Risk Factors Comparison 2024-02-13 to 2023-02-24 Form: 10-K

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The following are important factors that could affect our financial performance and could cause actual results for future periods to differ materially from our anticipated results or other expectations, including those expressed in any forward- looking statements made in this Annual Report or our other filings with the SEC or in oral presentations such as telephone conferences and webcasts open to the public. You should carefully consider the following factors in conjunction with " Management' s Discussion and Analysis of Financial Condition and Results of Operations " in Item 7 and our Consolidated Financial Statements and related Notes in Item 8. Risks Related to Our Business Risks Related to Industry Dynamics We operate in a highly competitive industry and, if we are unable to adequately address factors that may adversely affect our revenue and costs, our business could suffer. Competition in the transportation services industry is intense. Increased competition may lead to a reduction in revenues, reduced profit margins, or a loss of market share, any one of which could harm our business. There are many factors that could impair our profitability, including the following: (i) competition from other transportation services companies, some of which offer different services or have a broader coverage network, more fully developed information technology systems and greater capital resources than we do; (ii) a reduction in the rates charged by our competitors to gain business, especially during times of declining economic growth, which may limit our ability to maintain or increase our rates, maintain our operating margins or achieve significant growth in our business; (iii) shippers soliciting bids from multiple carriers for their shipping needs, which may result in the depression of freight rates or loss of business to competitors; (iv) the establishment by our competitors of cooperative relationships to increase their ability to address shipper needs; (v) decisions by our current or prospective customers to develop or expand internal capabilities for some of the services we provide; (vi) the development of new technologies or business models that could result in our disintermediation in certain services we provide; and (vii) competition from other transportation services companies and technology companies that are aggressively pursuing strategies and business models to digitize their services and expand their digital service offerings, including through the development and implementation of new technology that provides a significant competitive advantage. Economic recessions and other factors that reduce economic activity could have a material adverse impact on our business. The transportation industry in North America historically has experienced cyclical fluctuations in financial results due to economic recessions, downturns in the business cycles of our customers, increases in the prices charged by third- party carriers, interest rate fluctuations, prolonged periods of inflation, political instability, **pandemics,** geopolitical conflict and war, changes in international trade policies and other U. S. and global economic factors beyond our control. During economic downturns, a reduction in overall demand for transportation services will likely reduce demand for our services and exert downward pressures on our rates and margins **. The pricing environment also generally becomes more competitive during economic downturns, which may, as it has in the past, affect our ability to obtain price increases from customers both during and following such periods, especially during periods of increased economic inflation** . In addition, in periods of strong economic growth, overall demand may exceed the available supply of transportation resources, resulting in increased network congestion and operating inefficiencies. Changes in international trade policies could significantly reduce the volume of goods transported globally and adversely affect our business and results of operations. These factors subject our business to various risks that may have a material impact on our operating results and future prospects. These risks may include the following: • A reduction in overall freight volume reduces our opportunities for growth. In addition, if a downturn in our customers' business causes a reduction in the volume of freight shipped by those customers, our operating results could be adversely affected; • Some of our customers may experience financial distress, file for bankruptcy protection, go out of business, or suffer disruptions in their business and may be unable to pay us. In addition, some customers may not pay us as quickly as they have in the past, causing our working capital needs to increase; • A significant number of our carriers may go out of business or may be unable to secure sufficient equipment capacity or services to enable us to meet our commitments to our customers; • We may not be able to adjust appropriately our expenses to rapid changes in market demand. In order to maintain high variability in our business model, it is necessary to adjust staffing levels when market demand changes. In periods of rapid change, it is more difficult to match our staffing levels to our business needs. In addition, we have other expenses that are primarily variable but are fixed for a period of time, as well as certain significant fixed expenses; • A prolonged, escalated or expanded war in Ukraine or sanctions imposed in response to the **war, the Israel- Hamas** war and future conflicts may adversely impact global supply chain activities and the economy at large; and • The U. S. government has made significant changes in U. S. trade policy and has taken certain actions that have negatively impacted U. S. trade, including imposing tariffs on certain goods imported into the United States. To date, several governments, including the European Union (" EU ") and China have imposed tariffs on certain goods imported from the United States. These actions may contribute to weakness in the global economy that could adversely affect our results of operations. Any further changes in U. S. or international trade policy could trigger additional retaliatory actions by affected countries, resulting in " trade wars " and further increased costs for goods transported globally, which may reduce customer demand for these products if the parties having to pay those tariffs increase their prices, or in trading partners limiting their trade with countries that impose anti- trade measures. Any of these factors could have an adverse effect on our business, results of operations or financial condition, as well as on the price of our common stock. ~~If we continue to face unfavorable market conditions arising from the COVID- 19 pandemic, our business, prospects, financial condition and operating results may be negatively impacted. The COVID- 19 pandemic that emerged in 2020 affected, and may continue to affect, economic activity broadly and customer sectors served by our industry. We continue to closely monitor the COVID- 19 pandemic and its impact on all aspects of our~~

~~business and geographies, including how it has impacted, and may continue to impact, our employees, customers and business partners. The COVID- 19 pandemic has created significant volatility, uncertainty and economic disruption, which may adversely affect our business operations and may materially and adversely affect our results of operations, cash flows and financial position. Our operations and those of our customers have been subject to supply chain disruptions due to pandemic-related plant and port shutdowns, transportation delays, government actions and other factors beyond our control. The global shortage of certain components such as semiconductor chips, strains on production or extraction of raw materials, cost inflation, and labor and equipment shortages, could escalate in future quarters. Labor shortages, particularly of truck drivers, mechanics and others employed by our third- party carriers, have led and may continue to lead to increased costs of procuring transportation services, and along with equipment shortages, can result in lower levels of service, including timeliness, productivity and quality of service. If these providers continue to face unfavorable market conditions, our business, prospects, financial condition and operating results may be negatively impacted. In response to the COVID- 19 pandemic, we incurred additional costs to meet the needs of our customers and employees and implemented operational changes. Further operational changes, including extended periods of remote work arrangements, could strain our business continuity plans, introduce operational risk, including but not limited to cybersecurity risks, impair our ability to manage our business, and cause us to incur additional costs, which may be significant. The impacts of the COVID- 19 pandemic and new strains of the virus that cause COVID- 19 may remain prevalent for a significant period of time and may continue to adversely affect our business, results of operations and financial condition even after the COVID- 19 outbreak has subsided.~~ Volatility in fuel prices impacts our fuel surcharge revenue and may impact our profitability. We are subject to risks associated with the availability and price of fuel, all of which are subject to political, economic and market factors that are outside of our control. Fuel expense constitutes one of the greatest costs to the independent contractor drivers and third- party carriers who transport freight arranged by our operations. Accordingly, we may be adversely affected by the timing and degree of fuel price fluctuations. As is customary in our industry, most of our customer contracts include fuel surcharge programs or other cost- recovery mechanisms to mitigate the effect of any fuel price increases over base amounts established in the contract. However, these mechanisms may not fully capture an increase in fuel price. Furthermore, market pressures may limit our ability to assess fuel surcharges in the future. The extent to which we are able to recover increases in fuel costs may be impacted by the amount of empty or out- of- route truck miles or engine idling time. Decreases in fuel prices reduce the cost of transportation services and, accordingly, will reduce our revenues and may reduce margins. Significant changes in the price or availability of fuel in future periods, or significant changes in our ability to mitigate fuel price increases through the use of fuel surcharges, could have a material adverse impact on our operations, fleet capacity and ability to generate both revenues and profits. Higher carrier prices may result in decreased income from operations and increases in working capital **usage**. Motor carriers can be expected to charge higher prices if market conditions warrant or to cover higher operating expenses. Our income from operations may decrease if we are unable to increase our pricing to our customers. Increased demand for over the road transportation services and changes in regulations may reduce available capacity and increase motor carrier pricing. In some instances where we have entered into contract freight rates with customers, in the event market conditions change and those contracted rates are below market rates, we may be required to provide transportation services at a loss **. This may be more acute when we have a high percentage of contracted freight with customers and when there are significant changes in prices charged by motor carriers in a short period, as most of our transportation services are procured transactionally**. To date, such losses have not been material, but there can be no assurances that such losses will not be material in the future. As our volumes increase or we increase freight rates charged to our customers, the resulting increase in revenues may increase our working capital needs due to our business model which generally has a higher length of days sales outstanding than days payables outstanding. Extreme or unusual weather conditions can disrupt our operations, impact freight volumes, and increase our costs, all of which could have a material adverse effect on our business results. Our business depends, in part, on predictable temperate weather patterns. Certain seasonal weather conditions and isolated weather events can disrupt our operations. At least some of our operations are constantly at risk of extreme adverse weather conditions. Any unusual or prolonged adverse weather patterns in our areas of operations or markets, whether due to climate change or otherwise, can temporarily impact freight volumes and increase our costs. Our operations may be subject to seasonal fluctuations, and our inability to manage these fluctuations could negatively affect our business and our results of operations. Many of our customers typically realize a significant portion of their sales in the fourth quarter of each year during the holiday season. Although not all of our customers experience the same seasonal variation, and some customers may have seasonal peaks that occur in periods other than the fourth quarter, the seasonality of our customers' businesses places higher demands on our services, requiring us to take measures, including temporarily expanding our workforce, to meet our customers' demands. Our failure to meet our customers' expectations during these seasonal peaks may negatively affect our customer relationships, could expose us to penalties under our contractual arrangements with customers and ultimately could negatively affect our business and our results of operations. Risks Related to Third- Party Relationships We depend on third parties in the operation of our business. We generally do not own or control the transportation assets that deliver our customers' freight, and we do not employ the people directly involved in delivering this freight. In addition, we engage third- party contractors who own and operate their own equipment and vendors to provide value- added services. Accordingly, we are dependent on third parties to provide truck, rail, ocean, air and other transportation and related services and to report certain events to us, including delivery information and cargo claims. This reliance on third parties could cause delays in reporting certain events, impacting our ability to recognize revenue and claims in a timely manner. Our inability to maintain positive relationships with independent carriers could significantly limit our ability to serve our customers on competitive terms. In addition, changes in the terms of the relationships with our vendors may make our value- added services less compelling to customers and adversely impact our results. Our ability to secure sufficient equipment or other transportation services to meet our commitments to customers or provide our services on competitive terms is subject to inherent risks, many of which are beyond our control, including equipment and labor shortages in the transportation industry, interruptions or stoppages in transportation services, " Acts of God " or acts of terrorism, changes in regulations impacting transportation, increases in operating expenses for carriers that result in a reduction in available carriers, and changes in transportation rates; and if we are unable to meet our commitments to our customers or provide our services on competitive terms, our operating results could be materially and adversely affected, and our customers could shift their business to our competitors temporarily or permanently. Our business relies on third- party carriers to conduct its operations, and the status of these parties as independent contractors, rather than employees, is being challenged. Federal and state legislation as well as tax and other regulatory authorities have sought to assert that independent contractors in the transportation service industry are employees rather than independent contractors. There can be no assurance that interpretations supporting independent contractor status will not change, that other federal or state legislation will not be enacted or that various authorities will not successfully assert a position that re- classifies independent contractors to be employees. If the third- party carriers with which we contract for the performance of delivery services, or their delivery workers, are determined to be our employees, that determination could materially increase our exposure under a variety of federal and state tax, workers' compensation, unemployment benefits, labor, employment and tort laws, as well as our potential liability for employee benefits and tax withholdings. Any of the above increased costs would adversely affect our business and operating results. In addition, we are involved in several class action and collective action lawsuits claiming that the third- party carriers with which we contract, or their delivery workers, should be treated as our employees, rather than independent contractors. These lawsuits may seek substantial monetary damages (including claims for unpaid wages, overtime, unreimbursed business expenses, deductions from wages and other items), injunctive relief, or both. While we believe that our third- party carriers are properly classified as independent contractors rather than as employees, and that their delivery workers are not employees of the ~~company~~ **Company** , adverse final outcomes in these matters could result in changes to their independent contractor status and could, among other things, entitle certain claimants to reimbursement of certain expenses and to the benefit of wage- and- hour laws, and result in employment and withholding taxes, back wages and benefit liability for us. These claims involve potentially significant classes that could involve thousands of claimants and, accordingly, significant potential damages and litigation costs, and could lead others to bring similar claims. Adverse final outcomes in these matters or changes to state or federal laws could cause us to change our business model, which could have a material adverse effect on our business strategies, financial condition, results of operations or cash flows. The results of these matters cannot be predicted with certainty and an unfavorable resolution of one or more of these matters could have a material adverse effect on our financial condition, results of operations or cash flows. Our business may be materially adversely affected by labor disputes or organizing efforts. Our business could be adversely affected by strikes and labor negotiations at seaports, labor disputes between railroads and their union employees, or by a work stoppage at one or more railroads or local trucking companies servicing rail or port terminals, including work disruptions involving owner- operators under contract with our local trucking operations. Port shutdowns and similar disruptions to major points in national or international transportation networks could result in terminal embargoes, disrupt equipment and freight flows, depress volumes and revenues, increase costs and have other negative effects on our operations and financial results. Labor disputes involving our customers could affect our operations. If our customers experience plant slowdowns or closures because they are unable to negotiate labor contracts, our revenue and profitability could be negatively impacted. ~~Although our work force in the United States is not unionized, labor~~ **Labor** unions ~~may~~ **sometimes** attempt to organize our employees. Successful unionization by our employees or organizing efforts could lead to business interruptions, work stoppages and the reduction of service levels due to work rules that could have an adverse effect on our customer relationships and our revenues, earnings, financial position and outlook. Risks Related to Our Use of Technology Our business will be seriously harmed if we fail to develop, implement, maintain, upgrade, enhance, protect and integrate our information technology systems, including those systems of any businesses that we acquire. We rely heavily on our information technology systems in managing our business; they are a key component of our customer- facing services and internal growth strategy. In general, we expect our customers to continue to demand more sophisticated, fully integrated technology from their carriers. To keep pace with changing technologies and customer demands, we must correctly address market trends and enhance the features and functionality of our proprietary technology platform in response to these trends. This process of continuous enhancement may lead to significant ongoing software development costs, which will continue to increase if we pursue new acquisitions of companies and their current systems. In addition, we may fail to accurately determine the needs of our customers or trends in the transportation industry, or we may fail to respond appropriately by implementing functionality for our technology platform in a timely or cost-effective manner. Any such failures could result in decreased demand for our services and a corresponding decrease in our revenues. We must ensure that our information technology systems remain competitive. If our information technology systems are unable to manage high volumes with reliability, accuracy and speed as we grow, or if such systems are not suited to manage the various services we offer, our service levels and operating efficiency could decline. In addition, if we fail to hire and retain qualified personnel to implement, protect and maintain our information technology systems, or if we fail to enhance our systems to meet our customers' needs, our results of operations could be seriously harmed. Our technology may not be successful or may not achieve the desired results, and we may require additional training or different personnel to successfully implement this technology. Our technology development process may be subject to cost overruns or delays in obtaining the expected results, which may result in disruptions to our operations. We could be affected by cyberattacks or breaches of our information systems, any of which could have a material adverse effect on our business. We may be subject to cybersecurity attacks and other intentional hacking. Any failure to identify and address such defects or errors or prevent a cyber- attack could result in service interruptions, operational difficulties, loss of revenues or market share, liability to our customers or others, the diversion of corporate resources, injury to our reputation or increased service and maintenance costs. Addressing such issues could prove to be impossible or very costly and responding to the resulting claims or liability could similarly involve substantial cost. Also, due to recent advances in technology and well- known efforts on the part of computer hackers and cyber- terrorists to breach data security of companies, we face risks associated with potential failure to adequately protect critical corporate, customer and employee data, which, if released, could adversely impact our customer relationships, our reputation, and even violate privacy laws. Recently, regulatory and enforcement focus on data protection has heightened in the United States. Failure to comply with applicable data protection regulations or other data protection standards may expose us to litigation, fines, sanctions or other penalties, which could harm our business, our reputation, results of operations and financial condition. A failure of our information technology infrastructure, information systems, networks or processes may materially adversely affect our business. The efficient operation of our business depends on our information technology systems. We rely on our information technology systems to effectively manage our sales and marketing, financial, legal and compliance functions, engineering and product development tasks, research and development data, communications, order entry and fulfillment and other business processes. We also rely on third parties and virtualized infrastructure to operate our information technology systems. Despite significant testing for risk management, external and internal risks, such as malware, insecure coding, " Acts of God, " data leakage and human error pose a direct threat to the stability or effectiveness of our information technology systems and operations. The failure of our information technology systems to perform as we anticipate could adversely affect our business through transaction errors, billing and invoicing errors, internal recordkeeping and reporting errors, processing inefficiencies and loss of sales, receivables collection or customers. Any such failure could result in harm to our reputation and have an ongoing adverse impact on our business, results of operations and financial condition, including after the underlying failures have been remedied. Further, the delay or failure to implement information system upgrades and new systems effectively could disrupt our business, distract management' s focus and attention from our business operations, and increase our implementation and operating costs, any of which could negatively impact our operations and operating results. Issues related to the intellectual property rights on which our business depends, whether related to our failure to enforce our own rights or infringement claims brought by others, could have a material adverse effect on our business, financial condition and results of operations. We use both internally developed and purchased technologies in conducting our business. Whether internally developed or purchased, it is possible that users of these technologies could be claimed to infringe upon or violate the intellectual property rights of third parties. In the event that a claim is made against us by a third- party for the infringement of intellectual property rights, a settlement or adverse judgment against us could result in increased costs to license the technology or a legal prohibition against our using the technology. Thus, our failure to obtain, maintain or enforce our intellectual property rights could have a material adverse effect on our business, financial condition and results of operations. We rely on a combination of intellectual property rights, including patents, copyrights, trademarks, domain names, trade secrets, intellectual property licenses and other contractual rights, to protect our intellectual property and technology. Any of our owned or licensed intellectual property rights could be challenged, invalidated, circumvented, infringed or misappropriated; our trade secrets and other confidential information could be disclosed in an unauthorized manner to third parties; or we may fail to secure the rights to intellectual property developed by our employees, contractors and others. Efforts to enforce our intellectual property rights may be time- consuming and costly, distract management' s attention, divert our resources and ultimately be unsuccessful. Moreover, should we fail to develop and properly manage future intellectual property, this could adversely affect our market positions and business opportunities. Third- party security incidents could result in the loss of our or our customers' data, expose us to liability, harm our reputation, damage our competitiveness and adversely impact our financial results. We rely on third parties to provide us with a number of operational and technical services. These third parties may have access to our systems, provide hosting services or otherwise process data about us or our customers, employees or partners. Our ability to monitor such third parties' security measures is limited. Any security incident involving such third parties could compromise the integrity or availability of, or result in the theft of, our and our customers' data. Unauthorized access to data and other confidential or proprietary information may be obtained through break- ins, network breaches by unauthorized parties, employee theft or misuse, or other misconduct. If any of the foregoing were to occur or to be perceived to occur, our reputation may suffer, our competitive position may be diminished, we could face lawsuits, regulatory investigation, fines, and potential liability and our financial results could be negatively impacted. Risks Related to Our Credit and Liquidity Challenges in the commercial and credit environment may adversely affect our future access to capital on favorable terms. Volatility in the world financial markets could increase borrowing costs or affect our ability to access the capital markets. Our ability to issue debt or enter into other financing arrangements on acceptable terms could be adversely affected if there is a material decline in the demand for our services or in the financial health of our customers or suppliers or if there are other significantly unfavorable changes in economic conditions. We ~~have~~ incurred debt obligations that could adversely affect our business and profitability and our ability to meet other obligations. **As of December 31** ~~In connection with the Separation~~ , ~~RXO entered into~~ **2023, we had $ 360 million of outstanding debt** (~~i~~ **excluding finance leases**) ~~a revolving credit agreement providing for a five- year~~ **, constituting $ 355 million of our unsecured notes and $ 5 million outstanding under our** unsecured, multi- currency revolving credit facility ~~and~~ **that matures in 2027** (~~ii~~ **the " Revolver "**) **, in addition to** ~~a term loan credit agreement providing for a five- year~~ $ ~~100~~ **595** million ~~unsecured term loan facility. Additionally, RXO issued $ 355 million~~ of **undrawn commitments under** ~~unsecured notes. RXO transferred the net proceeds from the issuance of the notes and the incurrence of the term loan, together with cash on RXO' s balance sheet, to XPO in October 2022. As a result of these~~ -- **the Revolver** ~~transactions, RXO had approximately $ 455 million of outstanding debt as of December 31, 2022, excluding finance leases~~ . We may also incur additional indebtedness in the future. Our inability to generate sufficient cash flows to satisfy our debt obligations, or to refinance our indebtedness on commercially reasonable terms or at all, could materially and adversely affect our financial position and results of operations. Further, failure to comply with the covenants under our indebtedness may have a material adverse impact on our operations. If we fail to comply with any of the covenants under our debt and are unable to obtain a waiver or amendment, such failure may result in an event of default under our indebtedness. We may not have sufficient liquidity to repay or refinance our indebtedness if such indebtedness were accelerated upon an event of default. Risks Related to Litigation and Regulation We are subject to claims arising from our transportation operations. We use the services of thousands of transportation companies in connection with our transportation operations. From time to time, the drivers employed and engaged by the motor carriers we contract with are involved in accidents, which may result in serious personal injuries. The resulting types and / or amounts of damages may be excluded by or exceed the amount of insurance coverage maintained by the third- party carrier. Although these drivers are not our employees and all of these drivers are employees, owner- operators, or independent contractors working for the third- party carriers, from time to time, claims may be asserted against us for their actions or for our actions in retaining them. Claims against us may exceed the amount of our insurance coverage or may not be covered by insurance at all. A material increase in the frequency or severity of accidents, liability claims or workers’ compensation claims, or unfavorable resolutions of claims could materially and adversely affect our operating results. In addition, significant increases in insurance costs or the inability to purchase insurance as a result of these claims could reduce our profitability. Our involvement in the transportation of certain goods, including but not limited to, hazardous materials, could also increase our exposure in the event one of our third- party carriers is involved in an accident resulting in injuries or contamination. In North America, as a property freight broker, we are not legally liable for loss or damage to our customers ’ cargo. In our customer contracts, we may agree to assume cargo liability up to a stated maximum. We typically do not assume cargo liability to our customers above minimum industry standards in our international freight forwarding, ocean transportation, or air freight businesses on international or domestic air shipments. Although we are not legally liable for loss or damage to our customers ’ cargo, from time to time, claims may be asserted against us for cargo losses. From time to time, we are involved in lawsuits and are subject to various claims that could result in significant expenditures and impact our operations. The nature of our business exposes us to the potential for various types of claims and litigation. We are subject to claims and litigation related to independent contractor classification, labor and employment, personal injury, vehicular accidents, cargo and other property damage, commercial disputes, environmental liability and other matters, including with respect to claims asserted under various other theories of agency or employer liability. Claims against us may exceed the amount of insurance coverage that we have or may not be covered by insurance at all. Businesses that we acquire also increase our exposure to litigation. Material increases in liability claims or workers’ compensation claims, or the unfavorable resolution of claims, or our failure to recover, in full or in part, under indemnity provisions could materially and adversely affect our operating results. In addition, significant increases in insurance costs or the inability to purchase insurance as a result of these claims could reduce our profitability. Our third- party carriers are subject to increasingly stringent laws protecting the environment, including transitional risks relating to climate change, which could directly or indirectly have a material adverse effect on our business. Future and existing environmental regulatory requirements, including evolving transportation technology, in the United States and abroad could adversely affect operations and increase operating expenses, which in turn could increase our purchased transportation costs or further exacerbate shortages of trucking equipment. If we are unable to retain compliant third- party carriers or pass such operating expenses along to our customers, our business could be materially and adversely affected. Even without any new legislation or regulation, increased public concern regarding greenhouse gases emitted by transportation carriers could harm the reputations of companies operating in the transportation industry and shift consumer demand toward more locally sourced products and away from our services. We are subject to governmental regulations and political conditions, which could negatively impact our business. Our operations are regulated and licensed by various governmental agencies at the local, state and federal levels in the United States and in the foreign countries where we operate. These regulatory agencies have authority and oversight of domestic and international activities. Our subsidiaries must also comply with applicable regulations and requirements of various agencies. The regulatory landscape in which we operate is constantly evolving and subject to significant change, including as a result of evolving political and social attitudes. Future laws, regulations and regulatory reforms, including without limitation future laws and regulations related to increased minimum wages, the expansion of union organization rights or changes in the classification of employees and independent contractors, may be more stringent and may require changes to our operating practices that influence the demand for our services or require us to incur significant additional costs, which could adversely affect our results of operations to the extent we are unable to obtain a corresponding increase in price from our customers. Furthermore, political conditions may increase the level of intensity of regulations that impact our business, may require changes to our operating practices, may influence demand for our services, or may require us to incur significant additional costs, any of which could negatively impact our business. Risks Related to Our Strategy and Operations We depend on our ability to attract and retain qualified employees and temporary workers. We depend on our ability to attract and retain qualified talent, including temporary, part- time and full- time team members; sales representatives; brokerage agents; managers; and executive officers. If we are unable to attract and retain such individuals, we may be unable to maintain our current competitive position within the industry, meet our customers’ expectations or successfully expand and grow our business. In addition to our permanent employees, our ability to meet customer demands and expectations, especially during periods of peak volume, is substantially dependent on our ability to recruit and retain qualified temporary workers. Increased demand for temporary workers, low unemployment or changes in federal or state minimum wage laws may increase the costs of temporary labor, and any such increases in labor costs could adversely affect our business, results of operations, cash flows and financial condition. Moreover, our inability to recruit a qualified temporary workforce may result in our inability to meet our customers’ performance targets. Failure to successfully implement our cost and revenue initiatives could cause our future financial results to suffer. We are implementing various cost and revenue initiatives to further increase our profitability, including advanced pricing analytics and revenue management tools, our digital brokerage platform, our shared distribution network, cross- selling to strategic accounts, workforce productivity and further back- office optimization. If we are not able to successfully implement these cost and revenue initiatives, our future financial results may suffer. We may not successfully manage our growth. We have grown rapidly and substantially over prior years, including by expanding our internal resources, making acquisitions and entering into new markets, and we intend to continue to focus on rapid growth, including organic growth and potentially additional acquisitions. We may experience difficulties and higher- than- expected expenses in executing this strategy as a result of unfamiliarity with new markets, changes in revenue and business models, entry into new geographic areas and increased pressure on our existing infrastructure and information technology systems. Our growth will place a significant strain on our management, operational, financial and information technology resources. We will need to continually improve existing procedures and controls, as well as implement new transaction processing, operational and financial systems, and procedures and controls to expand, train and manage our employee base. Our working capital needs will continue to increase as our operations grow. Failure to manage our growth effectively, or obtain necessary working capital, could have a material adverse effect on our business, results of operations, cash flows and financial condition. Our inability to successfully manage the costs and operational difficulties of adding new customers or more volume from existing customers may negatively affect our financial condition and operations. Establishing new customer relationships or adding operational sites for existing customers requires a significant amount of time, operational focus and capital. Although we typically partner with our new customers to ensure that onboarding is smooth and allocate costs appropriately, our inability to integrate new customers or operational sites into our technology systems or recruit additional employees to manage new customer relationships, or higher than anticipated costs to onboard new customers **,** may negatively affect our financial condition or operations. We derive a significant portion of our total revenue from our largest customers. Our top five customers comprised approximately 21 % of our consolidated total revenue for the year ended December 31, ~~2022~~ **2023** . Our largest customer comprised approximately ~~8~~ **9. 5** % of our consolidated total revenue for the year ended December 31, ~~2022~~ **2023** . The sudden loss of one or more major customers could materially and adversely affect our operating results. Damage to our reputation through unfavorable publicity or the actions of our employees or independent contractors could adversely affect our financial condition. Our success depends on our ability to consistently deliver operational excellence and strong customer service. Our inability to deliver our services and solutions as promised on a consistent basis, or our customers having a negative experience or otherwise becoming dissatisfied, can negatively impact our relationships with new or existing customers and adversely affect our brand and reputation, which could, in turn, adversely affect revenue and earnings growth. Adverse publicity (whether or not justified) relating to activities by our employees, contractors, agents or others with whom we do business, such as customer service mishaps or noncompliance with laws, could tarnish our reputation and reduce the value of our brand. With the increase in the use of social media outlets, adverse publicity can be disseminated quickly and broadly, making it increasingly difficult for us to effectively respond. This unfavorable publicity could also require us to allocate significant resources to rebuild our reputation. If we determine that our goodwill has become impaired, we may incur impairment charges, which would negatively impact our operating results. As of December 31, ~~2022~~ **2023** , we had $ 630 million of goodwill on our Consolidated Balance Sheet. Goodwill represents the excess of cost over the fair value of net assets acquired in business combinations. We assess potential impairment of our goodwill annually, or more frequently if an event or circumstance indicates an impairment loss may have been incurred. Impairment may result from significant changes in the manner or use of the acquired assets, in connection with the sale, spin off or other divestiture of a business unit, negative industry or economic trends and / or significant underperformance relative to historic or projected operating results. For a discussion of our goodwill impairment testing, see " Critical Accounting Policies **and Estimates** — Evaluation of Goodwill " in " Management' s Discussion and Analysis of Financial Condition and Results of Operations. " Any acquisitions that we may complete in the future may be unsuccessful or result in other risks or developments that adversely affect our financial condition and results. While we intend for acquisitions to improve our competitiveness and profitability, we cannot be certain that any future acquisitions will be accretive to earnings or otherwise meet our operational or strategic expectations. Special risks, including accounting, regulatory, compliance, information technology or human resources issues, may arise in connection with, or as a result of, the acquisition of an existing company, including the assumption of unanticipated liabilities and contingencies, difficulties in integrating acquired businesses, possible management distractions, or the inability of the acquired business to achieve the levels of revenue, profit, productivity or synergies we anticipate or otherwise perform as we expect on the timeline contemplated. Any of these events could adversely affect our financial condition and results of operations. We may not realize all of the anticipated benefits of any divestitures we may make in the future, or the benefits of any such divestitures may take longer to realize than expected. We may in the future sell certain businesses or exit particular markets. Any such divestitures may not yield the targeted improvements in our business. Divestitures involve risks, including difficulties in the separation of operations, services, and personnel, disruption in our operations or businesses, finding a suitable purchaser, and the diversion of management' s attention from our other businesses. Any impairments and losses on divestiture resulting from this process may cause us to record significant charges, including those related to goodwill and other intangible assets. Any charges that we are required to record or the failure to achieve the intended financial results associated with divestitures of businesses or assets could have a material adverse effect on our business, financial condition or results of operations. Risks Related to the Separation We have a ~~very~~ limited operating history as a standalone, publicly traded company, and our historical financial information **, prior to the Separation,** is not necessarily representative of the results we would have achieved as a standalone, publicly traded company and may not be a reliable indicator of our future results. The financial information in this Annual Report refers to RXO as a public company that began regular- way trading on November 1, 2022. Prior to the Separation, we derived our combined financial statements from XPO' s accounting records and presented these on a standalone basis as if RXO had been operated independently from XPO. Our historical financial information **, prior to the Separation,** does not necessarily reflect the financial condition, results of operations or cash flows that we will achieve as a standalone publicly traded company. Prior to the Separation, we were able to benefit from XPO' s shared economies of scope and scale in costs, employees, vendor relationships and customer relationships. Additionally, XPO performed various corporate functions for us, such as legal, treasury, accounting, human resources, investor relations, and finance. Our historical financial results **, prior to the Separation,** reflect allocations of corporate expenses from XPO for such functions, which may be less than the expenses we will incur as a separate, publicly traded company. In addition, our working capital requirements and capital for our general corporate purposes, including capital expenditures and acquisitions, historically were part of the corporate- wide cash management policies of XPO. Following the completion of the Separation, our results of operations, cash flows, working capital and financing requirements may be subject to increased volatility and our ability to fund capital expenditures and investments, and service debt , may be diminished and we may need to obtain additional financing from banks, through public offerings or private placements of debt or equity securities, strategic relationships or other arrangements, which may or may not be available and may be more costly. For these reasons, as well as the additional risks related to the Separation noted below, we may not achieve the expected benefits of the Separation ~~.~~ ~~Following the Separation, our financial profile has changed, and we are a smaller, less diversified company than XPO prior to the Separation. The Separation resulted in RXO becoming a smaller, less diversified company with a business concentrated in its industry. As a result, our company may be more vulnerable to changing market conditions, which could have a material adverse effect on our business, financial condition and results of operations. In addition, the diversification of our revenues, costs, and cash flows will diminish as a standalone company, such that our results of operations, cash flows, working capital and financing requirements may be subject to increased volatility and, as we will no longer be able to use cash flow from XPO to fund our investments and operations, our ability to fund capital expenditures and investments, pay dividends and service debt may be diminished. In connection with the Separation, RXO and XPO indemnified each other for certain liabilities. If we are required to pay under these indemnities to XPO, our financial results could be negatively impacted. The XPO indemnities may not be sufficient to hold us harmless from the full amount of liabilities for which XPO will be allocated responsibility, and XPO may not be able to satisfy its indemnification obligations in the future. Pursuant to the Separation and Distribution Agreement and certain other agreements between RXO and XPO, each party agreed to indemnify the other for certain liabilities, in each case for uncapped amounts. Indemnities that we may be required to provide XPO may be significant and could negatively impact our business. Third parties could also seek to hold us responsible for any of the liabilities that XPO has agreed to retain. Any amounts we are required to pay pursuant to these indemnification obligations and other liabilities could require us to divert cash that would otherwise have been used in furtherance of our operating business. Further, the indemnities from XPO for our benefit may not be sufficient to protect us against the full amount of such liabilities, and XPO may not be able to fully satisfy its indemnification obligations. Moreover, even if we ultimately succeed in recovering from XPO any amounts for which we are held liable, we may be temporarily required to bear these costs ourselves. Each of these risks could negatively affect our business, results of operations and financial condition. XPO may fail to perform under the various transition services agreements that were executed as part of the Separation, or we may fail to have necessary systems and services in place when certain of the transaction agreements expire. In connection with the separation and prior to the distribution, RXO and XPO entered into the Separation and Distribution Agreement and various other agreements, including the TSA, the TMA, the EMA and the IPLA. The Separation and Distribution Agreement, the TMA, the EMA and the IPLA, together with the documents and agreements by which the internal reorganization was effected, determined the allocation of assets and liabilities between the companies following the separation for those respective areas and include any necessary indemnifications related to liabilities and obligations. The TSA provides for the performance of certain services by each company for the benefit of the other for a period of time after the Separation. RXO will rely on XPO to satisfy its performance and payment obligations under these agreements. If XPO is unable or unwilling to satisfy its obligations under these agreements, including its indemnification obligations, we could incur operational difficulties and / or losses~~ . If the Separation, together with certain related transactions, does not qualify as a transaction that is generally tax- free for U. S. federal income tax purposes, we could be subject to significant tax liabilities, and, in certain circumstances, we could be required to indemnify XPO for material amounts of taxes and other related amounts pursuant to indemnification obligations under the TMA. In addition, if certain internal restructuring transactions were to fail to qualify as transactions that are generally tax- free for U. S. federal or non- U. S. income tax purposes, we, as well as XPO, could be subject to significant tax liabilities. In connection with the Separation, XPO received an opinion of outside counsel regarding the qualification of the Separation, together with certain related transactions, as a " reorganization " within the meaning of Sections 355 and 368 (a) (1) (D) of the Internal Revenue Code (the ~~"~~ " Code ~~"~~ "). The opinion of counsel was based upon and relies on, among other things, various facts and assumptions, as well as certain representations, statements and undertakings of XPO and RXO, including those relating to the past and future conduct of XPO and RXO. If any of these facts, assumptions, representations, statements or undertakings is, or becomes, inaccurate or incomplete, or if XPO or RXO breaches any of its representations or covenants contained in the separation agreement and certain other agreements and documents or in any documents relating to the opinion of counsel, the opinion of counsel may be invalid and the conclusions reached therein could be jeopardized. Notwithstanding receipt of the opinion of counsel, the U. S. Internal Revenue Service (the " IRS ") could determine that the Separation and / or certain related transactions should be treated as taxable transactions for U. S. federal income tax purposes if it determines that any of the representations, assumptions or undertakings upon which the opinion of counsel was based are false or have been violated. In addition, the opinion of counsel represents the judgment of such counsel and will not be binding on the IRS or any court, and the IRS or a court may disagree with the conclusions in the opinion of counsel. Accordingly, notwithstanding receipt of the opinion of counsel, there can be no assurance that the IRS will not assert that the Separation and / or certain related transactions do not qualify for tax- free treatment for U. S. federal income tax purposes or that a court would not sustain such a challenge. In the event the IRS were to prevail with such a challenge, we, as well as XPO and XPO' s stockholders, could be subject to significant U. S. federal income tax liability. If the Separation, together with certain related transactions, were to fail to qualify as a transaction that is tax- free for U. S. federal income tax purposes under Sections 355 and 368 (a) (1) (D) of the Code, in general, for U. S. federal income tax purposes, XPO would recognize taxable gain as if it had sold the RXO common stock in a taxable sale for its fair market value, and XPO stockholders who receive such RXO shares in the distribution would be subject to tax as if they had received a taxable distribution equal to the fair market value of such shares. In addition, as part of and prior to the Separation, XPO and its subsidiaries completed an internal reorganization, and XPO, RXO and their respective subsidiaries incurred certain tax costs in connection with the internal reorganization, including non- U. S. tax costs resulting from transactions in non- U. S. jurisdictions, which may be material. With respect to certain transactions undertaken as part of the internal reorganization, XPO obtained opinions of external tax advisors regarding the tax treatment of such transactions. Such opinions are based and relied on, among other things, various facts and assumptions, as well as certain representations, statements and undertakings of XPO, RXO or their respective subsidiaries. If any of these representations or statements is, or becomes, inaccurate or incomplete, or if XPO, RXO or their respective subsidiaries do not fulfill or otherwise comply with any such undertakings or covenants, such opinions may be invalid or the conclusions reached therein could be jeopardized. Further, notwithstanding receipt of any such tax opinions, there can be no assurance that the relevant taxing authorities will not assert that the tax treatment of the relevant transactions differs from the conclusions reached in the relevant tax opinions. In the event the relevant taxing authorities prevail with any challenge in respect of any relevant transaction, XPO, RXO and their subsidiaries could be subject to significant tax liabilities. Under the TMA, we generally are required to indemnify XPO for any taxes resulting from the Separation (and any related costs and other damages) to the extent such amounts resulted from: (i) an acquisition of all or certain portions of the equity securities or assets of RXO, whether by merger or otherwise (and regardless of whether we participated in or otherwise facilitated the acquisition), (ii) certain other actions or failures to act by RXO, or (iii) any breach of RXO' s covenants or undertakings contained in the Separation and Distribution Agreement and certain other agreements and documents. Further, under the TMA, we generally would be required to indemnify XPO for a specified portion of any taxes (and any related costs and other damages) arising as a result of the failure of the Separation and certain related transactions to qualify as a transaction that is generally tax- free (including as a result of Section 355 (e) of the Code) or a failure of any internal distribution that is intended to qualify as a transaction that is generally tax- free to so qualify, in each case, to the extent such amounts did not result from a disqualifying action by, or acquisition of equity securities of, XPO or RXO. Any such indemnity obligations could be material. We may not be able to engage in desirable capital- raising or strategic transactions following the Separation. Under current U. S. federal income tax law, a spin- off that otherwise qualifies for tax- free treatment can be rendered taxable to the parent corporation and its stockholders as a result of certain post- spin- off transactions, including certain acquisitions of shares or assets of the spun- off corporation. For example, a spin- off may result in taxable gain to the parent corporation under Section 355 (e) of the Code if it were later deemed to be part of a plan (or series of related transactions) pursuant to which one or more persons acquire, directly or indirectly, shares representing a 50 percent or greater interest (by vote or value) in the spun- off corporation. To preserve the U. S. federal income tax treatment of the Separation, and in addition to our indemnity obligation described above, the TMA restricts us, for the two- year period following the Separation, except in specific circumstances, from, among other things: (i) ceasing to actively conduct certain of our businesses; (ii) entering into certain transactions or series of transactions pursuant to which all or a portion of the shares of RXO stock would be acquired, whether by merger or otherwise; (iii) liquidating or merging or consolidating with any other person; (iv) issuing equity securities beyond certain thresholds; (v) repurchasing shares of RXO stock other than in certain open- market transactions; or (vi) taking or failing to take any other action that would jeopardize the expected U. S. federal income tax treatment of the Separation and certain related transactions. Further, the TMA imposes similar restrictions on us and our subsidiaries during the two- year period following the Separation that are intended to prevent certain transactions undertaken as part of the internal reorganization from failing to qualify as transactions that are generally tax- free for U. S. federal income tax purposes under Sections 355 and 368 (a) (1) (D) of the Code or for applicable non- U. S. income tax purposes. These restrictions may limit our ability to pursue certain equity issuances, strategic transactions, repurchases or other transactions that we may otherwise believe to be in the best interests of our stockholders or that might increase the value of our business. Also, we may be responsible for liabilities arising from the failure of the Separation, together with certain related transactions, to qualify for tax- free treatment and our indemnity obligations for such liabilities under the TMA, may discourage, delay or prevent certain third parties from acquiring RXO. Certain of our directors and employees may have actual or potential conflicts of interest because of their positions with or financial interests in XPO. Because of their current or former positions with XPO, certain of our executive officers and directors continue to own equity interests in XPO following the Separation. In addition, Mr. Jacobs serves as executive chairman of XPO while also serving as chairman of our board of directors. These factors could create, or appear to create, potential conflicts of interest to the extent that we and XPO face decisions that could have different implications for the two companies. For example, potential conflicts of interest could arise in connection with the resolution of any dispute that may arise between XPO and our company regarding the terms of the agreements governing the Separation and the relationship between the companies. Risks Related to Our Common Stock Sales of shares of our common stock in connection with the Registration Rights Agreement, or the prospect of any such sales, could affect the market price of our common stock and could impair our ability to raise capital through future sales of equity securities. We have entered into a registration rights agreement (the " Registration Rights Agreement ") with Jacobs Private Equity, LLC (" JPE "), an affiliate of Brad Jacobs, our chairman. As of December 31, ~~2022~~ **2023** , JPE beneficially owned 1. 3 million shares of our common stock, which represents approximately 1. 1 % of our outstanding shares of common stock. Any sales in connection with the Registration Rights Agreement, or the prospect of any such sales, could adversely impact the market price of our common stock. In addition, in connection with a registration request under the Registration Rights Agreement for an underwritten offering, we may be required to agree to be restricted from selling or disposing any of our common stock or securities convertible into or exchangeable or exercisable for common stock for a period of 90 days (subject to certain exceptions and our ability to defer a registration request or suspend use of a registration statement under certain circumstances). As a result, we may be restricted in our ability to raise capital through future sales of equity securities. Any stockholder' s percentage of ownership in RXO may be diluted in the future at any given time. In the future, existing holders of our common stock may be diluted because of equity issuances for acquisitions, capital market transactions or otherwise, including any equity awards that we will grant to our directors, officers and employees. Our employees have stock- based awards that correspond to shares of our common stock after the Separation as a result of conversion of their XPO stock- based awards. We anticipate that the compensation committee of our board of directors will grant additional stock- based awards to our employees under the employee benefits plan. Such awards will have a dilutive effect on the number of RXO shares outstanding, and therefore on our earnings per share, which could adversely affect the market price of our common stock. Certain provisions in RXO' s amended and restated certificate of incorporation and bylaws, and of Delaware law, may prevent or delay an acquisition of RXO, which could decrease the trading price of our common stock. Our amended and restated certificate of incorporation and amended and restated bylaws contain, and Delaware law contains, provisions that are intended to deter coercive takeover practices and inadequate takeover bids by making such practices or bids unacceptably expensive to the bidder and to encourage prospective acquirers to negotiate with our board of directors rather than to attempt a hostile takeover. These provisions include: • the ability of our remaining directors to fill vacancies on our board of directors; • limitations on stockholders' ability to call a special stockholder meeting or act by written consent; • rules regarding how stockholders may present proposals or nominate directors for election at stockholder meetings; • the right of our board of directors to issue preferred stock without stockholder approval; and • a classified board of directors, with each class serving a staggered three- year term, which could have the effect of making the replacement of incumbent directors more time consuming and difficult. In addition, we are subject to Section 203 of the Delaware General Corporate Law (the " DGCL "), which could have the effect of delaying or preventing a change of control that you may favor. Section 203 provides that, subject to limited exceptions, persons that acquire, or are affiliated with persons that acquire, more than 15 % of the outstanding voting stock of a Delaware corporation may not engage in a business combination with that corporation, including by merger, consolidation or acquisitions of additional shares, for a three- year period following the date on which that person or any of its affiliates becomes the holder of more than 15 % of the corporation' s outstanding voting stock. We believe these provisions will protect our stockholders from coercive or otherwise unfair takeover tactics by requiring potential acquirers to negotiate with our board of directors and by providing our board of directors with more time to assess any acquisition proposal. These provisions are not intended to make RXO immune from takeovers; however, these provisions will apply even if the offer may be considered beneficial by some stockholders and could delay or prevent an acquisition that our board of directors determines is not in the best interests of RXO and our stockholders. These provisions may also prevent or discourage attempts to remove and replace incumbent directors. In addition, an acquisition or further issuance of our common stock may trigger the application of Section 355 (e) of the Code, causing the Separation to be taxable to XPO. Under the TMA, we are required to indemnify XPO for the resulting tax, and this indemnity obligation might discourage, delay or prevent a change of control that our stockholders may consider favorable. RXO' s amended and restated certificate of incorporation contains an exclusive forum provision that may discourage lawsuits against RXO and our directors and officers. Our amended and restated certificate of incorporation provides that unless the board of directors otherwise determines, the state courts within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) will be the sole and exclusive forum for any derivative action or proceeding brought on behalf of RXO, any action asserting a claim for or based on a breach of a fiduciary duty owed by any current or former director or officer or other employee or stockholder of RXO in such capacity to RXO or to RXO stockholders, including a claim alleging the aiding and abetting of such a breach of fiduciary duty, any action asserting a claim against RXO or any current or former director or officer or other employee or stockholder of RXO in such capacity arising pursuant to any provision of the DGCL or our amended and restated certificate of incorporation or amended and restated bylaws, any action asserting a claim relating to or involving RXO governed by the internal affairs doctrine, or any action asserting an " internal corporate claim " as that term is defined in Section 115 of the DGCL. Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. Accordingly, both state and federal courts have jurisdiction to entertain such claims. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our amended and restated certificate of incorporation provides that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty of liability created by the Exchange Act or the rules and regulations thereunder, and as a result, the exclusive forum provision does not apply to actions arising under the Exchange Act or the rules and regulations thereunder. While the Delaware Supreme Court ruled in March 2020 that federal forum selection provisions purporting to require claims under the Securities Act be brought in federal court are " facially valid " under Delaware law, there is uncertainty as to whether other courts will enforce our federal forum provision described above. Our stockholders will not be deemed to have waived compliance with the federal securities laws and the rules and regulations thereunder. This exclusive forum provision may limit the ability of our stockholders to bring a claim in a judicial forum that such stockholders find favorable for disputes with RXO or our directors or officers, which may discourage such lawsuits against RXO and our directors and officers. Alternatively, if a court were to find this exclusive forum provision inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings described above, we may incur additional costs associated with resolving such matters in other jurisdictions, which could negatively affect our business, results of operations and financial condition.