for issuance under the Plan.

(d) If, as a result of any dividend or other distribution (whether in the form of cash, Shares or other securities), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, 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, issuance of Shares pursuant to the anti-dilution provisions of securities of the Company, or other similar corporate transaction or event affecting the Shares, an adjustment is necessary in order to prevent diminution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Board shall adjust equitably any or all of:

(i) the number and type of Shares (or other securities) which thereafter may be made the subject of Awards, including the aggregate and individual limits specified in Section 5(a) and Section 5(b), respectively;

(ii) the number and type of Shares (or other securities) subject to outstanding Awards; and

(iii) the grant, purchase, exercise or hurdle price with respect to any Award or, if deemed appropriate, make provision for a cash payment to the holder of an outstanding Award;

*provided, however,* that the number of Shares subject to any Award denominated in Shares shall always be a whole number.

(e) Any Shares delivered pursuant to an Award may consist, in whole or in part, of authorized and unissued Shares or Shares acquired by the Company.

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Section 6. *Options.* The Board is authorized to grant Options to Participants with the following terms and conditions and with such additional terms and conditions, in either case not inconsistent with the provisions of the Plan, as the Board shall determine:

(a) The exercise price per Share under an Option shall be determined by the Board; *provided, however*, that, except in the case of Replacement Awards, such exercise price shall not be less than the Fair Market Value of a Share on the date of grant of such Option.

(b) The term of each Option shall be fixed by the Board but shall not exceed 10 years from the date of grant of such Option.

(c) The Board shall determine the time or times at which an Option may be exercised in whole or in part.

(d) The Board shall determine the method or methods by which, and the form or forms, including cash, Shares (including Shares underlying an Option), other Awards, other property, or any combination thereof, having a Fair Market Value on the exercise date equal to the relevant exercise price, in which payment of the exercise price with respect thereto may be made or deemed to have been made.

Section 7. *RSUs.* The Board is authorized to grant RSUs to Participants with the following terms and conditions and with such additional terms and conditions, in either case not inconsistent with the provisions of the Plan, as the Board shall determine. RSUs shall be subject to such restrictions as the Board may impose (including any limitation on the right to receive any dividend, dividend equivalent or other right), which restrictions may lapse separately or in combination at such time or times, in such installments or otherwise, as the Board may deem appropriate.

Section 8. *Other Stock-Based Awards.* The Board is authorized, subject to limitations under applicable law, to grant to Participants such other Awards that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Shares or factors that may influence the value of Shares, including convertible or exchangeable debt securities, other rights convertible or exchangeable into Shares, purchase rights for Shares, Awards with value and payment contingent upon performance of the Company or business units thereof or any other factors designated by the Board. The Board shall determine the terms and conditions of such Awards. Shares delivered pursuant to an Award in the nature of a purchase right granted under this Section 8 shall be purchased for such consideration, paid for at such times, by such methods and in such forms, including cash, Shares, other Awards, other property, or any combination thereof, as the Board shall determine.

Section 9. *Retainers.* The Board is authorized, subject to limitations under applicable law, to grant to Participants Retainers. The Board shall determine the terms and conditions of such Retainers, including without limitation (i) the amounts payable, (ii) the payment dates (including whether payment is made in a lump sum or installments and whether payment is made in advance or arrears), (iii) whether such Retainers may be electively received in Shares and (iv) whether such Retainers may be electively deferred and, if so, whether such deferred Retainers may be distributed in cash and/or Shares.

Section 10. *Effect of Termination of Service or a Change in Control on Awards.*

(a) The Board may provide, by rule or regulation or in any Award Document, or may determine in any individual case, the circumstances in which, and the extent to which, an Award may be exercised, settled, vested, paid or forfeited in the event of a Participant's termination of service from the Board prior to exercise or settlement of such Award.

(b) Unless specifically provided to the contrary in any Award Document, upon a Change in Control, all Awards shall become fully exercisable, shall vest and shall be settled, as applicable, and any restrictions applicable to any Award shall automatically lapse.

Section 11. *General Provisions Applicable to Awards.*

(a) Awards shall be granted for no cash consideration or for such minimal cash consideration as may be required by applicable law.

(b) Awards may, in the discretion of the Board, be granted either alone or in addition to or in tandem with any other Award or any award granted under any other plan of the Company. Awards granted in addition to or in tandem with other

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Awards, or in addition to or in tandem with awards granted under any other plan of the Company, may be granted either at the same time as or at a different time from the grant of such other Awards or awards.

(c) Subject to the terms of the Plan, payments or transfers to be made by the Company upon the grant, exercise or settlement of an Award may be made in the form of cash, Shares, other Awards, other property, net settlement, or any combination thereof, as determined by the Board in its discretion at the time of grant, and may be made in a single payment or transfer, in installments or on a deferred basis, in each case in accordance with rules and procedures established by the Board. Such rules and procedures may include provisions for the payment or crediting of reasonable interest on installment or deferred payments or the grant or crediting of dividend equivalents in respect of installment or deferred payments.

(d) Except as may be permitted by the Board or as specifically provided in an Award Document, (i) no Award and no right under any Award shall be assignable, alienable, saleable or transferable by a Participant otherwise than by will or pursuant to Section 11(e) and (ii) during a Participant's lifetime, each Award, and each right under any Award, shall be exercisable only by such Participant or, if permissible under applicable law, by such Participant's guardian or legal representative. The provisions of this Section 11(d) shall not apply to any Award that has been fully exercised or settled, as the case may be, and shall not preclude forfeiture of an Award in accordance with the terms thereof.

(e) A Participant may designate a Beneficiary or change a previous Beneficiary designation at such times prescribed by the Board by using forms and following procedures approved or accepted by the Board for that purpose.

(f) All certificates for Shares and/or other securities 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 Board may deem advisable under the Plan or the rules, regulations and other requirements of the Securities and Exchange Commission, any stock market or exchange upon which such Shares or other securities are then quoted, traded or listed, and any applicable securities laws, and the Board may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions.

#### Section 12. *Amendments and Termination.*

(a) Except to the extent prohibited by applicable law and unless otherwise expressly provided in an Award Document or in the Plan, the Board may amend, alter, suspend, discontinue or terminate the Plan or any portion thereof at any time; *provided, however*, that no such amendment, alteration, suspension, discontinuation or termination shall be made without (i) shareholder approval if such approval is required by applicable law or the rules of the stock market or exchange, if any, on which the Shares are principally quoted or traded or (ii) the consent of the affected Participant, if such action would materially adversely affect the rights of such Participant under any outstanding Award, except (x) to the extent any such amendment, alteration, suspension, discontinuation or termination is made to cause the Plan to comply with applicable law, stock market or exchange rules and regulations or accounting or tax rules and regulations or (y) to impose any "clawback" or recoupment provisions on any Awards in accordance with Section 4(c) of the Plan. Notwithstanding anything to the contrary in the Plan, the Board may amend the Plan in such manner as may be necessary to enable the Plan to achieve its stated purposes in any jurisdiction in a tax-efficient manner and in compliance with local rules and regulations.

(b) The Board may waive any conditions or rights under, amend any terms of, or amend, alter, suspend, discontinue or terminate any Award theretofore granted, prospectively or retroactively, without the consent of any relevant Participant or holder or Beneficiary of an Award; *provided, however*, that no such action shall materially adversely affect the rights of any affected Participant or holder or Beneficiary under any Award theretofore granted under the Plan, except (x) to the extent any such action is made to cause the Plan to comply with applicable law, stock market or exchange rules and regulations or accounting or tax rules and regulations, or (y) to impose any "clawback" or recoupment provisions on any Awards in accordance with Section 4(c) of the Plan.

(c) *No Repricing.* Notwithstanding the foregoing, except as provided in Section 5(d), no action shall directly or indirectly, through cancellation and regrant or any other method, reduce, or have the effect of reducing, the exercise price of any Award established at the time of grant thereof without approval of the Company's stockholders.

(d) The Board shall be authorized to make adjustments in the terms and conditions of, and the criteria included in, Awards in recognition of events (including the events described in Section 5(d)) affecting the Company, or the financial statements of the Company, or of changes in applicable laws, regulations or accounting principles, whenever the Board determines that such adjustments are appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan.

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(e) The Board may correct any defect, supply any omission, or reconcile any inconsistency in the Plan or any Award in the manner and to the extent it shall deem desirable to carry the Plan into effect.

Section 13. *Miscellaneous.*

(a) No Participant or other person shall have any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Participants or holders or Beneficiaries of Awards under the Plan. The terms and conditions of Awards need not be the same with respect to each recipient.

(b) The grant of an Award shall not be construed as giving a Participant the right to be retained in the service of the Board or the Company. The receipt of any Award under the Plan is not intended to confer any rights on the receiving Participant except as set forth in the applicable Award Document.

(c) Nothing contained in the Plan shall prevent the Company from adopting or continuing in effect other or additional compensation arrangements, and such arrangements may be either generally applicable or applicable only in specific cases.

(d) The Company shall be authorized to withhold from any Award granted or 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 (including net settlement), other Awards, other property, net settlement, or any combination thereof) of applicable withholding taxes due in respect of an Award, its exercise or settlement or any payment or transfer under such Award or under the Plan and to take such other action (including providing for elective payment of such amounts in cash or Shares by the Participant) as may be necessary in the opinion of the Company to satisfy all obligations for the payment of such taxes.

(e) If any provision of the Plan or any Award Document 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 Board, such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Board, materially altering the intent of the Plan or the Award Document, such provision shall be stricken as to such jurisdiction, person or Award, and the remainder of the Plan and any such Award Document shall remain in full force and effect.

(f) 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 and a Participant or any other person. To the extent that any person acquires a right to receive payments from the Company pursuant to an Award, such right shall be no greater than the right of any unsecured general creditor of the Company.

(g) No fractional Shares shall be issued or delivered pursuant to the Plan or any Award, and the Board shall determine whether cash or other securities 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.

Section 14. *Effective Date of the Plan.* The Plan shall be effective as of the Effective Date; *provided* that any Stock Option, RSU or other Stock-Based Award granted under the Plan prior to the date on which the Plan is approved by the Company's stockholders shall be subject to such approval.

Section 15. *Term of the Plan.* No Award shall be granted under the Plan after the earliest to occur of (i) the tenth year anniversary of the Effective Date, (ii) the maximum number of Shares available for issuance under the Plan have been issued or (iii) the Board terminates the Plan in accordance with Section 11(a). However, unless otherwise expressly provided in the Plan or in an applicable Award Document, any Award theretofore granted may extend beyond such date, and the authority of the Board to amend, alter, adjust, suspend, discontinue or terminate any such Award, or to waive any conditions or rights under any such Award, and the authority of the Board to amend the Plan, shall extend beyond such date.

Section 16. *Section 409A of the Code.* With respect to Awards subject to Section 409A of the Code, the Plan is intended to comply with the requirements of Section 409A of the Code, and the provisions of the Plan and any Award Document shall be interpreted in a manner that satisfies the requirements of Section 409A of the Code, and the Plan shall be operated accordingly. If any provision of the Plan or any term or condition of any Award would otherwise frustrate or conflict with this intent, the provision, term or condition will be interpreted and deemed amended so as to avoid this conflict. If the Board considers a Participant to be one of the Company's "specified employees" under Section 409A of the Code at the time of such Participant's termination of service from the Board, any distribution that otherwise would be made to such Participant

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with respect to an Award that is subject to Section 409A of the Code as a result of such termination from service shall not be made until the date that is six months after such termination of service, except to the extent that earlier distribution would not result in such Participant's incurring interest or additional tax under Section 409A of the Code.

Section 17. *Governing Law.* The Plan and each Award Document shall be governed by the laws of the State of Delaware, without application of the conflicts of law principles thereof.