As filed with the Securities and Exchange Commission on May 19, 2010

File No. 001-34658

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Amendment No. 2
to
FORM 10

GENERAL FORM FOR REGISTRATION OF SECURITIES
PURSUANT TO SECTION 12(B) OR 12(G) OF
THE SECURITIES EXCHANGE ACT OF 1934

The Babcock & Wilcox Company
(exact name of registrant as specified in its charter)

Delaware	**80-0558025**
(State of incorporation or organization)	**(I.R.S. Employer Identification No.)**
The Harris Building **13024 Ballantyne Corporate Place, Suite 700** **Charlotte, North Carolina**	
(Address of principal executive offices)	**28277** **(Zip code)**

Registrant's telephone number, including area code: (704) 625-4900

Securities to be registered pursuant to Section 12(b) of the Act:

Title of Each Class Registered	**Name of Each Exchange on Which Such Class will be Registered**
Common Stock, par value $0.01 per share	**The New York Stock Exchange, Inc.**

Securities to be registered pursuant to Section 12(g) of the Act:

None

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

Large accelerated filer ☐	Accelerated filer ☐	Non-accelerated filer ☑ (Do not check if a smaller reporting company)	Smaller reporting company ☐

THE BABCOCK & WILCOX COMPANY

INFORMATION INCLUDED IN INFORMATION STATEMENT AND INCORPORATED BY REFERENCE IN FORM 10

CROSS REFERENCE SHEET BETWEEN INFORMATION STATEMENT AND ITEMS OF FORM 10

We have filed our information statement as Exhibit 99.1 to this Form 10. For your convenience, we have provided below a cross-reference sheet identifying where the items required by Form 10 can be found in the information statement.

Item No.	Item Caption	Location in Information Statement
1.	Business.	See "Summary," "Risk Factors," "Cautionary Statement Concerning Forward-Looking Information," "The Spin-Off," "Capitalization," "Selected Historical Combined Financial Data," "Unaudited Pro Forma Combined Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business," "Relationship with McDermott After the Spin-Off" and "Management."
1A.	Risk Factors.	See "Risk Factors."
2.	Financial Information.	See "Summary," "Risk Factors," "Capitalization," "Selected Historical Combined Financial Data," "Unaudited Pro Forma Combined Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations."
3.	Properties.	See "Business."
4.	Security Ownership of Certain Beneficial Owners and Management.	See "Security Ownership of Certain Beneficial Owners and Management."
5.	Directors and Executive Officers.	See "Management."
6.	Executive Compensation.	See "Management" and "Executive Compensation."
7.	Certain Relationships and Related Transactions, and Director Independence.	See "Summary," "Risk Factors," "Management," "Certain Relationships and Related Transactions" and "Relationship with McDermott After the Spin-Off."
8.	Legal Proceedings.	See "Business—Legal Proceedings."
9.	Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.	See "Summary," "Risk Factors," "The Spin-Off," "Dividend Policy" and "Description of Capital Stock."
10.	Recent Sales of Unregistered Securities.	Not Applicable.
11.	Description of Registrant's Securities to be Registered.	See "Description of Capital Stock."
12.	Indemnification of Directors and Officers.	See "Indemnification of Directors and Officers."
13.	Financial Statements and Supplementary Data.	See "Summary," "Selected Historical Combined Financial Data," "Unaudited Pro Forma Combined Financial Data" and "Index to Financial Statements."

Item No.	Item Caption	Location in Information Statement
14.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.	Not Applicable.

15. Financial Statements and Exhibits.

(a) Combined Financial Statements: The following financial statements are included in the information statement and filed as part of this Registration Statement:

Report of Independent Registered Public Accounting Firm

Combined Balance Sheets as of December 31, 2009 and 2008

Combined Statements of Income for the years ended December 31, 2009, 2008 and 2007

Combined Statements of Comprehensive Income (Loss) for the years ended December 31, 2009, 2008 and 2007

Combined Statements of Parent Equity (Deficit) as of December 31, 2009, 2008 and 2007

Combined Statements of Cash Flows for the years ended December 31, 2009, 2008 and 2007

Notes to Combined Financial Statements

Condensed Combined Balance Sheets as of March 31, 2010 and December 31, 2009 (Unaudited)

Condensed Combined Statements of Income for the three months ended March 31, 2010 and 2009 (Unaudited)

Condensed Combined Statements of Comprehensive Income for the three months ended March 31, 2010 and 2009 (Unaudited)

Condensed Combined Statements of Parent Equity (Deficit) as of March 31, 2010 and 2009 (Unaudited)

Condensed Combined Statements of Cash Flows for the three months ended March 31, 2010 and 2009 (Unaudited)

Notes to Condensed Combined Financial Statements (Unaudited)

(b) Combined Financial Statements Schedules: Schedule II is filed with this information statement. All other schedules for which provision is made in the applicable regulations of the SEC have been omitted because they are not required under the relevant instructions or because the required information is included in the financial statements or the related notes contained in this information statement.

(c) Exhibits. The following documents are filed as exhibits hereto:

Exhibit Number	Exhibit Description
2.1*	Form of Master Separation Agreement
3.1	Form of Restated Certificate of Incorporation of the Registrant
3.2	Form of Amended and Restated Bylaws of the Registrant
10.1	Form of Tax Sharing Agreement
10.2*	Form of Employee Matters Agreement
10.3	Form of Transition Services Agreement (McDermott International, Inc. as service provider)
10.4	Form of Transition Services Agreement (The Babcock & Wilcox Company as service provider)
10.5	Assumption and Loss Allocation Agreement dated as of May 18, 2010 by and among ACE American Insurance Company and the Ace Affiliates (as defined therein), McDermott International, Inc. and Babcock & Wilcox Holdings, Inc.

Exhibit Number	Exhibit Description
10.6	Novation and Assumption Agreement dated as of May 18, 2010 by and among ACE American Insurance Company and the Ace Affiliates (as defined therein), Creole Insurance Company, Ltd. and Boudin Insurance Company, Ltd.
10.7	Novation and Assumption Agreement dated as of May 18, 2010 by and among McDermott International, Inc., Babcock & Wilcox Holdings, Inc., Boudin Insurance Company, Ltd. and Creole Insurance Company, Ltd.
10.8**	Form of 2010 Long-Term Incentive Plan of The Babcock & Wilcox Company
10.9**	Form of The Babcock & Wilcox Company Executive Incentive Compensation Plan
10.10**	Form of The Babcock & Wilcox Company Management Incentive Compensation Plan
10.11**	Form of Supplemental Executive Retirement Plan of The Babcock & Wilcox Company
10.12**	Restructuring Transaction Retention Agreement between McDermott International, Inc. and John A. Fees dated December 10, 2009
10.13**	Restructuring Transaction Retention Agreement between McDermott International, Inc. and Michael S. Taff dated December 10, 2009
10.14**	Form of Restructuring Transaction Retention Agreement between McDermott International, Inc. and certain executive officers (other than Messrs. Fees or Taff) dated December 10, 2009
10.15**	Form of Restructuring Transaction Retention Agreement between McDermott International, Inc. and certain other employees dated December 10, 2009
10.16	Credit Agreement dated as of May 3, 2010, among Babcock & Wilcox Investment Company, the lenders and letter of credit issuers party thereto, and Bank of America, N.A., as administrative agent
10.17	Pledge and Security Agreement dated as of May 3, 2010, by Babcock & Wilcox Investment Company and certain of its subsidiaries in favor of Bank of America, N.A., as administrative agent
21.1**	List of Subsidiaries
99.1	Information Statement, Subject to Completion, dated May 19, 2010

* To be filed by amendment.
** Previously filed.

SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: May 19, 2010

THE BABCOCK & WILCOX COMPANY

By: /S/ BRANDON C. BETHARDS
Name: Brandon C. Bethards
Title: President and Chief Executive Officer

EXHIBIT INDEX

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Exhibit 3.1

RESTATED CERTIFICATE OF INCORPORATION
of
THE BABCOCK & WILCOX COMPANY

The Babcock & Wilcox Company (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "DGCL"), hereby adopts this Restated Certificate of Incorporation, which accurately restates and integrates the provisions of the existing Certificate of Incorporation of the Corporation as heretofore amended (as so amended, the "Certificate of Incorporation") and further amends the Certificate of Incorporation as provided herein, and does hereby further certify that:

1. The name of the Corporation is The Babcock & Wilcox Company. The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on March 8, 2010.

2. The Board of Directors of the Corporation and the sole stockholder of the Corporation have duly adopted this Restated Certificate of Incorporation in accordance with the provisions of Sections 242 and 245 of the DGCL.

3. The Certificate of Incorporation is hereby amended and restated to read in its entirety as follows:

RESTATED CERTIFICATE OF INCORPORATION

FIRST: The name of the Corporation is The Babcock & Wilcox Company.

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at that address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful business, act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware or any successor statute (the "DGCL").

FOURTH: The aggregate number of shares of capital stock which the Corporation will have authority to issue is 325,000,000 shares of common stock, par value $.01 per share ("Common Stock"), and 75,000,000 shares of preferred stock, par value $.01 per share ("Preferred Stock"). The Corporation may issue shares of any class of its capital stock for such consideration and for such corporate purposes as the Board of Directors of the Corporation (the "Board of Directors") may from time to time determine. Each share of Common Stock shall be entitled to one vote.

The Preferred Stock may be divided into and issued from time to time in one or more series as may be fixed and determined by the Board of Directors. The relative rights and preferences of the Preferred Stock of each series will be such as are stated in any resolution or resolutions adopted by the Board of Directors setting forth the designation of that series and fixing and determining the relative rights and preferences thereof, any such resolution or resolutions being herein called a "Directors' Resolution." The Board of Directors hereby is authorized to fix and determine the powers, designations, preferences, and relative, participating, optional or other rights (including, without limitation, voting powers, full or limited, preferential rights to receive dividends or assets on liquidation, rights of conversion or exchange into Common Stock, Preferred Stock of any series or other securities, any right of the Corporation to exchange or convert shares into Common Stock, Preferred Stock of any series or other securities, or redemption provisions or sinking fund provisions) as between series and as between or among series of Preferred Stock and as between the Preferred Stock or any series thereof and the Common Stock, and the qualifications, limitations or restrictions thereof, if any, all as shall be stated in a Directors' Resolution, and the shares of Preferred Stock or any series thereof may have full or limited voting powers, or be without voting powers, all as shall be stated in a Directors' Resolution.

Consistent with this Article FOURTH and applicable law, any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any series of Preferred Stock may be dependent on facts ascertainable outside this Certificate of Incorporation (this "Certificate of Incorporation") or any amendment hereto, or outside resolutions of the Board of Directors pursuant to authority expressly vested in it by this Certificate of Incorporation. Except as applicable law or this Certificate of Incorporation otherwise may require, the terms of any series of Preferred Stock may be amended without consent of the holders of any other series of Preferred Stock or of any class of capital stock of the Corporation.

No stockholder will, by reason of the holding of shares of any class or series of capital stock of the Corporation, have a preemptive or preferential right to acquire or subscribe for any shares or securities of any class, whether now or hereafter authorized, which may at any time be issued, sold or offered for sale by the Corporation, unless a Directors' Resolution specifically so provides with respect to a series of Preferred Stock.

Cumulative voting of shares of any class or series of capital stock having voting rights is prohibited unless specifically provided for in a Directors' Resolution with respect to a series of Preferred Stock. Furthermore, the Common Stock is not convertible, redeemable or assessable, or entitled to the benefits of any sinking fund.

FIFTH: (a) *Directors*. The business and affairs of the Corporation will be managed by or under the direction of the Board of Directors. In addition to the authority and powers conferred on the Board of Directors by the DGCL or by the other provisions of this Certificate of Incorporation, the Board of Directors hereby is authorized and empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the DGCL, this Certificate of Incorporation and any Bylaws of the Corporation; *provided*, *however*, that no Bylaws hereafter adopted, or any amendments thereto, will invalidate any prior act of the Board of Directors that would have been valid if such Bylaws or amendment had not been adopted.

(b) *Number, Election, Classification and Terms of Directors*. The number of directors which will constitute the whole Board of Directors shall be fixed from time to time exclusively by, and may be increased or decreased from time to time exclusively by, the affirmative vote of at least a majority of the directors then in office (subject to such rights of holders of a series of shares of Preferred Stock to elect one or more directors pursuant to any provisions contained in a Directors' Resolution with respect to such series), but in any event will not be less than three. The directors, other than those who may be elected by the holders of any series of Preferred Stock, will be divided into three classes: Class I, Class II and Class III. Each director will serve for a term ending on the third annual meeting of stockholders of the Corporation following the annual meeting of stockholders at which that director was elected; provided, however, that the directors first designated as Class I directors will serve for a term expiring at the annual meeting of stockholders next following the end of the calendar year 2010, the directors first designated as Class II directors will serve for a term expiring at the annual meeting of stockholders next following the end of the calendar year 2011, and the directors first designated as Class III directors will serve for a term expiring at the annual meeting of stockholders next following the end of the calendar year 2012. Each director will hold office until the annual meeting of stockholders at which that director's term expires and, the foregoing notwithstanding, each director will serve until his or her successor shall have been duly elected and qualified or until his or her earlier death, resignation or removal.

At each annual election, the directors chosen to succeed those whose terms then expire will be of the same class as the directors they succeed, unless, by reason of any intervening changes in the authorized number of directors, the Board of Directors shall have designated one or more directorships whose term then expires as directorships of another class in order more nearly to achieve equality of number of directors among the classes.

In the event of any change in the authorized number of directors, each director then continuing to serve as such will nevertheless continue as a director of the class of which he or she is a member until the expiration of his or her current term, or his or her prior death, resignation or removal. The Board of Directors will specify the class to which a newly created directorship will be allocated.

Election of directors need not be by written ballot unless the Bylaws of the Corporation so provide.

(c) *Removal of Directors*. No director of the Corporation may be removed from office as a director by vote or other action of the stockholders or otherwise, except for cause or a Board Determination (as defined below), and then only by the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all then outstanding shares of capital stock of the Corporation generally entitled to vote in the election of directors, voting together as a single class. Except as applicable law otherwise provides and unless the Board of Directors has made a determination that removal is in the best interests of the Corporation (in which case a finding of cause is not required for removal), which determination shall require the affirmative vote of at least eighty percent (80%) of the directors then in office at any meeting of the Board of Directors called for that purpose (a "Board Determination"), "cause" for the removal of a director will be deemed to exist only if the director whose removal is proposed: (i) has been convicted, or has been granted immunity to testify in any proceeding in which another has been convicted, of a felony by a court of competent jurisdiction and that conviction is no longer subject to direct appeal; (ii) has been found to have been grossly negligent or guilty of misconduct in the performance of his duties to the Corporation in any matter of substantial importance to the Corporation by (A) the affirmative vote of at least eighty percent (80%) of the directors then in office at any meeting of the Board of Directors called for that purpose or (B) a court of competent jurisdiction; or (iii) has been adjudicated by a court of competent jurisdiction to be mentally incompetent, which mental incompetency directly affects his ability to serve as a director of the Corporation. Notwithstanding the foregoing, whenever holders of outstanding shares of one or more series of Preferred Stock are entitled to elect members of the Board of Directors voting separately as a class pursuant to the provisions applicable in the case of arrearages in the payment of dividends or other defaults contained in the Directors' Resolution providing for the establishment of any series of Preferred Stock, any such director of the Corporation so elected may be removed in accordance with the provisions of that Directors' Resolution. The foregoing provisions of this Article FIFTH are subject to the terms of any series of Preferred Stock with respect to the directors to be elected solely by the holders of such series of Preferred Stock.

(d) *Vacancies*. Except as a Directors' Resolution providing for the establishment of any series of Preferred Stock may provide otherwise, newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, removal or other cause will be filled by the affirmative vote of at least a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors, or by the sole remaining director. Any director elected in accordance with the preceding sentence will hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until that director's successor shall have been elected and qualified or until his or her earlier death, resignation or removal. Except as a Directors' Resolution providing for the establishment of any series of Preferred Stock may provide otherwise with respect to directors elected pursuant to any provisions contained in a Directors' Resolution with respect to such series, no decrease in the number of directors constituting the Board of Directors will shorten the term of any incumbent director.

(e) *Amendment of Bylaws*. The Board of Directors shall have the power to adopt, amend or repeal the Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board of Directors shall require the approval of at least a majority of the directors then in office. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Corporation at any annual meeting before which such matter has been properly brought in accordance with the Bylaws of the Corporation, or at any special meeting if notice of the proposed amendment is contained in the notice of said special meeting; *provided*, *however*, that, in addition to any vote of the holders of any class or series of capital stock of the Corporation required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least eighty percent (80%) of the voting power of all then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Corporation.

(f) *Certain Amendments*. Notwithstanding anything in this Certificate of Incorporation or the Bylaws of the Corporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of all then

outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or adopt any provision inconsistent with, or to repeal, this Article FIFTH or Article SIXTH.

SIXTH: From and after the first date as of which the Corporation has a class or series of capital stock registered under the Securities Exchange Act of 1934, as amended, except as a Directors' Resolution may establish with respect to any series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by those stockholders. Except as applicable law requires, or as a Directors' Resolution may prescribe, special meetings of stockholders of the Corporation may be called only by (i) the Chairman of the Board of Directors or (ii) the Board of Directors pursuant to a resolution at least a majority of the entire Board of Directors approves by an affirmative vote, and no such special meeting may be called by any other person or persons.

SEVENTH: No director of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director; *provided, however,* that the foregoing provisions will not eliminate or limit the liability of a director (a) for any breach of that director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL, as the same exists or as that provision hereafter may be amended, supplemented or replaced, or (d) for any transactions from which that director derived an improper personal benefit. If the DGCL is amended after the filing of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, will be limited to the fullest extent permitted by that law, as so amended. Any repeal or modification of this Article SEVENTH by the stockholders of the Corporation will be prospective only and will not have any effect on the liability or alleged liability of a director of the Corporation arising out of or related to any event, act or omission that occurred prior to such repeal or modification.

EIGHTH: Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for the Corporation under Section 291 of Title 8 of the Delaware Code, or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If the majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders, of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of that compromise or arrangement, the said compromise or arrangement and the said reorganization will, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

4. This Restated Certificate of Incorporation shall become effective at 12:01 a.m. E.D.T. on [ ], 2010.

IN WITNESS WHEREOF, the Corporation has caused this certificate to be executed this [ ] day of [ ], 2010.

THE BABCOCK & WILCOX COMPANY

By: _____
Name:
Title:

Exhibit 3.2

AMENDED AND RESTATED

BYLAWS

OF

THE BABCOCK & WILCOX COMPANY

AMENDED AND RESTATED
BYLAWS
OF
THE BABCOCK & WILCOX COMPANY

Table of Contents

AMENDED AND RESTATED
BYLAWS
OF
THE BABCOCK & WILCOX COMPANY
EFFECTIVE AS OF [ ], 2010

The Board of Directors of The Babcock & Wilcox Company (the "Corporation") by resolution has duly adopted these Amended and Restated Bylaws (these "Bylaws") to govern the Corporation's internal affairs.

ARTICLE I

STOCKHOLDERS

Section 1.1 *Annual Meetings*. If required by applicable law, the Corporation will hold an annual meeting of the holders of its capital stock (each, a "Stockholder") for the election of directors of the Corporation (each, a "Director") at such date, time and place as the Board of Directors of the Corporation (the "Board") by resolution may designate from time to time. The Corporation may transact any other business, or act on any proposal, at an annual meeting which has properly come before that meeting in accordance with Sections 1.10 or 2.10.

Section 1.2 *Special Meetings.* Any of the following may call special meetings of Stockholders for any purpose or purposes at any time and designate the date, time and place of any such meeting: (i) the Chairman of the Board (the "Chairman"); and (ii) the Board pursuant to a resolution that at least a majority of the total number of Directors approves by an affirmative vote. Except as the restated certificate of incorporation of the Corporation (as amended from time to time and including each certificate of designation, if any, respecting any class or series of preferred stock of the Corporation which has been executed, acknowledged and filed in accordance with applicable law, the "Certificate of Incorporation") or applicable law otherwise provides, no other Person or Persons may call a special meeting of Stockholders. Business transacted at any special meeting of Stockholders shall be limited to the purposes stated in the notice.

Section 1.3 *Notice of Meetings.* By or at the direction of the Chairman, the chief executive officer of the Corporation (the "CEO") or the secretary of the Corporation (the "Secretary") whenever Stockholders are to take any action at a meeting, the Corporation will give a notice of that meeting to the Stockholders entitled to vote at that meeting which states the place, date, the means of remote communications, if any, by which Stockholders and proxy holders may be deemed to be present in person and vote at the meeting, and hour of that meeting and, in the case of a special meeting, the purpose or purposes for which that meeting is called. Unless the Certificate of Incorporation, these Bylaws or applicable law otherwise provides, the Corporation will give the notice of any meeting of Stockholders not less than ten nor more than 60 days before the date of that meeting. Written notice may be given personally, by mail or by a form of electronic transmission consented to by the Stockholder to whom the notice is given, to the fullest extent allowed under the General Corporation Law of the State of Delaware or any successor statute (the "DGCL"). Notice of any meeting of Stockholders need not be given to any Stockholder (a) if waived by such Stockholder in writing in accordance with Section 7.6 or (b) to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, in either case (i) or (ii) above, have been mailed addressed to such person at such person's address as shown on the records of the Corporation and have been returned undeliverable; *provided, however,* that the exception in (b)(i) shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission. If any person to whom notice need not be given in accordance with clause (b) of the immediately preceding sentence shall deliver to the Corporation a written notice setting forth such person's then current address, the requirement that notice be given to such person shall be reinstated. Attendance at a meeting

of the Stockholders shall constitute a waiver of notice of such meeting, except when a Stockholder attends a meeting for the express purpose of objecting (and so expresses such objection at the beginning of the meeting) to the transaction of any business on the ground that the meeting has not been called or convened in accordance with applicable law, the Certificate of Incorporation or these Bylaws.

Section 1.4 *Fixing Date for Determination of Stockholders of Record.*

(a) *Registered Holders as Owners.* Unless otherwise provided under Delaware law, the Corporation may regard the person in whose name any shares issued by the Corporation are registered in the stock transfer records of the Corporation at any particular time (including, without limitation, as of a record date fixed pursuant to paragraph (b) of this Section 1.4) as the owner of those shares at that time for purposes of voting those shares, receiving distributions thereon or notices in respect thereof, transferring those shares, exercising rights of dissent with respect to those shares, entering into agreements with respect to those shares, or giving proxies with respect to those shares; and neither the Corporation nor any of its officers, Directors, employees or agents shall be liable for regarding that person as the owner of those shares at that time for any of those purposes.

(b) *Record Date*. In order that the Corporation may determine the Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board by resolution may fix a record date, which record date: (i) must not precede the date on which the Board adopts that resolution; (ii) in the case of a determination of Stockholders entitled to vote at any meeting of Stockholders or adjournment thereof, will, unless applicable law otherwise requires, not be more than 60 nor less than ten days before the date of that meeting; and (iii) in the case of any other action, will not be more than 60 days prior to that other action. If the Board does not fix a record date: (i) the record date for determining Stockholders entitled to notice of or to vote at a meeting of Stockholders will be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived in accordance with Section 7.6 of these Bylaws, at the close of business on the day next preceding the day on which the meeting is held; and (ii) the record date for determining Stockholders for any other purpose will be at the close of business on the day on which the Board adopts the resolution relating thereto. A determination of Stockholders of record entitled to notice of or to vote at a meeting of Stockholders will apply to any adjournment of that meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 1.5 *List of Stockholders Entitled To Vote.* The Secretary will prepare and make, at least ten days before each meeting of Stockholders, a list of the Stockholders entitled to vote at that meeting which complies with the requirements of Section 219 of the DGCL as in effect at that time.

Section 1.6 *Adjournments.* Any meeting of Stockholders, annual or special, may be adjourned from time to time by the Chairman or presiding officer of the meeting or by the Stockholders or their proxies in attendance to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business it might have transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment the Board fixes a new record date for the adjourned meeting, the Corporation will give, in accordance with Section 1.3, notice of the adjourned meeting to each Stockholder of record and entitled to vote at the adjourned meeting.

Section 1.7 *Quorum*. Except as the Certificate of Incorporation, these Bylaws or applicable law otherwise provides: (i) at each meeting of Stockholders the presence in person or by proxy of the holders of shares of stock having a majority of the votes the holders of all outstanding shares of capital stock of the Corporation entitled to vote at the meeting could cast will be necessary and sufficient to constitute a quorum; and (ii) the holders of capital stock of the Corporation so present and entitled to vote at any duly convened meeting at which the necessary quorum has been ascertained may continue to transact business until that meeting adjourns

notwithstanding any withdrawal from that meeting of shares of capital stock counted in determining the existence of that quorum. Any shares subject to "broker non-votes" shall be considered present at the meeting with respect to the determination of a quorum but shall not be considered as votes cast with respect to matters as to which no authority is granted. In the absence of a quorum, the Chairman or presiding officer of the meeting or the Stockholders so present may, by majority vote, adjourn the meeting from time to time in the manner Section 1.6 provides until a quorum attends. Shares of its own capital stock belonging to the Corporation or to another corporation, limited liability company, partnership or other entity (each, an "Entity"), if the Corporation, directly or indirectly, holds a majority of the shares entitled to vote in the election of directors (or the equivalent) of that other Entity, will be neither entitled to vote nor counted for quorum purposes; provided, however, that the foregoing will not limit the right of the Corporation to vote shares of capital stock, including but not limited to its own capital stock, it holds in a fiduciary capacity.

Section 1.8 *Organization*. The Chairman will chair and preside over any meeting of Stockholders at which he or she is present. The Board will designate the chairman and presiding officer over any meeting of Stockholders from which the Chairman is absent. In the absence of such designation by the Board, the chairman of the meeting will be chosen at the meeting. The Secretary will act as secretary of meetings of Stockholders, but in his or her absence from any such meeting the chairman of that meeting may appoint any person to act as secretary of that meeting. The chairman of any meeting of Stockholders will announce at that meeting the date and time of the opening and the closing of the polls for each matter on which the Stockholders will vote at that meeting.

Section 1.9 *Voting by Stockholders*.

(a) *Voting on Matters Other than the Election of Directors.* With respect to any matters as to which no other voting requirement is specified by the DGCL, the Certificate of Incorporation or these Bylaws, the affirmative vote required for Stockholder action shall be that of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter. Any shares subject to broker non-votes shall not be considered as shares entitled to vote as to matters with respect to which no authority has been granted. In the case of a matter submitted for a vote of the Stockholders as to which a Stockholder approval requirement is applicable under the Stockholder approval policy of any stock exchange or quotation system on which the capital stock of the Corporation is traded or quoted, the requirements (to the extent applicable to the Corporation) of Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or any provision of the Internal Revenue Code, in each case for which no higher voting requirement is specified by the DGCL, the Certificate of Incorporation or these Bylaws, the vote required for approval shall be the requisite vote specified in such Stockholder approval policy, Rule 16b-3 or Internal Revenue Code provision, as the case may be (or the highest such requirement if more than one is applicable). For the approval or ratification of the appointment of independent public accountants (if submitted for a vote of the Stockholders), the vote required for approval shall be a majority of the votes cast on the matter. For this purpose, abstentions shall not be considered as votes cast.

(b) *Voting in the Election of Directors.* Unless otherwise provided in the Certificate of Incorporation, Directors shall be elected by a plurality of the votes cast by the holders of outstanding shares of capital stock of the Corporation entitled to vote in the election of Directors at a meeting of Stockholders at which a quorum is present.

Section 1.10 *Stockholder Proposals*. (a) At an annual meeting of Stockholders, only such business shall be conducted, and only such proposals shall be acted upon, as shall have been properly brought before such annual meeting. To be properly brought before an annual meeting, business or proposals (other than any nomination of Directors, which is governed by Section 2.10 hereof) must (i) be specified in the notice relating to the meeting (or any supplement thereto) given by or at the direction of the Board in accordance with Section 1.3 hereof or (ii) be properly brought before the meeting by a Stockholder who (A) is a Stockholder of record at the time of the giving of such Stockholder's notice provided for in this Section 1.10 and on the record date for the determination of Stockholders entitled to vote at such annual meeting, (B) is entitled to vote at the annual meeting and

(C) complies with the requirements of this Section 1.10, and must otherwise be proper subjects for Stockholder action and be properly introduced at the annual meeting. Clause (ii) of the immediately preceding sentence shall be the exclusive means for a Stockholder to submit business or proposals (other than matters properly brought under Rule 14a-8 under the Exchange Act, to the extent such rule is applicable to the Corporation, and included in the notice relating to the meeting (or any supplement thereto) given by or at the direction of the Board in accordance with Section 1.3 hereof) before an annual meeting of Stockholders. For a proposal to be properly brought before an annual meeting by a Stockholder pursuant to these provisions, in addition to any other applicable requirements, such Stockholder must have given timely advance notice thereof in writing to the Secretary. To be timely, such Stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not later than the close of business on the 90th day and not earlier than the close of business on the 120th day prior to the first anniversary of the annual meeting date of the next preceding annual meeting; *provided*, *however*, that if the scheduled annual meeting date differs from such anniversary date by more than 30 days, notice by such Stockholder, to be timely, must be so delivered or received not earlier than the close of business on the 75th day and not later than the close of business on the later of the 45th day prior to the date of such annual meeting or, if less than 100 days' prior notice or public disclosure of the scheduled meeting date is given or made, the tenth day following the earlier of the day on which the notice of such meeting was mailed to Stockholders or the day on which such public disclosure was made. In no event shall any adjournment, postponement or deferral of an annual meeting or the announcement thereof commence a new time period for the giving of a Stockholder's notice as described above.

(b) Any such Stockholder's notice to the Secretary shall set forth as to each matter such Stockholder proposes to bring before the annual meeting: (i) a description of the proposal desired to be brought before the meeting and the reasons for conducting such business at the meeting, together with the text of the proposal or business (including the text of any resolutions proposed for consideration); (ii) as to such Stockholder proposing such business and the beneficial owner, if any, on whose behalf the proposal is made, (A) the name and address of such Stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, and the name and address of any other Stockholders known by such Stockholder to be supporting such business or proposal, (B) (1) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially and of record by such Stockholder and such beneficial owner, (2) any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of capital stock of the Corporation or with a value derived in whole or in part from the price, value or volatility of any class or series of shares of capital stock of the Corporation or any derivative or synthetic arrangement having characteristics of a long position in any class or series of shares of capital stock of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such Stockholder and by such beneficial owner and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of capital stock of the Corporation, (3) any proxy, contract, arrangement, understanding or relationship the effect or intent of which is to increase or decrease the voting power of such Stockholder or beneficial owner with respect to any shares of any security of the Corporation, (4) any pledge by such Stockholder or beneficial owner of any security of the Corporation or any short interest of such Stockholder or beneficial owner in any security of the Corporation (for purposes of this Section 1.10 and Section 2.10, a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (5) any rights to dividends on the shares of capital stock of the Corporation owned beneficially by such Stockholder and by such beneficial owner that are separated or separable from the underlying shares of capital stock of the Corporation, (6) any proportionate interest in shares of capital stock of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such Stockholder or beneficial owner is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (7) any performance-related fees (other than an asset-based fee) that such Stockholder or beneficial owner is entitled to based on any increase or decrease in the value of shares of capital stock of the Corporation or Derivative Instruments, if any, as of the date

of such notice, including, without limitation, for purposes of clauses (B)(1) through (B)(7) above, any of the foregoing held by members of such Stockholder's or beneficial owner's immediate family sharing the same household (which information shall be supplemented by such Stockholder and beneficial owner, if any, not later than ten days after the record date for the meeting to disclose such ownership as of the record date), and (C) any other information relating to such Stockholder and beneficial owner, if any, that would be required to be disclosed in solicitations of proxies for the proposal, or would otherwise be required, in each case pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (iii) any material interest of such Stockholder and beneficial owner, if any, in such business or proposal; and (iv) a description of all agreements, arrangements and understandings between such Stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with such business or proposal by such Stockholder.

(c) A Stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 1.10 shall be true and correct as of the record date for the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received at, the principal executive offices of the Corporation not later than five business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight business days prior to the date for the meeting and, if practicable (or, if not practicable, on the first practicable date prior to), any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof). In addition, a Stockholder providing notice of business proposed to be brought before an annual meeting shall update and supplement such notice, and deliver such update and supplement to the principal executive offices of the Corporation, promptly following the occurrence of any event that materially changes the information provided or required to be provided in such notice pursuant to this Section 1.10.

(d) The Chairman or, if the Chairman is not presiding, the presiding officer of the meeting of Stockholders shall determine whether the requirements of this Section 1.10 have been met with respect to any Stockholder proposal. If the Chairman or the presiding officer determines that any Stockholder proposal was not made in accordance with the terms of this Section 1.10, he or she shall so declare at the meeting and any such proposal shall not be acted upon at the meeting.

(e) At a special meeting of Stockholders, only such business shall be conducted, and only such proposals shall be acted upon, as shall have been properly brought before such special meeting. To be properly brought before such a special meeting, business or proposals (other than any nomination of Directors, which is governed by Section 2.10 hereof) must (i) be specified in the notice relating to the meeting (or any supplement thereto) given by or at the direction of the Board of Directors in accordance with Section 1.3 hereof or (ii) constitute matters incident to the conduct of the meeting as the Chairman or the presiding officer of the meeting shall determine to be appropriate.

(f) In addition to the foregoing provisions of this Section 1.10, a Stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder, to the extent such requirements apply to the Corporation, with respect to the matters set forth in this Section 1.10. Nothing in this Section 1.10 shall be deemed to affect any rights of Stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act, to the extent such rule applies to the Corporation.

Section 1.11 *Proxies*. Each Stockholder entitled to vote at a meeting of Stockholders may authorize another person or persons to act for such Stockholder by proxy. Proxies for use at any meeting of Stockholders shall be filed with the Secretary, or such other officer as the Board may from time to time determine by resolution to act as secretary of the meeting, before or at the time of the meeting. All proxies shall be received and taken charge of

and all ballots shall be received and canvassed by the secretary of the meeting, who shall decide all questions relating to the qualification of voters, the validity of the proxies and the acceptance or rejection of votes, unless an inspector or inspectors shall have been appointed by the Chairman or presiding officer of the meeting, in which event such inspector or inspectors shall decide all such questions.

Section 1.12 *Conduct of Meetings.* The Board may adopt by resolution such rules and regulations for the conduct of meetings of Stockholders as it deems appropriate. Except to the extent inconsistent with those rules and regulations, if any, the Chairman or presiding officer of any meeting of Stockholders will have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of the Chairman or presiding officer, are appropriate for the proper conduct of that meeting. Such rules, regulations or procedures whether adopted by the Board or prescribed by the Chairman or presiding officer of the meeting may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to Stockholders of record, their duly authorized and constituted proxies or such other persons as the Chairman or presiding officer of the meeting may determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; (vi) limitations on the time allotted to questions or comments by participants; and (vii) policies and procedures with respect to the adjournment of such meetings. Except to the extent the Board or the Chairman or presiding officer of any meeting otherwise prescribes, no rules or parliamentary procedure will govern any meeting of Stockholders.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1 *Powers, Number, Classification and Vacancies.*

(a) *Powers of the Board of Directors.* The powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed by or under the direction of, the Board. In addition to the authority and powers conferred upon the Board by the DGCL, the Certificate of Incorporation or these Bylaws, the Board is hereby authorized and empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the DGCL, the Certificate of Incorporation and these Bylaws; *provided, however*, that no Bylaw of the Corporation hereafter adopted, nor any amendment thereto, shall invalidate any prior act of the Board that would have been valid if such Bylaw or amendment thereto had not been adopted.

(b) *Management*. Except as otherwise provided by the Certificate of Incorporation or these Bylaws or to the extent prohibited by Delaware law, the Board shall have the right (which, to the extent exercised, shall be exclusive) to establish the rights, powers, duties, rules and procedures that (i) from time to time shall govern the Board, including, without limiting the generality of the foregoing, the vote required for any action by the Board and (ii) from time to time shall affect the directors' power to manage the business and affairs of the Corporation. No Bylaw of the Corporation shall be adopted by the Stockholders that shall impair or impede the implementation of this Section 2.1(b).

(c) *Number of Directors.* Within the limits specified in the Certificate of Incorporation, and subject to such rights of holders of shares of one or more outstanding series of preferred stock of the Corporation to elect one or more Directors under circumstances as shall be provided by or pursuant to the Certificate of Incorporation, the number of Directors that shall constitute the whole Board shall be fixed from time to time exclusively by, and may be increased or decreased from time to time exclusively by, the affirmative vote of at least a majority of the Directors then in office.

(d) *Classification*. As provided in the Certificate of Incorporation, the directors, other than those who may be elected by the holders of any outstanding series of preferred stock of the Corporation, shall be divided into

three classes as nearly equal in size as is practicable: Class I, Class II and Class III. At each annual election, the directors chosen to succeed those whose terms then expire shall be of the same class as the directors they succeed, unless, by reason of any intervening changes in the authorized number of directors, the Board shall have designated one or more directorships whose term then expires as directorships of another class in order more nearly to achieve equality of number of directors among the classes. In the event of any change in the authorized number of directors, each director then continuing to serve as such shall nevertheless continue as a director of the class of which he or she is a member until the expiration of his or her current term, or his or her prior death, resignation or removal in accordance with the Certificate of Incorporation and these Bylaws.

(e) *Vacancies.* Unless otherwise provided by or pursuant to the Certificate of Incorporation, newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board resulting from death, resignation, removal or other cause in accordance with the Certificate of Incorporation and these Bylaws may be filled only by the affirmative vote of at least a majority of the remaining Directors then in office, even if such remaining Directors constitute less than a quorum of the Board, or by a sole remaining Director. Any person who becomes a Director in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such Director's successor shall have been duly elected and qualified or until his or her earlier death, resignation or removal. Unless otherwise provided by or pursuant to the Certificate of Incorporation, no decrease in the number of Directors constituting the Board shall shorten the term of any incumbent Director.

Section 2.2 *Regular Meetings.* The Board will hold its regular meetings at such places within or without the State of Delaware, on such dates and at such times as the Board by resolution may determine from time to time, and any such resolution will constitute due notice to all Directors of the regular meeting or meetings to which it relates. By notice pursuant to Section 2.7, the Chairman or a majority of the Board may change the place, date or time of any regular meeting of the Board.

Section 2.3 *Special Meetings*. The Board will hold a special meeting at any place within or without the State of Delaware or time whenever the Chairman or a majority of the Board by resolution calls that meeting by notice pursuant to Section 2.7.

Section 2.4 *Telephonic Meetings*. Members of the Board may hold and participate in any Board meeting by means of conference telephone or other communications equipment that permits all persons participating in the meeting to hear each other, and participation of any Director in a meeting pursuant to this Section 2.4 will constitute the presence in person of that Director at that meeting for purposes of these Bylaws, except in the case of a Director who so participates only for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting has not been called or convened in accordance with applicable law or these Bylaws.

Section 2.5 *Organization*. The Chairman will chair and preside over meetings of the Board at which he or she is present. A majority of the Directors present at any meeting of the Board from which the Chairman is absent will designate one of their number as chairman over that meeting. The Secretary will act as secretary of meetings of the Board, but in his or her absence from any such meeting the chairman of that meeting may appoint any person to act as secretary of that meeting.

Section 2.6 *Order of Business*. The Board will transact business at its meetings in such order as the Chairman or the Board by resolution will determine.

Section 2.7 *Notice of Meetings*. To call a special meeting of the Board, the Chairman or a majority of the Board must give a timely notice to each Director of the time and place of, and the general nature of the business the Board will transact at, all special meetings of the Board. To change the time or place of any regular meeting of the Board, the Chairman or a majority of the Board must give a timely notice to each Director of that change. To be timely, any notice this Section 2.7 requires must be delivered to each Director personally or by mail,

facsimile, e-mail or other communication at least one day before the meeting to which it relates; provided, however, that notice of any meeting of the Board need not be given to any Director who waives the requirement of that notice (whether after that meeting or otherwise) or is present at that meeting.

Section 2.8 *Quorum; Vote Required for Action*. At all meetings of the Board, the presence in person of a majority of the total number of Directors then in office will constitute a quorum for the transaction of business, and the participation by a Director in any meeting of the Board will constitute that Director's presence in person at that meeting unless that Director expressly limits that participation to objecting, at the beginning of the meeting, to the transaction of any business at that meeting on the ground that the meeting has not been called or convened in accordance with applicable law or these Bylaws. Except in cases in which the Certificate of Incorporation or these Bylaws otherwise provide, the vote of a majority of the Directors present at a meeting at which a quorum is present will be the act of the Board.

Section 2.9 *Board Action by Unanimous Written Consent in Lieu of Meeting*. Unless the Certificate of Incorporation or these Bylaws otherwise provides, the Board may, without a meeting, prior notice or a vote, take any action it must or may take at any meeting, if all members of the Board consent thereto in writing or electronic transmission, and the written consents or electronic transmissions are filed with the minutes of proceedings of the Board that the Secretary is to keep.

Section 2.10 *Nomination of Directors; Qualifications*.

(a) Subject to such rights of holders of shares of one or more outstanding series of preferred stock of the Corporation to elect one or more Directors under circumstances as shall be provided by or pursuant to the Certificate of Incorporation, only persons who are nominated in accordance with the procedures set forth in this Section 2.10 shall be eligible for election as, and to serve as, Directors. Nominations of persons for election to the Board may be made only at a meeting of the Stockholders at which Directors are to be elected, and only (i) by or at the direction of the Board or (ii) (if but only if the Board has determined that directors shall be elected at such meeting) by any Stockholder who is a Stockholder of record at the time of the giving of such Stockholder's notice provided for in this Section 2.10 and on the record date for the determination of Stockholders entitled to vote at such meeting, who is entitled to vote at such meeting in the election of Directors and who complies with the requirements of this Section 2.10. Clause (ii) of the immediately preceding sentence shall be the exclusive means for a Stockholder to make any nomination of a person or persons for election as a Director at an annual meeting or special meeting. Any such nomination by a Stockholder shall be preceded by timely advance notice in writing to the Secretary pursuant to this Section 2.10.

To be timely with respect to an annual meeting, such Stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the annual meeting date of the next preceding annual meeting; *provided*, *however*, that (1) if the scheduled annual meeting date differs from such anniversary date by more than 30 days, notice by such Stockholder, to be timely, must be so delivered or received not earlier than the close of business on the 75th day and not later than the close of business on the later of the 45th day prior to the date of such annual meeting or, if less than 100 days' prior notice or public disclosure of the scheduled meeting date is given or made, the tenth day following the earlier of the day on which the notice of such meeting was mailed to Stockholders or the day on which such public disclosure was made; and (2) if the number of directors to be elected to the Board at such annual meeting is increased and there is no prior notice or public disclosure by the Corporation naming all of the nominees for director or specifying the size of the increased Board at least 100 days prior to such anniversary date, a Stockholder's notice required by this Section 2.10 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the principal executive offices of the Corporation not later than the close of business on the tenth day following the earlier of the day on which the notice of such meeting was mailed to Stockholders or the day on which such public disclosure was made. To be timely with respect to a special meeting, such Stockholder's notice must be delivered to, or mailed and

received at, the principal executive offices of the Corporation not earlier than the close of business on the 75th day and not later than the close of business on the 45th day prior to the scheduled special meeting date; *provided*, *however*, that if less than 100 days' prior notice or public disclosure of the scheduled meeting date is given or made, notice by such Stockholder, to be timely, must be so delivered or received not later than the close of business on the tenth day following the earlier of the day on which the notice of such meeting was mailed to Stockholders or the day on which such public disclosure was made. In no event shall any adjournment, postponement or deferral of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a Stockholder's notice as described above.

Any such Stockholder's notice to the Secretary shall set forth (i) as to each person whom such Stockholder proposes to nominate for election or re-election as a Director, (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) any other information relating to such person that would be required to be disclosed in solicitations of proxies for election of Directors in a contested election, or would otherwise be required, in each case pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including, without limitation, the written consent of such person to having such person's name placed in nomination at the meeting and to serve as a Director if elected), and (D) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such Stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if such Stockholder and such beneficial owner, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and (ii) as to such Stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination is made and the proposed nominee, (A) the name and address of such Stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, and the name and address of any other Stockholders known by such Stockholder to be supporting such nomination, (B) (1) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially and of record by such Stockholder, such beneficial owner and such nominee, (2) any Derivative Instrument directly or indirectly owned beneficially by such Stockholder, such beneficial owner and such nominee and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of capital stock of the Corporation, (3) any proxy, contract, arrangement, understanding or relationship the effect or intent of which is to increase or decrease the voting power of such Stockholder, beneficial owner or nominee with respect to any shares of any security of the Corporation, (4) any pledge by such Stockholder, beneficial owner or nominee of any security of the Corporation or any short interest of such Stockholder, beneficial owner or nominee in any security of the Corporation, (5) any rights to dividends on the shares of capital stock of the Corporation owned beneficially by such Stockholder, beneficial owner and nominee that are separated or separable from the underlying shares of capital stock of the Corporation, (6) any proportionate interest in shares of capital stock of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such Stockholder, beneficial owner or nominee is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (7) any performance-related fees (other than an asset-based fee) that such Stockholder, beneficial owner or nominee is entitled to based on any increase or decrease in the value of shares of capital stock of the Corporation or Derivative Instruments, if any, as of the date of such notice, including, without limitation, for purposes of clauses (B)(1) through (B)(7) above, any of the foregoing held by members of such Stockholder's, beneficial owner's or nominee's immediate family sharing the same household (which information shall be supplemented by such Stockholder, beneficial owner, if any, and nominee not later than ten days after the record date for the meeting to disclose such ownership as of the record date), and (C) any other information relating to such Stockholder, beneficial owner, if any, and nominee that would be required to be disclosed in solicitations of proxies for election of Directors in a contested election, or would otherwise be required, in each case pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Any such Stockholder's

notice to the Secretary shall also include or be accompanied by, with respect to each nominee for election or reelection to the Board, a completed and signed questionnaire, representation and agreement required by Section 2.10(c). The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent Director or that could be material to a reasonable Stockholder's understanding of the independence, or lack thereof, of such nominee.

(b) A Stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to Section 2.10(a) shall be true and correct as of the record date for the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received at, the principal executive offices of the Corporation not later than five business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight business days prior to the date for the meeting and, if practicable (or, if not practicable, on the first practicable date prior to), any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof). In addition, a Stockholder providing notice of any nomination proposed to be made at a meeting shall update and supplement such notice, and deliver such update and supplement to the principal executive offices of the Corporation promptly following the occurrence of any event that materially changes the information provided or required to be provided in such notice pursuant to this Section 2.10.

(c) To be eligible to be a nominee for election or reelection as a Director, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 2.10(a)) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be in the form provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a Director, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a Director, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a Director that has not been disclosed therein, and (C) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a Director, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

(d) The Chairman or, if he or she is not presiding, the presiding officer of the meeting of Stockholders shall determine whether the requirements of this Section 2.10 have been met with respect to any nomination or purported nomination. If the Chairman or the presiding officer determines that any purported nomination was not made in accordance with the requirements of this Section 2.10, he or she shall so declare at the meeting and the defective nomination shall be disregarded. In addition to the foregoing provisions of this Section 2.10, a Stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder, to the extent such requirements apply to the Corporation, with respect to the matters set forth in this Section 2.10.

(e) Directors need not be residents of the State of Delaware or Stockholders.

Section 2.11 *Compensation*. Unless otherwise restricted by law, the Board shall have the authority to fix the compensation of the Directors. The Directors may be paid their expenses, if any, of attendance at each meeting of

the Board and may be paid a fixed sum for attendance at each meeting of the Board or paid a stated salary or paid other compensation as Director. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may also be paid their expenses, if any, of and allowed compensation for attending committee meetings.

ARTICLE III

BOARD COMMITTEES

Section 3.1 *Board Committees*. (a) The Board may designate one or more Board committees consisting of one or more of the Directors. The Board may designate one or more Directors as alternate members of any Board committee, who may replace any absent or disqualified member at any meeting of that committee. The member or members present at any meeting of any Board committee and not disqualified from voting at that meeting may, whether or not constituting a quorum, unanimously appoint another Director to act at that meeting in the place of any member of that committee who is absent from or disqualified to vote at that meeting.

(b) The Board by resolution may change the membership of any Board committee at any time and fill vacancies on any of those committees. A majority of the members of any Board committee will constitute a quorum for the transaction of business by that committee unless the Board by resolution requires a greater number for that purpose. The Board by resolution may elect a chairman of any Board committee. The election or appointment of any Director to a Board committee will not create any contract rights of that Director, and the Board's removal of any member of any Board committee will not prejudice any contract rights that member otherwise may have.

(c) Each other Board committee the Board may designate pursuant to Section 3.1(a) will, subject to applicable provisions of law, have and may exercise all the powers and authorities of the Board to the extent the Board resolution designating that committee so provides.

Section 3.2 *Board Committee Rules*. Unless the Board otherwise provides, each Board committee may make, alter and repeal rules for the conduct of its business. In the absence of those rules, each Board committee will conduct its business in the same manner as the Board conducts its business pursuant to Article II.

ARTICLE IV

OFFICERS

Section 4.1 *Designation*. The officers of the Corporation will consist of a CEO, president, Secretary, treasurer and such senior or other vice presidents, assistant secretaries, assistant treasurers and other officers as the Board may elect or appoint from time to time. Any number of offices of the Corporation may be held by the same person. The Board shall also elect or appoint from among the directors a person to act as Chairman who shall not be deemed to be an officer of the Corporation unless he or she has otherwise been elected or appointed as such.

Section 4.2 *CEO*. The CEO will, subject to the control of the Board: (i) have general supervision and control of the affairs, business, operations and properties of the Corporation; (ii) see that all orders and resolutions of the Board are carried into effect; and (iii) have the power to appoint and remove all subordinate officers, employees and agents of the Corporation, except for those the Board elects or appoints. The CEO also will perform such other duties and may exercise such other powers as generally pertain to his or her office or these Bylaws or the Board by resolution assigns to him or her from time to time.

Section 4.3 *Powers and Duties of Other Officers*. The other officers of the Corporation will have such powers and duties in the management of the Corporation as the Board by resolution may prescribe and, except to

the extent so prescribed, as generally pertain to their respective offices, subject to the control of the Board. The Board may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 4.4 *Vacancies*. Whenever any vacancies shall occur in any office by death, resignation, increase in the number of offices of the Corporation, or otherwise, the same shall be filled by the Board, and the officer so elected shall hold office until such officer's successor is elected or appointed or until his or her earlier death, resignation or removal.

Section 4.5 *Removal*. Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract, common law and statutory rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 4.6 *Action with Respect to Securities of Other Corporations*. Unless otherwise directed by the Board, the Chairman, the CEO, the president, any vice president and the treasurer of the Corporation shall each have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of security holders of or with respect to any action of security holders of any other corporation in which the Corporation may hold securities and otherwise to exercise any and all rights and powers which the Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE V

CAPITAL STOCK

Section 5.1 *Uncertificated Shares*. Shares of capital stock of the Corporation will be uncertificated. Ownership of such shares shall be evidenced by book entry notation on the stock transfer records of the Corporation.

Section 5.2 *Transfer of Shares*. The Corporation may act as its own transfer agent and registrar for shares of its capital stock or use the services of one or more transfer agents and registrars as the Board by resolution may appoint from time to time. Shares shall be transferred on the stock transfer records of the Corporation only upon the written instructions originated by the holders thereof or by their duly authorized attorneys or legal representatives.

Section 5.3 *Ownership of Shares*. The Corporation will be entitled to treat the holder of record of any share or shares of its capital stock as the holder in fact thereof and, accordingly, will not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it has express or other notice thereof, except as the applicable laws of the State of Delaware otherwise provide.

Section 5.4 *Regulations Regarding Shares*. The Board will have the power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration or the replacement of shares of capital stock of the Corporation.

ARTICLE VI

INDEMNIFICATION

Section 6.1 *General*. The Corporation shall, to the fullest extent permitted by applicable law in effect on the date of effectiveness of these Bylaws, and to such greater extent as applicable law may thereafter permit, indemnify and hold each Indemnitee (as this and all other capitalized words used in this Article VI not previously

defined in these Bylaws are defined in Section 6.15 hereof) harmless from and against any and all losses, liabilities, costs, claims, damages and, subject to Section 6.2, Expenses arising out of any event or occurrence related to the fact that Indemnitee is or was a Director or an officer of the Corporation or is or was serving in another Corporate Status.

Section 6.2 *Expenses*. If Indemnitee is, by reason of his or her Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he or she shall be indemnified against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to any Matter in such Proceeding, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf relating to such Matter. The termination of any Matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Matter. To the extent that the Indemnitee is, by reason of his or her Corporate Status, a witness in any Proceeding, he or she shall be indemnified against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith.

Section 6.3 *Advances*. In the event of any threatened or pending Proceeding in which Indemnitee is a party or is involved and that may give rise to a right of indemnification under this Article VI, following written request to the Corporation by Indemnitee, the Corporation shall promptly pay to Indemnitee amounts to cover Expenses reasonably incurred by Indemnitee in such Proceeding in advance of its final disposition upon the receipt by the Corporation of (i) a written undertaking executed by or on behalf of Indemnitee providing that Indemnitee will repay the advance if it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Corporation as provided in this Article VI and (ii) satisfactory evidence as to the amount of such Expenses.

Section 6.4 *Request for Indemnification*. To obtain indemnification, Indemnitee shall submit to the Secretary a written claim or request. Such written claim or request shall contain sufficient information to reasonably inform the Corporation about the nature and extent of the indemnification or advance sought by Indemnitee. The Secretary shall promptly advise the Board of such request.

Section 6.5 *Determination of Entitlement; No Change of Control*. If there has been no Change of Control at or before the time the request for indemnification is submitted, Indemnitee's entitlement to indemnification shall be determined in accordance with Section 145(d) of the DGCL. If entitlement to indemnification is to be determined by Independent Counsel, the Corporation shall furnish notice to Indemnitee, within ten days after receipt of the request for indemnification, specifying the identity and address of Independent Counsel. The Indemnitee may, within 14 days after receipt of such written notice, deliver to the Corporation a written objection to such selection. Such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of Independent Counsel and the objection shall set forth with particularity the factual basis for such assertion. If there is an objection to the selection of Independent Counsel, either the Corporation or Indemnitee may petition the Court for a determination that the objection is without a reasonable basis or for the appointment of Independent Counsel selected by the Court.

Section 6.6 *Determination of Entitlement; Change of Control*. If there has been a Change of Control at or before the time the request for indemnification is submitted, Indemnitee's entitlement to indemnification shall be determined in a written opinion by Independent Counsel selected by Indemnitee. Indemnitee shall give the Corporation written notice advising of the identity and address of the Independent Counsel so selected. The Corporation may, within 14 days after receipt of such written notice of selection, deliver to the Indemnitee a written objection to such selection. Indemnitee may, within 14 days after the receipt of such objection from the Corporation, submit the name of another Independent Counsel and the Corporation may, within seven days after receipt of such written notice, deliver to the Indemnitee a written objection to such selection. Any objections referred to in this Section 6.6 may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of Independent Counsel and such objection shall set forth with particularity the factual basis for such assertion. Indemnitee may petition the Court for a determination that the Corporation's objection

to the first or second selection of Independent Counsel is without a reasonable basis or for the appointment of Independent Counsel of a person selected by the Court.

Section 6.7 *Procedures of Independent Counsel*. If a Change of Control shall have occurred before the request for indemnification is sent by Indemnitee, Indemnitee shall be presumed (except as otherwise expressly provided in this Article VI) to be entitled to indemnification upon submission of a request for indemnification in accordance with Section 6.4 hereof, and thereafter the Corporation shall have the burden of proof to overcome the presumption in reaching a determination contrary to the presumption. The presumption shall be used by Independent Counsel as a basis for a determination of entitlement to indemnification unless the Corporation provides information sufficient to overcome such presumption by clear and convincing evidence or the investigation, review and analysis of Independent Counsel convinces him or her by clear and convincing evidence that the presumption should not apply.

Except in the event that the determination of entitlement to indemnification is to be made by Independent Counsel, if the person or persons empowered under Section 6.5 or 6.6 hereof to determine entitlement to indemnification shall not have made and furnished to Indemnitee in writing a determination within 60 days after receipt by the Corporation of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification unless Indemnitee knowingly misrepresented a material fact in connection with the request for indemnification or such indemnification is prohibited by applicable law. The termination of any Proceeding or of any Matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Article VI) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act 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, or with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful. A person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan of the Corporation shall be deemed to have acted in a manner not opposed to the best interests of the Corporation.

For purposes of any determination hereunder, a person shall be deemed to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal Proceeding, to have had no reasonable cause to believe his or her conduct was unlawful, if his or her action is based on the records or books of account or other records of the Corporation or another enterprise or on information, opinions, reports or statements presented to him or her or to the Corporation by any of the Corporation's officers, employees or Directors, or committees of the Board, or by any other person as to matters the person reasonably believes are in such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation or another enterprise in the course of their duties or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this Section 6.7 shall mean any other corporation or any partnership, limited liability company, association, joint venture, trust, employee benefit plan or other enterprise for which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this paragraph shall not be deemed to be exclusive or to limit in any way the circumstances in which an Indemnitee may be deemed to have met the applicable standards of conduct for determining entitlement to rights under this Article.

Section 6.8 *Independent Counsel Expenses*. The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel incurred acting pursuant to this Article VI and in any Proceeding to which it is a party or witness in respect of its investigation and written report and shall pay all reasonable fees and expenses incident to the procedures in which such Independent Counsel was selected or appointed. No Independent Counsel may serve if a timely objection has been made to his or her selection until a court has determined that such objection is without a reasonable basis.

Section 6.9 *Adjudication*. In the event that (i) a determination is made pursuant to Section 6.5 or 6.6 hereof that Indemnitee is not entitled to indemnification under this Article VI; (ii) advancement of Expenses is not timely made pursuant to Section 6.3 hereof; (iii) Independent Counsel has not made and delivered a written opinion determining the request for indemnification (a) within 90 days after being appointed by the Court, (b) within 90 days after objections to his or her selection have been overruled by the Court or (c) within 90 days after the time for the Corporation or Indemnitee to object to his or her selection; or (iv) payment of indemnification is not made within five days after a determination of entitlement to indemnification has been made or is deemed to have been made pursuant to Section 6.5, 6.6 or 6.7 hereof, Indemnitee shall be entitled to an adjudication by the Court of his or her entitlement to such indemnification or advancement of Expenses. In the event that a determination shall have been made that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 6.9 shall be conducted in all respects as a *de novo* trial on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. If a Change of Control shall have occurred, in any judicial proceeding commenced pursuant to this Section 6.9, the Corporation shall have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be. If a determination shall have been made or is deemed to have been made that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 6.9, or otherwise, unless Indemnitee knowingly misrepresented a material fact in connection with the request for indemnification, or such indemnification is prohibited by law.

The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 6.9 that the procedures and presumptions of this Article VI are not valid, binding and enforceable. If the Indemnitee, pursuant to this Section 6.9, seeks a judicial adjudication to enforce his or her rights under, or to recover damages for breach of, this Article VI, and if he or she prevails therein, then Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any and all Expenses actually and reasonably incurred by him or her in such judicial adjudication. If it shall be determined in such judicial adjudication that Indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, then the Expenses incurred by Indemnitee in connection with such judicial adjudication or arbitration shall be prorated.

Section 6.10 *Participation by the Corporation*. With respect to any Proceeding: (a) the Corporation will be entitled to participate therein at its own expense; (b) except as otherwise provided below, to the extent that it may wish, the Corporation (jointly with any other indemnifying party similarly notified) will be entitled to assume the defense thereof, with counsel reasonably satisfactory to Indemnitee; and (c) the Corporation shall not be liable to indemnify Indemnitee under this Article VI for any amounts paid in settlement of any action or claim effected without its written consent, which consent shall not be unreasonably withheld. After receipt of notice from the Corporation to Indemnitee of the Corporation’s election to assume the defense thereof, the Corporation will not be liable to Indemnitee under this Article VI for any legal or other expenses subsequently incurred by Indemnitee in connection with the defense thereof other than as otherwise provided below. Indemnitee shall have the right to employ his or her own counsel in such action, suit, proceeding or investigation but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless the employment of counsel by Indemnitee has been authorized by the Corporation, or Indemnitee shall have reasonably concluded that there is a conflict of interest between the Corporation and Indemnitee in the conduct of the defense of such action, or the Corporation shall not in fact have employed counsel to assume the defense of such action, in each of which cases the fees and expenses of counsel employed by Indemnitee shall be subject to indemnification pursuant to the terms of this Article VI. The Corporation shall not be entitled to assume the defense of any Proceeding brought in the name of or on behalf of the Corporation or as to which Indemnitee shall have reasonably concluded that there is a conflict of interest between the Corporation and Indemnitee in the conduct of the defense of such action. The Corporation shall not settle any action or claim in any manner which would impose any limitation or unindemnified penalty on Indemnitee without Indemnitee’s written consent, which consent shall not be unreasonably withheld.

Section 6.11 *Nonexclusivity of Rights*. The rights of indemnification and advancement of Expenses as provided by this Article VI shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Certificate of Incorporation, these Bylaws, any agreement, a vote of Stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Article VI or any provision hereof shall be effective as to any Indemnitee for acts, events and circumstances that occurred, in whole or in part, before such amendment, alteration or repeal. The provisions of this Article VI shall be binding upon the Corporation, its successors and assigns and shall continue as to an Indemnitee whose Corporate Status has ceased for any reason and shall inure to the benefit of his or her heirs, executors, administrators or personal representatives. Neither the provisions of this Article VI nor those of any agreement to which the Corporation is a party shall be deemed to preclude the indemnification of any person who is not specified in this Article VI as having the right to receive indemnification or is not a party to any such agreement, but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL.

Section 6.12 *Insurance and Subrogation*. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under applicable law.

The Corporation shall not be liable under this Article VI to make any payment of amounts otherwise indemnifiable hereunder if, but only to the extent that, Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

In the event of any payment hereunder, the Corporation shall be subrogated to the extent of such payment to all the rights of recovery of Indemnitee, who shall execute all papers required and take all action reasonably requested by the Corporation to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

Section 6.13 *Severability*. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby; and, to the fullest extent possible, the provisions of this Article VI shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 6.14 *Certain Actions Where Indemnification Is Not Provided*. Notwithstanding any other provision of this Article VI, no person shall be entitled to indemnification or advancement of Expenses under this Article VI with respect to any Proceeding, or any Matter therein, brought or made by such person against the Corporation.

Section 6.15 *Definitions*. For purposes of this Article VI:

“Change of Control” means a change in control of the Corporation after the date Indemnitee acquired his or her Corporate Status, which shall be deemed to have occurred in any one of the following circumstances occurring after such date: (i) there shall have occurred an event that is or would be required to be reported with respect to the Corporation in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Exchange Act, if the Corporation is or were subject to such reporting requirement; (ii) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) shall have become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing 40% or more of the combined voting power of the Corporation’s then outstanding voting securities without prior approval of at least two-thirds of the members of the Board in office immediately prior to such person’s attaining such percentage interest; (iii) the Corporation is a party to a merger, consolidation, sale of assets or other reorganization, or a proxy contest, as a consequence of which members of the Board in office immediately prior to such transaction or event constitute less than a majority of the Board thereafter; or (iv) during any period of two consecutive years, individuals who at the

beginning of such period constituted the Board (including, for this purpose, any new director whose election or nomination for election by the Stockholders was approved by a vote of at least two-thirds of the Directors then still in office who were directors at the beginning of such period) cease for any reason to constitute at least a majority of the Board.

"Corporate Status" describes the status of an individual as a director, officer or other designated legal representative of the Corporation or of any predecessor of the Corporation, or as a director, officer or other designated legal representative of any other corporation, partnership, limited liability company, association, joint venture, trust, employee benefit plan or other enterprise for which an individual is or was serving as a director, officer or other designated legal representative at the request of the Corporation.

"Court" means the Court of Chancery of the State of Delaware or any other court of competent jurisdiction.

"Expenses" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness in a Proceeding.

"Indemnitee" includes any person who is, or is threatened to be made, a witness in or a party to any Proceeding by reason of his or her Corporate Status.

"Independent Counsel" means a law firm, or a member of a law firm, that is experienced in matters of corporate law and neither presently is, nor in the five years previous to his, her or its selection or appointment has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder.

"Matter" is a claim, a material issue or a substantial request for relief.

"Proceeding" includes any action, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative, except one initiated by an Indemnitee pursuant to Section 6.9 hereof to enforce his or her rights under this Article VI.

Section 6.16 *Notices*. Promptly after receipt by Indemnitee of notice of the commencement of any Proceeding, Indemnitee shall, if he or she anticipates or contemplates making a claim for Expenses or an advance pursuant to the terms of this Article VI, notify the Corporation of the commencement of such Proceeding; *provided*, *however*, that any delay in so notifying the Corporation shall not constitute a waiver or release by Indemnitee of rights hereunder and that any omission by Indemnitee to so notify the Corporation shall not relieve the Corporation from any liability that it may have to Indemnitee otherwise than under this Article VI. Any communication required or permitted to the Corporation shall be addressed to the Secretary and any such communication to Indemnitee shall be addressed to Indemnitee's address as shown on the Corporation's records unless he or she specifies otherwise and shall be personally delivered, delivered by U.S. Mail, or delivered by commercial express overnight delivery service. Any such notice shall be effective upon receipt.

Section 6.17 *Contractual Rights*. The right to be indemnified or to the advancement or reimbursement of Expenses (i) is a contract right based upon good and valuable consideration, pursuant to which Indemnitee may sue as if these provisions were set forth in a separate written contract between Indemnitee and the Corporation, (ii) is and is intended to be retroactive and shall be available as to events occurring prior to the adoption of these provisions and (iii) shall continue after any rescission or restrictive modification of such provisions as to events occurring prior thereto.

Section 6.18 *Indemnification of Employees, Agents and Fiduciaries*. The Corporation, by adoption of a resolution of the Board of Directors, may indemnify and advance expenses to a person who is an employee (including an employee acting in his Designated Professional Capacity), agent or fiduciary of the Corporation

including any such person who is or was serving at the request of the Corporation as a director, officer, employee, agent or fiduciary of any other corporation, partnership, joint venture, limited liability company, trust, employee benefit plan or other enterprise to the same extent and subject to the same conditions (or to such lesser extent and/or with such other conditions as the Board of Directors may determine) under which it may indemnify and advance expenses to an Indemnitee under this Article V.

ARTICLE VII

MISCELLANEOUS

Section 7.1 *Fiscal Year*. The fiscal year of the Corporation shall end on the 31st day of December of each year or as otherwise provided by a resolution adopted by the Board.

Section 7.2 *Seal*. The corporate seal will have the name of the Corporation inscribed thereon and will be in such form as the Board by resolution may approve from time to time.

Section 7.3 *Interested Directors; Quorum.* No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other Entity in which one or more of its Directors or officers are Directors or officers (or hold equivalent offices or positions), or have a financial interest, will be void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or Board committee which authorizes the contract or transaction, or solely because his, her or their votes are counted for that purpose, if: (i) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the Board committee, and the Board or Board committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts as to the Director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of those Stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a Board committee or the Stockholders. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a Board committee which authorizes the contract or transaction.

Section 7.4 *Form of Records*. Any records the Corporation maintains in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Section 7.5 *Bylaw Amendments*. The Board has the power to adopt, amend and repeal from time to time the Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board shall require the approval of at least a majority of the Directors then in office. The Stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Corporation at any annual meeting before which such matter has been properly brought in accordance with Sections 1.1 and 1.10 hereof, or at any special meeting if notice of the proposed amendment is contained in the notice of said special meeting; provided, however, that, in addition to any vote of the holders of any class or series of capital stock of the Corporation required by law or by the Certificate of Incorporation, the affirmative vote of the holders of at least eighty percent (80%) of the voting power of the then issued and outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Corporation.

Section 7.6 *Notices; Waiver of Notice*. Whenever any notice is required to be given to any Stockholder, Director or member of any Board committee under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, that notice will be deemed to be sufficient if given (i) by telegraphic, facsimile, electronic mail,

cable, wireless transmission or other electronic transmission or (ii) by deposit of the same in the United States mail, with postage paid thereon, addressed to the person entitled thereto at his or her address as it appears in the records of the Corporation, and that notice shall be deemed to have been given on the day of such transmission or mailing, as the case may be.

Whenever any notice is required to be given to any Stockholder or Director under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to that notice or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, will be equivalent to the giving of that notice. Attendance of a person at a meeting will constitute a waiver of notice of that meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Stockholders, the Board or any Board committee need be specified in any written waiver of notice or any waiver by electronic transmission unless the Certificate of Incorporation or these Bylaws so require.

Section 7.7 *Resignations*. Any Director or officer of the Corporation may resign at any time. Any such resignation shall be made in writing and shall take effect at the time specified in that resignation, or, if that resignation does not specify any time, at the time of its receipt by the Chairman, the CEO or the Secretary. The acceptance of a resignation will not be necessary to make it effective, unless that resignation expressly so provides.

Section 7.8 *Books, Reports and Records*. The Corporation shall keep books and records of account and shall keep minutes of the proceedings of the Stockholders, the Board and each committee of the Board. Each Director and each member of any committee designated by the Board shall, in the performance of his or her duties, be fully protected in relying in good faith on the books of account or other records of the Corporation and on information, opinions, reports or statements presented to him or her or to the Corporation by any of the Corporation's officers, employees or other Directors, or committees of the Board, or by any other person as to matters the Director or member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or behalf of the Corporation.

Section 7.9 *Facsimile Signatures*. In addition to the provisions for the use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of the Chairman, any other Director, or any officer or officers of the Corporation may be used whenever and as authorized by the Board.

Section 7.10 *Certain Definitional Provisions*. (a) When used in these Bylaws, the words "herein," "hereof" and "hereunder" and words of similar import refer to these Bylaws as a whole and not to any provision of these Bylaws, and the words "Article" and "Section" refer to Articles and Sections of these Bylaws unless otherwise specified.

(b) Whenever the context so requires, the singular number includes the plural and vice versa, and a reference to one gender includes the other gender and the neuter.

(c) The word "including" (and, with correlative meaning, the word "include") means including, without limiting the generality of any description preceding that word, and the words "shall" and "will" are used interchangeably and have the same meaning.

Section 7.11 *Captions*. Captions to Articles and Sections of these Bylaws are included for convenience of reference only, and these captions do not constitute a part hereof for any other purpose or in any way affect the meaning or construction of any provision hereof.

Adopted: [ ], 2010

TAX SHARING AGREEMENT

between

J. RAY HOLDINGS, INC.

and

BABCOCK & WILCOX HOLDINGS, INC.

dated as of

[ ] [ ], 2010

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TAX SHARING AGREEMENT

This TAX SHARING AGREEMENT (this "Agreement") is entered into as of [ ] [ ], 2010, between J. Ray Holdings, Inc., a Delaware corporation ("J. Ray U.S.") and Babcock &Wilcox Holdings, Inc., a Delaware corporation f/k/a McDermott Holdings, Inc. ("BHI"), and, solely for the purpose set forth on its signature page to this Agreement, The Babcock & Wilcox Company, a Delaware corporation ("B&W"). BHI and J. Ray U.S. are sometimes referred to herein individually as a "Party," and collectively as the "Parties." Unless otherwise indicated, all "Section" references in this Agreement are to the various sections of this Agreement.

RECITALS

WHEREAS, J. Ray U.S. is a wholly owned Subsidiary of BHI, and BHI is a wholly owned Subsidiary of McDermott International, Inc., a Panamanian company ("MII");

WHEREAS, the Board of Directors of MII has determined that it would be appropriate and in the best interests of MII and its stockholders for MII to separate the B&W Group from the J. Ray Group, as contemplated by the Master Separation Agreement (the "Separation");

WHEREAS, in furtherance thereof, the Board of Directors of MII has determined that, in connection with the Separation, it would be appropriate and in the best interests of MII and its stockholders for (i) BHI to contribute certain assets and liabilities to J. Ray U.S. and to distribute all of the issued and outstanding capital stock of J. Ray U.S. to MII in what is intended to qualify as a tax-free transaction described under Sections 368(a)(1)(D) and 355 of the Code (the "Internal Distribution"), (ii) MII to contribute all of the issued and outstanding capital stock of BHI to B&W as part of a transaction intended to qualify as a tax-free reorganization under Section 368(a)(1)(F) of the Code (the "F Reorganization"), (iii) MII to distribute all of the issued and outstanding capital stock of B&W on a pro rata basis to holders of MII Common Stock in what is intended to qualify as a tax-free transaction (except, in the case of the holders of MII Common Stock, with respect to cash received in lieu of fractional shares) described under Section 355 of the Code (the "External Distribution") and (iv) the members of the B&W Group and J. Ray Group to engage in the Related Separation Transactions;

WHEREAS, MII and B&W have set forth in a Master Separation Agreement the principal arrangements between them regarding the separation of the B&W Group from the J. Ray Group; and

WHEREAS, the Parties desire to provide for and agree upon the allocation between the Parties of Taxes and Tax Benefits arising prior to, and as a result of, and subsequent to the Separation, and provide for and agree upon other matters relating to Taxes.

NOW, THEREFORE, in consideration of the foregoing and agreements set forth below, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND EXAMPLES

Section 1.1 *Definitions*. For purposes of this Agreement (including the recitals hereof), the following terms shall have the following meanings:

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, such first Person.

"Agreement" has the meaning set forth in the preamble hereof.

"B&W" has the meaning set forth in the preamble hereof.

"B&W Group" means B&W and each Person that is a Subsidiary of B&W immediately after the External Distribution on the External Distribution Date.

"BHI" has the meaning set forth in the preamble hereof.

"Business Day" means a day other than a Saturday, a Sunday or a day on which banking institutions located in the State of Texas are authorized or obligated by applicable law or executive order to close.

"Code" means the U.S. Internal Revenue Code of 1986, as amended from time to time, or any successor law.

"Confidential Information" has the meaning set forth in Section 6.3.

"Control" means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of securities or partnership, membership, limited liability company or other ownership interests, by contract or otherwise. "Controlled" has a meaning correlative to the foregoing.

"Controlling Party" means the Party that has full responsibility, control and discretion in handling, settling or contesting a Tax Contest pursuant to Section 7.2.

"Due Date" has the meaning set forth in Section 4.4.

"Effective Time" means the time at which the Internal Distribution is effected on the Internal Distribution Date.

"External Distribution" has the meaning set forth in the recitals hereof.

"External Distribution Date" means the date on which the External Distribution occurs.

"F Reorganization" has the meaning set forth in the recitals hereof.

"Governmental Authority" shall mean any U.S. federal, state, local or non-U.S. court, government (or political subdivision thereof), department, commission, board, bureau, agency, official or other regulatory, administrative or governmental authority.

"Group" means the J. Ray Group or the B&W Group, as the context requires.

"Information Statement" means the information statement and any related documentation to be provided to holders of MII Common Stock in connection with the External Distribution, including any amendments or supplements thereto.

"Internal Distribution" has the meaning set forth in the recitals hereof.

"Internal Distribution Date" means the date on which the Internal Distribution occurs.

"IRS" means the Internal Revenue Service.

"IRS Submission" means the Ruling Request and any other correspondence or supplemental materials submitted to the IRS in connection with obtaining the Ruling.

"J. Ray Group" means MII and each Person that is a Subsidiary of MII immediately after the External Distribution on the External Distribution Date.

"J. Ray U.S." has the meaning set forth in the preamble hereof.

"Joint Return" means any Tax Return, for any Tax Year, that includes Tax Items of one or more members of the J. Ray Group and one or more members of the B&W Group, determined without regard to Tax Items carried forward to such Tax Year.

"Master Separation Agreement" means the Master Separation Agreement entered into as of [ ], 2010 between MII and B&W.

"MII" has the meaning set forth in the preamble hereof.

"MII Common Stock" means the MII common stock, par value $1.00 per share, outstanding as of the Effective Time.

"Non-Controlling Party" means the Party that does not have full responsibility, control and discretion in handling, settling or contesting a Tax Contest pursuant to Section 7.2.

"Non-Preparer" means the Party that is not responsible for the preparation and filing of the Joint Return or Separate Return, as applicable, pursuant to Section 3.2.

"Party" has the meaning set forth in the preamble to this Agreement.

"Payment Date" means (i) with respect to any U.S. federal income tax return, any of (A) the due date for any required installment of estimated taxes determined under Section 6655 of the Code, (B) the due date (determined without regard to extensions) for filing the return determined under Section 6072 of the Code or (C) the date the return is filed, as applicable, and (ii) with respect to any other Tax Return, any of the corresponding dates determined under the applicable Tax Law.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, a union, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

"Preparer" means the Party that is responsible for the preparation and filing of the Joint Return or Separate Return, as applicable, pursuant to Section 3.2.

"Prime Rate" means the fluctuating commercial loan rate announced by JPMorgan Chase Bank, National Association from time to time at its New York, NY office as its prime rate or base rate for U.S. Dollar loans in the United States of America in effect on the date of determination.

"Related Separation Transactions" means the transactions described in the Omnibus Restructuring Agreement dated May 10, 2010.

"Requesting Party" has the meaning set forth in Section 5.2.

"Ruling" means PLR-**[ ]**, which was issued to MII on **[ ] [ ]**, 2010.

"Ruling Request" means the request for rulings, dated February 16, 2010, filed by MII with the IRS in connection with the Internal Distribution and the External Distribution, and any other correspondence or supplemental materials submitted to the IRS in connection with obtaining the Ruling.

"Separate Return" means any Tax Return that is not a Joint Return.

"Separation" has the meaning set forth in the recitals hereof.

"Separation Taxes" has the meaning set forth in Section 2.2(b).

"Subsidiary" means, with respect to any specified Person, any corporation, partnership, limited liability company, joint venture or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such specified Person or by any one or more of its Subsidiaries, or by such specified Person and one or more of its Subsidiaries.

"Supplemental IRS Submission" means any request for a Supplemental Ruling, each supplemental submission and any other correspondence or supplemental materials submitted to the IRS in connection with obtaining any Supplemental Ruling.

"Supplemental Ruling" means any private letter ruling obtained by MII or BHI from the IRS which supplements or otherwise modifies the Ruling.

"Supplemental Tax Opinion" means, with respect to a specified action, an opinion (other than the Tax Opinion) from Tax Counsel to the effect that (i) such action will not preclude (A) the Internal Distribution from qualifying as a tax-free transaction described under Sections 368(a)(1) and 355 of the Code, (B) the F Reorganization from qualifying as a tax-free transaction under Section 368(a)(1)(D) of the Code or (C) the External Distribution from qualifying as a tax-free transaction described under Section 355 of the Code to MII and the holders of MII Common Stock (except, in the case of the holders of MII Common Stock, with respect to cash received in lieu of fractional shares) and (ii) the tax, if any, imposed on the Related Separation Transactions will not be increased.

"Tax" or "Taxes" means any income, gross income, gross receipts, profits, capital stock, franchise, withholding, payroll, social security, workers compensation, unemployment, disability, property, ad valorem, stamp, excise, severance, occupation, service, sales, use, license, lease, transfer, import, export, value added, alternative minimum, estimated or other similar tax (including any fee, assessment or other charge in the nature of or in lieu of any tax) imposed by any Tax Authority and any interest, penalties, additions to tax or additional amounts in respect of the foregoing.

"Tax Authority" means, with respect to any Tax, the Governmental Authority that imposes such Tax, and the Governmental Authority (if any) charged with the assessment, determination or collection of such Tax for such the Governmental Authority.

"Tax Benefit" means a Tax Item that could decrease the Tax liability of a taxpayer, including a credit, loss or other deduction, but not including deductions attributable to or arising from the J. Ray Group or the B&W Group, as applicable, to the extent that the aggregate of such deductions in a Tax Year does not exceed the income attributable to or arising from such Group in such Tax Year.

"Tax Contest" means an audit, review, examination or any other administrative or judicial proceeding with the purpose or effect of redetermining Taxes of any member of either Group (including any administrative or judicial review of any claim for refund).

"Tax Counsel" means (i) with respect to the Tax Opinion, Baker Botts L.L.P. or (ii) with respect to a Supplemental Tax Opinion, a nationally recognized law firm or accounting firm designated by the Party to whom such opinion is delivered.

"Tax Item" means, with respect to any Tax, any item of income, gain, loss, deduction, credit or other attribute that may have the effect of increasing or decreasing any Tax.

"Tax Law" means the law of any Governmental Authority and any controlling judicial or administrative interpretations of such law, relating to any Tax.

"Tax Materials" means (i) the Ruling issued by the IRS in connection with the Internal Distribution, the F Reorganization and the External Distribution, (ii) each IRS Submission, (iii) the representation letters delivered to Tax Counsel in connection with the delivery of the Tax Opinion and (iv) any other materials delivered or deliverable by MII, BHI and others in connection with the rendering by Tax Counsel of the Tax Opinion or the issuance by the IRS of any Ruling.

"Tax Opinion" means the opinion to be delivered by Tax Counsel to MII in connection with the Internal Distribution, the F Reorganization, the External Distribution and the Related Separation Transactions to the effect that (subject to the assumptions, qualifications and limitations set forth therein) for the U.S. federal income tax purposes (i) the Internal Distribution will qualify as a tax-free transaction described under Sections 368(a)(1)(D) and 355 of the Code to BHI and MII, (ii) the F reorganization will qualify as a tax-free reorganization under Section 368(a)(1)(F) of the Code to BHI, B&W and MII, (iii) the External Distribution will qualify as a tax-free transaction described under Section 355 of the Code to MII and the holders of MII Common Stock (except, in the case of the holders of MII Common Stock, with respect to cash received in lieu of fractional shares) and (iv) the Related Separation Transactions will be tax-free to the parties involved.

"Tax Records" means Tax Return, Tax Return work papers, documentation relating to any Tax Contests and any other books of account or records required to be maintained under applicable Tax Laws (including but not limited to Section 6001 of the Code) or under any record retention agreement with any Tax Authority.

"Tax Return" means any report of Taxes due (including estimated Taxes), any claims for refund of Taxes paid, any information return with respect to Taxes, or any other similar report, statement, declaration or document required to be filed (by paper, electronically or otherwise) under any applicable Tax Law, including any attachments, exhibits or other materials submitted with any of the foregoing, and including any amendments or supplements to any of the foregoing.

"Tax Year" means, with respect to any Tax, the year, or shorter period, if applicable, for which the Tax is reported as provided under applicable Tax Law.

"Treasury Regulations" means the regulations promulgated from time to time under the Code as in effect for the relevant Tax Year.

Section 1.2 *Examples*. The operation of various provisions of this Agreement is illustrated by examples in Appendix A hereto, and this Agreement shall be interpreted in accordance with such examples.

ARTICLE II

ALLOCATION OF TAX LIABILITIES AND TAX BENEFITS

Section 2.1 *Liability for and Payment of Taxes*. Except as provided in Section 3.1(b) (Provision of Information and Assistance), Section 3.2(c) (Provision of Information) and Article VII (Tax Contests), and in accordance with Article IV:

(a) *BHI Liabilities and Payments*. For any Tax Year (or portion thereof), BHI shall, subject to the rules for Tax Benefits in Section 2.1(c):

(i) be liable for and pay the Taxes (determined without regard to Tax Benefits) allocated to it pursuant to Section 2.2, reduced by any Tax Benefits allocated to J. Ray U.S. or BHI that are allowable under applicable Tax Law, to the applicable Tax Authority as required by Article IV; and

(ii) pay J. Ray U.S. for:

(A) any Tax Benefit arising in a Tax Year that begins after the Internal Distribution Date allocated to J. Ray U.S. pursuant to Section 2.2 that BHI uses to reduce Taxes payable by it pursuant to Section 2.1(a)(i) in any Tax Year that begins on or before the Internal Distribution Date;

(B) any Tax Benefit that (i) arises in a Tax Year that begins on or before the Internal Distribution Date, (ii) is allocated to J. Ray U.S. pursuant to Section 2.2, (iii) arises or is used as a result of a Tax Contest or other dispute which is resolved after the Internal Distribution Date and (iv) BHI uses to reduce Taxes payable by it pursuant to Section 2.1(a)(i) in any Tax Year that begins on or before the Internal Distribution Date; and

(C) any Tax Benefit that (i) arises in a Tax Year that begins on or before the Internal Distribution Date, (ii) is allocated to J. Ray U.S. pursuant to Section 2.2, and (iii) BHI uses to reduce Taxes payable by it pursuant to Section 2.1(a)(i) in any Tax Year that begins after the Internal Distribution Date.

(b) *J. Ray U.S. Liabilities and Payments*. For any Tax Year (or portion thereof), J. Ray U.S. shall, subject to the rules for Tax Benefits in Section 2.1(c):

(i) be liable for and pay the Taxes (determined without regard to Tax Benefits) allocated to it pursuant to Section 2.2, reduced by any Tax Benefits allocated to J. Ray U.S. or BHI that are allowable under applicable Tax Law, either to the applicable Tax Authority or to BHI as required by Article IV; and

(ii) pay BHI for:

(A) any Tax Benefit arising in a Tax Year that begins after the Internal Distribution Date allocated to BHI pursuant to Section 2.2 that J. Ray U.S. uses to reduce Taxes payable by it pursuant to Section 2.1(b)(i) in any Tax Year that begins on or before the Internal Distribution Date; and

(B) any Tax Benefit that (i) arises in a Tax Year that begins on or before the Internal Distribution Date, (ii) is allocated to BHI pursuant to Section 2.2, (iii) arises or is used as a result of a Tax Contest or other dispute which is resolved after the Internal Distribution Date and (iv) J. Ray U.S. uses to reduce Taxes payable by it pursuant to Section 2.1(b)(i) in any Tax Year that begins on or before the Internal Distribution Date.

(c) *Rules for Tax Benefits.* For purposes of this Article II:

(i) For any Tax Year that begins on or before the Internal Distribution Date, (A) BHI shall, pursuant to Section 2.1(a)(i), reduce Taxes allocated to it by Tax Benefits allocated to J. Ray U.S. only to the extent such Tax Benefits are not taken into account by J. Ray U.S. pursuant to Section 2.1(b)(i) in the same Tax Year and (B) J. Ray U.S. shall, pursuant to Section 2.1(b)(i), reduce Taxes allocated to it by Tax Benefits allocated to BHI only to the extent such Tax Benefits are not taken into account by BHI pursuant to Section 2.1(a)(i) in the same Tax Year.

(ii) For purposes of applying Section 2.1(c)(i), for any Tax Year that begins on or before the Internal Distribution Date, (A) BHI shall not take into account any Tax Benefit under Section 2.1(a)(i) unless the utilization of such Tax Benefit would be allowable under applicable Tax Law after taking into account only those Tax Items allocated to BHI during such Tax Year (or portion thereof) and (B) J. Ray U.S. shall not take into account any Tax Benefit under Section 2.1(b)(i) unless the utilization of such Tax Benefit would be allowable under applicable Tax Law after taking into account only those Tax Items allocated to J. Ray U.S. during such Tax Year (or portion thereof).

(iii) Tax Benefits will be treated as used in the order specified under applicable Tax Law, and to the extent that such Tax Law does not specify the order of use then Tax Benefits will be deemed to be used pro rata.

Section 2.2 *Allocation Rules.* For purposes of Section 2.1:

(a) *General Rule*. Except as otherwise provided in this Section 2.2, (i) Taxes (determined without regard to Tax Benefits) for any Tax Year (or portion thereof) shall be allocated (A) to BHI to the extent of the net taxable income or other applicable items attributable to members of the B&W Group that gave rise to such Taxes and (B) to J. Ray U.S. to the extent of the net taxable income or other applicable items attributable to members of the J. Ray Group that gave rise to such Taxes and (ii) Tax Benefits for any Tax Year (or portion thereof) shall be allocated (A) to BHI to the extent of the losses, credits or other applicable items attributable to members of the B&W Group that gave rise to such Tax Benefits and (B) to J. Ray U.S. to the extent of the losses, credits or other applicable items attributable to members of the J. Ray Group that gave rise to such Tax Benefits. For purposes of applying this Section 2.2, any Taxes imposed on payments from a member of one Group to a member of the other Group shall be treated as attributable entirely to the payee.

(b) *Taxes Resulting from the Separation*. For purposes of Section 2.1:

(i) *Separation Taxes Allocable to BHI.* Except as provided in Section 2.2(b)(ii), Taxes and Tax Items resulting from the Internal Distribution, the F Reorganization, the External Distribution or the Related Separation Transactions (collectively, the "Separation Taxes") shall be allocated to BHI; provided that Separation Taxes shall not include Taxes resulting from a payment between the Parties under this Agreement.

(ii) *Separation Taxes Allocable to J. Ray U.S.* Separation Taxes shall be allocated to J. Ray U.S. to the extent that such Separation Taxes are directly attributable to J. Ray U.S.'s breach of any covenant or representation under Article VIII.

ARTICLE III

PREPARATION AND FILING OF TAX RETURNS

Section 3.1 *Joint Returns.*

(a) *Preparation of Joint Returns.* BHI shall be responsible for preparing and filing (or causing to be prepared and filed) all Joint Returns, except that J. Ray U.S. shall have the sole discretion over whether any Tax Return is filed on a consolidated, combined or unitary basis, if such Tax Return would include at least one member of each Group and the filing of such Tax Return is elective under the relevant Tax Law.

(b) *Provision of Information and Assistance.*

(i) *Information with Respect to Joint Returns.* At the written request of BHI, J. Ray U.S. shall provide BHI with all information in its possession, or in the possession of its Group (as of the time in the immediately following sentence), that is reasonably necessary for BHI to properly and timely file all Joint Returns. J. Ray U.S. shall provide such information no later than 30 Business Days prior to the extended due date of such Joint Return. If J. Ray U.S. or its Group is in possession of information and J. Ray U.S. fails to provide such information within the time period described in this Section 3.1(b)(i) and in the form reasonably requested by BHI to permit the timely filing of any Joint Return, then, notwithstanding any other provision of this Agreement, J. Ray U.S. shall be liable for, and shall indemnify and hold harmless each member of the B&W Group from and against, any penalties, interest or other payment obligation assessed against any member of either Group by reason of any resulting delay in filing such return. If J. Ray U.S. provides information within the time period described in this Section 3.1(b)(i) in the form reasonably requested by BHI to permit the timely filing of a Joint Return, then, notwithstanding any other provision of this Agreement, BHI shall be liable for, and shall indemnify and hold harmless each member of the J. Ray Group from and against, any penalties, interest or other payment obligation assessed against any member of either Group by reason of any delay in filing such return.

(ii) *Information with Respect to Estimated Payments and Extension Payments.* At the written request of BHI, J. Ray U.S. shall provide BHI with all information that J. Ray U.S. then has in its possession, or that is then in the possession of its Group, and that relates to members of the J. Ray Group that BHI reasonably requests in order to determine the amount of Taxes due on any Payment Date with respect to a Joint Return. J. Ray U.S. shall provide such information no later than 15 Business Days before such Payment Date. In the event that J. Ray U.S. fails to provide information within the time period described in this Section 3.1(b)(ii) in the form reasonably requested by BHI to permit the timely payment of such Taxes, the indemnification principles of Section 3.1(b)(i) shall apply with respect to any penalties, interest or other payments assessed against any member of either Group by reason of any resulting delay in paying such Taxes.

(iii) *Assistance.* At the written request of BHI, J. Ray U.S. shall take (at its own cost and expense), and shall cause the members of the J. Ray Group to take (at their own cost and expense), any reasonable action (*e.g.*, filing a ruling request with the relevant Tax Authority or executing a limited power of attorney) that is reasonably necessary in order for BHI or any other member of the B&W Group to prepare, file, amend or take any other action with respect to a Joint Return. In the event that J. Ray U.S. fails to take, or cause to be taken, any such requested action, the indemnification principles of Section 3.1(b)(i) shall apply with respect to any penalties, interest or other payments assessed against any member of either Group by reason of a failure to take any such requested action.

(c) *Allocation of Tax Items Between Joint Return and Separate Return.* BHI must (i) allocate Tax Items between a Joint Return and any related Separate Return for which J. Ray U.S. is responsible pursuant to Section 3.2(a) that are filed with respect to the same Tax Year in a manner that is consistent with the reporting of such Tax Items on such related Separate Return and (ii) make any applicable elections required under applicable Tax Law (including, without limitation, under Treasury Regulations Section 1.1502-76(b)(2)) necessary to effect such allocation.

Section 3.2 *Separate Returns.*

(a) *Tax Returns to be Prepared by J. Ray U.S.* J. Ray U.S. shall be responsible for preparing and filing (or causing to be prepared and filed), and shall be considered the Preparer of, all Separate Returns that include Tax Items of members of the J. Ray Group.

(b) *Tax Returns to be Prepared by BHI.* BHI shall be responsible for preparing and filing (or causing to be prepared and filed), and shall be considered the Preparer of, all Separate Returns that include Tax Items of members of the B&W Group.

(c) *Provision of Information*. At the written request of the Preparer, the Non-Preparer shall provide to the Preparer any information about members of the Non-Preparer's Group that the Non-Preparer then has in its possession, or that is then in the possession of its Group, and that the Preparer reasonably requests in order to properly and timely file all Separate Returns for which the Preparer is responsible pursuant to Section 3.2(a) or (b). Such information shall be provided within the time period prescribed by Section 3.1(b) for the provision of information for Joint Returns. In the event that the Non-Preparer fails to provide information within the time period described in Section 3.1(b) and in the form reasonably requested by the Preparer to permit the timely filing of a Separate Return, the indemnification principles of Section 3.1(b)(i) shall apply with respect to any penalties, interest or other payments assessed against any member of either Group by reason of any resulting delay in filing such return.

Section 3.3 *Special Rules Relating to the Preparation of Tax Returns.*

(a) *General Rule*. Except as otherwise provided in this Agreement, the Party responsible for filing (or causing to be filed) a Tax Return pursuant to Section 3.1 or Section 3.2 shall have the exclusive right, in its sole discretion, with respect to such Tax Return to determine (i) the manner in which such Tax Return shall be prepared and filed, including the elections, methods of accounting, positions, conventions and principles of taxation to be used, and the manner in which any Tax Item shall be reported, (ii) whether any extensions

may be requested, (iii) whether an amended Tax Return shall be filed, (iv) whether any claims for refund shall be made, (v) whether any refunds shall be paid by way of refund or credited against any liability for the related Tax and (vi) whether to retain outside firms to prepare or review such Tax Return.

(b) *Joint Returns*. With respect to any Joint Return, BHI may not take (and shall cause the members of the B&W Group not to take) any positions that it knows, or reasonably should know, would adversely affect any member of the J. Ray Group.

(c) *Withholding and Reporting*.

(i) *MII Stock Awards.* With respect to stock of MII delivered to any Person, J. Ray U.S. and BHI shall cooperate (and shall cause their Affiliates to cooperate) so as to permit MII to discharge any applicable Tax withholding and Tax reporting obligations, including the appointment of BHI or one or more of its Affiliates as the withholding and reporting agent if MII or one or more of its Affiliates is not otherwise required or permitted to withhold and report under applicable Tax Law.

(ii) *B&W Stock Awards.* With respect to stock of B&W delivered to any Person, J. Ray U.S. and BHI shall cooperate (and shall cause their Affiliates to cooperate) so as to permit B&W to discharge any applicable Tax withholding and Tax reporting obligations, including the appointment of J. Ray U.S. or one or more of its Affiliates as the withholding and reporting agent if B&W or one or more of its Affiliates is not otherwise required or permitted to withhold and report under applicable Tax Law.

(d) *Standard of Performance*. BHI shall prepare Joint Returns with the same general degree of care as it uses in preparing Separate Returns.

Section 3.4 *Reliance on Exchanged Information*. If a member of the B&W Group supplies information to a member of the J. Ray Group, or a member of the J. Ray Group supplies information to a member of the B&W Group, and an officer of the requesting member intends to sign a statement or other document under penalties of perjury in reliance upon the accuracy of such information, then a duly authorized officer of the member supplying such information shall certify, to such officer's knowledge and belief, the accuracy and completeness of the information so supplied.

ARTICLE IV

TAX PAYMENTS

Section 4.1 *Payment of Taxes to Tax Authorities*. J. Ray U.S. shall be responsible for remitting to the proper Tax Authority all Tax shown on any Tax Return for which it is responsible for the preparation and filing pursuant to Section 3.2(a), and BHI shall be responsible for remitting to the proper Tax Authority all Tax shown (including Taxes for which J. Ray U.S. is wholly or partially liable pursuant to Section 2.1 on any Tax Return for which it is responsible for the preparation and filing pursuant to Section 3.1(a) or Section 3.2(b).

Section 4.2 *Indemnification Payments.*

(a) *Tax Payments Made by the B&W Group.* If any member of the B&W Group remits a payment to a Tax Authority for Taxes for which J. Ray U.S. is wholly or partially liable under this Agreement, J. Ray U.S. shall remit the amount for which it is liable to BHI within 30 Business Days after receiving notification requesting such amount.

(b) *Payments for Tax Benefits.*

(i) If a member of the J. Ray Group uses a Tax Benefit for which BHI is entitled to reimbursement pursuant to Section 2.1(b)(ii), J. Ray U.S. shall pay to BHI, within 30 Business Days following the use of such Tax Benefit, an amount equal to the deemed value of such Tax Benefit, as determined in Section 4.2(b)(iv).

(ii) If a member of the B&W Group uses a Tax Benefit for which J. Ray U.S. is entitled to reimbursement pursuant to Section 2.1(a)(ii), BHI shall pay to J. Ray U.S., within 30 Business Days following the use of such Tax Benefit, an amount equal to the deemed value of such Tax Benefit, as determined in Section 4.2(b)(iv).

(iii) For purposes of this Agreement, a Tax Benefit (other than a Tax refund) will be considered used (A) in the case of a Tax Benefit that generates a Tax refund, at the time such Tax refund is received and (B) in all other cases, at the time the Tax Return is filed with respect to such Tax Benefit or, if no Tax Return is filed, at the time the Tax would have been due in the absence of such Tax Benefit.

(iv) The deemed value of any such Tax Benefit will be (A) in the case of a Tax credit, the amount of such credit or (B) in the case of a Tax deduction, an amount equal to the product of (1) the amount of such deduction and (2) the highest statutory rate applicable under Section 11 of the Code or other applicable rate under state, local or foreign law, as appropriate.

Section 4.3 *Initial Determinations and Subsequent Adjustments*. The initial determination of the amount of any payment that one Party is required to make to another under this Agreement shall be made on the basis of the Tax Return as filed, or, if the Tax to which the payment relates is not reported in a Tax Return, on the basis of the amount of Tax initially paid to the Tax Authority. The amounts paid under this Agreement will be redetermined, and additional payments relating to such redetermination will be made, as appropriate, if as a result of an audit by a Tax Authority, an amended Tax Return, or for any other reason (i) additional Taxes to which such redetermination relates are subsequently paid, (ii) a refund of such Taxes is received, (iii) the Group using a Tax Benefit changes or (iv) the amount or character of any Tax Item is adjusted or redetermined. Each payment required by the immediately preceding sentence (i) as a result of a payment of additional Taxes will be due 30 Business Days after the date on which the additional Taxes were paid or, if later, 15 Business Days after the date of a request from the other Party for the payment, (ii) as a result of the receipt of a refund will be due 30 Business Days after the refund was received, (iii) as a result of a change in use of a Tax Benefit will be due 30 Business Days after the date on which the final action resulting in such change is taken by a Tax Authority or either Party or any member of its Group or (iv) as a result of an adjustment or redetermination of the amount or character of a Tax Item will be due 30 Business Days after the date on which the final action resulting in such adjustment or redetermination is taken by a Tax Authority or either Party or any member of its Group. If a payment is made as a result of an audit by a Tax Authority which does not conclude the matter, further adjusting payments will be made, as appropriate, to reflect the outcome of subsequent administrative or judicial proceedings.

Section 4.4 *Interest on Late Payments*. Payments pursuant to this Agreement that are not made by the date prescribed in this Agreement or, if no such date is prescribed, within 30 Business Days after demand for payment is made (the "Due Date") shall bear interest for the period from and including the date immediately following the Due Date through and including the date of payment at a per annum rate fixed at the Prime Rate plus 2% per annum, subject to any maximum amount permitted by applicable Law, on the Due Date (or, if the Due Date is not a business day, as of 11:00 a.m. New York, NY time on the first business day following the Due Date). Such rate shall be redetermined at the beginning of each calendar quarter following such Due Date. Such interest will be payable at the same time as the payment to which it relates and shall be calculated on the basis of a year of 365 days and the actual number of days for which due.

Section 4.5 *Payments by or to Other Group Members*. When appropriate under the circumstances to reflect the underlying liability for a Tax or entitlement to a Tax refund or Tax Benefit, a payment which is required to be made by or to J. Ray U.S. or BHI may be made by or to another member of the J. Ray Group or the B&W Group, as appropriate, but nothing in this Section 4.5 shall relieve J. Ray U.S. or BHI of its obligations under this Agreement.

Section 4.6 *Procedural Matters*. Any written notice for indemnification delivered to the indemnifying Party in accordance with Section 9.5 shall state the amount due and owing together with a schedule calculating in

reasonable detail such amount (and shall include any relevant Tax Return, statement, bill or invoice related to such Taxes, costs, expenses or other amounts due and owing). All payments required to be made by one Party to the other Party pursuant to this Article IV shall be made by electronic, same day wire transfer. Payments shall be deemed made when received. If the indemnifying Party fails to make a payment to the indemnified Party within the time period set forth in this Article IV, the indemnifying Party shall pay to the indemnified Party, in addition to interest that accrues pursuant to Section 4.4, any costs or expenses, including any breakage costs, incurred by the indemnified Party to secure such payment or to satisfy the indemnifying Party's portion of the obligation giving rise to the indemnification payment.

Section 4.7 *Tax Consequences of Payments*. For all Tax purposes and to the extent permitted by applicable Tax Law, the Parties shall treat any payment made pursuant to this Agreement as a capital contribution by BHI to J. Ray U.S. or a distribution by J. Ray U.S. to BHI, as the case may be, immediately prior to the Internal Distribution. If any such payment (or portion thereof) causes, directly or indirectly, an increase in the Taxes owed by the recipient (or any of the members of its Group) under one or more applicable Tax Laws through withholding or otherwise, the payor's payment obligation (or portion thereof) under this Agreement shall be grossed up to take into account any additional Taxes that may be owed by the recipient (or any of the members of its Group) as a result of such payment. In the event that a Tax Authority asserts that J. Ray U.S.'s or BHI's treatment of a payment pursuant to this Agreement should be other than as required pursuant to this Section 4.7, J. Ray U.S. or BHI, as appropriate, shall use its commercially reasonable efforts to contest such assertion.

ARTICLE V

ASSISTANCE AND COOPERATION

Section 5.1 *Cooperation*. In addition to the obligations enumerated in Section 3.1(b) and Section 3.2(c), J. Ray U.S. and BHI will cooperate (and cause the members of their respective Groups to cooperate) with each other and with each other's agents and representatives, including their respective accounting firms and legal counsel, in connection with Tax matters, including provision of relevant documents and information in their possession and making available to each other, as reasonably requested and available, personnel (including officers, employees and agents of the Parties or their Affiliates) responsible for preparing, maintaining, and interpreting information and documents relevant to Taxes, and personnel reasonably required as witnesses or for purposes of providing information or documents in connection with any administrative or judicial proceedings relating to Taxes.

Section 5.2 *Supplemental Rulings and Supplemental Tax Opinions*. Each of the Parties agrees that at the reasonable request of the other Party (the "Requesting Party"), such Party shall (and shall cause each member of its Group to) cooperate and use reasonable efforts to seek to obtain, as expeditiously as reasonably practicable, a Supplemental Ruling from the IRS. Each of the Parties further agrees that at the reasonable request of the Requesting Party, such other Party shall (and shall cause each member of its Group to) cooperate and use reasonable efforts to assist the Requesting Party in obtaining, as expeditiously as reasonably practicable, a Supplemental Tax Opinion from Tax Counsel. Within 30 Business Days after receiving an invoice from the other Party therefor, the Requesting Party shall reimburse such Party for all reasonable costs and expenses incurred by such Party and the members of its Group in connection with obtaining or requesting a Supplemental Ruling or in connection with assisting the Requesting Party in obtaining a Supplemental Tax Opinion. Notwithstanding the foregoing, J. Ray U.S. shall not be required to file any Supplemental IRS Submission unless BHI represents to J. Ray U.S. that (i) it has reviewed the Supplemental IRS Submission and (ii) all information and representations, if any, relating to any member of the B&W Group contained in the Supplemental IRS Submissions are true, correct and complete in all material respects.

ARTICLE VI

TAX RECORDS

Section 6.1 *Retention of Tax Records*. Each of J. Ray U.S. and BHI shall preserve, and shall cause the members of its Group to preserve, all Tax Records that are in its possession or in the possession of any member of its Group, and that could affect the liability of any member of the other Group for Taxes, for as long as the contents thereof may become material in the administration of any matter under applicable Tax Law, but in any event until the later of (i) the expiration of any applicable statutes of limitation, as extended and (ii) 7 years after the Internal Distribution Date.

Section 6.2 *Access to Tax Records*. BHI shall make available, and cause the members of the B&W Group to make available, to members of the J. Ray Group for inspection and copying (i) all Tax Records in their possession at the time of any request therefor that relate to Tax Years that begin on or before the Internal Distribution Date and (ii) the portion of any Tax Record in their possession at the time of any request therefor that relates to Tax Years that begin after the Internal Distribution Date and which is reasonably necessary for the preparation of a Separate Return by a member of the J. Ray Group or with respect to a Tax Contest relating to such return. J. Ray U.S. shall make available, and cause the members of the J. Ray Group to make available, to members of the B&W Group for inspection and copying that portion of any Tax Record in their possession at the time of any request therefor that relates to Tax Years that begin on or before the Internal Distribution Date and which is reasonably necessary for the preparation of a Joint Return or Separate Return by a member of the B&W Group or with respect to a Tax Contest relating to such return.

Section 6.3 *Confidentiality*.

(a) J. Ray U.S. and BHI shall hold and shall cause the members of the J. Ray Group and the B&W Group, respectively, to hold, and shall each cause their respective officers, employees, accountants, counsel, consultants, advisors and agents to hold, in strict confidence and not to disclose or release without the prior written consent of the other Party, any and all Confidential Information (as defined herein); provided, that the Parties may disclose, or may permit disclosure of, Confidential Information (i) as may be necessary in connection with the filing of Tax Returns or any administrative or judicial proceedings relating to Taxes, to their respective accountants, auditors, attorneys, financial advisors, bankers and other appropriate consultants and advisors who have a need to know such information and are informed of their obligation to hold such information confidential to the same extent as is applicable to the Parties and in respect of whose failure to comply with such obligations, J. Ray U.S. or BHI, as the case may be, will be responsible or (ii) to the extent any member of the J. Ray Group or the B&W Group is compelled to disclose any such Confidential Information by judicial or administrative process or, in the opinion of legal counsel, by other requirements of law. Notwithstanding the foregoing, in the event that any demand or request for disclosure of Confidential Information is made pursuant to clause (ii) above, J. Ray U.S. or BHI, as the case may be, shall promptly notify the other of the existence of such request or demand and shall provide the other a reasonable opportunity to seek an appropriate protective order or other remedy, which both Parties will cooperate in seeking to obtain. In the event that such appropriate protective order or other remedy is not obtained, the Party whose Confidential Information is required to be disclosed shall or shall cause the other Party to furnish, or cause to be furnished, only that portion of the Confidential Information that is legally required to be disclosed. As used in this Section 6.3, “Confidential Information” shall mean all proprietary, technical or operational information, data or material of one Party which, prior to or following the Internal Distribution Date, has been disclosed by J. Ray U.S. or members of the J. Ray Group, on the one hand, or BHI or members of the B&W Group, on the other hand, in written, oral (including by recording), electronic, or visual form to, or otherwise has come into the possession of, the other, including pursuant to the access provisions of Section 3.1(b), Section 3.2(c), Section 6.2 or Section 7.3 hereof or any other provision of this Agreement or by virtue of employees of one Group becoming employees of the other Group as a result of the transactions contemplated by the Master Separation Agreement (except to the extent that such Information can be shown to have been (a) in the public domain through no fault of such Party (or, in the case of J. Ray U.S., any other member of the J. Ray Group or, in the case of BHI, any other member of the

B&W Group) or (b) later lawfully acquired from other sources by the Party (or, in the case of J. Ray U.S., such member of the J. Ray Group or, in the case of BHI, such member of the B&W Group) to which it was furnished; provided, however, in the case of (b) that such sources did not provide such Information in breach of any confidentiality obligations).

(b) Notwithstanding anything to the contrary set forth herein, (i) J. Ray U.S. and the other members of the J. Ray Group, on the one hand, and BHI and the other members of the B&W Group, on the other hand, shall be deemed to have satisfied their obligations hereunder with respect to Confidential Information if they exercise the same degree of care (but no less than a reasonable degree of care) as they take to preserve confidentiality for their own similar Information and (ii) confidentiality obligations provided for in any agreement between J. Ray U.S. or any other member of the J. Ray Group, or BHI or any other member of the B&W Group, on the one hand, and any employee of J. Ray U.S. or any other member of the J. Ray Group, or BHI or any other member of the B&W Group, on the other hand, shall remain in full force and effect. Confidential Information of J. Ray U.S. or any other member of the J. Ray Group, on the one hand, or BHI or any other member of the B&W Group, on the other hand, in the possession of and used by the other as of the Internal Distribution Date may continue to be used by such Person in possession of the Confidential Information in and only in the operation of such Person's business, and may be used only so long as the Confidential Information is maintained in confidence and not disclosed in violation of this Section 6.3. Such continued right to use may not be transferred to any third party unless the third party purchases all or substantially all of the business and assets of J. Ray U.S. or BHI, or any asset of J. Ray U.S. or BHI in which the relevant Confidential Information is used or employed, in one transaction or in a series of related transactions, and such prospective purchaser executes a written agreement with J. Ray U.S. or BHI, as the case may be (which agreement shall be fully and directly enforceable by J. Ray U.S. or BHI, respectively), in which such Party agrees to be bound in perpetuity by the terms of this Section 6.3.

ARTICLE VII

TAX CONTESTS

Section 7.1 *Notices*. Each Party shall provide prompt notice to the other Party of any pending or threatened Tax audit, assessment, proceeding or other Tax Contest of which it becomes aware relating to (i) Taxes for which it may be indemnified by the other Party hereunder, (ii) the qualification of the Internal Distribution as a tax-free transaction described under Sections 368(a)(1)(D) and 355 of the Code, (iii) the qualification of the F Reorganization as a tax-free transaction described under Section 368(a)(1)(F) of the Code, (iv) the qualification of the External Distribution as a tax-free transaction (except, in the case of the holders of MII Common Stock, with respect to cash received in lieu of fractional shares) described under Section 355 of the Code or (v) the tax treatment of the Related Separation Transactions. Such notice shall contain factual information (to the extent known) describing any asserted Tax liability in reasonable detail and shall be accompanied by copies of any notice and other documents received from any Tax Authority in respect of any such matters. If (i) an indemnified Party has knowledge of an asserted Tax liability with respect to a matter for which it is to be indemnified hereunder, (ii) such Party fails to give the indemnifying Party prompt notice of such asserted Tax liability and (iii) the indemnifying Party has the right, pursuant to Section 7.2, to control the Tax Contest relating to such Tax liability, then (A) if the indemnifying Party is precluded from contesting the asserted Tax liability as a result of the failure to give prompt notice, the indemnifying Party shall have no obligation to indemnify the indemnified Party for any Taxes arising out of such asserted Tax liability and (B) if the indemnifying Party is not precluded from contesting the asserted Tax liability, but such failure to give prompt notice results in a monetary detriment to the indemnifying Party, then any amount which the indemnifying Party is otherwise required to pay the indemnified Party pursuant to this Agreement shall be reduced by the amount of such detriment.

Section 7.2 *Control of Tax Contests.*

(a) *General Rule*. Except as otherwise provided in this Section 7.2, each Party shall be the Controlling Party with respect to any Tax Contest involving a Tax reported on a Tax Return for which it is responsible for preparing and filing (or causing to be prepared and filed) pursuant to Article III of this Agreement.

(b) *Tax Contests Involving Certain Taxes Reported on a Joint Return*. J. Ray U.S. shall be the Controlling Party with respect to any Tax Contest involving a Tax reported on a Joint Return where such Tax relates exclusively to a member of the J. Ray Group.

(c) *Tax Contests Relating to Certain Tax Items*. BHI shall be the Controlling Party with respect to any Tax Benefit it utilizes to reduce Taxes pursuant to Section 2.1(a)(i), unless BHI is required to pay J. Ray U.S. for the use of such Tax Benefit pursuant to Section 2.1(a)(ii).

(d) *Non-Controlling Party Participation Rights*. With respect to a Tax Contest of any Tax Return which involves a Tax liability for which the Non-Controlling Party may be liable, or a Tax Benefit to which the Non-Controlling Party may be entitled, under this Agreement, (i) the Non-Controlling Party shall, at its own cost and expense, be entitled to participate in such Tax Contest, (ii) the Controlling Party shall keep the Non-Controlling Party reasonably informed and consult in good faith with the Non-Controlling Party and its Tax advisors with respect to any issue relating to such Tax Contest, (iii) the Controlling Party shall provide the Non-Controlling Party with copies of all correspondence, notices and other written materials received from any Tax Authority and shall otherwise keep the Non-Controlling Party and its Tax advisors advised of significant developments in the Tax Contest and of significant communications involving representatives of the Tax Authority, (iv) the Non-Controlling Party may request that the Controlling Party take a position in respect of such Tax Contest, and the Controlling Party shall do so provided that (A) there exists substantial authority for such position (within the meaning of the accuracy-related penalty provisions of Section 6662 of the Code) and (B) the adoption of such position would not reasonably be expected to increase the Taxes or reduce the Tax Benefits allocated to the Controlling Party pursuant to Article II of this Agreement (unless the Non-Controlling Party agrees to indemnify and hold harmless the Controlling Party from such increase in Taxes or reduction in Tax Benefits), (v) the Controlling Party shall provide the Non-Controlling Party with a copy of any written submission to be sent to a Taxing Authority prior to the submission thereof and shall give serious and good faith consideration to any comments or suggested revisions that the Non-Controlling Party or its Tax advisors may have with respect thereto and (vi) there will be no settlement, resolution or closing or other agreement with respect thereto without the consent of the Non-Controlling Party, which consent shall not be unreasonably withheld or delayed.

Section 7.3 *Cooperation*. At the written request of the Controlling Party, the Non-Controlling Party shall provide to the Controlling Party any information about members of the Non-Controlling Party's Group that the Non-Controlling Party then has in its possession, or that is then in the possession of its Group, and that the Controlling Party reasonably requests in order to handle, settle or contest the Tax Contest. At the request of the Controlling Party, the Non-Controlling Party shall take any action (e.g., executing a limited power of attorney) that is reasonably necessary in order for the Controlling Party to handle, settle or contest the Tax Contest. BHI shall assist J. Ray U.S., and J. Ray U.S. shall assist BHI, in taking any remedial actions that are necessary or desirable to minimize the effects of any adjustment made by a Tax Authority. The Controlling Party shall reimburse the Non-Controlling Party for any reasonable out-of-pocket costs and expenses incurred in complying with this Section 7.3. The Controlling Party shall have no obligation to indemnify the Non-Controlling Party for any additional Taxes resulting from the Tax Contest, if the Non-Controlling Party fails to cooperate in accordance with this Section 7.3.

ARTICLE VIII

RESTRICTION ON CERTAIN ACTIONS OF THE GROUPS

Section 8.1 *General Restrictions*. Following the External Distribution Date, BHI shall not, and shall cause the members of the B&W Group not to, and J. Ray U.S. shall not, and shall cause the members of the J. Ray Group not to, take any action that, or fail to take any action the failure of which, (i) would be inconsistent with the Internal Distribution qualifying, or preclude the Internal Distribution from qualifying, as a tax-free transaction described under Sections 368(a)(1)(D) and 355 of the Code, (ii) would be inconsistent with the F

Reorganization qualifying, or preclude the F Reorganization from qualifying, as a tax-free transaction described under Section 368(a)(1)(F), (iii) would be inconsistent with the External Distribution qualifying, or preclude the External Distribution from qualifying, as a tax-free transaction (except with respect to cash received in lieu of fractional shares) described under Section 355 of the Code or (iv) would be inconsistent with the treatment of the Related Separation Transactions, or that would increase any tax imposed on the parties thereto.

Section 8.2 *Restricted Actions Relating to Tax Materials*. Without limiting the other provisions of this Article VIII, following the Effective Time, BHI shall not, and shall cause the members of the B&W Group not to, and J. Ray U.S. shall not, and shall cause the members of the J. Ray Group not to, take any action that, or fail to take any action the failure of which to take, would be reasonably likely to be inconsistent with, or cause any Person to be in breach of, any representation or covenant, or any material statement, made in the Tax Materials.

ARTICLE IX

MISCELLANEOUS

Section 9.1 *Entire Agreement*. This Agreement, together with the Master Separation Agreement, constitutes the entire agreement and understanding between J. Ray U.S. and BHI with respect to the subject matter hereof and supersedes all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof.

Section 9.2 *Binding Effect; No Third-Party Beneficiaries; Assignment.* This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns; and, except for the rights to indemnification provided to the members of the J. Ray Group and the B&W Group under this Agreement, nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may not be assigned by either Party (including by operation of law or otherwise), except with the prior written consent of the other Party.

Section 9.3 *Amendment; Waivers*. No change or amendment may be made to this Agreement except by an instrument in writing signed on behalf of both of the Parties. Either Party may, at any time, (i) extend the time for the performance of any of the obligations or other acts of the other, (ii) waive any inaccuracies in the representations and warranties of the other contained herein or in any document delivered pursuant hereto and (iii) waive compliance by the other with any of the agreements, covenants or conditions contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the Party to be bound thereby. No failure or delay on the part of either Party in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty, covenant or agreement contained herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof, or of any other right.

Section 9.4 *Remedies Cumulative*. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

Section 9.5 *Notices*. Unless otherwise expressly provided herein, all notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to be duly given (i) when personally delivered or (ii) if mailed by registered or certified mail, postage prepaid, return receipt requested, on the date the return receipt is executed or the letter is refused by the addressee or its agent or (iii) if sent by overnight courier which delivers only upon the signed receipt of the addressee, on the date the receipt acknowledgment is executed or refused by the addressee or its agent or (iv) if sent by facsimile or electronic mail, on the date confirmation of transmission is received (provided that a copy of any notice delivered pursuant to this clause (iv) shall also be sent pursuant to clause (i), (ii) or (iii)), addressed to the attention of the addressee’s General Counsel at the address of its principal executive office or to such other address or facsimile number for a Party as it shall have specified by like notice.

Section 9.6 *Counterparts*. This Agreement may be executed in multiple counterparts, each of which when executed shall be deemed to be an original but all of which together shall constitute one and the same agreement.

Section 9.7 *Severability*. If any term or other provision of this Agreement is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

Section 9.8 *Governing Law*. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Texas, without regard to any conflicts of law provisions thereof that would result in the application of the laws of any other jurisdiction.

Section 9.9 *Performance Guarantees*. J. Ray U.S. and BHI shall cause to be performed, and hereby guarantee the performance of, all actions, agreements and obligations set forth herein to be performed by their respective Subsidiaries and Affiliates.

Section 9.10 *Construction*. This Agreement shall be construed as if jointly drafted by J. Ray U.S. and BHI and no rule of construction or strict interpretation shall be applied against either Party. In this Agreement, unless the context clearly indicates otherwise, words used in the singular include the plural and words used in the plural include the singular; and if a word or phrase is defined in this Agreement, its other grammatical forms, as used in this Agreement, shall have a corresponding meaning. Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine and the neuter. Unless the context otherwise requires, the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation,” and the word “or” shall have the inclusive meaning represented by the phrase “and/or.” The words “shall” and “will” are used interchangeably in this Agreement and have the same meaning. Relative to the determination of any period of time hereunder, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including.” All references herein to a specific time of day in this Agreement shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable, on the date in question. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. As used in this Agreement, the words “this Agreement,” “herein,” “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision of this Agreement. The titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement.

Section 9.11 *Limitation of Liability*. IN NO EVENT SHALL ANY MEMBER OF THE J. RAY GROUP OR THE B&W GROUP OR THEIR RESPECTIVE DIRECTORS, OFFICERS AND EMPLOYEES BE LIABLE FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE OR SPECULATIVE DAMAGES (INCLUDING IN RESPECT OF LOST PROFITS OR REVENUES), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Section 9.12 *Termination*.

(a) This Agreement may be terminated at any time prior to the Internal Distribution Date by and in the sole discretion of J. Ray U.S. without the approval of BHI. In the event of termination pursuant to this Section 9.12, neither Party shall have any liability of any kind to the other Party under this Agreement.

(b) This Agreement shall otherwise terminate at such time as all obligations and liabilities of the Parties have been satisfied. The obligations and liabilities of the Parties arising under this Agreement shall continue in full force and effect until all such obligations have been satisfied and such liabilities have been paid in full, whether by expiration of time, operation of law or otherwise.

Section 9.13 *Authority*. Each of the Parties represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate or other actions, (c) it has duly and validly executed and delivered this Agreement on or prior to the Internal Distribution Date and (d) this Agreement creates legal, valid and binding obligations, enforceable against it in accordance with its respective terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

Section 9.14 *Predecessors or Successors*. Any reference to J. Ray U.S., BHI, MII, a Person or a Subsidiary in this Agreement shall include any predecessors or successors (e.g., by merger or other reorganization, liquidation or conversion) of J. Ray U.S., BHI, MII, such Person or such Subsidiary, respectively. Notwithstanding the foregoing, BHI (not McDermott Investments, LLC) shall be the successor to McDermott Incorporated.

Section 9.15 *Expenses*. Except as otherwise expressly provided for herein, each Party and its Subsidiaries shall bear their own expenses incurred in connection with the preparation of Tax Returns and other matters related to Taxes under the provisions of this Agreement for which they are liable.

Section 9.16 *Effective Time*. This Agreement shall become effective on the date recited above on which the Parties entered into this Agreement.

Section 9.17 *Change in Law*. Any reference to a provision of the Code or any other Tax Law shall include a reference to any applicable successor provision or law.

Section 9.18 *Disputes*. The procedures for discussion, negotiation and arbitration set forth in Article V of the Master Separation Agreement shall apply to all disputes, controversies or claims (whether sounding in contract, tort or otherwise) that may arise out of or relate to, or arise under or in connection with this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date set forth above.

J. RAY HOLDINGS, INC.

By: _____
Name:
Title:

BABCOCK & WILCOX HOLDINGS, INC.

By: _____
Name:
Title:

The Babcock & Wilcox Company hereby joins in the execution of this Agreement solely for the purpose of guaranteeing the performance of all actions, agreements and obligations set forth herein to be performed by BHI.

THE BABCOCK & WILCOX COMPANY

By: _____
Name:
Title:

Exhibit 10.3

TRANSITION SERVICES AGREEMENT

BETWEEN

MCDERMOTT INTERNATIONAL, INC.

(as service provider)

and

THE BABCOCK & WILCOX COMPANY

(as service receiver)

Dated [ ], 2010

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TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (together with the Schedules hereto, this "Agreement") is entered into as of [ ], 2010, by and between McDermott International, Inc., a Panamanian corporation ("McDermott"), and The Babcock & Wilcox Company, a Delaware corporation ("B&W").

WHEREAS, the Board of Directors of McDermott has determined that it would be appropriate and desirable for McDermott to distribute (the "Distribution") on a pro rata basis to the holders of outstanding shares of common stock, par value $1.00 per share, of McDermott all of the outstanding shares of common stock, par value $0.01 per share, of B&W owned by McDermott;

WHEREAS, in order to effectuate the foregoing, McDermott and B&W have entered into a Master Separation Agreement, dated as of the date hereof (the "Master Separation Agreement"), which provides, among other things, upon the terms and subject to the conditions thereof, for the separation of the respective businesses of McDermott and B&W and the Distribution, and the execution and delivery of certain other agreements, including this Agreement, in order to facilitate and provide for the foregoing; and

WHEREAS, in order to provide for an orderly transition under the Master Separation Agreement, it will be advisable for McDermott, through members of the MII Group, to provide to B&W certain services described herein for a transitional period.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 *Definitions*. As used in this Agreement, the following terms shall have the meanings set forth below:

"Additional Services" has the meaning set forth in Section 2.3.

"Agreement" has the meaning set forth in the preamble.

"Availed Party" has the meaning set forth in Section 9.2(a).

"B&W" has the meaning set forth in the preamble.

"Distribution" has the meaning set forth in the recitals.

"Force Majeure Event" has the meaning set forth in Section 10.1.

"Master Separation Agreement" has the meaning set forth in the recitals.

"McDermott" has the meaning set forth in the preamble.

"Schedules" means Schedules [ ] through [ ] attached hereto.

"Security Regulations" has the meaning set forth in Section 9.2(a).

"Service Coordinator" has the meaning set forth in Section 2.2.

"Services" has the meaning set forth in Section 2.1(a).

"Systems" has the meaning set forth in Section 9.2(a).

"Tax" has the meaning set forth in Section 4.4.

Capitalized terms used but not otherwise defined in this Agreement shall have the respective meanings assigned to such terms in the Master Separation Agreement.

ARTICLE II

SERVICES

Section 2.1 *Services*.

(a) Upon the terms and subject to the conditions of this Agreement, McDermott, acting directly and/or through its Affiliates and their respective employees, agents, contractors or independent third parties designated by any of them, agrees to use commercially reasonable efforts to provide or to cause to be provided services to the B&W Group as set forth in the Schedules (including any Additional Services provided in accordance with Section 2.3 hereof, all such services are collectively referred to herein as the "Services").

(b) At all times during the performance of the Services, all Persons performing such Services (including agents, temporary employees, independent third parties and consultants) shall be construed as being independent from the B&W Group, and such Persons shall not be considered or deemed to be employees of any member of the B&W Group nor entitled to any employee benefits of B&W as a result of this Agreement. The responsibility of such Persons is to perform the Services in accordance with this Agreement and, as necessary, to advise the applicable member of the B&W Group in connection therewith, and such Persons shall not be responsible for decision-making on behalf of any member of the B&W Group. Such Persons shall not be required to report to management of any member of the B&W Group nor be deemed to be under the management or direction of any member of the B&W Group. B&W acknowledges and agrees that, except as may be expressly set forth herein as a Service (including any Additional Services provided in accordance with Section 2.3 hereof) or otherwise expressly set forth in the Master Separation Agreement or an Ancillary Agreement, no member of the MII Group shall be obligated to provide, or cause to be provided, any service or goods to any member of the B&W Group.

(c) Notwithstanding anything to the contrary in this Agreement, McDermott and members of the MII Group shall not be required to perform Services hereunder or take any actions relating thereto that conflict with or violate any applicable law, contract, license, authorization, certification or permit or McDermott's Code of Business Conduct or other governance policies, as they may be amended from time to time.

Section 2.2 *Service Coordinators*. Each party will nominate in writing a representative to act as the primary contact with respect to the provision of the Services and the resolution of disputes under this Agreement (each such person, a "Service Coordinator"). The initial Service Coordinators shall be [ ] and [ ] (or their designated delegates) for each of McDermott and B&W, respectively. The Service Coordinators shall meet as expeditiously as possible to resolve any dispute hereunder; and any dispute that is not resolved by the Service Coordinators within 45 days shall be resolved in accordance with the dispute resolution procedures set forth in Article V of the Master Separation Agreement. Each party hereto may treat an act of a Service Coordinator of the other party hereto which is consistent with the provisions of this Agreement as being authorized by such other party without inquiring behind such act or ascertaining whether such Service Coordinator had authority to so act; *provided*, *however*, that no such Service Coordinator shall have authority to amend this Agreement. McDermott and B&W shall advise each other promptly (in any case no more than three Business Days) in writing of any change in their respective Service Coordinators, setting forth the name of the replacement, and stating that the replacement Service Coordinator is authorized to act for such party in accordance with this Section 2.2.

Section 2.3 *Additional Services*. B&W may request additional Services (the "Additional Services") from McDermott by providing written notice. Upon the mutual written agreement as to the nature, cost, duration and scope of such Additional Services, McDermott and B&W shall supplement in writing the Schedules hereto to include such Additional Services. Subject to the other limitations in this Agreement, including the provisions in

Section 2.6, but notwithstanding the foregoing provisions of this Section 2.3, in addition to providing the Services specified in the Schedules, McDermott, acting directly and/or through its Affiliates and their respective employees, agents, contractors or independent third parties designated by any of them, shall use commercially reasonable efforts to provide or to cause to be provided additional, de minimis administrative support services to the B&W Group as may be requested by any member of the B&W Group from time to time, at no cost beyond the amounts set forth in the Schedules (as the amounts set forth in the Schedules contemplate such additional, de minimis administrative support services); provided, however, that, for any such additional services to be considered de minimis for purposes of this sentence, such additional services shall not require the attention of (i) any one employee of any member of the McDermott Group for more than 2 hours in any single calendar month or (ii) any group of employees of any one or more members of the McDermott Group for more than 30 hours in any single calendar month. Except where the context otherwise indicates or requires, any such additional services referred to in the immediately preceding sentence shall be deemed to be "Services" under this Agreement.

Section 2.4 *Third Party Services*. McDermott shall have the right to hire third-party subcontractors to provide all or part of any Service hereunder; provided, that McDermott shall consult in good faith with B&W regarding the proposed hiring of any third-party subcontractor that has not previously been involved in the activities relating to such Service prior to the date hereof; provided, further, that, in the event such subcontracting is inconsistent with the practice applied by McDermott generally from time to time within its own organization, McDermott shall give notice to B&W of its intent to subcontract any portion of the Services and B&W shall have 20 days (or such lesser period set forth in the notice as may be practicable in the event of exigent circumstances) to determine, in its sole discretion, whether to permit such subcontracting or whether to cancel such Service in accordance with Article VI hereof. If B&W opts to cancel a Service pursuant to the immediately preceding sentence, it shall not be liable to McDermott pursuant to Section 6.1 for any costs or expenses McDermott or any member of the MII Group remains obligated to pay to the third-party subcontractor identified in the notice provided by McDermott as described above. McDermott shall not be required to give notice of its intent to subcontract Services to any party listed on Exhibit 2.4 hereto, nor shall B&W have any right to cancel any Service subcontracted to any such listed party pursuant to this Section 2.4 (provided, that this sentence shall not prevent B&W from cancelling any Service pursuant to Section 6.1).

Section 2.5 *Standard of Performance; Limitation of Liability.*

(a) The Services to be provided hereunder shall be performed with the same general degree of care, at the same general level and at the same general degree of accuracy and responsiveness, as when performed within the McDermott organization (including, for this purpose, B&W and its subsidiaries) prior to the date of this Agreement. It is understood and agreed that McDermott and the members of the MII Group are not professional providers of the types of services included in the Services and that McDermott personnel performing Services have other responsibilities and will not be dedicated full-time to performing Services hereunder.

(b) In the event McDermott or any member of the MII Group fails to provide, or cause to be provided, the Services in accordance with the standard of service set forth in Section 2.5(a) or Section 2.5(c), the sole and exclusive remedy of B&W shall be, at B&W's sole discretion, within 90 days from the date that McDermott or such member of the MII Group first fails to provide such Service, to not pay for such Service; *provided* that in the event McDermott defaults in the manner described in clause (ii) of Section 7.1, B&W shall have the further rights set forth in Article VII.

(c) EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 2.5, NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED (INCLUDING THE WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION), ARE MADE BY MCDERMOTT OR ANY MEMBER OF THE MII GROUP WITH RESPECT TO THE SERVICES UNDER THIS AGREEMENT AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL SUCH REPRESENTATIONS OR WARRANTIES ARE HEREBY WAIVED AND DISCLAIMED. B&W (ON

ITS OWN BEHALF AND ON BEHALF OF EACH OTHER MEMBER OF THE B&W GROUP) HEREBY EXPRESSLY WAIVES ANY RIGHT B&W OR ANY MEMBER OF THE B&W GROUP MAY OTHERWISE HAVE FOR ANY LOSSES, TO ENFORCE SPECIFIC PERFORMANCE OR TO PURSUE ANY OTHER REMEDY AVAILABLE IN CONTRACT, AT LAW OR IN EQUITY IN THE EVENT OF ANY NON-PERFORMANCE, INADEQUATE PERFORMANCE, FAULTY PERFORMANCE OR OTHER FAILURE OR BREACH BY MCDERMOTT OR ANY MEMBER OF THE MII GROUP UNDER OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE NEGLIGENCE OR GROSS NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT OR ACTIVE OR PASSIVE) OF MCDERMOTT OR ANY MEMBER OF THE MII GROUP OR ANY THIRD PARTY SERVICE PROVIDER AND WHETHER DAMAGES ARE ASSERTED IN CONTRACT OR TORT, UNDER FEDERAL, STATE OR NON U.S. LAWS OR OTHER STATUTE OR OTHERWISE; PROVIDED, HOWEVER, THAT THE FOREGOING WAIVER SHALL NOT EXTEND TO COVER, AND MCDERMOTT SHALL BE RESPONSIBLE FOR, SUCH LOSSES CAUSED BY THE WILLFUL MISCONDUCT OF MCDERMOTT OR ANY MEMBER OF THE MII GROUP. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL THE MII GROUP BE LIABLE TO THE B&W GROUP WITH RESPECT TO CLAIMS ARISING OUT OF THIS AGREEMENT FOR AMOUNTS IN THE AGGREGATE EXCEEDING THE AGGREGATE SERVICE CHARGES PAID HEREUNDER BY THE B&W GROUP.

Section 2.6 *Service Boundaries and Scope*. Except as provided in a Schedule for a specific Service: (a) McDermott shall be required to provide, or cause to be provided, the Services only at the locations such Services are being provided by any member of the MII Group for any member of the B&W Group immediately prior to the Distribution Date; provided, however, that, to the extent any such Service is to be provided by an employee of McDermott who works in the corporate headquarters of McDermott, such Service shall, to the extent feasible, only be provided by such employee from the corporate headquarters of McDermott; and (b) the Services shall be available only for purposes of conducting the business of the B&W Group substantially in the manner it was conducted immediately prior to the Distribution Date. Except as provided in a Schedule for a specific Service, in providing, or causing to be provided, the Services, McDermott shall not be obligated to: (i) maintain the employment of any specific employee or hire additional employees or third-party service providers; (ii) purchase, lease or license any additional equipment (including computer equipment, furniture, furnishings, fixtures, machinery, vehicles, tools and other tangible personal property), software or other assets, rights or properties; (iii) make modifications to its existing systems or software; (iv) provide any member of the B&W Group with access to any systems or software other than those to which it has authorized access immediately prior to the Distribution Date; or (v) pay any costs related to the transfer or conversion of data of any member of the B&W Group. B&W acknowledges (on its own behalf and on behalf of the other members of the B&W Group) that the employees of McDermott or any other members of the MII Group who may be assisting in the provision of Services hereunder are at-will employees and, as such, may terminate or be terminated from employment with McDermott or any of the other members of the MII Group providing Services hereunder at any time for any reason. In no event shall McDermott or any of its Affiliates or any of their respective employees or agents be required to perform any Services or take any other actions hereunder that conflict with any applicable Law. For the avoidance of doubt and except as may hereafter be designated as Additional Services in accordance with Section 2.3, the Services do not include any services required for or as the result of any business acquisitions, divestitures, start-ups or terminations by the B&W Group. To the extent B&W desires McDermott to provide any services in connection with any such acquisitions, divestitures, start-ups or terminations, B&W shall follow the procedures for requesting Additional Services pursuant to Section 2.3.

Section 2.7 *Cooperation*. McDermott and B&W shall cooperate with one another and provide such further assistance as the other party may reasonably request in connection with the provision of Services hereunder.

Section 2.8 *Transitional Nature of Services; Changes*. Subject to Sections 2.3 and 2.5, the parties acknowledge the transitional nature of the Services and that McDermott may make changes from time to time in the manner of performing the Services.

Section 2.9 *Access*. During the term of this Agreement and for so long as any Services are being provided to B&W by McDermott, B&W will provide McDermott and its authorized representatives reasonable access, during regular business hours upon reasonable notice, to B&W and its employees, representatives, facilities and books and records as McDermott and its representatives may reasonably require in order to perform such Services.

ARTICLE III

SERVICE CHARGES

Section 3.1 *Compensation*. Subject to the specific terms of this Agreement, the compensation to be received by McDermott for each Service provided hereunder will be the fees set forth on the Schedule relating to the particular Service, subject to any escalation provided for on such Schedule. In consideration for the provision of a Service, each member of the B&W Group receiving such Service shall pay to McDermott or, at the election of McDermott, the member of the MII Group providing such Service, the applicable fee for such Service as set forth on the attached Schedules.

ARTICLE IV

PAYMENT

Section 4.1 *Payment*. Except as otherwise provided in a Schedule for a specific Service, charges for Services shall be invoiced monthly by McDermott or, at its option, the member of the MII Group providing the Service. Except as otherwise provided in a Schedule for a specific Service, B&W shall make the corresponding payment no later than 60 days after receipt of the invoice. Unless otherwise provided in this Agreement, B&W shall remit funds in payment of invoices provided hereunder either by wire transfer or ACH (Automated Clearing House) in accordance with the payment instructions set forth in Schedule 4.1. Each invoice shall be directed to the B&W Service Coordinator or such other person designated in writing from time to time by such Service Coordinator. The invoice shall set forth in reasonable detail the Services rendered and the invoice amount for the Services rendered for the period covered by such invoice. Interest will accrue on any unpaid amounts at ten percent (10%) per annum (compounded monthly) or, if less, the maximum non-usurious rate of interest permitted by applicable law, until such amounts, together with all accrued and unpaid interest thereon, are paid in full. All timely payments under this Agreement shall be made without early payment discount. Any preexisting obligation to make payment for Services provided hereunder shall survive the termination of this Agreement. If McDermott incurs any reasonable out-of-pocket expenses (including any incremental license fees incurred by McDermott in connection with performance of the Services and any travel expenses incurred at the request or with the consent of B&W) or remits funds to a third-party on behalf of B&W, in either case in connection with the rendering of Services, then McDermott shall include such amount on its monthly invoice to B&W, with reasonable supporting documentation, and B&W shall reimburse that amount to McDermott pursuant to this Section 4.1 as part of its next monthly payment.

Section 4.2 *Payment Disputes*. B&W may object to any amounts for any Service at any time before, at the time of, or after payment is made, provided such objection is made in writing to McDermott within 120 days following the date of the disputed invoice. B&W shall timely pay the disputed items in full while resolution of the dispute is pending; provided, however, that McDermott shall pay interest at a rate of five percent (5%) per annum (compounded monthly) on any amounts it is required to return to B&W upon resolution of the dispute. Payment of any amount shall not constitute approval thereof. The Service Coordinators shall meet as expeditiously as possible to resolve any dispute. Any dispute that is not resolved by the Service Coordinators within 45 days shall be resolved in accordance with the dispute resolution and arbitration procedures set forth in Article V of the Master Separation Agreement. Neither party (or any member of its respective Group) shall have a right of set-off against the other party (or any member of its respective Group) for billed amounts hereunder. Upon written request, McDermott will provide to B&W reasonable detail and support documentation to permit B&W to verify the accuracy of an invoice.

Section 4.3 *Review of Charges; Error Correction*. McDermott shall maintain accurate books and records (including invoices of third parties) related to the Services sufficient to calculate, and allow B&W to verify, the amounts owed under this Agreement. From time to time until 120 days following the termination of this Agreement, B&W shall have the right to review, and McDermott shall provide access to, such books and records to verify the accuracy of such amounts, provided that such reviews shall not occur more frequently than once per calendar quarter. Each such review shall be conducted during normal business hours and in a manner that does not unreasonably interfere with the operations of McDermott. If, as a result of any such review, B&W determines that it overpaid any amount to McDermott, then B&W may raise an objection pursuant to the provisions of Section 4.2. B&W shall bear the cost and expense of any such review. McDermott shall make adjustments to charges as required to reflect the discovery of errors or omissions in charges.

Section 4.4 *Taxes*. All transfer taxes, excises, fees or other charges (including value added, sales, use or receipts taxes, but not including a tax on or measured by the income, net or gross revenues, business activity or capital of a member of the MII Group), or any increase therein, now or hereafter imposed directly or indirectly by law upon any fees paid hereunder for Services, which a member of the MII Group is required to pay or incur in connection with the provision of Services hereunder ("Tax"), shall be passed on to B&W as an explicit surcharge and shall be paid by B&W in addition to any Service fee payment, whether included in the applicable Service fee payment, or added retroactively. If B&W submits to McDermott a timely and valid resale or other exemption certificate acceptable to McDermott and sufficient to support the exemption from Tax, then such Tax will not be added to the Service fee payable pursuant to Article III; provided, however, that if a member of the MII Group is ever required to pay such Tax, B&W will promptly reimburse McDermott for such Tax, including any interest, penalties and attorney's fees related thereto. The parties will cooperate to minimize the imposition of any Taxes.

Section 4.5 *Records*. McDermott shall maintain true and correct records of all receipts, invoices, reports and such other documents relating to the Services hereunder in accordance with its standard accounting practices and procedures, consistently applied. McDermott shall retain such accounting records and make them available to B&W's authorized representatives and auditors for a period of not less than one year from the close of each fiscal year of McDermott; provided, however, that McDermott may, at its option, transfer such accounting records to B&W upon termination of this Agreement.

ARTICLE V

TERM

Section 5.1 *Term*. Subject to Articles VI and VII, the MII Group shall provide the specific Services to the B&W Group pursuant to this Agreement for the time period set forth on the Schedule relating to the specific Service. In accordance with the Master Separation Agreement and Article VI of this Agreement, except as otherwise provided in a Schedule for a specific Service, B&W shall undertake to provide to itself and members of the B&W Group, and to terminate as soon as reasonably practicable, the Services provided to the B&W Group hereunder. Except as otherwise provided in a Schedule for a specific Service or group of related Services, all Services provided for hereunder shall terminate on March 31, 2011. Except as otherwise expressly agreed or unless sooner terminated, this Agreement shall commence upon the Distribution Date and shall continue in full force and effect between the parties for so long as any Service set forth in any Schedule hereto is being provided to B&W or members of the B&W Group and this Agreement shall terminate upon the cessation of all Services provided hereunder; provided that Articles I, IV, VIII, IX and XI and Section 2.5(c) will survive the termination of this Agreement and any such termination shall not affect any obligation for the payment of Services rendered prior to termination.

ARTICLE VI

DISCONTINUATION OF SERVICES

Section 6.1 *Discontinuation of Services*. Unless otherwise provided in the relevant Schedule for a particular Service, at any time after the Distribution Date, B&W may, without cause and in accordance with the terms and conditions hereunder and the Master Separation Agreement, request the discontinuation of one or more specific Services by giving McDermott at least 30 days' prior written notice; provided, however, that any such discontinuation will not affect the amounts payable to McDermott hereunder unless (and then only to the extent that) the charges for the discontinued Services have been separately identified in the applicable Schedule. B&W shall be liable to McDermott for all costs and expenses McDermott or any member of the MII Group remains obligated to pay in connection with any discontinued Service or Services, except in the case of a Service terminated by B&W pursuant to clause (ii) of the first sentence of Section 7.1 hereof. The parties shall cooperate as reasonably required to effectuate an orderly and systematic transfer to the B&W Group of all of the duties and obligations previously performed by McDermott or a member of the MII Group under this Agreement.

Section 6.2 *Procedures Upon Discontinuation or Termination of Services*. Upon the discontinuation or termination of a Service hereunder, this Agreement shall be of no further force and effect with respect to such Service, except as otherwise provided in a Schedule for a specific Service and except as to obligations accrued prior to the date of discontinuation or termination; provided, however, that Articles I, IV, VIII, IX and XI and Section 2.5(c) of this Agreement shall survive such discontinuation or termination. Each party and the applicable member(s) of its respective Group shall, within 60 days after discontinuation or termination of a Service, deliver to the other party and the applicable member(s) of its respective Group originals of all books, records, contracts, receipts for deposits and all other papers or documents in its possession which pertain exclusively to the business of the other party and relate to such Service; provided that a party may retain copies of material provided to the other party pursuant to this Section 6.2 as it deems necessary or appropriate in connection with its financial reporting obligations or internal control practices and policies.

ARTICLE VII

DEFAULT

Section 7.1 *Termination for Default*. In the event (i) of a failure of B&W to pay for Services in accordance with the terms of this Agreement, or (ii) any party shall default, in any material respect, in the due performance or observance by it of any of the other terms, covenants or agreements contained in this Agreement, then (1) if the non-defaulting party is McDermott, McDermott shall have the right, at its sole discretion, to immediately terminate the Service with respect to which the default occurred, and (2) if the non-defaulting party is B&W, B&W shall have the right, at its sole discretion, to immediately terminate the Service with respect to which the default occurred, in either case if the defaulting party has failed to cure the default within 30 days of receipt of the written notice of such default. B&W's right to terminate this Agreement pursuant to this Article VII and the rights set forth in Section 2.5 shall constitute B&W's sole and exclusive rights and remedies for a breach by McDermott hereunder (including any breach caused by an Affiliate of McDermott or other third party providing a Service hereunder).

ARTICLE VIII

INDEMNIFICATION AND WAIVER

Section 8.1 *Waiver of Consequential Damages*. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT,

CONSEQUENTIAL, REMOTE OR SPECULATIVE DAMAGES (INCLUDING IN RESPECT OF LOST PROFITS OR REVENUES), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT LIMIT EACH PARTY'S INDEMNIFICATION OBLIGATIONS FOR LIABILITIES TO THIRD PARTIES AS SET FORTH IN THIS AGREEMENT, THE MASTER SEPARATION AGREEMENT OR ANY ANCILLARY AGREEMENT.

Section 8.2 *Services Received*. B&W hereby acknowledges and agrees that:

(a) the Services to be provided hereunder are subject to and limited by the provisions of Section 2.5, Article VII and the other provisions hereof, including the limitation of remedies available to B&W that restricts available remedies resulting from a Service not provided in accordance with the terms hereof to non-payment and, in certain limited circumstances, the right to terminate this Agreement;

(b) the Services are being provided solely to facilitate the transition of B&W to a separate company as a result of the Distribution, and McDermott and its Affiliates do not provide any such Services to non-Affiliates;

(c) it is not the intent of McDermott and the other members of the MII Group to render, nor of B&W and the other members of the B&W Group to receive from McDermott and the other members of the MII Group, professional advice or opinions, whether with regard to tax, legal, treasury, finance, employment or other business and financial matters, or technical advice, whether with regard to information technology or other matters; B&W shall not rely on, or construe, any Service rendered by or on behalf of McDermott as such professional advice or opinions or technical advice; and B&W shall seek all third-party professional advice and opinions or technical advice as it may desire or need, and in any event B&W shall be responsible for and assume all risks associated with the Services, except to the limited extent set forth in Section 2.5 and Article VII;

(d) with respect to any software or documentation within the Services, B&W shall use such software and documentation internally and for their intended purpose only, shall not distribute, publish, transfer, sublicense or in any manner make such software or documentation available to other organizations or persons, and shall not act as a service bureau or consultant in connection with such software; and

(e) a material inducement to McDermott's agreement to provide the Services is the limitation of liability and the release provided by B&W in this Agreement.

ACCORDINGLY, EXCEPT WITH REGARD TO THE LIMITED REMEDIES EXPRESSLY SET FORTH HEREIN, B&W SHALL ASSUME ALL LIABILITY FOR AND SHALL FURTHER RELEASE, DEFEND, INDEMNIFY AND HOLD MCDERMOTT, ANY MEMBER OF THE MII GROUP AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS (ALL AS INDEMNIFIED PARTIES) FREE AND HARMLESS FROM AND AGAINST ALL LOSSES RESULTING FROM, ARISING OUT OF OR RELATED TO THE SERVICES, HOWSOEVER ARISING AND WHETHER OR NOT CAUSED BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF MCDERMOTT, ANY MEMBER OF THE MII GROUP OR ANY THIRD PARTY SERVICE PROVIDER, OTHER THAN THOSE LOSSES CAUSED BY THE WILLFUL MISCONDUCT OF MCDERMOTT OR ANY MEMBER OF THE MII GROUP.

Section 8.3 *Express Negligence*. **THE INDEMNITY, RELEASES AND LIMITATIONS OF LIABILITY IN THIS AGREEMENT (INCLUDING ARTICLES II AND VIII) ARE INTENDED TO BE ENFORCEABLE AGAINST THE PARTIES IN ACCORDANCE WITH THE EXPRESS TERMS AND SCOPE THEREOF NOTWITHSTANDING ANY EXPRESS NEGLIGENCE RULE OR ANY SIMILAR DIRECTIVE THAT WOULD PROHIBIT OR OTHERWISE LIMIT INDEMNITIES BECAUSE OF THE NEGLIGENCE OR GROSS NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT OR ACTIVE OR PASSIVE) OR OTHER FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES.**

ARTICLE IX

CONFIDENTIALITY

Section 9.1 *Confidentiality*. B&W and McDermott each acknowledge and agree that the terms of Section 6.9 of the Master Separation Agreement shall apply to information, documents, plans and other data made available or disclosed by one party to the other in connection with this Agreement. B&W and McDermott each acknowledge and agree that any third party Information (to the extent such Information does not constitute McDermott Books and Records) provided by any member of the B&W Group to any member of the MII Group after the Distribution Date in connection with the provision of the Services by any member of the MII Group, or generated, maintained or held in connection with the provision of the Services by any member of the MII Group after the Distribution Date, in each case that primarily relates to the B&W Business, the B&W Assets, or the B&W Liabilities, shall not be considered Privileged Information of McDermott or Confidential Information of McDermott.

Section 9.2 *System Security*.

(a) If any party hereto is given access to the other party's computer systems or software (collectively, the "Systems") in connection with the Services, the party given access (the "Availed Party") shall comply with all of the other party's system security policies, procedures and requirements that have been provided to the Availed Party in advance and in writing (collectively, "Security Regulations"), and shall not tamper with, compromise or circumvent any security or audit measures employed by such other party. The Availed Party shall access and use only those Systems of the other party for which it has been granted the right to access and use.

(b) Each party hereto shall use commercially reasonable efforts to ensure that only those of its personnel who are specifically authorized to have access to the Systems of the other party gain such access, and use commercially reasonable efforts to prevent unauthorized access, use, destruction, alteration or loss of information contained therein, including notifying its personnel of the restrictions set forth in this Agreement and of the Security Regulations.

(c) If, at any time, the Availed Party determines that any of its personnel has sought to circumvent, or has circumvented, the Security Regulations, that any unauthorized Availed Party personnel has accessed the Systems, or that any of its personnel has engaged in activities that may lead to the unauthorized access, use, destruction, alteration or loss of data, information or software of the other party hereto, the Availed Party shall promptly terminate any such person's access to the Systems and immediately notify the other party hereto. In addition, such other party hereto shall have the right to deny personnel of the Availed Party access to its Systems upon notice to the Availed Party in the event that the other party hereto reasonably believes that such personnel have engaged in any of the activities set forth above in this Section 9.2(c) or otherwise pose a security concern. The Availed Party shall use commercially reasonable efforts to cooperate with the other party hereto in investigating any apparent unauthorized access to such other party's Systems.

ARTICLE X

FORCE MAJEURE

Section 10.1 *Performance Excused*. Continued performance of a Service may be suspended immediately to the extent caused by any event or condition beyond the reasonable control of the party suspending such performance (and not involving any willful misconduct of such party), including acts of God, pandemics, floods, fire, earthquakes, labor or trade disturbances, strikes, war, acts of terrorism, civil commotion, electrical shortages or blackouts, breakdown or injury to computing facilities, compliance in good faith with any Law (whether or not it later proves to be invalid), unavailability of materials or bad weather (a "Force Majeure Event"). B&W shall not be obligated to pay any amount for Services that it does not receive as a result of a Force Majeure Event (and

the parties hereto shall negotiate reasonably to determine the amount applicable to such Services not received). In addition to the reduction of any amounts owed by B&W hereunder, during the occurrence of a Force Majeure Event, to the extent the provision of any Service has been disrupted or reduced, during such disruption or reduction, (a) B&W may replace any such affected Service by providing any such Service for itself or engaging one or more third parties to provide such Service at the expense of B&W and (b) McDermott shall cooperate with, provide such information to and take such other actions as may be reasonably required to assist such third parties to provide such substitute Service.

Section 10.2 *Notice*. The party claiming suspension due to a Force Majeure Event will give prompt notice to the other of the occurrence of the Force Majeure Event giving rise to the suspension and of its nature and anticipated duration.

Section 10.3 *Cooperation*. Upon the occurrence of a Force Majeure Event, the parties shall cooperate with each other to find alternative means and methods for the provision of the suspended Service.

ARTICLE XI

MISCELLANEOUS

Section 11.1 *Entire Agreement*. This Agreement, together with the documents referenced herein (including the Master Separation Agreement), constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof. To the extent any provision of this Agreement conflicts with the provisions of the Master Separation Agreement, the provisions of this Agreement shall be deemed to control with respect to the subject matter hereof.

Section 11.2 *Binding Effect; No Third-Party Beneficiaries; Assignment*. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns; and nothing in this Agreement, express or implied, is intended to confer upon any other person or entity any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may not be assigned by either party hereto, except with the prior written consent of the other party hereto.

Section 11.3 *Amendment; Waivers*. No change or amendment may be made to this Agreement except by an instrument in writing signed on behalf of both of the parties hereto. Either party hereto may, at any time, (i) extend the time for the performance of any of the obligations or other acts of the other, (ii) waive any inaccuracies in the representations and warranties of the other contained herein or in any document delivered pursuant hereto, and (iii) waive compliance by the other with any of the agreements, covenants or conditions contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. No failure or delay on the part of either party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty, covenant or agreement contained herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right.

Section 11.4 *Notices*. Unless otherwise expressly provided herein, all notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to be duly given (i) when personally delivered or (ii) if mailed by registered or certified mail, postage prepaid, return receipt requested, on the date the return receipt is executed or the letter is refused by the addressee or its agent or (iii) if sent by overnight courier which delivers only upon the signed receipt of the addressee, on the date the receipt acknowledgment is executed or refused by the addressee or its agent or (iv) if sent by facsimile or electronic mail, on the date confirmation of transmission is received (provided that a copy of any notice delivered pursuant to this clause (iv) shall also be sent pursuant to clause (i), (ii) or (iii)), addressed to the attention of the addressee’s General Counsel at the address of its principal executive office or to such other address or facsimile number for a party hereto as it shall have specified by like notice.

Section 11.5 *Counterparts*. This Agreement, including the Schedules hereto and the other documents referred to herein, may be executed in multiple counterparts, each of which when executed shall be deemed to be an original but all of which together shall constitute one and the same agreement.

Section 11.6 *Severability*. If any term or other provision of this Agreement or the Schedules attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

Section 11.7 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Texas, without regard to any conflicts of law provisions thereof that would result in the application of the laws of any other jurisdiction.

Section 11.8 *Performance*. Each party hereto shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Subsidiary or Affiliate of such party.

Section 11.9 *Relationship of Parties*. This Agreement does not create a fiduciary relationship, partnership, joint venture or relationship of trust or agency between the parties. The parties hereto agree that McDermott (and any other member of the MII Group which performs Services hereunder) is an independent contractor in the performance of Services for the B&W Group under this Agreement.

Section 11.10 *Regulations*. All employees of McDermott and the members of the MII Group shall, when on the property of B&W, conform to the rules and regulations of B&W concerning safety, health and security which are made known to such employees in advance in writing.

Section 11.11 *Construction*. This Agreement shall be construed as if jointly drafted by the parties hereto and no rule of construction or strict interpretation shall be applied against either party. In this Agreement, unless the context clearly indicates otherwise, words used in the singular include the plural and words used in the plural include the singular; and if a word or phrase is defined in this Agreement, its other grammatical forms, as used in this Agreement, shall have a corresponding meaning. Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine and the neuter. Unless the context otherwise requires, the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation,” and the word “or” shall have the inclusive meaning represented by the phrase “and/or.” The words “shall” and “will” are used interchangeably in this Agreement and have the same meaning. Relative to the determination of any period of time hereunder, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including.” All references herein to a specific time of day in this Agreement shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable, on the date in question. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Any reference herein to any Article, Section, Exhibit or Schedule means such Article or Section of, or such Exhibit or Schedule to, this Agreement, as the case may be, and references in any Section or definition to any clause means such clause of such Section or definition. As used in this Agreement, the words “this Agreement,” “herein,” “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision of this Agreement. The titles to Articles and headings of Sections contained in this Agreement, in any Exhibit or Schedule and in the table of contents to this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement.

Section 11.12 *Effect if Separation does not Occur*. If the Distribution does not occur, then all actions and events that are, under this Agreement, to be taken or occur effective as of or following the Distribution Date, or otherwise in connection with the Distribution, shall not be taken or occur except to the extent specifically agreed by the parties and neither party shall have any liability or further obligation to the other party under this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

MCDERMOTT INTERNATIONAL, INC.

By: _____
Name:
Title:

THE BABCOCK & WILCOX COMPANY

By: _____
Name:
Title:

[Signature Page to Transition Services Agreement]

Exhibit 10.4

TRANSITION SERVICES AGREEMENT

BETWEEN

THE BABCOCK & WILCOX COMPANY

(as service provider)

and

MCDERMOTT INTERNATIONAL, INC.

(as service receiver)

Dated [ ], 2010

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TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (together with the Schedules hereto, this "Agreement") is entered into as of [ ], 2010, by and between The Babcock & Wilcox Company, a Delaware corporation ("B&W"), and McDermott International, Inc., a Panamanian corporation ("McDermott").

WHEREAS, the Board of Directors of McDermott has determined that it would be appropriate and desirable for McDermott to distribute (the "Distribution") on a pro rata basis to the holders of outstanding shares of common stock, par value $1.00 per share, of McDermott all of the outstanding shares of common stock, par value $0.01 per share, of B&W owned by McDermott;

WHEREAS, in order to effectuate the foregoing, McDermott and B&W have entered into a Master Separation Agreement, dated as of the date hereof (the "Master Separation Agreement"), which provides, among other things, upon the terms and subject to the conditions thereof, for the separation of the respective businesses of McDermott and B&W and the Distribution, and the execution and delivery of certain other agreements, including this Agreement, in order to facilitate and provide for the foregoing; and

WHEREAS, in order to provide for an orderly transition under the Master Separation Agreement, it will be advisable for B&W, through members of the B&W Group, to provide to McDermott certain services described herein for a transitional period.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 *Definitions*. As used in this Agreement, the following terms shall have the meanings set forth below:

"Additional Services" has the meaning set forth in Section 2.3.

"Agreement" has the meaning set forth in the preamble.

"Availed Party" has the meaning set forth in Section 9.2(a).

"B&W" has the meaning set forth in the preamble.

"Distribution" has the meaning set forth in the recitals.

"Force Majeure Event" has the meaning set forth in Section 10.1.

"Master Separation Agreement" has the meaning set forth in the recitals.

"McDermott" has the meaning set forth in the preamble.

"Schedules" means Schedules [ ] through [ ] attached hereto.

"Security Regulations" has the meaning set forth in Section 9.2(a).

"Service Coordinator" has the meaning set forth in Section 2.2.

"Services" has the meaning set forth in Section 2.1(a).

"Systems" has the meaning set forth in Section 9.2(a).

"Tax" has the meaning set forth in Section 4.4.

Capitalized terms used but not otherwise defined in this Agreement shall have the respective meanings assigned to such terms in the Master Separation Agreement.

ARTICLE II

SERVICES

Section 2.1 *Services.*

(a) Upon the terms and subject to the conditions of this Agreement, B&W, acting directly and/or through its Affiliates and their respective employees, agents, contractors or independent third parties designated by any of them, agrees to use commercially reasonable efforts to provide or to cause to be provided services to the MII Group as set forth in the Schedules (including any Additional Services provided in accordance with Section 2.3 hereof, all such services are collectively referred to herein as the "Services").

(b) At all times during the performance of the Services, all Persons performing such Services (including agents, temporary employees, independent third parties and consultants) shall be construed as being independent from the MII Group, and such Persons shall not be considered or deemed to be employees of any member of the MII Group nor entitled to any employee benefits of MII as a result of this Agreement. The responsibility of such Persons is to perform the Services in accordance with this Agreement and, as necessary, to advise the applicable member of the MII Group in connection therewith, and such Persons shall not be responsible for decision-making on behalf of any member of the MII Group. Such Persons shall not be required to report to management of any member of the MII Group nor be deemed to be under the management or direction of any member of the MII Group. McDermott acknowledges and agrees that, except as may be expressly set forth herein as a Service (including any Additional Services provided in accordance with Section 2.3 hereof) or otherwise expressly set forth in the Master Separation Agreement or an Ancillary Agreement, no member of the B&W Group shall be obligated to provide, or cause to be provided, any service or goods to any member of the MII Group.

(c) Notwithstanding anything to the contrary in this Agreement, B&W and members of the B&W Group shall not be required to perform Services hereunder or take any actions relating thereto that conflict with or violate any applicable law, contract, license, authorization, certification or permit or B&W's Code of Business Conduct or other governance policies, as they may be amended from time to time.

Section 2.2 *Service Coordinators*. Each party will nominate in writing a representative to act as the primary contact with respect to the provision of the Services and the resolution of disputes under this Agreement (each such person, a "Service Coordinator"). The initial Service Coordinators shall be [ ] and [ ] (or their designated delegates) for each of McDermott and B&W, respectively. The Service Coordinators shall meet as expeditiously as possible to resolve any dispute hereunder; and any dispute that is not resolved by the Service Coordinators within 45 days shall be resolved in accordance with the dispute resolution procedures set forth in Article V of the Master Separation Agreement. Each party hereto may treat an act of a Service Coordinator of the other party hereto which is consistent with the provisions of this Agreement as being authorized by such other party without inquiring behind such act or ascertaining whether such Service Coordinator had authority to so act; *provided*, *however*, that no such Service Coordinator shall have authority to amend this Agreement. McDermott and B&W shall advise each other promptly (in any case no more than three Business Days) in writing of any change in their respective Service Coordinators, setting forth the name of the replacement, and stating that the replacement Service Coordinator is authorized to act for such party in accordance with this Section 2.2.

Section 2.3 *Additional Services*. McDermott may request additional Services (the "Additional Services") from B&W by providing written notice. Upon the mutual written agreement as to the nature, cost, duration and scope of such Additional Services, McDermott and B&W shall supplement in writing the Schedules hereto to include such Additional Services. Subject to the other limitations in this Agreement, including the provisions in Section 2.6, but nothwithstanding the foregoing provisions of this Section 2.3, in addition to providing the Services specified in the Schedules, B&W, acting directly and/or through its Affiliates and their respective employees, agents, contractors or independent third parties designated by any of them, shall use commercially reasonable efforts to provide or to cause to be provided additional, de minimis administrative support services to

the MII Group as may be requested by any member of the MII Group from time to time, at no cost beyond the amounts set forth in the Schedules (as the amounts set forth in the Schedules contemplate such additional, de minimis administrative support services); provided, however, that, for any such additional services to be considered de minimis for purposes of this sentence, such additional services shall not require the attention of (i) any one employee of any member of the B&W Group for more than 2 hours in any single calendar month or (ii) any group of employees of any one or more members of the B&W Group for more than 30 hours in any single calendar month. Except where the context otherwise indicates or requires, any such additional services referred to in the immediately preceding sentence shall be deemed to be "Services" under this Agreement.

Section 2.4 *Third Party Services*. B&W shall have the right to hire third-party subcontractors to provide all or part of any Service hereunder; provided, that B&W shall consult in good faith with McDermott regarding the proposed hiring of any third-party subcontractor that has not previously been involved in the activities relating to such Service prior to the date hereof; provided, further, that, in the event such subcontracting is inconsistent with the practice applied by B&W generally from time to time within its own organization, B&W shall give notice to McDermott of its intent to subcontract any portion of the Services and McDermott shall have 20 days (or such lesser period set forth in the notice as may be practicable in the event of exigent circumstances) to determine, in its sole discretion, whether to permit such subcontracting or whether to cancel such Service in accordance with Article VI hereof. If McDermott opts to cancel a Service pursuant to the immediately preceding sentence, it shall not be liable to B&W pursuant to Section 6.1 for any costs or expenses B&W or any member of the B&W Group remains obligated to pay to the third-party subcontractor identified in the notice provided by B&W as described above. B&W shall not be required to give notice of its intent to subcontract Services to any party listed on Exhibit 2.4 hereto, nor shall McDermott have any right to cancel any Service subcontracted to any such listed party pursuant to this Section 2.4 (provided, that this sentence shall not prevent McDermott from cancelling any Service pursuant to Section 6.1).

Section 2.5 *Standard of Performance; Limitation of Liability.*

(a) The Services to be provided hereunder shall be performed with the same general degree of care, at the same general level and at the same general degree of accuracy and responsiveness, as when performed within the McDermott organization (including, for this purpose, B&W and its subsidiaries) prior to the date of this Agreement. It is understood and agreed that B&W and the members of the B&W Group are not professional providers of the types of services included in the Services and that B&W personnel performing Services have other responsibilities and will not be dedicated full-time to performing Services hereunder.

(b) In the event B&W or any member of the B&W Group fails to provide, or cause to be provided, the Services in accordance with the standard of service set forth in Section 2.5(a) or Section 2.5(c), the sole and exclusive remedy of McDermott shall be, at McDermott's sole discretion, within 90 days from the date that B&W or such member of the B&W Group first fails to provide such Service, to not pay for such Service; *provided* that in the event B&W defaults in the manner described in clause (ii) of Section 7.1, McDermott shall have the further rights set forth in Article VII.

(c) EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 2.5, NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED (INCLUDING THE WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION), ARE MADE BY B&W OR ANY MEMBER OF THE B&W GROUP WITH RESPECT TO THE SERVICES UNDER THIS AGREEMENT AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL SUCH REPRESENTATIONS OR WARRANTIES ARE HEREBY WAIVED AND DISCLAIMED. MCDERMOTT (ON ITS OWN BEHALF AND ON BEHALF OF EACH OTHER MEMBER OF THE MII GROUP) HEREBY EXPRESSLY WAIVES ANY RIGHT MCDERMOTT OR ANY MEMBER OF THE MII GROUP MAY OTHERWISE HAVE FOR ANY LOSSES, TO ENFORCE SPECIFIC PERFORMANCE OR TO PURSUE ANY OTHER REMEDY AVAILABLE IN CONTRACT, AT LAW OR IN EQUITY IN THE EVENT OF ANY NON-PERFORMANCE, INADEQUATE PERFORMANCE,

FAULTY PERFORMANCE OR OTHER FAILURE OR BREACH BY B&W OR ANY MEMBER OF THE B&W GROUP UNDER OR RELATING TO THIS AGREEMENT, NOTWITHSTANDING THE NEGLIGENCE OR GROSS NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT OR ACTIVE OR PASSIVE) OF B&W OR ANY MEMBER OF THE B&W GROUP OR ANY THIRD PARTY SERVICE PROVIDER AND WHETHER DAMAGES ARE ASSERTED IN CONTRACT OR TORT, UNDER FEDERAL, STATE OR NON U.S. LAWS OR OTHER STATUTE OR OTHERWISE; PROVIDED, HOWEVER, THAT THE FOREGOING WAIVER SHALL NOT EXTEND TO COVER, AND B&W SHALL BE RESPONSIBLE FOR, SUCH LOSSES CAUSED BY THE WILLFUL MISCONDUCT OF B&W OR ANY MEMBER OF THE B&W GROUP. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL THE B&W GROUP BE LIABLE TO THE MII GROUP WITH RESPECT TO CLAIMS ARISING OUT OF THIS AGREEMENT FOR AMOUNTS IN THE AGGREGATE EXCEEDING THE AGGREGATE SERVICE CHARGES PAID HEREUNDER BY THE MII GROUP.

Section 2.6 *Service Boundaries and Scope*. Except as provided in a Schedule for a specific Service: (a) B&W shall be required to provide, or cause to be provided, the Services only at (i) the locations such Services are being provided by any member of the B&W Group for any member of the MII Group immediately prior to the Distribution Date and (ii) the corporate headquarters of B&W in Charlotte, North Carolina; provided, however, that, to the extent any such Service is to be provided by an employee of B&W who works in the corporate headquarters of B&W, such Service shall, to the extent feasible, only be provided by such employee from the corporate headquarters of B&W; and (b) the Services shall be available only for purposes of conducting the business of the MII Group substantially in the manner it was conducted immediately prior to the Distribution Date. Except as provided in a Schedule for a specific Service, in providing, or causing to be provided, the Services, B&W shall not be obligated to: (i) maintain the employment of any specific employee or hire additional employees or third-party service providers; (ii) purchase, lease or license any additional equipment (including computer equipment, furniture, furnishings, fixtures, machinery, vehicles, tools and other tangible personal property), software or other assets, rights or properties; (iii) make modifications to its existing systems or software; (iv) provide any member of the MII Group with access to any systems or software other than those to which it has authorized access immediately prior to the Distribution Date; or (v) pay any costs related to the transfer or conversion of data of any member of the MII Group. McDermott acknowledges (on its own behalf and on behalf of the other members of the MII Group) that the employees of B&W or any other members of the B&W Group who may be assisting in the provision of Services hereunder are at-will employees and, as such, may terminate or be terminated from employment with B&W or any of the other members of the B&W Group providing Services hereunder at any time for any reason. In no event shall B&W or any of its Affiliates or any of their respective employees or agents be required to perform any Services or take any other actions hereunder that conflict with any applicable Law. For the avoidance of doubt and except as may hereafter be designated as Additional Services in accordance with Section 2.3, the Services do not include any services required for or as the result of any business acquisitions, divestitures, start-ups or terminations by the MII Group. To the extent McDermott desires B&W to provide any services in connection with any such acquisitions, divestitures, start-ups or terminations, McDermott shall follow the procedures for requesting Additional Services pursuant to Section 2.3.

Section 2.7 *Cooperation*. McDermott and B&W shall cooperate with one another and provide such further assistance as the other party may reasonably request in connection with the provision of Services hereunder.

Section 2.8 *Transitional Nature of Services; Changes*. Subject to Sections 2.3 and 2.5, the parties acknowledge the transitional nature of the Services and that B&W may make changes from time to time in the manner of performing the Services.

Section 2.9 *Access*. During the term of this Agreement and for so long as any Services are being provided to McDermott by B&W, McDermott will provide B&W and its authorized representatives reasonable access, during regular business hours upon reasonable notice, to McDermott and its employees, representatives, facilities and books and records as B&W and its representatives may reasonably require in order to perform such Services.

ARTICLE III

SERVICE CHARGES

Section 3.1 *Compensation*. Subject to the specific terms of this Agreement, the compensation to be received by B&W for each Service provided hereunder will be the fees set forth on the Schedule relating to the particular Service, subject to any escalation provided for on such Schedule. In consideration for the provision of a Service, each member of the MII Group receiving such Service shall pay to B&W or, at the election of B&W, the member of the B&W Group providing such Service, the applicable fee for such Service as set forth on the attached Schedules.

ARTICLE IV

PAYMENT

Section 4.1 *Payment*. Except as otherwise provided in a Schedule for a specific Service, charges for Services shall be invoiced monthly by B&W or, at its option, the member of the B&W Group providing the Service. Except as otherwise provided in a Schedule for a specific Service, McDermott shall make the corresponding payment no later than 60 days after receipt of the invoice. Unless otherwise provided in this Agreement, McDermott shall remit funds in payment of invoices provided hereunder either by wire transfer or ACH (Automated Clearing House) in accordance with the payment instructions set forth in Schedule 4.1. Each invoice shall be directed to the MII Service Coordinator or such other person designated in writing from time to time by such Service Coordinator. The invoice shall set forth in reasonable detail the Services rendered and the invoice amount for the Services rendered for the period covered by such invoice. Interest will accrue on any unpaid amounts at ten percent (10%) per annum (compounded monthly) or, if less, the maximum non-usurious rate of interest permitted by applicable law, until such amounts, together with all accrued and unpaid interest thereon, are paid in full. All timely payments under this Agreement shall be made without early payment discount. Any preexisting obligation to make payment for Services provided hereunder shall survive the termination of this Agreement. If B&W incurs any reasonable out-of-pocket expenses (including any incremental license fees incurred by B&W in connection with performance of the Services and any travel expenses incurred at the request or with the consent of McDermott) or remits funds to a third-party on behalf of McDermott, in either case in connection with the rendering of Services, then B&W shall include such amount on its monthly invoice to McDermott, with reasonable supporting documentation, and McDermott shall reimburse that amount to B&W pursuant to this Section 4.1 as part of its next monthly payment.

Section 4.2 *Payment Disputes*. McDermott may object to any amounts for any Service at any time before, at the time of, or after payment is made, provided such objection is made in writing to B&W within 120 days following the date of the disputed invoice. McDermott shall timely pay the disputed items in full while resolution of the dispute is pending; provided, however, that B&W shall pay interest at a rate of five percent (5%) per annum (compounded monthly) on any amounts it is required to return to McDermott upon resolution of the dispute. Payment of any amount shall not constitute approval thereof. The Service Coordinators shall meet as expeditiously as possible to resolve any dispute. Any dispute that is not resolved by the Service Coordinators within 45 days shall be resolved in accordance with the dispute resolution and arbitration procedures set forth in Article V of the Master Separation Agreement. Neither party (or any member of its respective Group) shall have a right of set-off against the other party (or any member of its respective Group) for billed amounts hereunder. Upon written request, B&W will provide to McDermott reasonable detail and support documentation to permit McDermott to verify the accuracy of an invoice.

Section 4.3 *Review of Charges; Error Correction.* B&W shall maintain accurate books and records (including invoices of third parties) related to the Services sufficient to calculate, and allow McDermott to verify, the amounts owed under this Agreement. From time to time until 120 days following the termination of this Agreement, McDermott shall have the right to review, and B&W shall provide access to, such books and records

to verify the accuracy of such amounts, provided that such reviews shall not occur more frequently than once per calendar quarter. Each such review shall be conducted during normal business hours and in a manner that does not unreasonably interfere with the operations of B&W. If, as a result of any such review, McDermott determines that it overpaid any amount to B&W, then McDermott may raise an objection pursuant to the provisions of Section 4.2. McDermott shall bear the cost and expense of any such review. B&W shall make adjustments to charges as required to reflect the discovery of errors or omissions in charges.

Section 4.4 *Taxes*. All transfer taxes, excises, fees or other charges (including value added, sales, use or receipts taxes, but not including a tax on or measured by the income, net or gross revenues, business activity or capital of a member of the B&W Group), or any increase therein, now or hereafter imposed directly or indirectly by law upon any fees paid hereunder for Services, which a member of the B&W Group is required to pay or incur in connection with the provision of Services hereunder ("Tax"), shall be passed on to McDermott as an explicit surcharge and shall be paid by McDermott in addition to any Service fee payment, whether included in the applicable Service fee payment, or added retroactively. If McDermott submits to B&W a timely and valid resale or other exemption certificate acceptable to B&W and sufficient to support the exemption from Tax, then such Tax will not be added to the Service fee payable pursuant to Article III; provided, however, that if a member of the B&W Group is ever required to pay such Tax, McDermott will promptly reimburse B&W for such Tax, including any interest, penalties and attorney's fees related thereto. The parties will cooperate to minimize the imposition of any Taxes.

Section 4.5 *Records*. B&W shall maintain true and correct records of all receipts, invoices, reports and such other documents relating to the Services hereunder in accordance with its standard accounting practices and procedures, consistently applied. B&W shall retain such accounting records and make them available to McDermott's authorized representatives and auditors for a period of not less than one year from the close of each fiscal year of B&W; provided, however, that B&W may, at its option, transfer such accounting records to McDermott upon termination of this Agreement.

ARTICLE V

TERM

Section 5.1 *Term*. Subject to Articles VI and VII, the B&W Group shall provide the specific Services to the MII Group pursuant to this Agreement for the time period set forth on the Schedule relating to the specific Service. In accordance with the Master Separation Agreement and Article VI of this Agreement, except as otherwise provided in a Schedule for a specific Service, McDermott shall undertake to provide to itself and members of the MII Group, and to terminate as soon as reasonably practicable, the Services provided to the MII Group hereunder. Except as otherwise provided in a Schedule for a specific Service or group of related Services, all Services provided for hereunder shall terminate on March 31, 2011. Except as otherwise expressly agreed or unless sooner terminated, this Agreement shall commence upon the Distribution Date and shall continue in full force and effect between the parties for so long as any Service set forth in any Schedule hereto is being provided to McDermott or members of the MII Group and this Agreement shall terminate upon the cessation of all Services provided hereunder; provided that Articles I, IV, VIII, IX and XI and Section 2.5(c) will survive the termination of this Agreement and any such termination shall not affect any obligation for the payment of Services rendered prior to termination.

ARTICLE VI

DISCONTINUATION OF SERVICES

Section 6.1 *Discontinuation of Services*. Unless otherwise provided in the relevant Schedule for a particular Service, at any time after the Distribution Date, McDermott may, without cause and in accordance with the terms and conditions hereunder and the Master Separation Agreement, request the discontinuation of one or more

specific Services by giving B&W at least 30 days' prior written notice; provided, however, that any such discontinuation will not affect the amounts payable to B&W hereunder unless (and then only to the extent that) the charges for the discontinued Services have been separately identified in the applicable Schedule. McDermott shall be liable to B&W for all costs and expenses B&W or any member of the B&W Group remains obligated to pay in connection with any discontinued Service or Services, except in the case of a Service terminated by McDermott pursuant to clause (ii) of the first sentence of Section 7.1 hereof. The parties shall cooperate as reasonably required to effectuate an orderly and systematic transfer to the MII Group of all of the duties and obligations previously performed by B&W or a member of the B&W Group under this Agreement.

Section 6.2 *Procedures Upon Discontinuation or Termination of Services*. Upon the discontinuation or termination of a Service hereunder, this Agreement shall be of no further force and effect with respect to such Service, except as otherwise provided in a Schedule for a specific Service and except as to obligations accrued prior to the date of discontinuation or termination; provided, however, that Articles I, IV, VIII, IX and XI and Section 2.5(c) of this Agreement shall survive such discontinuation or termination. Each party and the applicable member(s) of its respective Group shall, within 60 days after discontinuation or termination of a Service, deliver to the other party and the applicable member(s) of its respective Group originals of all books, records, contracts, receipts for deposits and all other papers or documents in its possession which pertain exclusively to the business of the other party and relate to such Service; provided that a party may retain copies of material provided to the other party pursuant to this Section 6.2 as it deems necessary or appropriate in connection with its financial reporting obligations or internal control practices and policies.

ARTICLE VII

DEFAULT

Section 7.1 *Termination for Default*. In the event (i) of a failure of McDermott to pay for Services in accordance with the terms of this Agreement, or (ii) any party shall default, in any material respect, in the due performance or observance by it of any of the other terms, covenants or agreements contained in this Agreement, then (1) if the non-defaulting party is B&W, B&W shall have the right, at its sole discretion, to immediately terminate the Service with respect to which the default occurred, and (2) if the non-defaulting party is McDermott, McDermott shall have the right, at its sole discretion, to immediately terminate the Service with respect to which the default occurred, in either case if the defaulting party has failed to cure the default within 30 days of receipt of the written notice of such default. McDermott's right to terminate this Agreement pursuant to this Article VII and the rights set forth in Section 2.5 shall constitute McDermott's sole and exclusive rights and remedies for a breach by B&W hereunder (including any breach caused by an Affiliate of B&W or other third party providing a Service hereunder).

ARTICLE VIII

INDEMNIFICATION AND WAIVER

Section 8.1 *Waiver of Consequential Damages*. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE OR SPECULATIVE DAMAGES (INCLUDING IN RESPECT OF LOST PROFITS OR REVENUES), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT LIMIT EACH PARTY'S INDEMNIFICATION OBLIGATIONS FOR LIABILITIES TO THIRD PARTIES AS SET FORTH IN THIS AGREEMENT, THE MASTER SEPARATION AGREEMENT OR ANY ANCILLARY AGREEMENT.

Section 8.2 *Services Received*. McDermott hereby acknowledges and agrees that:

(a) the Services to be provided hereunder are subject to and limited by the provisions of Section 2.5, Article VII and the other provisions hereof, including the limitation of remedies available to McDermott that restricts available remedies resulting from a Service not provided in accordance with the terms hereof to non-payment and, in certain limited circumstances, the right to terminate this Agreement;

(b) the Services are being provided solely to facilitate the transition of McDermott as a separate company as a result of the Distribution, and B&W and its Affiliates do not provide any such Services to non-Affiliates;

(c) it is not the intent of B&W and the other members of the B&W Group to render, nor of McDermott and the other members of the MII Group to receive from B&W and the other members of the B&W Group, professional advice or opinions, whether with regard to tax, legal, treasury, finance, employment or other business and financial matters, or technical advice, whether with regard to information technology or other matters; McDermott shall not rely on, or construe, any Service rendered by or on behalf of B&W as such professional advice or opinions or technical advice; and McDermott shall seek all third-party professional advice and opinions or technical advice as it may desire or need, and in any event McDermott shall be responsible for and assume all risks associated with the Services, except to the limited extent set forth in Section 2.5 and Article VII;

(d) with respect to any software or documentation within the Services, McDermott shall use such software and documentation internally and for their intended purpose only, shall not distribute, publish, transfer, sublicense or in any manner make such software or documentation available to other organizations or persons, and shall not act as a service bureau or consultant in connection with such software; and

(e) a material inducement to B&W's agreement to provide the Services is the limitation of liability and the release provided by McDermott in this Agreement.

ACCORDINGLY, EXCEPT WITH REGARD TO THE LIMITED REMEDIES EXPRESSLY SET FORTH HEREIN, MCDERMOTT SHALL ASSUME ALL LIABILITY FOR AND SHALL FURTHER RELEASE, DEFEND, INDEMNIFY AND HOLD B&W, ANY MEMBER OF THE B&W GROUP AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS (ALL AS INDEMNIFIED PARTIES) FREE AND HARMLESS FROM AND AGAINST ALL LOSSES RESULTING FROM, ARISING OUT OF OR RELATED TO THE SERVICES, HOWSOEVER ARISING AND WHETHER OR NOT CAUSED BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF B&W, ANY MEMBER OF THE B&W GROUP OR ANY THIRD PARTY SERVICE PROVIDER, OTHER THAN THOSE LOSSES CAUSED BY THE WILLFUL MISCONDUCT OF B&W OR ANY MEMBER OF THE B&W GROUP.

Section 8.3 *Express Negligence*. **THE INDEMNITY, RELEASES AND LIMITATIONS OF LIABILITY IN THIS AGREEMENT (INCLUDING ARTICLES II AND VIII) ARE INTENDED TO BE ENFORCEABLE AGAINST THE PARTIES IN ACCORDANCE WITH THE EXPRESS TERMS AND SCOPE THEREOF NOTWITHSTANDING ANY EXPRESS NEGLIGENCE RULE OR ANY SIMILAR DIRECTIVE THAT WOULD PROHIBIT OR OTHERWISE LIMIT INDEMNITIES BECAUSE OF THE NEGLIGENCE OR GROSS NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT OR ACTIVE OR PASSIVE) OR OTHER FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES.**

ARTICLE IX

CONFIDENTIALITY

Section 9.1 *Confidentiality*. B&W and McDermott each acknowledge and agree that the terms of Section 6.9 of the Master Separation Agreement shall apply to information, documents, plans and other data made available or disclosed by one party to the other in connection with this Agreement. B&W and McDermott each

acknowledge and agree that any third party Information (to the extent such Information does not constitute B&W Books and Records) provided by any member of the MII Group to any member of the B&W Group after the Distribution Date in connection with the provision of the Services by any member of the B&W Group, or generated, maintained or held in connection with the provision of the Services by any member of the B&W Group after the Distribution Date, in each case that primarily relates to the MII Business, the MII Assets, or the MII Liabilities, shall not be considered Privileged Information of B&W or Confidential Information of B&W.

Section 9.2 *System Security.*

(a) If any party hereto is given access to the other party's computer systems or software (collectively, the "Systems") in connection with the Services, the party given access (the "Availed Party") shall comply with all of the other party's system security policies, procedures and requirements that have been provided to the Availed Party in advance and in writing (collectively, "Security Regulations"), and shall not tamper with, compromise or circumvent any security or audit measures employed by such other party. The Availed Party shall access and use only those Systems of the other party for which it has been granted the right to access and use.

(b) Each party hereto shall use commercially reasonable efforts to ensure that only those of its personnel who are specifically authorized to have access to the Systems of the other party gain such access, and use commercially reasonable efforts to prevent unauthorized access, use, destruction, alteration or loss of information contained therein, including notifying its personnel of the restrictions set forth in this Agreement and of the Security Regulations.

(c) If, at any time, the Availed Party determines that any of its personnel has sought to circumvent, or has circumvented, the Security Regulations, that any unauthorized Availed Party personnel has accessed the Systems, or that any of its personnel has engaged in activities that may lead to the unauthorized access, use, destruction, alteration or loss of data, information or software of the other party hereto, the Availed Party shall promptly terminate any such person's access to the Systems and immediately notify the other party hereto. In addition, such other party hereto shall have the right to deny personnel of the Availed Party access to its Systems upon notice to the Availed Party in the event that the other party hereto reasonably believes that such personnel have engaged in any of the activities set forth above in this Section 9.2(c) or otherwise pose a security concern. The Availed Party shall use commercially reasonable efforts to cooperate with the other party hereto in investigating any apparent unauthorized access to such other party's Systems.

ARTICLE X

FORCE MAJEURE

Section 10.1 *Performance Excused*. Continued performance of a Service may be suspended immediately to the extent caused by any event or condition beyond the reasonable control of the party suspending such performance (and not involving any willful misconduct of such party), including acts of God, pandemics, floods, fire, earthquakes, labor or trade disturbances, strikes, war, acts of terrorism, civil commotion, electrical shortages or blackouts, breakdown or injury to computing facilities, compliance in good faith with any Law (whether or not it later proves to be invalid), unavailability of materials or bad weather (a "Force Majeure Event"). McDermott shall not be obligated to pay any amount for Services that it does not receive as a result of a Force Majeure Event (and the parties hereto shall negotiate reasonably to determine the amount applicable to such Services not received). In addition to the reduction of any amounts owed by McDermott hereunder, during the occurrence of a Force Majeure Event, to the extent the provision of any Service has been disrupted or reduced, during such disruption or reduction, (a) McDermott may replace any such affected Service by providing any such Service for itself or engaging one or more third parties to provide such Service at the expense of McDermott and (b) B&W shall cooperate with, provide such information to and take such other actions as may be reasonably required to assist such third parties to provide such substitute Service.

Section 10.2 *Notice*. The party claiming suspension due to a Force Majeure Event will give prompt notice to the other of the occurrence of the Force Majeure Event giving rise to the suspension and of its nature and anticipated duration.

Section 10.3 *Cooperation*. Upon the occurrence of a Force Majeure Event, the parties shall cooperate with each other to find alternative means and methods for the provision of the suspended Service.

ARTICLE XI

MISCELLANEOUS

Section 11.1 *Entire Agreement*. This Agreement, together with the documents referenced herein (including the Master Separation Agreement), constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof. To the extent any provision of this Agreement conflicts with the provisions of the Master Separation Agreement, the provisions of this Agreement shall be deemed to control with respect to the subject matter hereof.

Section 11.2 *Binding Effect; No Third-Party Beneficiaries; Assignment.* This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns; and nothing in this Agreement, express or implied, is intended to confer upon any other person or entity any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may not be assigned by either party hereto, except with the prior written consent of the other party hereto.

Section 11.3 *Amendment; Waivers*. No change or amendment may be made to this Agreement except by an instrument in writing signed on behalf of both of the parties hereto. Either party hereto may, at any time, (i) extend the time for the performance of any of the obligations or other acts of the other, (ii) waive any inaccuracies in the representations and warranties of the other contained herein or in any document delivered pursuant hereto, and (iii) waive compliance by the other with any of the agreements, covenants or conditions contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. No failure or delay on the part of either party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty, covenant or agreement contained herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right.

Section 11.4 *Notices*. Unless otherwise expressly provided herein, all notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to be duly given (i) when personally delivered or (ii) if mailed by registered or certified mail, postage prepaid, return receipt requested, on the date the return receipt is executed or the letter is refused by the addressee or its agent or (iii) if sent by overnight courier which delivers only upon the signed receipt of the addressee, on the date the receipt acknowledgment is executed or refused by the addressee or its agent or (iv) if sent by facsimile or electronic mail, on the date confirmation of transmission is received (provided that a copy of any notice delivered pursuant to this clause (iv) shall also be sent pursuant to clause (i), (ii) or (iii)), addressed to the attention of the addressee’s General Counsel at the address of its principal executive office or to such other address or facsimile number for a party hereto as it shall have specified by like notice.

Section 11.5 *Counterparts*. This Agreement, including the Schedules hereto and the other documents referred to herein, may be executed in multiple counterparts, each of which when executed shall be deemed to be an original but all of which together shall constitute one and the same agreement.

Section 11.6 *Severability*. If any term or other provision of this Agreement or the Schedules attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this

Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

Section 11.7 *Governing Law*. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of Texas, without regard to any conflicts of law provisions thereof that would result in the application of the laws of any other jurisdiction.

Section 11.8 *Performance*. Each party hereto shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Subsidiary or Affiliate of such party.

Section 11.9 *Relationship of Parties*. This Agreement does not create a fiduciary relationship, partnership, joint venture or relationship of trust or agency between the parties. The parties hereto agree that B&W (and any other member of the B&W Group which performs Services hereunder) is an independent contractor in the performance of Services for the MII Group under this Agreement.

Section 11.10 *Regulations*. All employees of B&W and the members of the B&W Group shall, when on the property of McDermott, conform to the rules and regulations of McDermott concerning safety, health and security which are made known to such employees in advance in writing.

Section 11.11 *Construction*. This Agreement shall be construed as if jointly drafted by the parties hereto and no rule of construction or strict interpretation shall be applied against either party. In this Agreement, unless the context clearly indicates otherwise, words used in the singular include the plural and words used in the plural include the singular; and if a word or phrase is defined in this Agreement, its other grammatical forms, as used in this Agreement, shall have a corresponding meaning. Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine and the neuter. Unless the context otherwise requires, the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation,” and the word “or” shall have the inclusive meaning represented by the phrase “and/or.” The words “shall” and “will” are used interchangeably in this Agreement and have the same meaning. Relative to the determination of any period of time hereunder, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including.” All references herein to a specific time of day in this Agreement shall be based upon Central Standard Time or Central Daylight Savings Time, as applicable, on the date in question. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Any reference herein to any Article, Section, Exhibit or Schedule means such Article or Section of, or such Exhibit or Schedule to, this Agreement, as the case may be, and references in any Section or definition to any clause means such clause of such Section or definition. As used in this Agreement, the words “this Agreement,” “herein,” “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision of this Agreement. The titles to Articles and headings of Sections contained in this Agreement, in any Exhibit or Schedule and in the table of contents to this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement.

Section 11.12 *Effect if Separation does not Occur*. If the Distribution does not occur, then all actions and events that are, under this Agreement, to be taken or occur effective as of or following the Distribution Date, or otherwise in connection with the Distribution, shall not be taken or occur except to the extent specifically agreed by the parties and neither party shall have any liability or further obligation to the other party under this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

THE BABCOCK & WILCOX COMPANY

By: _____
Name:
Title:

MCDERMOTT INTERNATIONAL, INC.

By: _____
Name:
Title:

[Signature Page to Transition Services Agreement]

Exhibit 10.5

EXECUTION VERSION

ASSUMPTION AND LOSS ALLOCATION AGREEMENT

by and among

ACE American Insurance Company,
acting for itself and the ACE Affiliates (as defined below)

and

MCDERMOTT INTERNATIONAL, INC.,

a Panamanian corporation

and

BABCOCK & WILCOX HOLDINGS, INC.,

a corporation organized and existing under the laws of the State of Delaware

RECITALS

THIS ASSUMPTION AND LOSS ALLOCATION AGREEMENT (the "Agreement"), is entered into and effective as of May 18, 2010 (the "Effective Date") by and among ACE AMERICAN INSURANCE COMPANY, individually and acting for the ACE Affiliates (in such capacities, the "Company"), MCDERMOTT INTERNATIONAL, INC., a Panamanian corporation ("MII"), BABCOCK & WILCOX HOLDINGS, INC., a Delaware corporation ("B&W"), to be succeeded by The Babcock & Wilcox Company, a Delaware corporation, after the effective time of the Merger, and, solely with respect to Sections 2, 3 and 5(c), the other MII Entities signatory hereto and the other B&W Entities signatory hereto.

WHEREAS, the Company and/or the ACE Affiliates have issued the Existing Policies to one or more MII Entities and one or more B&W Entities; and

WHEREAS, in connection with the Existing Policies, the Company, the ACE Affiliates, one or more MII Entities, and/or one or more B&W Entities entered into various Existing Insurance Agreements; and

WHEREAS, pursuant to the Existing Policies and the Existing Insurance Agreements, the MII Entities and the B&W Entities are obligated, among other things, to pay or reimburse the Company and/or the ACE Affiliates for certain Obligations, which Obligations are secured by the Existing Collateral; and

WHEREAS, B&W, prior to the Separation, is a wholly owned Subsidiary of MII; and

WHEREAS, MII intends to spin-off B&W from MII through a dividend of common stock of B&W to the shareholders of MII (the "Separation"); and

WHEREAS, in connection with the Separation: (a) the MII Entities desire to transfer and the B&W Entities desire to assume any B&W Obligations that were incurred by, or with respect to which there exists any obligation of, an MII Entity, whether such B&W Obligations were existing, accruing or arising before, on or after the Effective Date; and (b) the B&W Entities desire to transfer and the MII Entities desire to assume any MII Obligations that were incurred by, or with respect to which there exists any obligation of, a B&W Entity, whether such MII Obligations were existing, accruing or arising before, on or after the Effective Date; and

WHEREAS, the Company, on its own behalf and on behalf of the ACE Affiliates, is willing to consent to the transfer and assumption of the Obligations as set forth herein, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set out herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including a one-time administrative fee of $25,000 (the "Fee"), and intending to be legally bound, the Parties agree as follows:

1. Definitions. The following terms used herein, including in the recitals and Exhibits hereto, shall have the following meanings:

"ACE Affiliate" means each Affiliate of ACE American Insurance Company that is listed on Exhibit V attached hereto and made a part hereof that has issued an Existing Policy or is party to an Existing Insurance Agreement.

"Affiliate" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person. For this purpose "control" of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" has the meaning set forth in the recitals to this Agreement.

"Assumption Time" means midnight (New York time) on the Effective Date.

"B&W" has the meaning set forth in the recitals to this Agreement.

"B&W Assumed Obligations" has the meaning set forth in Section 5(b).

"B&W Assumption" has the meaning set forth in Section 2(a).

"B&W Entity" means B&W and each of the entities listed on Exhibit I attached hereto and made a part hereof. It is acknowledged and understood that, from and after the effectiveness of the Separation, the B&W Entities will not be Subsidiaries or Affiliates of MII or any of the other MII Entities.

"B&W LOC" has the meaning set forth in Section 5(b).

"B&W Obligations" means any Obligations of, or to the extent arising from the operations, business, or property of, a B&W Entity for which any MII Entity is responsible under the terms of an Existing Policy or Existing Insurance Agreement, whether arising prior to, at or after the Effective Date.

"B&W Retained Obligations" has the meaning set forth in Section 2(d).

"Cash Collateral" has the meaning set forth in Section 7.

"Company" has the meaning set forth in the recitals to this Agreement.

"Company Designation" has the meaning set forth in Section 4(a).

"Effective Date" has the meaning set forth in the recitals to this Agreement.

"ESIS" means ESIS, Inc., an Affiliate of the Company.

"Existing Collateral" means any and all of the following forms of security held by the Company or any ACE Affiliate under the terms of any Existing Policy or Existing Insurance Agreement in order to secure any Obligations outstanding as of the date hereof: (i) any and all letters of credit outstanding as of the date hereof provided by or required to be provided by a B&W Entity or a MII Entity; (ii) any and all Cash Collateral provided by or required to be provided by a B&W Entity or a MII Entity; (iii) any securities account pledged by a B&W Entity or a MII Entity pursuant to any Existing Insurance Agreement; or (iv) any other collateral or security previously provided by a B&W Entity or a MII Entity under the terms of any Existing Policy or Existing Insurance Agreement in order to secure any Obligations outstanding as of the date hereof.

"Existing ESIS Agreement" means any agreement relating to claims or losses under one or more Existing Policies in which ESIS is in direct contractual privity with any MII Entity or any B&W Entity.

"Existing Insurance Agreement" means any agreement entered into on or prior to the date hereof by or on behalf of (or which is otherwise binding on) any B&W Entity and/or MII Entity with the Company or an ACE Affiliate in connection with an Existing Policy, including, without limitation, any high deductible agreement, any notice of election, any collateral agreement, any agreement relating to any deductible or paid loss retrospectively rated insurance program, any agreement relating to deductibles under any of the Existing Policies, any letter or agreement relating to policy dividends, any early close-out agreement relating to any Existing Policy or Existing Insurance Agreement and any agreement described on Exhibit II and Exhibit VI attached hereto and made a part hereof.

"Existing Policy" means each policy of general liability insurance, automobile liability insurance and workers compensation insurance (other than any insurance policy that is the subject of any reinsurance agreement) issued prior to the date hereof by the Company or an ACE Affiliate to a B&W Entity or a MII Entity, as applicable, including those policies identified on Exhibit III and Exhibit VII attached hereto and made a part hereof.

"Fee" has the meaning set forth in the recitals to this Agreement.

"Foreign Insurance Agreements" means the Existing Insurance Agreements listed on Exhibit VI attached hereto and made a part hereof and any other similar written agreements entered into between the Company or any of its Affiliates and a MII Entity or a B&W Entity in connection with or relating to insurance policies issued to cover risks located primarily outside of the continental United States during the period from January 1, 1974 through May 7, 2010.

"Foreign Policies" means the Existing Policies listed on Exhibit VII attached hereto and made a part hereof and any other general liability insurance policy issued by the Company or any of its Affiliates to a MII Entity or a B&W Entity to cover risks located primarily outside of the continental United States during the period from January 1, 1974 through May 7, 2010.

"Master Separation Agreement" means a Master Separation Agreement to be entered into between MII and The Babcock & Wilcox Company in connection with the Separation.

"Merger" means the merger, to occur after the date hereof, of Babcock & Wilcox Holdings, Inc., a Delaware corporation, with and into The Babcock & Wilcox Company, a Delaware corporation and the surviving entity of such Merger.

"MII" has the meaning set forth in the recitals to this Agreement.

"MII Cash Collateral" has the meaning set forth in Section 5(a).

"MII Assumed Obligations" has the meaning set forth in Section 5(a).

"MII Assumption" has the meaning set forth in Section 2(c).

"MII Entity" means MII and each of the entities listed on Exhibit IV attached hereto and made a part hereof. It is acknowledged and understood that, from and after the effectiveness of the Separation, the MII Entities will not be Subsidiaries or Affiliates of B&W or any of the other B&W Entities.

"MII LOC" has the meaning set forth in Section 5(a).

"MII Obligations" means any Obligations of, or to the extent arising from the operations, business, or property of, a MII Entity for which any B&W Entity is responsible under the terms of an Existing Policy or Existing Insurance Agreement, whether arising prior to, at or after the Effective Time.

"MII Retained Obligations" has the meaning set forth in Section 2(b).

"Obligations" means any and all amounts, duties, liabilities and obligations, whether accrued, fixed or contingent, mature or inchoate, known or unknown, including deductibles and premium adjustments, payable by or to be performed by a MII Entity or a B&W Entity to the Company or any ACE Affiliate under the terms of any Existing Policy or any Existing Insurance Agreement.

"Organizational Documents" means (a) with respect to any corporation, its certificate or articles of incorporation or organization and its bylaws, (b) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, and (d) with respect to any limited liability company, its certificate or articles of formation or organization and its operating agreement or other organizational documents.

"Parties" means the Company, MII and B&W, collectively (and each individually is a "Party").

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, a union, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

"Separation" has the meaning set forth in the recitals to this Agreement.

"Subsidiary" means, with respect to any specified Person, any corporation, partnership, limited liability company, joint venture or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such specified Person or by any one or more of its Subsidiaries, or by such specified Person and one or more of its Subsidiaries.

"Substituted Collateral" means (i) the MII LOC and the B&W LOC and (ii) any other collateral or security to be provided on or after the date hereof by a B&W Entity or a MII Entity under the terms of any Existing Policy or Existing Insurance Agreement in order to secure any Obligations outstanding as of the date hereof.

2. Assumption.

(a) B&W Assumption. Notwithstanding anything in any Existing Insurance Agreement or Existing Policy to the contrary, each MII Entity that is a signatory hereto hereby transfers and assigns, and B&W does hereby assume, effective as of the Assumption Time, the B&W Obligations; and B&W hereby agrees to observe, pay, perform, satisfy, fulfill and discharge any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of any MII Entity under the Existing Policies and Existing Insurance Agreements in respect of the B&W Obligations (the "B&W Assumption"). The Company, on its own behalf and on behalf of the ACE Affiliates, hereby consents to, and agrees to give full force and effect to, the B&W Assumption. From and after the Assumption Time, the Company (and/or the applicable ACE Affiliate): (i) may enforce its rights under the Existing Policies and the Existing Insurance Agreements in respect of the B&W Obligations against B&W to the same extent such Person could, prior to the B&W Assumption, enforce such rights against the applicable MII Entity and (ii) releases each MII Entity from its obligation to observe, pay, perform, satisfy, fulfill or discharge any such B&W Obligations.

(b) MII Retained Obligations. MII hereby agrees to continue to observe, pay, perform, satisfy, fulfill and discharge any and all of its now existing and hereafter arising Obligations (other than B&W Obligations) (the "MII Retained Obligations") in accordance with the terms of this Agreement and the applicable Existing Policy and Existing Insurance Agreement.

(c) MII Assumption. Notwithstanding anything in any Existing Insurance Agreement or Existing Policy to the contrary, each B&W Entity that is a signatory hereto hereby transfers and assigns, and MII does hereby assume, effective as of the Assumption Time, the MII Obligations; and MII hereby agrees to observe, pay, perform, satisfy, fulfill and discharge any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of any B&W Entity under the Existing Policies and Existing Insurance Agreements in respect of the MII Obligations (the "MII Assumption"). The Company, on its own behalf and on behalf of the ACE Affiliates, hereby consents to, and agrees to give full force and effect to, the MII Assumption. From and after the Assumption Time, the Company (and/or the applicable ACE Affiliate): (i) may enforce its rights under the Existing Policies and the Existing Insurance Agreements

in respect of the MII Obligations against MII to the same extent such Person could, prior to the MII Assumption, enforce such rights against the applicable B&W Entity and (ii) releases each B&W Entity from its obligation to observe, pay, perform, satisfy, fulfill or discharge any such MII Obligations.

(d) B&W Retained Obligations. B&W hereby agrees to continue to observe, pay, perform, satisfy, fulfill and discharge any and all of its now existing and hereafter arising Obligations (other than MII Obligations) (the "B&W Retained Obligations") in accordance with the terms of this Agreement and the applicable Existing Policy and Existing Insurance Agreement.

(e) Obligations of the Company and the ACE Affiliates. For the avoidance of doubt, the Parties acknowledge that nothing in this Agreement shall discharge, limit or in any way affect the obligations of the Company or the ACE Affiliates as insurers under any of the Existing Policies. Such obligations shall continue to be performed to the extent and in the manner set forth in the applicable Existing Policy by the Company and/or by the ACE Affiliates, as the case may be, for the benefit of such Persons who are entitled to such performance under the applicable Existing Policy, provided, however, that to the extent that such performance gives rise to Obligations, the responsibility for such Obligations shall be governed by this Agreement.

(f) Existing ESIS Agreements. The Parties shall use commercially reasonable efforts to enter into an agreement with ESIS promptly after the date hereof pursuant to which ESIS shall acknowledge and consent to the B&W Assumption and the MII Assumption and the other provisions of this Agreement with respect to determining any MII Obligations, MII Retained Obligations, B&W Obligations or B&W Retained Obligations (or allocations thereof) in respect of any Existing ESIS Agreement.

3. Joinder. As of the Effective Date, (a) to the extent that B&W is not already a party thereto and an Existing Insurance Agreement contains any B&W Obligations, each Existing Insurance Agreement is hereby deemed amended to add B&W as an "Insured" or other such obligor thereunder solely to the extent necessary to give effect to the B&W Assumption and (b) to the extent that MII is not already a party thereto and an Existing Insurance Agreement contains any MII Obligations, each Existing Insurance Agreement is hereby deemed amended to add MII as an "Insured" or other such obligor thereunder solely to the extent necessary to give effect to the MII Assumption.

4. Allocation.

(a) Company Designations. (i) MII shall continue to pay or perform any and all Obligations constituting MII Retained Obligations pursuant to and in the manner set forth in the applicable Existing Policy and the applicable Existing Insurance Agreement giving rise to such Obligations and (ii) B&W shall continue to pay or perform any and all Obligations constituting B&W Retained Obligations pursuant to and in the manner set forth in the applicable Existing Policy and the applicable Existing Insurance Agreement giving rise to such Obligations; provided, however, that in each case, MII and B&W shall provide to the Company on a timely basis such information as the Company may request so that the Company may determine whether the Obligations constitute MII Retained Obligations or B&W Retained Obligations. The Company shall determine whether such Obligations constitute MII Retained Obligations or B&W Retained Obligations (the "Company Designation") and shall notify the applicable Party of any such Company Designation. With respect to the Obligations arising out of or relating to the Foreign Policies or the Foreign Insurance Agreements, if the Company is unable to make a determination as to whether any such Obligations constitute MII Retained Obligations or B&W Retained Obligations based upon the information available to the Company, the Company will deem the Company Designation for such Obligations to be MII Retained Obligations. B&W agrees that, notwithstanding any dispute or disagreement it may have with respect to any Company Designation, it will pay any B&W Retained Obligation pursuant to and in the manner set forth in the applicable Existing Policy and the applicable Existing Insurance Agreement giving rise to such B&W Retained Obligation; and MII agrees that, notwithstanding any dispute or disagreement it may have with respect to any Company Designation, it will pay such MII Retained Obligation pursuant to and in the manner set forth in the applicable Existing Policy and the applicable Existing Insurance

Agreement giving rise to such MII Retained Obligation; provided, however, that such payment shall not be construed as prejudicial to either Party in any dispute between MII and B&W with respect to any such Company Designation.

(b) Disputes. Notwithstanding any dispute or disagreement between MII and B&W concerning a Company Designation, the applicable Party shall pay any amount payable pursuant to a Company Designation as set forth in Section 4(a), and any such dispute or disagreement between MII and B&W shall be resolved pursuant to Article V of the Master Separation Agreement; provided, that (i) until the Master Separation Agreement is executed and delivered by all parties thereto, the reference to such agreement herein shall be deemed to refer to the draft thereof dated as of April 28, 2010; (ii) the Company will not be made a party to any arbitration proceeding arising from such dispute or disagreement, but may be called as a witness; (iii) any costs incurred by the Company in respect of any such arbitration proceeding will be fully reimbursed to the Company equally by the Disputing Parties promptly following receipt of a reimbursement demand from the Company; (iv) under no circumstances will MII or B&W, as a result of such arbitration proceeding, require the Company to return any amount received by the Company pursuant to a prior Company Designation, whether such amount was received as a result of the Company's draw against security posted for its benefit or otherwise, and (v) the Company shall comply with the allocation or other resolution of such dispute established by any award or order of such arbitration, or settlement between the Disputing Parties; and (vi) any indemnification and reimbursement of the Company by B&W and MII pursuant to this Agreement, the Existing Policies and the Existing Insurance Agreements and any other agreement relating to the disputed Company Designation shall be in accordance with the allocation established by such award, order or settlement of such dispute.

5. Collateral and Fee.

(a) MII LOC.

(i) MII will, within fifteen (15) days after the Effective Date, provide to the Company, as beneficiary thereof, (A) cash collateral in an amount of $687,236 in respect of its Obligations under the Existing Insurance Agreements and the Existing Policies (other than the Foreign Insurance Agreements and Foreign Policies) and (B) cash collateral in an amount of $6,074,640 in respect of the Foreign Insurance Agreements and Foreign Policies (such cash collateral individually and collectively being referred to herein as the "MII Cash Collateral"). The Company shall return the MII Cash Collateral to MII promptly upon receipt of the MII LOC as set forth below. MII will, within fifteen (15) days after July 1, 2010, provide to the Company, as beneficiary thereof, (A) a clean, irrevocable and unconditional letter of credit in an amount of $687,236 in respect of its Obligations under the Existing Insurance Agreements and the Existing Policies (other than the Foreign Insurance Agreements and Foreign Policies) and (B) a clean, irrevocable and unconditional letter of credit in an amount of $6,074,640 in respect of the Foreign Insurance Agreements and Foreign Policies (each such letter of credit individually and collectively being referred to herein as the "MII LOC"), issued in a form and by a bank or other financial institution, in each case acceptable to the Company; and/or such other forms of collateral as the Company may permit from time to time. The MII LOC shall be in an aggregate amount that is less than the aggregate amount of the Existing Collateral provided by MII and shall secure the MII Retained Obligations and the Obligations assumed by MII in the MII Assumption (the "MII Assumed Obligations").

(ii) The MII LOC shall be "evergreen," meaning that it shall provide by its terms that it will be renewed automatically each year for an additional year unless written notice of non-renewal is received by the Company at least sixty (60) days prior to the MII LOC's anniversary date. If the Company permits MII to provide collateral in a form other than the MII LOC, MII shall provide such collateral in an amount and form acceptable to the Company.

(iii) MII shall keep the MII LOC in place (or other collateral acceptable to the Company) as security for payment of the MII Retained Obligations and the MII Assumed Obligations, until the

Company determines in its sole discretion that there is no longer any need for such collateral. If there shall be a material deterioration in the financial condition of the bank or other financial institution which has issued the MII LOC, the Company shall have the right to require MII to replace the MII LOC with a new letter of credit with similar terms issued by a bank or other financial institution then acceptable to the Company.

(iv) The Company shall have the right to draw against the MII LOC and/or other collateral in each instance where any portion of the MII Retained Obligation or the MII Assumed Obligations for any reason is not fulfilled in the manner and within the time periods required under this Agreement or the Existing Policies or Existing Insurance Agreements giving rise thereto.

(v) Annually, the Company shall review and redetermine the amount of the MII Retained Obligations and the MII Assumed Obligations and the amount of collateral security required pursuant to this Agreement. At such time, MII will provide its most recent audited financial statements, interim financial statements, and any other financial information reasonably requested by the Company for the purpose of evaluating the financial condition of MII. MII will provide any needed increases in the amount of the MII LOC (and/or other collateral if acceptable to the Company) within thirty (30) days of the Company's written request for any additional required amount of the MII LOC. The Company will effect any decreases in the amount of the MII LOC (and/or other collateral) promptly, provided that MII is not in breach of any of its obligations under this Agreement, the Existing Policies or any Existing Insurance Agreement.

(b) B&W LOC.

(i) B&W will, within fifteen (15) days after the Effective Date, provide to the Company, as beneficiary thereof, (A) a clean, irrevocable and unconditional letter of credit in an amount of $33,828,776 in respect of its Obligations under the Existing Insurance Agreements and the Existing Policies (other than the Foreign Insurance Agreements and Foreign Policies) and (B) a clean, irrevocable and unconditional letter of credit in an amount of $200,000 in respect of the Foreign Insurance Agreements and Foreign Policies (each such letter of credit individually and collectively being referred to herein as the "B&W LOC"), issued in a form and by a bank or other financial institution, in each case acceptable to the Company; and/or such other forms of collateral as the Company may permit from time to time. The B&W LOC shall be in an aggregate amount that is less than the aggregate amount of the Existing Collateral provided by B&W and shall secure the B&W Retained Obligations and the Obligations assumed by B&W in the B&W Assumption (the "B&W Assumed Obligations").

(ii) The B&W LOC shall be "evergreen," meaning that it shall provide by its terms that it will be renewed automatically each year for an additional year unless written notice of non-renewal is received by the Company at least sixty (60) days prior to the B&W LOC's anniversary date. If the Company permits B&W to provide collateral in a form other than the B&W LOC, B&W shall provide such collateral in an amount and form acceptable to the Company.

(iii) B&W shall keep the B&W LOC in place (or other collateral acceptable to the Company) as security for payment of the B&W Retained Obligations and the B&W Assumed Obligations, until the Company determines in its sole discretion that there is no longer any need for such collateral. If there shall be a material deterioration in the financial condition of the bank or other financial institution which has issued the B&W LOC, the Company shall have the right to require B&W to replace the B&W LOC with a new letter of credit with similar terms issued by a bank or other financial institution then acceptable to the Company.

(iv) The Company shall have the right to draw against the B&W LOC and/or other collateral in each instance where any portion of the B&W Retained Obligations or the B&W Assumed Obligations for any reason is not fulfilled in the manner and within the time periods required under this Agreement or the Existing Policies or Existing Insurance Agreements giving rise thereto.

(v) Annually, the Company shall review and redetermine the amount of the B&W Retained Obligations and the B&W Assumed Obligations and the amount of collateral security required pursuant to this Agreement. At such time, B&W will provide its most recent audited financial statements, interim financial statements, and any other financial information reasonably requested by the Company for the purpose of evaluating the financial condition of B&W. B&W will provide any needed increases in the amount of the B&W LOC (and/or other collateral if acceptable to the Company) within thirty (30) days of the Company's written request for any additional required amount of the B&W LOC. The Company will effect any decreases in the amount of the B&W LOC (and/or other collateral) promptly, provided that B&W is not in breach of any of its obligations under this Agreement, the Existing Policies or any Existing Insurance Agreement.

(c) Substituted Collateral. Notwithstanding anything in any Existing Policy or Existing Insurance Agreement to the contrary, the Parties, each B&W Entity that is a party hereto and each MII Entity that is a party hereto hereby agree that, upon receipt of the Substituted Collateral as set forth in Section 5(a)(i) and 5(b)(i), the Existing Collateral shall be replaced with such Substituted Collateral and, accordingly, shall be released by the Company and the ACE Affiliates.

(d) Fee. No later than fifteen (15) days after the Effective Date, MII shall pay to the Company the Fee, which shall be paid pursuant to the Company's wire instructions as provided to MII in writing prior to the date such Fee is payable.

6. Existing Collateral. The Substituted Collateral required to be provided by MII and B&W hereunder shall, except to the extent provided otherwise in this Agreement, be subject to all of the terms and conditions applicable to the Existing Collateral pursuant to the Existing Insurance Agreements to the same extent that such terms and conditions applied to the Existing Collateral thereunder.

7. Security Interest. Each of MII and B&W will separately provide (or have provided) to the Company and ESIS, from time to time, funds to be credited to paid loss deposit funds, deductible funds and/ or loss funds (collectively, "Cash Collateral") that the Company or ESIS shall hold pursuant to the Existing Insurance Agreements with respect to the MII Retained Obligations and the MII Assumed Obligations, in the case of MII, and with respect to the B&W Retained Obligations and the B&W Assumed Obligations, in the case of B&W. Each of MII and B&W hereby grant to the Company, for its benefit and the benefit of the ACE Affiliates, a continuing first priority security interest in and lien on all of their respective right, title and interest, if any, in and to the Cash Collateral and all proceeds thereof as security for their now existing and hereafter arising Obligations to the Company or such ACE Affiliates. The Company shall hold the Cash Collateral in accordance with the terms of the applicable Existing Insurance Agreement pursuant to which such Cash Collateral was provided to the Company or the applicable ACE Affiliate. The Company shall have the sole and exclusive right, and is hereby authorized, to use the Cash Collateral to pay any and all Obligations of MII and/or B&W in accordance with the Company Designation in accordance with the terms of the applicable Existing Insurance Agreement and this Agreement.

8. Billing. On and after the Effective Date, the Company (or any third party administrator acting on behalf of the Company in respect of an Existing Policy) will, in each case in accordance with the billing procedures set forth in the applicable Existing Policy and Existing Insurance Agreement:

(a) bill MII directly for the MII Retained Obligations and the MII Assumed Obligations; and

(b) bill B&W directly for the B&W Retained Obligations and the B&W Assumed Obligations.

9. Amendments. Neither this Agreement nor any provision hereof may be amended, changed, waived, discharged or terminated except by a written instrument signed by the Company, B&W, MII and each other Party, if any, against whom enforcement of such amendment, change, waiver, discharge or termination is sought.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any right or obligation hereunder may be assigned or conveyed by any Party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

11. [Intentionally Omitted].

12. No Waiver. The failure or refusal by any Party to exercise any rights granted hereunder shall not constitute a waiver of such rights or preclude the subsequent exercise thereof, and no oral communication shall be asserted as a waiver of any such rights hereunder unless such communication shall be confirmed in a writing plainly expressing an intent to waive such rights and signed by the Party against whom such waiver is asserted.

13. Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed and delivered shall constitute an original, but such counterparts together shall constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic mail shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties and other Persons signatory hereto transmitted by facsimile or by electronic mail shall be deemed to be their original signatures for all purposes.

14. No Third Party Beneficiary. This Agreement shall not be deemed to give any right or remedy to any third party whatsoever unless otherwise specifically granted hereunder.

15. Parties' Representations. As of the Effective Date, each of the Parties expressly represents on its own behalf: (a) it is an entity in good standing in its jurisdiction of organization; (b) it has all requisite corporate power and authority to enter into this Agreement, and to perform its obligations hereunder; (c) the execution and delivery by it of this Agreement, and the performance by it of its obligations under this Agreement, have been duly authorized by all necessary corporate or other action; (d) this Agreement, when duly executed and delivered by it, and subject to the due execution and delivery hereof by the other Parties, will be a valid and binding obligation of it, enforceable against it, its successors and permitted assigns, in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles; (e) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the respective terms and conditions hereof will not (i) violate any provision of its Organizational Documents, (ii) violate any applicable order, judgment, injunction, award or decree of any court, arbitrator or governmental or regulatory body against it, or binding upon it, or any agreement with, or condition imposed by, any governmental or regulatory body, foreign or domestic, binding upon it as of the date hereof, or (iii) violate any agreement, contract, obligation, promise or undertaking that is legally binding and to which it is a party or by which it is bound; and (f) the signatory hereto on behalf of it is duly authorized and legally empowered to enter into this Agreement on its behalf.

16. Notices. Any and all notices, requests, approvals, authorizations, consents, instructions, designations and other communications that are required or permitted to be given pursuant to this Agreement shall be in writing and may be given either by personal delivery, first class prepaid post (airmail if to another country) or by internationally recognized overnight delivery service to the following address, or to such other address and recipient as such Party may have notified in accordance with the terms of this section as being its address or recipient for notification for the purposes of this Agreement:

If to the Company

ACE American Insurance Company
225 E. John Carpenter Freeway, Suite 1300
Irving, TX 75062
Attention: Underwriting Manager
ACE Risk Management

Telephone: (972) 465.7500
Facsimile: (972) 465.7826

If to any MII Entity:

McDermott International, Inc.
757 N. Eldridge Parkway
Houston, Texas 77079
Attention: VP and Chief Risk Officer (with copy to General Counsel)

Telephone: 281-870-5785
Telecopier: 281-870-5923
Electronic Mail: twoodard@mcdermott.com

If to any B&W Entity:

Prior to the Separation:

Babcock & Wilcox Holdings, Inc.
800 Main Street
Lynchburg, Virginia 24504
Attention: Director, Risk Management (with copy to General Counsel)
Telephone: 434-522-6800

with a copy to:
McDermott International, Inc.
777 N. Eldridge Parkway
Houston, Texas 77079
Attention: Director, Risk Management (with copy to General Counsel)

Telephone: 281-870-5476
Telecopier: 281-870-5923
Electronic Mail: cjryan@mcdermott.com

On and After the Separation:

The Babcock & Wilcox Company
The Harris Building
13024 Ballantyne Corporate Place, Suite 700
Charlotte, North Carolina
Attention: Director, Risk Management (with copy to General Counsel)

Any notice or communication to any Person shall be deemed to be received by that Person:

(A) upon personal delivery; or

(B) upon receipt if sent by mail or courier.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without regard to those provisions concerning conflicts of laws that would result in the application of the laws of any other jurisdiction.

18. Entire Agreement. This Agreement, together with the Existing Policies and Existing Insurance Agreements, constitute the entire agreement among all of the Parties and supersedes all other prior agreements and understandings, both written and oral, with respect to the subject matter hereof.

19. Dispute Resolution. If a dispute between either MII or B&W, on the one hand, and the Company or any ACE Affiliate, on the other hand, involves rights or obligations arising under this Agreement, or any of the Existing Policies or Existing Insurance Agreements, the arbitration provisions in the most recent Existing Insurance Agreement referenced in Exhibit II shall govern the resolution of the entire dispute in all respects. In any such arbitration brought by or against MII or B&W, the other of B&W or MII, as applicable, shall have right to associate effectively in the defense and/or prosecution of such arbitration.

20. Severability. If any term or other provision of this Agreement or the Exhibits attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

21. Rules of Construction. The definitions of terms used herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (b) any reference herein to any law shall be construed as referring to such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to the restrictions contained herein), (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word “from” means “from and including” and the word “to” means “to and including” and (f) any reference herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement. No provision of this Agreement shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties intending to be legally bound hereby have executed this Agreement, by their duly authorized representatives.

ACE AMERICAN INSURANCE COMPANY,
on behalf of itself and the ACE Affiliates

By: /S/ LAURA VEST
Name: **Laura Vest**
Title: **Vice President**

MCDERMOTT INTERNATIONAL, INC.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Senior Vice President**

BABCOCK & WILCOX HOLDINGS, INC.

By: /S/ MICHAEL S. TAFF
Name: **Michael S. Taff**
Title: **Senior Vice President**

ACKNOWLEDGED AND AGREED FOR PURPOSES OF SECTIONS 2, 3 and 5(c):

B&W ENTITIES:

AMERICON EQUIPMENT SERVICES, INC.

AMERICON, INC.

APPLIED SYNERGISTICS, INC.

BABCOCK & WILCOX CANADA LTD.

BABCOCK & WILCOX CHINA HOLDINGS, INC.

BABCOCK & WILCOX CONSTRUCTION CO., INC.

BABCOCK & WILCOX DE MONTERREY, S.A. DE C.V.

BABCOCK & WILCOX DENMARK HOLDINGS, INC.

BABCOCK & WILCOX EBENSBURG POWER, INC.

BABCOCK & WILCOX EQUITY INVESTMENTS, INC.

BABCOCK & WILCOX INDIA HOLDINGS, INC.

BABCOCK & WILCOX INTERNATIONAL SALES AND SERVICE CORPORATION

BABCOCK & WILCOX INTERNATIONAL, INC.

By: /S/ BENJAMIN H. BASH
Name: **Benjamin H. Bash**
Title: **Assistant Secretary of each of the above**

BABCOCK & WILCOX MODULAR NUCLEAR ENERGY LLC

BABCOCK & WILCOX NUCLEAR OPERATIONS GROUP, INC.

BABCOCK & WILCOX NUCLEAR ENERGY, INC.

BABCOCK & WILCOX NUCLEAR SERVICES (U.K.) LIMITED

BABCOCK & WILCOX TECHNICAL SERVICES CLINCH RIVER, LLC

BABCOCK & WILCOX POWER GENERATION GROUP, INC.

BABCOCK & WILCOX TECHNICAL SERVICES GROUP, INC.

BABCOCK & WILCOX TECHNICAL SERVICES SAVANNAH RIVER COMPANY

BABCOCK & WILCOX VOLUND A/S

BCE PARTS LTD.

BWX TECHNOLOGIES, INC.

BWXT FEDERAL SERVICES, INC.

BWXT HANFORD COMPANY

BWXT OF IDAHO, INC.

BWXT OF OHIO, INC.

BWXT WASHINGTON, INC.

By: /S/ BENJAMIN H. BASH
Name: **Benjamin H. Bash**
Title: **Assistant Secretary of each of the above**

CREOLE INSURANCE COMPANY, LTD.

DELTA POWER SERVICES, LLC

DIAMOND OPERATING CO., INC.

DIAMOND POWER AUSTRALIA HOLDINGS, INC.

DIAMOND POWER CHINA HOLDINGS, INC.

DIAMOND POWER EQUITY INVESTMENTS, INC.

DIAMOND POWER INTERNATIONAL, INC.

DIAMOND POWER SPECIALTY (PROPRIETARY) LIMITED

DPS BERKELEY, LLC

DPS CADILLAC, LLC

DPS FLORIDA, LLC

DPS GREGORY, LLC

DPS LOWELL COGEN, LLC

DPS MECKLENBURG, LLC

DPS MICHIGAN, LLC

DPS MOJAVE, LLC

DPS SABINE, LLC

GUMBO INSURANCE COMPANY, LTD.

By: /S/ BENJAMIN H. BASH
Name: **Benjamin H. Bash**
Title: **Assistant Secretary of each of the above**

INTECH INTERNATIONAL INC.

INTECH, INC.

IVEY-COOPER SERVICES, L.L.C.

MARINE MECHANICAL CORPORATION

NFS HOLDINGS, INC.

NOG-ERWIN HOLDINGS, INC.

NORTH COUNTY RECYCLING, INC.

NUCLEAR FUEL SERVICES, INC.

O&M HOLDING COMPANY

SOFCO - EFS HOLDINGS LLC

By: /S/ BENJAMIN H. BASH
Name: **Benjamin H. Bash**
Title: **Assistant Secretary of each of the above**

BABCOCK & WILCOX TECHNICAL SERVICES (U.K.) LIMITED

By: /S/ BENJAMIN H. BASH
Name: **Benjamin H. Bash**
Title: **Joint Secretary**

B&W DE PANAMA, INC.

BABCOCK & WILCOX INTERNATIONAL INVESTMENTS CO., INC.

BABCOCK & WILCOX INVESTMENT COMPANY

By: /S/ MICHAEL S. TAFF
Name: **Michael S. Taff**
Title: **Senior Vice President, of each of the above**

BABCOCK & WILCOX INDIA PRIVATE LIMITED

DIAMOND POWER SPECIALTY LIMITED

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Assistant Secretary**

NATIONAL ECOLOGY COMPANY

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Secretary**

DIAMOND POWER DO BRASIL LIMITADA

DIAMOND POWER INTERNATIONAL, INC.

BABCOCK & WILCOX INTERNATIONAL SALES AND SERVICE CORPORATION
(as Shareholders of Diamond Power do Brasil Limitada)

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Assistant Secretary of each of the Shareholders**

P. T. BABCOCK & WILCOX ASIA

SERVICIOS DE FABRICACION DE VALLE SOLEADO, S.A. DE C.V.

SERVICOS PROFESIONALES DE VALLE SOLEADO, S.A. DE C.V.

By: /s/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Secretary**

DIAMOND POWER CENTRAL & EASTERN EUROPE S.R.O.

DIAMOND POWER FINLAND OY

By: /S/ JUHA K. MUSTONEN
Name: **Juha K. Mustonen**
Title: **Managing Director**

DIAMOND POWER MACHINE (HUBEI) CO., INC.

By: /S/ DAVID R. GIBBS
Name: **David R. Gibbs**
Title: **Director**

Signature Page to Assumption and Loss Allocation Agreement

DIAMOND POWER SWEDEN AB

By: /S/ MIKA J. HAIKOLA
Name: **Mika J. Haikola**
Title: **Managing Director**

ACKNOWLEDGED AND AGREED FOR PURPOSES OF SECTIONS 2, 3 and 5(c):

MII ENTITIES:

CHARTERING COMPANY (SINGAPORE) PTE. LTD.

J. RAY MCDERMOTT (QINGDAO) PTE. LTD.

J. RAY MCDERMOTT ASIA PACIFIC PTE. LTD.

MALMAC SDN. BHD.

MCDERMOTT (MALAYSIA) SENDIRIAN BERHAD

By: /S/ JEFF J. HIGHTOWER
Name: **Jeff J. Hightower**
Title: **Director of each of the above**

BOUDIN INSURANCE COMPANY, LTD.

J. RAY MCDERMOTT EASTERN HEMISPHERE LIMITED

LAGNIAPPE INSURANCE COMPANY, LTD.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Assistant Secretary, of each of the above**

J. RAY MCDERMOTT UK LTD.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Joint Secretary**

EASTERN MARINE SERVICES, INC.

GLOBAL ENERGY - MCDERMOTT LIMITED

HYDRO MARINE SERVICES, INC.

J. RAY MCDERMOTT (CASPIAN), INC.

J. RAY MCDERMOTT (NIGERIA) LTD.

J. RAY MCDERMOTT (NORWAY), AS

J. RAY MCDERMOTT CANADA HOLDING, LTD.

J. RAY MCDERMOTT CANADA, LTD.

J. RAY MCDERMOTT CONTRACTORS, INC.

J. RAY MCDERMOTT DE MEXICO, S.A. DE C.V.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Secretary of each of the above**

J. RAY MCDERMOTT ENGINEERING SERVICES PRIVATE LIMITED

J. RAY MCDERMOTT ENGINEERING, LLC

J. RAY MCDERMOTT FAR EAST, INC.

J. RAY MCDERMOTT INTERNATIONAL, INC.

J. RAY MCDERMOTT INTERNATIONAL VESSELS, LTD.

J. RAY MCDERMOTT INVESTMENTS B.V.

J. RAY MCDERMOTT KAZAKHSTAN LLP

J. RAY MCDERMOTT LOGISTIC SERVICES PVT. LIMITED

J. RAY MCDERMOTT MIDDLE EAST, INC.

J. RAY MCDERMOTT SOLUTIONS, INC.

J. RAY MCDERMOTT TECHNOLOGY, INC.

J. RAY MCDERMOTT UNDERWATER SERVICES, INC.

J. RAY MCDERMOTT WEST AFRICA HOLDINGS, INC.

J. RAY MCDERMOTT WEST AFRICA, INC.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Secretary of each of the above**

MCDERMOTT CASPIAN CONTRACTORS, INC.

MCDERMOTT FAR EAST, INC.

MCDERMOTT GULF OPERATING COMPANY, INC.

MCDERMOTT INTERNATIONAL B.V.

MCDERMOTT INTERNATIONAL INVESTMENTS CO., INC.

MCDERMOTT INTERNATIONAL MARINE INVESTMENTS N.V.

MCDERMOTT INTERNATIONAL TRADING CO., INC.

MCDERMOTT INTERNATIONAL VESSELS, INC.

MCDERMOTT MARINE MEXICO, S.A. DE C.V.

MCDERMOTT OFFSHORE SERVICES COMPANY, INC.

MCDERMOTT OLD JV OFFICE, INC.

MCDERMOTT OVERSEAS INVESTMENT CO. N.V.

MCDERMOTT OVERSEAS, INC.

MCDERMOTT TRADE CORPORATION

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Secretary of each of the above**

MENTOR SUBSEA TECHNOLOGY SERVICES, INC.

NORTH ATLANTIC VESSEL, INC.

OFFSHORE PIPELINES INTERNATIONAL, LTD.

OPI VESSELS, INC.

OPMI, LTD.

SABINE RIVER REALTY, INC.

SERVICIOS DE FABRICACION DE ALTAMIRA, S.A. DE C.V.

SERVICOS PROFESIONALES DE ALTAMIRA, S.A. DE C.V.

SPARTEC, INC.

VARSY INTERNATIONAL N.V.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Secretary of each of the above**

MCDERMOTT KFT.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Managing Director**

J. RAY MCDERMOTT (AUST.) HOLDING PTY. LIMITED

MCDERMOTT AUSTRALIA PTY. LTD.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Corporate Officer of each of the above**

MCDERMOTT INCORPORATED

MCDERMOTT PANAMA HOLDINGS, S.A.

J. RAY MCDERMOTT HOLDINGS, LLC

J. RAY MCDERMOTT, INC.

J. RAY MCDERMOTT, S.A.

MCDERMOTT CAYMAN LTD.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Senior Vice President of each of the above**

MCDERMOTT INTERNATIONAL MARKETING, INC.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **President**

FLOATEC, LLC

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Assistant Secretary**

MCDERMOTT HOLDINGS (U.K.) LIMITED

MCDERMOTT MARINE CONSTRUCTION LIMITED

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Joint Secretary of each of the above**

MCDERMOTT SERVICOS DE CONSTRUCAO, LTDA.

J. RAY MCDERMOTT INC.

MCDERMOTT OVERSEAS, INC.,
(as Shareholders)

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Assistant Secretary**

OFFSHORE PIPELINES SDN. BHD.

OFFSHORE PIPELINES SDN. BLD.
(as Sole Shareholder)

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Assistant Secretary**

INTERNATIONAL VESSELS LTD.

By: /S/ STEVEN W. ROLL
Name: **Steven W. Roll**
Title: **Director**

Signature Page to Assumption and Loss Allocation Agreement

PT. BAJA WAHANA INDONESIA

By: /s/ SCOTT CUMMINS
Name: **Scott Cummins**
Title: **President Director**

SINGAPORE HUANGDAO PTE. LTD.

By: /S/ ROCKNE L. MOSELEY
Name: **Rockne L. Moseley**
Title: **Director**

Signature Page to Assumption and Loss Allocation Agreement

Exhibit 10.6

GROUP II AGREEMENT- EXECUTION VERSION

NOVATION AND ASSUMPTION AGREEMENT

by and among

ACE American Insurance Company, acting for itself and its affiliates including, without limitation, Pacific Employers Insurance Company;
ACE INA Insurance Company;
ACE Insurance Company;
Insurance Company of North America

and

Creole Insurance Company, Ltd., a Bermuda company,

and

Boudin Insurance Company, Ltd., a Bermuda company

RECITALS

THIS NOVATION AND ASSUMPTION AGREEMENT (the "Agreement"), is entered into and effective as of May 18, 2010 (the "Effective Date") by and among ACE American Insurance Company, individually and acting for the ACE Affiliates (in such capacities, the "Company"), Creole Insurance Company, Ltd., a Bermuda company ("Creole"), and Boudin Insurance Company, Ltd., a Bermuda company ("Boudin").

WHEREAS, the Company and/or the ACE Affiliates have entered into the Existing Reinsurance Agreements with Creole and Boudin; and

WHEREAS, pursuant to the Existing Reinsurance Agreements, Creole and Boudin are obligated, among other things, to reinsure the Company and/or the ACE Affiliates with regard to certain Existing Policies; and

WHEREAS, Creole, prior to the Separation, is a wholly owned Subsidiary of MII; and

WHEREAS, MII intends to spin-off the B&W Entities (including Creole) from MII in connection with a dividend of common stock of B&W to the shareholders of MII (the "Separation"); and

WHEREAS, in connection with the Separation, the Parties wish to provide that Boudin be the reinsurer with respect to cessions arising from the operations, business, or property of MII and that Creole be the reinsurer with respect to cessions arising from the operations, business, or property of B&W, in each case whether such obligations were existing, accruing or arising before, on or after the Effective Date; and

WHEREAS, the Company, on its own behalf and on behalf of the ACE Affiliates, is willing to consent to the transfer, assumption, and novation of the matters as set forth herein, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set out herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. The following terms used herein, including in the recitals and Exhibits hereto, shall have the following meanings:

"ACE Affiliate" means each Affiliate of ACE that has issued an Existing Policy, including Pacific Employers Insurance Company, ACE INA Insurance Company, ACE Insurance Company and Insurance Company of North America.

"Affiliate" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person. For this purpose "control" of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" has the meaning set forth in the recitals to this Agreement.

"ALAA" means the Assumption and Loss Allocation Agreement, dated as of the date hereof, among the Company, B&W, MII and certain other MII Entities and B&W Entities signatory thereto.

"Assumption Time" means midnight (New York time) on the Effective Date.

"B&W" means Babcock & Wilcox Holdings, Inc., a Delaware corporation, to be succeeded by The Babcock & Wilcox Company, a Delaware corporation, after the effective time of the merger, to occur after the date hereof, of Babcock & Wilcox Holdings, Inc., with and into The Babcock & Wilcox Company, the surviving entity of such merger.

"B&W Entity" means B&W and each of the entities listed on Exhibit I attached hereto and made a part hereof. It is acknowledged and understood that, from and after the effectiveness of the Separation, the B&W Entities will not be Subsidiaries or Affiliates of MII or any of the other MII Entities.

"Boudin Assumption and Novation" has the meaning set forth in Section 2(a).

"Boudin LOC" has the meaning set forth in Section 3(a).

"Company" has the meaning set forth in the recitals to this Agreement.

"Company B&W Obligation" means any obligation of the Company or an ACE Affiliate to or for the benefit of an Insured under an Existing Policy that arises, will arise, or has arisen from the operations, business, or property of a B&W Entity.

"Company MII Obligation" means any obligation of the Company or an ACE Affiliate to or for the benefit of an Insured under an Existing Policy that arises, will arise, or has arisen from the operations, business, or property of an MII Entity.

"Creole Assumption and Novation" has the meaning set forth in Section 2(c).

"Creole LOC" has the meaning set forth in Section 3(b).

"Effective Date" has the meaning set forth in the recitals to this Agreement.

"ESIS" means ESIS, Inc., an Affiliate of the Company.

"Existing Collateral" means any and all letters of credit or trust agreements outstanding as of the date hereof provided by or required to be provided by Creole or Boudin under the terms of any Existing Reinsurance Agreement in order to secure obligations arising thereunder.

"Existing Policy" means each policy of general liability insurance, automobile liability insurance, or workers compensation insurance issued prior to the date hereof by the Company or an ACE Affiliate to one or more B&W Entities and/or one or more MII Entities that is subject to an Existing Reinsurance Agreement.

"Existing Reinsurance Agreement" means each reinsurance agreement (whether denominated a treaty, a reinsurance policy, a reinsurance agreement, a facultative certificate, or otherwise) in which (a) Creole or Boudin is the reinsurer, (b) one or more of the Company and/or ACE Affiliates is or are the reinsureds, and (c) the ceded risk includes risk under any Existing Policy. "Existing Reinsurance Agreements" shall not mean or include any Existing Security Agreements (as defined below). Exhibit II attached hereto and made a part hereof reflects the Parties' best efforts to list all Existing Reinsurance Agreements, but the definitions in this Agreement shall control in the event of any errors or omissions on such Exhibit.

"Existing Security Agreements" shall mean and include any trust agreement, collateral agreement, pledge and security agreement or other similar contract between the Company or an ACE Affiliate and Boudin or between the Company or an ACE Affiliate and Creole, which was entered into in connection with or pursuant to any Existing Reinsurance Agreement (as defined above), and which are embodied in separately-executed written instruments.

"Go-Forward Boudin Obligations" means the obligations of Boudin under (a) the Transferable Boudin Reinsurance Agreements, (b) the Novated-to-Boudin Reinsurance Agreements and (c) the Wholly Retained Boudin Reinsurance Agreements, in each case after giving effect to the transfers, assumptions, novations, and releases effected by this Agreement.

"Go-Forward Creole Obligations" means the obligations of Creole under (a) the Transferable Creole Reinsurance Agreements, (b) the Novated-to-Creole Reinsurance Agreements and (c) the Wholly Retained Creole Reinsurance Agreements, in each case after giving effect to the transfers, assumptions, novations, and releases effected by this Agreement.

"Insured," as a noun in reference to one or more insurance policies, means any Person who is insured by such policy or policies, regardless of whether such Person is designated an "Insured" or a "Named Insured" in such policy or is otherwise expressly identified therein.

"Master Separation Agreement" means a Master Separation Agreement to be entered into between MII and The Babcock & Wilcox Company in connection with the Separation.

"MII" means McDermott International, Inc., a Panamanian corporation.

"MII Entity" means MII and each of the entities listed on Exhibit III attached hereto and made a part hereof. It is acknowledged and understood that, from and after the effectiveness of the Separation, the MII Entities will not be Subsidiaries or Affiliates of B&W or any of the other B&W Entities.

"Novated Reinsurance Agreement" means a Novated-to-Boudin Reinsurance Agreement or a Novated-to-Creole Reinsurance Agreement.

"Novated-to-Boudin Reinsurance Agreement" means, as to any Transferable Creole Reinsurance Agreement after the Assumption Time and giving effect to this Agreement, the aggregate of (a) all rights, duties, and obligations of Boudin to and in respect of the Company under such Transferable Creole Reinsurance Agreement as and to the extent novated to Boudin, and (b) all rights, duties, and obligations of the Company to and in respect of Boudin under such Transferable Creole Reinsurance Agreement as and to the extent novated to Boudin.

"Novated-to-Creole Reinsurance Agreement" means, as to any Transferable Boudin Reinsurance Agreement after the Assumption Time and giving effect to this Agreement, the aggregate of (a) all rights, duties, and obligations of Creole to and in respect of the Company under such Transferable Boudin Reinsurance Agreement as and to the extent novated to Creole, and (b) all rights, duties, and obligations of the Company to and in respect of Creole under such Transferable Boudin Reinsurance Agreement as and to the extent novated to Creole.

"Organizational Documents" means (a) with respect to any corporation, its certificate or articles of incorporation or organization and its bylaws, (b) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, and (d) with respect to any limited liability company, its certificate or articles of formation or organization and its operating agreement or other organizational documents.

"Parties" means the Company, Creole and Boudin, collectively (and each individually is a "Party").

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, a union, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

"Separation" has the meaning set forth in the recitals to this Agreement.

"Subsidiary" means, with respect to any specified Person, any corporation, partnership, limited liability company, joint venture or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such specified Person or by any one or more of its Subsidiaries, or by such specified Person and one or more of its Subsidiaries.

"Substituted Collateral" means the MII LOC and the B&W LOC.

"Transferable Boudin Reinsurance Agreements" means those Existing Reinsurance Agreements in which Boudin is the reinsurer and that reinsure, in whole or in part and whether or not including other obligations, Company B&W Obligations.

"Transferable Creole Reinsurance Agreements" means those Existing Reinsurance Agreements in which Creole is the reinsurer and that reinsures, in whole or in part and whether or not including other obligations, Company MII Obligations.

"Wholly Retained Boudin Reinsurance Agreement" means an Existing Reinsurance Agreement in which Boudin is the reinsurer and that is not a Transferable Boudin Reinsurance Agreement.

"Wholly Retained Creole Reinsurance Agreement" means an Existing Reinsurance Agreement in which Creole is the reinsurer and that is not a Transferable Creole Reinsurance Agreement.

2. Assumption and Novation.

(a) Boudin Assumption and Novation. Notwithstanding anything in any Transferable Creole Reinsurance Agreement to the contrary, and effective as of the Assumption Time, Creole hereby transfers and assigns, and Boudin hereby assumes by novation, so much of each Transferable Creole Reinsurance Agreement as reinsures any Company MII Obligation. In connection with such transfer, assignment, and novation:

(i) Boudin hereby agrees to observe, pay, perform, satisfy, fulfill and discharge, to the extent and in the manner required under the applicable Transferable Creole Reinsurance Agreement, any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of Creole under the Transferable Creole Reinsurance Agreement with respect to the Company MII Obligations insofar as transferred above (the "Boudin Assumption and Novation"); and

(ii) The Company and each ACE Affiliate hereby consent to, and agree to give full force and effect to, the Boudin Assumption and Novation. From and after the Assumption Time, Boudin and not Creole shall be treated as the Company's (or applicable ACE Affiliate's) contractual counterparty with respect the contracts and mutual rights and obligations subject to the Boudin Assumption and Novation. Without limitation, the Company and each ACE Affiliate, as applicable:

a may enforce against Boudin its rights with respect to the Company MII Obligations under the Transferable Creole Reinsurance Agreements to the same extent such Person could, prior to the Boudin Assumption and Novation, enforce such rights against Creole, and

b shall perform for the benefit of Boudin any obligation with respect to the Company MII Obligations under the Transferable Creole Reinsurance Agreements to the same extent such Person was obligated, prior to the Boudin Assumption and Novation, to perform such obligations for the benefit of Creole, and

c releases Creole from its obligation to observe, pay, perform, satisfy, fulfill or discharge any obligations under any Transferable Creole Reinsurance Agreements with respect to any Company MII Obligation.

(b) No Transfer or Novation of Creole Obligations arising from B&W Operations. The Wholly Retained Creole Reinsurance Agreements are not novated or otherwise affected by the Boudin Assumption

and Novation. The Transferable Creole Reinsurance Agreements are novated to Boudin as set forth above only to the extent that they reinsure Company MII Obligations. To the extent that the Transferable Creole Reinsurance Agreements reinsure Company B&W Obligations, the Parties acknowledge that Creole and not Boudin shall continue to observe, pay, perform, satisfy, fulfill and discharge any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of the reinsurer under the Transferable Creole Reinsurance Agreements.

(c) Creole Assumption and Novation. Notwithstanding anything in any Transferable Boudin Reinsurance Agreement to the contrary, and effective as of the Assumption Time, Boudin hereby transfers and assigns, and Creole hereby assumes by novation so much of each Transferable Boudin Reinsurance Agreement as reinsures any Company B&W Obligation. In connection with such transfer and assignment,

(i) Creole hereby agrees to observe, pay, perform, satisfy, fulfill and discharge, to the extent and in the manner required under the applicable Transferable Boudin Reinsurance Agreement, any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of Boudin under the Transferable Boudin Reinsurance Agreements with respect to the Company B&W Obligations insofar as transferred above (the "Creole Assumption and Novation"); and

(ii) The Company and each ACE Affiliate hereby consent to, and agree to give full force and effect to, the Creole Assumption and Novation. From and after the Assumption Time, Creole and not Boudin shall be treated as the Company's (or applicable ACE Affiliate's) contractual counterparty with respect the contracts and mutual rights and obligations subject to the Creole Assumption and Novation. Without limitation, the Company and each ACE Affiliate, as applicable:

a may enforce against Creole its rights under the Transferable Boudin Reinsurance Agreements to the same extent such Person could, prior to the Creole Assumption and Novation, enforce such rights against Boudin, and

b shall perform for the benefit of Creole any obligation under the Transferable Boudin Reinsurance Agreements to the same extent such Person was obligated, prior to the Creole Assumption and Novation, to perform such obligations for the benefit of Boudin, and

c releases Boudin from its obligation to observe, pay, perform, satisfy, fulfill or discharge any obligations under any Transferable Boudin Reinsurance Agreements with respect to any Company B&W Obligation.

(d) No Transfer or Novation of Boudin Obligations arising from MII Operations. The Wholly Retained Boudin Reinsurance Agreements are not novated or otherwise affected by the Creole Assumption and Novation. The Transferable Boudin Reinsurance Agreements are novated to Creole as set forth above only to the extent that they reinsure Company B&W Obligations. To the extent that the Transferable Boudin Reinsurance Agreements reinsure Company MII Obligations, the Parties acknowledge that Boudin and not Creole shall continue to observe, pay, perform, satisfy, fulfill and discharge any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of the reinsurer under the Transferable Boudin Reinsurance Agreements.

(e) No Effect on Aggregate Limits of Liability. For the avoidance of doubt, it is understood and agreed that the aggregate liability of Creole and Boudin, taken together, under the Existing Reinsurance Agreements (or any of them) is not intended to be, and shall be deemed not to be, increased by implementation of this Agreement. In particular, and without limitation, to the extent that any Transferable Creole Reinsurance Agreement (or Transferable Boudin Reinsurance Agreement) contains an aggregate limit of liability, that aggregate limit of liability shall, after the Assumption Time, apply as a single, joint aggregate limit of liability as between (i) the resulting Novated Reinsurance Agreement and (ii) the portions of the Transferable Creole Reinsurance Agreement (or Transferable Boudin Reinsurance Agreement) that are retained pursuant to Section 2(b) (or Section 2(d)) above. Neither Creole or Boudin shall have any further liability under a Novated Reinsurance Agreement upon actual exhaustion by payment of the single, joint aggregate limit of liability thereunder; provided, however, that each of Creole and Boudin agree that

the Company may determine the order in which any such single, joint aggregate limit of liability may be payable by each of them under such Novated Reinsurance Agreement, and provided further that (x) neither Creole or Boudin may refuse to pay any amount due to the Company on the basis of any claim or contention that in determining the order in which such limits are to be paid thereunder, the Company has not acted in good faith or has acted improperly, and (y) neither Creole nor Boudin may assert any such claim or contention as a defense to liability or payment or otherwise.

3. Collateral.

(a) Boudin LOC.

(i) Boudin (including for purposes of this Section 3, and if MII and Boudin so elect, MII on Boudin's behalf) will, within fifteen (15) days after the Effective Date, provide to the Company, as beneficiary thereof, an irrevocable letter of credit (the "Boudin LOC") in an amount of $696.00 (which amount shall be less than the aggregate amount of the Existing Collateral), issued in a form and by a bank or other financial institution, in each case acceptable to the Company; and/or such other forms of collateral as the Company may permit in writing from time to time. The Boudin LOC shall secure the Go-Forward Boudin Obligations.

(ii) The Boudin LOC shall be "evergreen," meaning that it shall provide by its terms that it will be renewed automatically each year for an additional year unless written notice of non-renewal is received by the Company at least sixty (60) days prior to the Boudin LOC's anniversary date. If the Company permits Boudin to provide collateral in a form other than the Boudin LOC, Boudin shall provide such collateral in an amount and form acceptable to the Company.

(iii) Boudin shall continue to provide the Boudin LOC (or other collateral acceptable to the Company) as security for payment of the Go-Forward Boudin Obligations, until the Company determines that there is no longer any need for such collateral. If there shall be a material deterioration in the financial condition of the bank or other financial institution which has issued the Boudin LOC, the Company shall have the right to require Boudin to replace the Boudin LOC with a new letter of credit with similar terms issued by a bank or other financial institution then acceptable to the Company.

(iv) The Company shall have the right to draw against the Boudin LOC and/or other collateral solely (a) in accordance with the terms of the applicable Wholly Retained Boudin Reinsurance Agreement or Novated-to-Boudin Reinsurance Agreement, as the case may be, and/or as required and permitted by the laws and regulations of the Commonwealth of Pennsylvania, or (b) in the event that a notice of nonrenewal is received pursuant to the evergreen clause.

(v) Annually, the Company shall review and redetermine the amount of the Go-Forward Boudin Obligations and the amount of collateral security required pursuant to this Agreement. At such time, MII will provide its most recent audited financial statements, interim financial statements, and any other financial information reasonably requested by the Company for the purpose of evaluating the financial condition of MII. MII will provide any needed increases in the amount of the Boudin LOC (and/or other collateral if acceptable to the Company) within thirty (30) days of the Company's written request for any additional required amount of the Boudin LOC. The Company will effect any decreases in the amount of the Boudin LOC (and/or other collateral) promptly, provided that Boudin is not in breach of any of its obligations under this Agreement or the Existing Reinsurance Agreements as transferred and novated hereunder and MII is not in breach of any of its obligations to the Company under the ALAA.

(b) Creole LOC.

(i) Creole (including for purposes of this Section 3, and if B&W and Creole so elect, B&W on Creole's behalf) will, within fifteen (15) days after the Effective Date, provide to the Company, as beneficiary thereof, an irrevocable letter of credit (the "Creole LOC") in an amount of $4,171,230.00 (which amount shall be less than the aggregate amount of the Existing Collateral), issued in a form and

by a bank or other financial institution, in each case acceptable to the Company; and/or such other forms of collateral as the Company may permit in writing from time to time. The Creole LOC shall secure the Go-Forward Creole Obligations.

(ii) The Creole LOC shall be "evergreen," meaning that it shall provide by its terms that it will be renewed automatically each year for an additional year unless written notice of non-renewal is received by the Company at least sixty (60) days prior to the Creole LOC's anniversary date. If the Company permits Creole to provide collateral in a form other than the Creole LOC, Creole shall provide such collateral in an amount and form acceptable to the Company.

(iii) Creole shall continue to provide the Creole LOC (or other collateral acceptable to the Company) as security for payment of the Go-Forward Creole Obligations, until the Company determines that there is no longer any need for such collateral. If there shall be a material deterioration in the financial condition of the bank or other financial institution which has issued the Creole LOC, the Company shall have the right to require Creole to replace the Creole LOC with a new letter of credit with similar terms issued by a bank or other financial institution then acceptable to the Company.

(iv) The Company shall have the right to draw against the Creole LOC and/or other collateral solely (a) in accordance with the terms of the applicable Wholly Retained Creole Reinsurance Agreement or Novated-to-Creole Reinsurance Agreement, as the case may be, and/or as required and permitted by the laws and regulations of the Commonwealth of Pennsylvania, or (b) in the event that a notice of nonrenewal is received pursuant to the evergreen clause.

(v) Annually, the Company shall review and redetermine the amount of the Go-Forward Creole Obligations and the amount of collateral security required pursuant to this Agreement. At such time, B&W will provide its most recent audited financial statements, interim financial statements, and any other financial information reasonably requested by the Company for the purpose of evaluating the financial condition of B&W. B&W will provide any needed increases in the amount of the Creole LOC (and/or other collateral if acceptable to the Company) within thirty (30) days of the Company's written request for any additional required amount of the Creole LOC. The Company will effect any decreases in the amount of the Creole LOC (and/or other collateral) promptly, provided that Creole is not in breach of any of its obligations under this Agreement or the Existing Reinsurance Agreements as transferred and novated hereunder and B&W is not in breach of any of its obligations to the Company under the ALAA.

(c) Existing Security Agreements; Substituted Collateral. Notwithstanding anything in any Existing Reinsurance Agreement or any Existing Security Agreement to the contrary, the Company shall release the Existing Collateral (including, without limitation, providing the necessary directions to issuing banks of letters of credit, trustees of reinsurance trusts, and/or similar third parties) upon receipt of the Substituted Collateral as set forth in Section 3(a)(i) and 3(b)(i), and the Parties shall take all actions and execute any documents necessary to terminate the Existing Security Agreements.

(d) Adjustments of Funds Withheld. To the extent that the Company has retained funds of Creole or Boudin as funds withheld under any Existing Reinsurance Agreement (including, without limitation, by allocating reinsurance premium or other funds of the reinsurers to claim payment funds held by ESIS), such funds shall continue to be maintained following the transactions contemplated by this Agreement. If the Company desires to effect a one-time reallocation of such funds withheld as between Creole and Boudin as a result of the transactions contemplated by this Agreement, it shall provide notice of such reallocation as promptly as possible after the Assumption Time, but in any event on or prior to October 1, 2010, and Creole and Boudin shall accept the Company's determination of the amount of such reallocation.

4. Existing Collateral. The Substituted Collateral required to be provided by Creole and Boudin hereunder shall, except to the extent provided otherwise in this Agreement, be subject to all of the terms and conditions applicable to the Existing Collateral pursuant to the Existing Reinsurance Agreements to the same extent that such terms and conditions applied to the Existing Collateral thereunder.

5. Allocation.

(a) Company Designations. The Company's determination as to whether an obligation is a Go-Forward Boudin Obligation or a Go-Forward Creole Obligation (a "Company Designation") shall be binding on Creole and Boudin, and they shall not delay, or make any deduction with respect to, their payment or other response to such obligation on account of any disagreement with such determination, provided, however, that such payment or other response shall not be construed as prejudicial to either Party in any dispute between Creole and Boudin with respect to any such Company Designation.

(b) Disputes. Any dispute or disagreement between Creole and Boudin with respect to the correctness of a Company Designation shall be resolved pursuant to Article V of the Master Separation Agreement by MII on behalf of Boudin and B&W on behalf of Creole; provided, that (i) the Company will not be made a party to any arbitration proceeding arising from such dispute or disagreement, but may be called as a witness; (ii) any reasonable costs incurred by the Company in respect of any such arbitration proceeding will be fully reimbursed to the Company promptly following receipt of a reimbursement demand from the Company; (iii) under no circumstances will MII or B&W or Creole or Boudin, as a result of such arbitration proceeding, require the Company to return any amount received by the Company pursuant to a prior Company Designation, whether such amount was received as a result of the Company's draw against security posted for its benefit or otherwise, and (iv) the Company shall comply with the allocation or other resolution of such dispute.

6. Billing. On and after the Effective Date, the Company will (in each case in accordance with the billing procedures set forth in the applicable Existing Reinsurance Agreement)

(a) bill Creole directly for such of the Go-Forward Creole Obligations as are then due and payable, and provide Creole with appropriate reports and accounting with respect to such obligations; and

(b) bill Boudin directly for such of the Go-Forward Boudin Obligations as are then due and payable, and provide Boudin with appropriate reports and accounting with respect to such obligations.

7. Amendments. Neither this Agreement nor any provision hereof may be amended, changed, waived, discharged or terminated except by a written instrument signed by each Party.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any right or obligation hereunder may be assigned or conveyed by any Party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

9. No Waiver. The failure or refusal by any Party to exercise any rights granted hereunder shall not constitute a waiver of such rights or preclude the subsequent exercise thereof, and no oral communication shall be asserted as a waiver of any such rights hereunder unless such communication shall be confirmed in a writing plainly expressing an intent to waive such rights and signed by the Party against whom such waiver is asserted.

10. Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed and delivered shall constitute an original, but such counterparts together shall constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties and other Persons signatory hereto transmitted by facsimile shall be deemed to be their original signatures for all purposes.

11. No Third Party Beneficiary. This Agreement shall not be deemed to give any right or remedy to any third party whatsoever unless otherwise specifically granted hereunder.

12. Parties' Representations. As of the Effective Date, each of the Parties expressly represents on its own behalf: (a) it is an entity in good standing in its jurisdiction of organization; (b) it has all requisite corporate power and authority to enter into this Agreement, and to perform its obligations hereunder; (c) the execution and delivery by it of this Agreement, and the performance by it of its obligations under this Agreement, have been duly authorized by all necessary corporate or other action; (d) this Agreement, when duly executed and delivered by it, and subject to the due execution and delivery hereof by the other Parties, will be a valid and binding obligation of it, enforceable against it, its successors and permitted assigns, in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles; (e) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the respective terms and conditions hereof will not (i) violate any provision of its Organizational Documents, (ii) violate any applicable order, judgment, injunction, award or decree of any court, arbitrator or governmental or regulatory body against it, or binding upon it, or any agreement with, or condition imposed by, any governmental or regulatory body, foreign or domestic, binding upon it as of the date hereof, or (iii) violate any agreement, contract, obligation, promise or undertaking that is legally binding and to which it is a party or by which it is bound; and (f) the signatory hereto on behalf of it is duly authorized and legally empowered to enter into this Agreement on its behalf.

13. Notices. Any and all notices, requests, approvals, authorizations, consents, instructions, designations and other communications that are required or permitted to be given pursuant to this Agreement shall be in writing and may be given either by personal delivery, first class prepaid post (airmail if to another country) or by internationally recognized overnight delivery service to the following address, or to such other address and recipient as such Party may have notified in accordance with the terms of this section as being its address or recipient for notification for the purposes of this Agreement:

If to the Company

ACE American Insurance Company
225 E. John Carpenter Freeway, Suite 1300
Irving, TX 75062

Attention:	Underwriting Manager ACE Risk Management
Telephone:	(972) 465.7500
Facsimile:	(972) 465.7826

If to Boudin:

Boudin Insurance Company, Ltd., c/o McDermott International, Inc.
757 N. Eldridge Parkway
Houston, Texas 77079

Attention:	VP and Chief Risk Officer (with copy to General Counsel)
Telephone:	281-870-5785
Telecopier:	281-870-5923
Electronic Mail:	twoodard@mcdermott.com

with a copy to:
Boudin Insurance Company, Ltd.
Cedar House
41 Cedar Avenue
P.O. Box HM 1838
Hamilton HM HX Bermuda
Bermuda
Fax (441) 295-3982

Telephone:	281-870-5476
Telecopier:	281-870-5923
Electronic Mail:	cjryan@mcdermott.com

If to any MII Entity:

McDermott International, Inc.
757 N. Eldridge Parkway
Houston, Texas 77079
Attention: VP and Chief Risk Officer (with copy to General Counsel)
Telephone: 281-870-5785
Telecopier: 281-870-5923
Electronic Mail: twoodard@mcdermott.com

If to Creole:

Creole Insurance Company, Ltd.

Prior to the Separation:

Creole Insurance Company, Ltd., c/o Babcock & Wilcox Holdings, Inc.
800 Main Street
Lynchburg, Virginia 24504
Attention: Director, Risk Management (with copy to General Counsel)
Telephone: 434-522-6800

with a copy to:
McDermott International, Inc.
777 N. Eldridge Parkway
Houston, Texas 77079
Attention: Director, Risk Management (with copy to General Counsel)

with an additional copy to:
Creole Insurance Company, Ltd.
Cedar House
41 Cedar Avenue
P.O. Box HM 1838
Hamilton HM HX Bermuda
Bermuda
Fax (441) 295-3982
Telephone: 281-870-5476
Telecopier: 281-870-5923
Electronic Mail: cjryan@mcdermott.com

On and After the Separation:

The Babcock & Wilcox Company
The Harris Building
13024 Ballantyne Corporate Place, Suite 700
Charlotte, North Carolina
Attention: Director, Risk Management (with copy to General Counsel)

with a copy to:
Creole Insurance Company, Ltd.
Cedar House
41 Cedar Avenue
P.O. Box HM 1838
Hamilton HM HX Bermuda
Bermuda
Fax (441) 295-3982
Telephone: 281-870-5476
Telecopier: 281-870-5923
Electronic Mail: cjryan@mcdermott.com

If to any B&W Entity:

Prior to the Separation:

Babcock & Wilcox Holdings, Inc.
(f/k/a The Babcock & Wilcox Company)
800 Main Street
Lynchburg, Virginia 24504
Attention: Director, Risk Management (with copy to General Counsel)
Telephone: 434-522-6800

with a copy to:
McDermott International, Inc.
777 N. Eldridge Parkway
Houston, Texas 77079
Attention: Director, Risk Management (with copy to General Counsel)
Telephone: 281-870-5476
Telecopier: 281-870-5923
Electronic Mail: cjryan@mcdermott.com

On and After the Separation:

The Babcock & Wilcox Company
The Harris Building
13024 Ballantyne Corporate Place, Suite 700
Charlotte, North Carolina
Attention: Director, Risk Management (with copy to General Counsel)

Any notice or communication to any Person shall be deemed to be received by that Person:

(A) upon personal delivery; or

(B) upon receipt if sent by mail or courier.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without regard to those provisions concerning conflicts of laws that would result in the application of the laws of any other jurisdiction.

15. Entire Agreement. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT AMONG ALL OF THE PARTIES WITH RESPECT TO THE TRANSFERS, ASSUMPTIONS, AND NOVATIONS DESCRIBED HEREIN AND SUPERSEDES ALL OTHER PRIOR AGREEMENTS AND UNDERSTANDINGS, BOTH WRITTEN AND ORAL, WITH RESPECT TO SUCH TRANSFERS, ASSUMPTIONS, AND NOVATIONS. SOLELY FOR INTERPRETATION PURPOSES, THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE READ TOGETHER WITH THE ALAA.

16. Dispute Resolution.

(a) For dispute resolution purposes as between Creole and Boudin, and all disputes between Creole and Boudin arising out of this Agreement, including without limitation as to whether a given obligation is a Go-Forward Creole Obligation or a Go-Forward Boudin Obligation, shall be resolved in accordance with the procedures set forth in the Master Separation Agreement (provided, however, that until the Master Separation Agreement is executed and delivered by all parties thereto, the reference to such agreement in this Section 16(a) shall be deemed to refer to the draft thereof dated as of April 28, 2010).

(b) As between the Company on the one hand and Creole and/or Boudin, on the other hand, all disputes arising hereunder shall be resolved in accordance with the arbitration provisions of the most recent Existing Reinsurance Agreement. In any such arbitration, the entity named in the applicable Company Designation shall be the party formally opposed to the Company, but the other of Boudin or Creole shall have right to associate effectively in the defense and/or prosecution of such arbitration.

17. Severability. If any term or other provision of this Agreement or the Exhibits attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

18. Rules of Construction. The definitions of terms used herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (b) any reference herein to any law shall be construed as referring to such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to the restrictions contained herein), (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word “from” means “from and including” and the word “to” means “to and including” and (f) any reference herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement. No provision of this Agreement shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties intending to be legally bound hereby have executed this Agreement, by their duly authorized representatives.

ACE AMERICAN INSURANCE COMPANY

By: /S/ LAURA VEST
Printed Name: **Laura Vest**
Title: **Vice President**

CREOLE INSURANCE COMPANY, LTD.

By: /S/ BENJAMIN H. BASH
Benjamin H. Bash
Assistant Secretary

BOUDIN INSURANCE COMPANY, LTD.

By: /S/ LIANE K. HINRICHS
Liane K. Hinrichs
Assistant Secretary

Consented to for Purposes of Section 3:

MCDERMOTT INTERNATIONAL INC.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Senior Vice President**

BABCOCK & WILCOX HOLDINGS, INC.

By: /S/ MICHAEL S. TAFF
Name: **Michael S. Taff**
Title: **Senior Vice President**

Exhibit 10.7

GROUP IV AGREEMENT

NOVATION AND ASSUMPTION AGREEMENT

by and among

MCDERMOTT INTERNATIONAL, INC.,

a Panamanian corporation,

and

BABCOCK & WILCOX HOLDINGS, INC.,

a corporation organized and existing under the laws of the State of Delaware,

and

BOUDIN INSURANCE COMPANY, LTD., a Bermuda company

and

CREOLE INSURANCE COMPANY, LTD., a Bermuda company,

RECITALS

THIS NOVATION AND ASSUMPTION AGREEMENT (the "Agreement"), is entered into and effective as of May 18, 2010 (the "Effective Date") by and among MCDERMOTT INTERNATIONAL, INC., a Panamanian corporation ("MII"), BABCOCK & WILCOX HOLDINGS, INC., a Delaware corporation ("B&W"), to be succeeded by The Babcock & Wilcox Company, a Delaware corporation, after the effective time of the Merger, CREOLE INSURANCE COMPANY, LTD., a Bermuda company ("Creole"), and BOUDIN INSURANCE COMPANY, LTD., a Bermuda company ("Boudin") and, solely with respect to Sections 2(a)(ii) and 2(c)(ii), respectively, the other MII Entities signatory hereto and the other B&W Entities signatory hereto.

WHEREAS, Boudin or Creole have issued the Existing Policies to one or more MII Entities and one or more B&W Entities; and

WHEREAS, pursuant to the Existing Policies, Boudin and Creole are obligated, among other things, to pay or reimburse MII Entities and/or B&W Entities for certain obligations; and

WHEREAS, B&W, prior to the Separation, is a wholly owned Subsidiary of MII; and

WHEREAS, MII intends to spin-off B&W from MII through a dividend of common stock of B&W to the shareholders of MII (the "Separation"); and

WHEREAS, in connection with the Separation: (a) Boudin desires to transfer and Creole desires to assume any Transferable Boudin Policies insofar as such policies relate to B&W Entities; and (b) Creole desires to transfer and Boudin desires to assume any Transferable Creole Policies insofar as such policies relate to MII Entities; and

WHEREAS, MII and B&W are parties, together with ACE American Insurance Company and certain of its affiliates (collectively, "ACE") to a certain Assumption and Loss Allocation Agreement (the "ALAA") that, among other things, assists in effecting the Separation by identifying certain MII Obligations and certain B&W Obligations and allocating liability and responsibility therefor; and

WHEREAS, certain of the liabilities of MII and/or B&W and their respective Affiliates that are insured by the Existing Policies under this Agreement are MII Obligations and/or B&W Obligations under the ALAA, and the parties desire that the allocation of liability in this Agreement conform to that in the ALAA insofar as such overlap may exist; and

WHEREAS, each of MII and B&W, each for itself and for its respective Subsidiaries, is willing to consent to the transfer, assumption, and novation of the matters set forth herein, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set out herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. The following terms used herein, including in the recitals and Exhibits hereto, shall have the following meanings:

"ACE" has the meaning set forth in the recitals to this Agreement.

"Affiliate" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person. For this purpose "control" of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" has the meaning set forth in the recitals to this Agreement.

"ALAA" has the meaning set forth in the recitals to this Agreement.

"Assumption Time" means midnight (New York time) on the Effective Date.

"B&W" has the meaning set forth in the recitals to this Agreement.

"B&W Entity" means B&W and each of the entities listed on Exhibit I attached hereto and made a part hereof. It is acknowledged and understood that, from and after the effectiveness of the Separation, the B&W Entities will not be Subsidiaries or Affiliates of MII or any of the other MII Entities.

"B&W Obligations" shall have the meaning ascribed to such term in the ALAA and shall be interpreted under this Agreement to conform to interpretations under the ALAA.

"Boudin Assumption and Novation" has the meaning set forth in Section 2(a)(i).

"Creole Assumption and Novation" has the meaning set forth in Section 2(c)(i).

"Effective Date" has the meaning set forth in the recitals to this Agreement.

"Existing Policies" means the Transferable Boudin Policies, the Transferable Creole Policies, the Wholly Retained Boudin Policies, and the Wholly Retained Creole Policies.

"Insured," as a noun in reference to one or more insurance policies, means any Person who is insured by such policy or policies, regardless of whether such Person is designated an "Insured" or a "Named Insured" in such policy or is otherwise expressly identified therein.

"Insured B&W Obligation" means an obligation of Creole or Boudin under the Existing Policies that arises from an obligation to ACE or its Affiliates that is a B&W Obligation under the ALAA.

"Insured MII Obligation" means an obligation of Creole or Boudin under the Existing Policies that arises from an obligation to ACE or its Affiliates that is an MII Obligation under the ALAA.

"Insurer," as a noun in reference to one or more insurance policies, means the Person identified in such policy or policies as the insurer.

"Inter-Captive Reinsurance Agreements" has the meaning set forth in Section 2(e).

"Master Separation Agreement" means a Master Separation Agreement to be entered into between MII and The Babcock & Wilcox Company in connection with the Separation.

"Merger" means the merger, to occur after the date hereof, of Babcock & Wilcox Holdings, Inc., a Delaware corporation, with and into The Babcock & Wilcox Company, a Delaware corporation and the surviving entity of such Merger.

"MII" has the meaning set forth in the recitals to this Agreement.

"MII Entity" means MII and each of the entities listed on Exhibit II attached hereto and made a part hereof. It is acknowledged and understood that, from and after the effectiveness of the Separation, the MII Entities will not be Subsidiaries or Affiliates of B&W or any of the other B&W Entities.

"MII Obligations" shall have the meaning ascribed to such term in the ALAA and shall be interpreted under this Agreement to conform to interpretations under the ALAA.

"Organizational Documents" means (a) with respect to any corporation, its certificate or articles of incorporation or organization and its bylaws, (b) with respect to any limited partnership, its certificate of limited partnership and its partnership agreement, (c) with respect to any general partnership, its partnership agreement, and (d) with respect to any limited liability company, its certificate or articles of formation or organization and its operating agreement or other organizational documents.

"Parties" means MII, B&W, Boudin and Creole collectively (and each individually is a "Party").

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, a union, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

"Separation" has the meaning set forth in the recitals to this Agreement.

"Subsidiary" means, with respect to any specified Person, any corporation, partnership, limited liability company, joint venture or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such specified Person or by any one or more of its Subsidiaries, or by such specified Person and one or more of its Subsidiaries.

"Transferable Boudin Policy" means each insurance policy issued prior to the date hereof by Boudin on which a B&W Entity is named or otherwise identified as an insured (including without limitation by being within a generic description such as "affiliates" or "subsidiaries").

"Transferable Creole Policy" means each insurance policy issued prior to the date hereof by Creole on which an MII Entity is named or otherwise identified as an insured (including without limitation by being within a generic description such as "affiliates" or "subsidiaries").

"Transferred Boudin Policy" means, as to any Transferable Creole Policy after the Assumption Time and giving effect to this Agreement, the aggregate of (a) all rights, duties, and obligations of Boudin vis-à-vis the MII Entities that were, prior to the Assumption Time, Insureds of Creole under such Transferable Creole Policy, and (b) all rights, duties, and obligations vis-à-vis Boudin of the MII Entities that were, prior to the Assumption Time, Insureds of Creole under such Transferable Creole Policy.

"Transferred Creole Policy" means, as to any Transferable Boudin Policy after the Assumption Time and giving effect to this Agreement, the aggregate of (a) all rights, duties, and obligations of Creole vis-à-vis the B&W Entities that were, prior to the Assumption Time, Insureds of Boudin under such Transferable Boudin Policy, and (b) all rights, duties, and obligations vis-à-vis Creole of the B&W Entities that were, prior to the Assumption Time, Insureds of Boudin under such Transferable Boudin Policy.

"Wholly Retained Boudin Policy" means an insurance policy issued by Boudin to one or more MII Entities (and possibly others) that is not a Transferable Boudin Policy.

"Wholly Retained Creole Policy" means an insurance policy issued by Creole to one or more B&W Entities (and possibly others) that is not a Transferable Creole Policy.

2. Assumption.

(a) Boudin Assumption and Novation. Notwithstanding anything in any Transferable Creole Policy to the contrary, and effective as of the Assumption Time, Creole hereby transfers and assigns, and Boudin hereby assumes by novation, (x) so much of each Transferable Creole Policy as relates to MII or any MII Entity as an Insured thereunder; and (y) any and all obligations of Creole under any of the Existing Policies that arise from Insured MII Obligations. In connection with and implementation of such transfer, assignment, and novation:

(i) Boudin hereby agrees to observe, pay, perform, satisfy, fulfill and discharge any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of Creole under the Transferable Creole Policies and with respect to the Insured MII Obligations, both insofar as transferred above (the "Boudin Assumption and Novation"); and

(ii) Each MII Entity that is a signatory hereto hereby consents to, and agrees to give full force and effect to, the Boudin Assumption and Novation. From and after the Assumption Time, Boudin and not Creole shall be treated as the applicable MII Entity's contractual counterparty with respect to the contracts and mutual rights and obligations subject to the Boudin Assumption and Novation. Without limitation, each MII Entity:

a may enforce against Boudin its rights under the Transferable Creole Policies or with respect to any Insured MII Obligation to the same extent such Person could, prior to the Boudin Assumption and Novation, enforce such rights against Creole, and

b shall perform for the benefit of Boudin any obligation under the Transferable Creole Policies or with respect to any Insured MII Obligation to the same extent such Person was obligated, prior to the Boudin Assumption and Novation, to perform such obligations for the benefit of Creole, and

c releases Creole from its obligation to observe, pay, perform, satisfy, fulfill or discharge any obligations under any Transferable Creole Policy or with respect to any Insured MII Obligation.

(iii) With respect to each Transferable Creole Policy that is subject to the Boudin Assumption and Novation, the aggregate of rights, duties, and obligations set forth in subsections (a)(i) and (a)(ii) above shall be treated as the Transferred Boudin Policy relating to such Transferable Creole Policy.

(b) No Transfer or Novation of Creole Obligations to B&W Entities. Except to the extent (which the Parties do not expect) that the Wholly Retained Creole Policies are determined to cover Insured MII Obligations notwithstanding the absence of any MII Entity as an Insured thereunder, the Wholly Retained Creole Policies are not novated or otherwise affected by the Boudin Assumption and Novation. The Transferable Creole Policies are novated to Boudin as set forth above only to the extent that one or more MII Entities is an insured thereunder. To the extent that B&W Entities are insureds under the Transferable Creole Policies, the Parties acknowledge that Creole and not Boudin shall continue to observe, pay, perform, satisfy, fulfill and discharge any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of the Insurer under the Transferable Creole Policies. The Parties further acknowledge that Creole and not Boudin shall continue to observe, pay, perform, satisfy, fulfill and discharge any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of the Insurer with respect to the Insured B&W Obligations.

(c) Creole Assumption and Novation. Notwithstanding anything in any Transferable Boudin Policy to the contrary, and effective as of the Assumption Time, Boudin hereby transfers and assigns, and Creole hereby assumes by novation, (x) so much of each Transferable Boudin Policy as relates to B&W or any

B&W Affiliate as an Insured thereunder; and (y) any and all obligations of Boudin under any of the Existing Policies that arise from Insured B&W Obligations. In connection with and in implementation of such transfer, assignment, and novation:

(i) Creole hereby agrees to observe, pay, perform, satisfy, fulfill and discharge any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of Boudin under the Transferable Boudin Policies and with respect to the Insured B&W Obligations, both insofar as transferred above (the "Creole Assumption and Novation"); and

(ii) Each B&W Entity that is a signatory hereto hereby consents to, and agrees to give full force and effect to, the Creole Assumption and Novation. From and after the Assumption Time, Creole and not Boudin shall be treated as the B&W Entity's contractual counterparty with respect the contracts and mutual rights and obligations subject to the Creole Assumption and Novation. Without limitation, each B&W Entity:

a may enforce against Creole its rights under the Transferable Boudin Policies or with respect to any Insured B&W Obligation to the same extent such Person could, prior to the Creole Assumption and Novation, enforce such rights against Boudin, and

b shall perform for the benefit of Creole any obligation under the Transferable Boudin Policies or with respect to any Insured B&W Obligation to the same extent such Person was obligated, prior to the Creole Assumption and Novation, to perform such obligations for the benefit of Boudin, and

c releases Boudin from its obligation to observe, pay, perform, satisfy, fulfill or discharge any obligations under any Transferable Boudin Policy or with respect to any Insured B&W Obligation.

(iii) With respect to each Transferable Boudin Policy that is subject to the Creole Assumption and Novation, the aggregate of rights, duties, and obligations set forth in subsections (c)(i) and (c)(ii) above shall be treated as the Transferred Creole Policy relating to such Transferable Boudin Policy.

(d) No Transfer or Novation of Boudin Obligations to MII Entities. Except to the extent (which the Parties do not expect) that the Wholly Retained Boudin Policies are determined to cover Insured B&W Obligations notwithstanding the absence of any B&W Entity as an Insured thereunder, the Wholly Retained Boudin Policies are not novated or otherwise affected by the Creole Assumption and Novation. The Transferable Boudin Policies are novated to Creole as set forth above only to the extent that one or more B&W Entities is an insured thereunder. To the extent that MII Entities are insureds under the Transferable Boudin Policies, the Parties acknowledge that Boudin and not Creole shall continue to observe, pay, perform, satisfy, fulfill and discharge any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of the Insurer under the Transferable Boudin Policies. The Parties further acknowledge that Boudin and not Creole shall continue to observe, pay, perform, satisfy, fulfill and discharge any and all now existing and hereafter arising duties, terms, provisions, covenants, obligations and liabilities of the Insurer with respect to the Insured MII Obligations.

(e) Commutation and Release of Mutual Reinsurance by Boudin and Creole. Effective at the Assumption Time, Creole and Boudin do hereby commute any and all contracts of reinsurance by which one of them reinsured the other (the "Inter-Captive Reinsurance Agreements"). In furtherance of such commutation, and also effective at the Assumption Time, Creole and Boudin do hereby fully release and discharge one another from and against any past, present, or future liabilities or obligations, known or unknown, arising under the Inter-Captive Reinsurance Agreements.

(f) No Effect on Aggregate Limits of Liability. For the avoidance of doubt, it is understood and agreed that the aggregate liability of Creole and Boudin, taken together, is not intended to be, and shall be deemed not to be, increased by implementation of this Agreement. In particular, and without limitation, to the extent that any Transferable Creole Policy (or Transferable Boudin Policy) contains an aggregate limit of liability,

that aggregate limit of liability shall, after the Assumption Time, apply as a single, joint aggregate limit of liability as between (i) the resulting Transferred Boudin Policy (or Transferred Creole Policy) and (ii) the portions of the Transferable Creole Policy (or Transferable Boudin Policy) that are retained pursuant to Section 2(b) (or Section 2(d)) above. Disputes as to priority of claims and/or allocation of the single, joint aggregate limit of liability shall be resolved pursuant to Section 12 hereof.

3. Amendments. Neither this Agreement nor any provision hereof may be amended, changed, waived, discharged or terminated except by a written instrument signed by each Party.

4. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any right or obligation hereunder may be assigned or conveyed by any Party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

5. No Waiver. The failure or refusal by any Party to exercise any rights granted hereunder shall not constitute a waiver of such rights or preclude the subsequent exercise thereof, and no oral communication shall be asserted as a waiver of any such rights hereunder unless such communication shall be confirmed in a writing plainly expressing an intent to waive such rights and signed by the Party against whom such waiver is asserted.

6. Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed and delivered shall constitute an original, but such counterparts together shall constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties and other Persons signatory hereto transmitted by facsimile shall be deemed to be their original signatures for all purposes.

7. No Third Party Beneficiary. This Agreement shall not be deemed to give any right or remedy to any third party whatsoever unless otherwise specifically granted hereunder.

8. Parties' Representations. As of the Effective Date, each of the Parties expressly represents on its own behalf: (a) it is an entity in good standing in its jurisdiction of organization; (b) it has all requisite corporate power and authority to enter into this Agreement, and to perform its obligations hereunder; (c) the execution and delivery by it of this Agreement, and the performance by it of its obligations under this Agreement, have been duly authorized by all necessary corporate or other action; (d) this Agreement, when duly executed and delivered by it, and subject to the due execution and delivery hereof by the other Parties, will be a valid and binding obligation of it, enforceable against it, its successors and permitted assigns, in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles; (e) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the respective terms and conditions hereof will not (i) violate any provision of its Organizational Documents, (ii) violate any applicable order, judgment, injunction, award or decree of any court, arbitrator or governmental or regulatory body against it, or binding upon it, or any agreement with, or condition imposed by, any governmental or regulatory body, foreign or domestic, binding upon it as of the date hereof, or (iii) violate any agreement, contract, obligation, promise or undertaking that is legally binding and to which it is a party or by which it is bound; and (f) the signatory hereto on behalf of it is duly authorized and legally empowered to enter into this Agreement on its behalf.

9. Notices. Any and all notices, requests, approvals, authorizations, consents, instructions, designations and other communications that are required or permitted to be given pursuant to this Agreement shall be in writing and may be given either by personal delivery, first class prepaid post (airmail if to another country) or by internationally recognized overnight delivery service to the following address, or to such other address and recipient as such Party may have notified in accordance with the terms of this section as being its address or recipient for notification for the purposes of this Agreement:

If to Boudin:

Boudin Insurance Company, Ltd., c/o McDermott International, Inc.
757 N. Eldridge Parkway
Houston, Texas 77079
Attention: VP and Chief Risk Officer (with copy to General Counsel)

Telephone: 281-870-5785
Telecopier: 281-870-5923
Electronic Mail: twoodard@mcdermott.com

with a copy to:
Boudin Insurance Company, Ltd.
Cedar House
41 Cedar Avenue
P.O. Box HM 1838
Hamilton HM HX Bermuda
Bermuda
Fax (441) 295-3982
Telephone: 281-870-5476
Telecopier: 281-870-5923
Electronic Mail: cjryan@mcdermott.com

If to any MII Entity:

McDermott International, Inc.
757 N. Eldridge Parkway
Houston, Texas 77079
Attention: VP and Chief Risk Officer (with copy to General Counsel)

Telephone: 281-870-5785
Telecopier: 281-870-5923
Electronic Mail: twoodard@mcdermott.com

If to Creole:

Creole Insurance Company, Ltd.

Prior to the Separation:

Creole Insurance Company, Ltd., c/o Babcock & Wilcox Holdings, Inc.
800 Main Street
Lynchburg, Virginia 24504
Attention: Director, Risk Management (with copy to General Counsel)
Telephone: 434-522-6800

with a copy to:
McDermott International, Inc.
777 N. Eldridge Parkway
Houston, Texas 77079
Attention: Director, Risk Management (with copy to General Counsel)

with an additional copy to:
Creole Insurance Company, Ltd.
Cedar House
41 Cedar Avenue
P.O. Box HM 1838
Hamilton HM HX Bermuda
Bermuda
Fax (441) 295-3982
Telephone: 281-870-5476
Telecopier: 281-870-5923
Electronic Mail: cjryan@mcdermott.com

On and After the Separation:

The Babcock & Wilcox Company
The Harris Building
13024 Ballantyne Corporate Place, Suite 700
Charlotte, North Carolina
Attention: Director, Risk Management (with copy to General Counsel)

with a copy to:
Creole Insurance Company, Ltd.
Cedar House
41 Cedar Avenue
P.O. Box HM 1838
Hamilton HM HX Bermuda
Bermuda
Fax (441) 295-3982
Telephone: 281-870-5476
Telecopier: 281-870-5923
Electronic Mail: cjryan@mcdermott.com

If to any B&W Entity:

Prior to the Separation:

Babcock & Wilcox Holdings, Inc.
800 Main Street
Lynchburg, Virginia 24504
Attention: Director, Risk Management (with copy to General Counsel)
Telephone: 434-522-6800

with a copy to:
McDermott International, Inc.
777 N. Eldridge Parkway
Houston, Texas 77079
Attention: Director, Risk Management (with copy to General Counsel)

Telephone: 281-870-5476
Telecopier: 281-870-5923
Electronic Mail: cjryan@mcdermott.com

On and After the Separation:

The Babcock & Wilcox Company
The Harris Building
13024 Ballantyne Corporate Place, Suite 700
Charlotte, North Carolina
Attention: Director, Risk Management (with copy to General Counsel)

Any notice or communication to any Person shall be deemed to be received by that Person:

(A) upon personal delivery; or

(B) upon receipt if sent by mail or courier.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without regard to those provisions concerning conflicts of laws that would result in the application of the laws of any other jurisdiction.

11. Entire Agreement. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT AMONG ALL OF THE PARTIES WITH RESPECT TO THE TRANSFERS, ASSUMPTIONS, AND NOVATIONS DESCRIBED HEREIN AND SUPERSEDES ALL OTHER PRIOR AGREEMENTS AND UNDERSTANDINGS, BOTH WRITTEN AND ORAL, WITH RESPECT TO THE SUBJECT MATTER HEREOF. SOLELY FOR INTERPRETATION PURPOSES, THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE READ TOGETHER WITH THE ALAA, AND THE PARTIES FURTHER ACKNOWLEDGE THE CONTROLLING NATURE OF THE ALAA WITH RESPECT TO DISPUTE RESOLUTION, AS SET FORTH IN THE FOLLOWING PARAGRAPH.

12. Dispute Resolution. Any and all disputes arising out of this Agreement shall be resolved in accordance with the procedures set for in the Master Separation Agreement (or, in the event the Master Separation Agreement is not entered into by MII and The Babcock & Wilcox Company, in accordance with the procedures set forth in the draft thereof dated as of April 28, 2010). Issues as to whether a given obligation is an Insured B&W Obligation or an Insured MII Obligation shall be resolved as set forth in the ALAA, which resolution shall be binding for all purposes of this Agreement, notwithstanding (by way of example only) any assertion that the putative Insured B&W Obligation arose under a Wholly Retained Boudin Policy or the putative Insured MII Obligation arose under a Wholly Retained Creole Policy, or any other assertion that the terms of this Agreement prohibit the allocation reached under the ALAA. Any such assertions may be made, to the extent appropriate, in connection with the dispute resolution under the ALAA but may not be made as a basis for challenging such resolution.

13. Severability. If any term or other provision of this Agreement or the Exhibits attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the court, administrative agency or arbitrator shall interpret this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible. If any sentence in this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

14. Rules of Construction. The definitions of terms used herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (b) any reference herein to any law shall be construed as referring to such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to the restrictions contained herein), (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this

Agreement in its entirety and not to any particular provision hereof, (e) with respect to the determination of any time period, the word "from" means "from and including" and the word "to" means "to and including" and (f) any reference herein to Articles, Sections and Exhibits shall be construed to refer to Articles and Sections of, and Exhibits to, this Agreement. No provision of this Agreement shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties intending to be legally bound hereby have executed this Agreement, by their duly authorized representatives.

MCDERMOTT INTERNATIONAL, INC.

By: /S/ LIANE K. HINRICHS
Liane K. Hinrichs
Senior Vice President

BOUDIN INSURANCE COMPANY, LTD.

By: /S/ LIANE K. HINRICHS
Liane K. Hinrichs
Assistant Secretary

BABCOCK & WILCOX HOLDINGS, INC.

By: /S/ MICHAEL S. TAFF
Michael S. Taff
Senior Vice President

CREOLE INSURANCE COMPANY, LTD.

By: /S/ BENJAMIN H. BASH
Benjamin H. Bash
Assistant Secretary

ACKNOWLEDGED AND AGREED FOR PURPOSES OF SECTION 2:

B&W ENTITIES:

AMERICON EQUIPMENT SERVICES, INC.

AMERICON, INC.

APPLIED SYNERGISTICS, INC.

BABCOCK & WILCOX CANADA LTD.

BABCOCK & WILCOX CHINA HOLDINGS, INC.

BABCOCK & WILCOX CONSTRUCTION CO., INC.

BABCOCK & WILCOX DE MONTERREY, S.A. DE C.V.

BABCOCK & WILCOX DENMARK HOLDINGS, INC.

BABCOCK & WILCOX EBENSBURG POWER, INC.

BABCOCK & WILCOX EQUITY INVESTMENTS, INC.

BABCOCK & WILCOX INDIA HOLDINGS, INC.

BABCOCK & WILCOX INTERNATIONAL SALES AND SERVICE CORPORATION

BABCOCK & WILCOX INTERNATIONAL, INC.

By: /S/ BENJAMIN H. BASH
Name: **Benjamin H. Bash**
Title: **Assistant Secretary of each of the above**

BABCOCK & WILCOX MODULAR NUCLEAR ENERGY LLC

BABCOCK & WILCOX NUCLEAR OPERATIONS GROUP, INC.

BABCOCK & WILCOX NUCLEAR ENERGY, INC.

BABCOCK & WILCOX NUCLEAR SERVICES (U.K.) LIMITED

BABCOCK & WILCOX TECHNICAL SERVICES CLINCH RIVER, LLC

BABCOCK & WILCOX POWER GENERATION GROUP, INC.

BABCOCK & WILCOX TECHNICAL SERVICES GROUP, INC.

BABCOCK & WILCOX TECHNICAL SERVICES SAVANNAH RIVER COMPANY

BABCOCK & WILCOX VOLUND A/S

BCE PARTS LTD.

BWX TECHNOLOGIES, INC.

BWXT FEDERAL SERVICES, INC.

BWXT HANFORD COMPANY

BWXT OF IDAHO, INC.

BWXT OF OHIO, INC.

BWXT WASHINGTON, INC.

By: /S/ BENJAMIN H. BASH
Name: **Benjamin H. Bash**
Title: **Assistant Secretary of each of the above**

CREOLE INSURANCE COMPANY, LTD.

DELTA POWER SERVICES, LLC

DIAMOND OPERATING CO., INC.

DIAMOND POWER AUSTRALIA HOLDINGS, INC.

DIAMOND POWER CHINA HOLDINGS, INC.

DIAMOND POWER EQUITY INVESTMENTS, INC.

DIAMOND POWER INTERNATIONAL, INC.

DIAMOND POWER SPECIALTY (PROPRIETARY) LIMITED

DPS BERKELEY, LLC

DPS CADILLAC, LLC

DPS FLORIDA, LLC

DPS GREGORY, LLC

DPS LOWELL COGEN, LLC

DPS MECKLENBURG, LLC

DPS MICHIGAN, LLC

DPS MOJAVE, LLC

DPS SABINE, LLC

GUMBO INSURANCE COMPANY, LTD.

By: /S/ BENJAMIN H. BASH
Name: **Benjamin H. Bash**
Title: **Assistant Secretary of each of the above**

INTECH INTERNATIONAL INC.

INTECH, INC.

IVEY-COOPER SERVICES, L.L.C.

MARINE MECHANICAL CORPORATION

NFS HOLDINGS, INC.

NOG-ERWIN HOLDINGS, INC.

NORTH COUNTY RECYCLING, INC.

NUCLEAR FUEL SERVICES, INC.

O&M HOLDING COMPANY

SOFCO - EFS HOLDINGS LLC

By: /S/ BENJAMIN H. BASH
Name: **Benjamin H. Bash**
Title: **Assistant Secretary of each of the above**

BABCOCK & WILCOX TECHNICAL SERVICES (U.K.) LIMITED

By: /S/ BENJAMIN H. BASH
Name: **Benjamin H. Bash**
Title: **Joint Secretary**

B&W DE PANAMA, INC.

BABCOCK & WILCOX INTERNATIONAL INVESTMENTS CO., INC.

BABCOCK & WILCOX INVESTMENT COMPANY

By: /S/ MICHAEL S. TAFF
Name: **Michael S. Taff**
Title: **Senior Vice President, of each of the above**

BABCOCK & WILCOX INDIA PRIVATE LIMITED

DIAMOND POWER SPECIALTY LIMITED

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Assistant Secretary**

NATIONAL ECOLOGY COMPANY

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Secretary**

DIAMOND POWER DO BRASIL LIMITADA

DIAMOND POWER INTERNATIONAL, INC.

BABCOCK & WILCOX INTERNATIONAL SALES AND SERVICE CORPORATION
(as Shareholders of Diamond Power do Brasil Limitada)

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Assistant Secretary of each of the Shareholders**

P. T. BABCOCK & WILCOX ASIA

SERVICIOS DE FABRICACION DE VALLE SOLEADO, S.A. DE C.V.

SERVICOS PROFESIONALES DE VALLE SOLEADO, S.A. DE C.V.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Secretary**

DIAMOND POWER CENTRAL & EASTERN EUROPE S.R.O.

DIAMOND POWER FINLAND OY

By: /S/ JUHA K. MUSTONEN
Name: **Juha K. Mustonen**
Title: **Managing Director**

DIAMOND POWER MACHINE (HUBEI) CO., INC.

By: /S/ DAVID R. GIBBS
Name: **David R. Gibbs**
Title: **Director**

DIAMOND POWER SWEDEN AB

By: /S/ MIKA J. HAIKOLA
Name: **Mika J. Haikola**
Title: **Managing Director**

ACKNOWLEDGED AND AGREED FOR PURPOSES OF SECTION 2:

MII ENTITIES:

CHARTERING COMPANY (SINGAPORE) PTE. LTD.

J. RAY MCDERMOTT (QINGDAO) PTE. LTD.

J. RAY MCDERMOTT ASIA PACIFIC PTE. LTD.

MALMAC SDN. BHD.

MCDERMOTT (MALAYSIA) SENDIRIAN BERHAD

By: /S/ JEFF J. HIGHTOWER
Name: **Jeff J. Hightower**
Title: **Director of each of the above**

BOUDIN INSURANCE COMPANY, LTD.

J. RAY MCDERMOTT EASTERN HEMISPHERE LIMITED

LAGNIAPPE INSURANCE COMPANY, LTD.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Assistant Secretary, of each of the above**

J. RAY MCDERMOTT UK LTD.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Joint Secretary**

EASTERN MARINE SERVICES, INC.

GLOBAL ENERGY - MCDERMOTT LIMITED

HYDRO MARINE SERVICES, INC.

J. RAY MCDERMOTT (CASPIAN), INC.

J. RAY MCDERMOTT (NIGERIA) LTD.

J. RAY MCDERMOTT (NORWAY), AS

J. RAY MCDERMOTT CANADA HOLDING, LTD.

J. RAY MCDERMOTT CANADA, LTD.

J. RAY MCDERMOTT CONTRACTORS, INC.

J. RAY MCDERMOTT DE MEXICO, S.A. DE C.V.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Secretary of each of the above**

J. RAY MCDERMOTT ENGINEERING SERVICES PRIVATE LIMITED

J. RAY MCDERMOTT ENGINEERING, LLC

J. RAY MCDERMOTT FAR EAST, INC.

J. RAY MCDERMOTT INTERNATIONAL, INC.

J. RAY MCDERMOTT INTERNATIONAL VESSELS, LTD.

J. RAY MCDERMOTT INVESTMENTS B.V.

J. RAY MCDERMOTT KAZAKHSTAN LLP

J. RAY MCDERMOTT LOGISTIC SERVICES PVT. LIMITED

J. RAY MCDERMOTT MIDDLE EAST, INC.

J. RAY MCDERMOTT SOLUTIONS, INC.

J. RAY MCDERMOTT TECHNOLOGY, INC.

J. RAY MCDERMOTT UNDERWATER SERVICES, INC.

J. RAY MCDERMOTT WEST AFRICA HOLDINGS, INC.

J. RAY MCDERMOTT WEST AFRICA, INC.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Secretary of each of the above**

MCDERMOTT CASPIAN CONTRACTORS, INC.

MCDERMOTT FAR EAST, INC.

MCDERMOTT GULF OPERATING COMPANY, INC.

MCDERMOTT INTERNATIONAL B.V.

MCDERMOTT INTERNATIONAL INVESTMENTS CO., INC.

MCDERMOTT INTERNATIONAL MARINE INVESTMENTS N.V.

MCDERMOTT INTERNATIONAL TRADING CO., INC.

MCDERMOTT INTERNATIONAL VESSELS, INC.

MCDERMOTT MARINE MEXICO, S.A. DE C.V.

MCDERMOTT OFFSHORE SERVICES COMPANY, INC.

MCDERMOTT OLD JV OFFICE, INC.

MCDERMOTT OVERSEAS INVESTMENT CO. N.V.

MCDERMOTT OVERSEAS, INC.

MCDERMOTT TRADE CORPORATION

By: /s/ Liane K. Hinrichs
Name: **Liane K. Hinrichs**
Title: **Secretary of each of the above**

MENTOR SUBSEA TECHNOLOGY SERVICES, INC.

NORTH ATLANTIC VESSEL, INC.

OFFSHORE PIPELINES INTERNATIONAL, LTD.

OPI VESSELS, INC.

OPMI, LTD.

SABINE RIVER REALTY, INC.

SERVICIOS DE FABRICACION DE ALTAMIRA, S.A. DE C.V.

SERVICOS PROFESIONALES DE ALTAMIRA, S.A. DE C.V.

SPARTEC, INC.

VARSY INTERNATIONAL N.V.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Secretary of each of the above**

MCDERMOTT KFT.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Managing Director**

J. RAY MCDERMOTT (AUST.) HOLDING PTY. LIMITED

MCDERMOTT AUSTRALIA PTY. LTD.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Corporate Officer of each of the above**

MCDERMOTT INCORPORATED

MCDERMOTT PANAMA HOLDINGS, S.A.

J. RAY MCDERMOTT HOLDINGS, LLC

J. RAY MCDERMOTT, INC.

J. RAY MCDERMOTT, S.A.

MCDERMOTT CAYMAN LTD.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **Senior Vice President of each of the above**

MCDERMOTT INTERNATIONAL MARKETING, INC.

By: /S/ LIANE K. HINRICHS
Name: **Liane K. Hinrichs**
Title: **President**

FLOATEC, LLC

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Assistant Secretary**

MCDERMOTT HOLDINGS (U.K.) LIMITED

MCDERMOTT MARINE CONSTRUCTION LIMITED

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Joint Secretary of each of the above**

MCDERMOTT SERVICOS DE CONSTRUCAO, LTDA.

J. RAY MCDERMOTT INC.

MCDERMOTT OVERSEAS, INC.,
(as Shareholders)

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Assistant Secretary**

OFFSHORE PIPELINES SDN. BHD.

OFFSHORE PIPELINES SDN. BLD.
(as Sole Shareholder)

By: /S/ ROBERT E. STUMPF
Name: **Robert E. Stumpf**
Title: **Assistant Secretary**

INTERNATIONAL VESSELS LTD.

By: /S/ STEVEN W. ROLL
Name: **Steven W. Roll**
Title: **Director**

Signature Page to Group IV Agreement

PT. BAJA WAHANA INDONESIA

By: /S/ SCOTT CUMMINS
Name: **Scott Cummins**
Title: **President Director**

SINGAPORE HUANGDAO PTE. LTD.

By: /S/ ROCKNE L. MOSELEY
Name: **Rockne L. Moseley**
Title: **Director**

Exhibit 10.16

Execution Version

Published CUSIP Number: _____

CREDIT AGREEMENT

Dated as of May 3, 2010

among

BABCOCK & WILCOX INVESTMENT COMPANY
(or, after the Spinoff, THE BABCOCK & WILCOX COMPANY),
as the Borrower,

BANK OF AMERICA, N.A.,
as Administrative Agent,
Swing Line Lender and an L/C Issuer,

and

The Other Lenders Party Hereto

BNP PARIBAS,
as Syndication Agent

and

JPMORGAN CHASE BANK, N.A.,
WELLS FARGO BANK, N.A.,
BBVA COMPASS, and
CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as Documentation Agents

BANC OF AMERICA SECURITIES LLC,
BNP PARIBAS SECURITIES CORP. and
J.P. MORGAN SECURITIES INC.,
as Joint Lead Arrangers and Joint Book Managers

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CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of May 3, 2010, among BABCOCK & WILCOX INVESTMENT COMPANY, a Delaware corporation, as the borrower hereunder (or, after the effectiveness of the Spinoff (defined below) and the satisfaction of the other terms and conditions herein relating to the substitution thereof, the New Borrower (defined below) as the borrower hereunder), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and an L/C Issuer.

The Borrower has requested that the Lenders provide a revolving credit facility, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I.
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"Administrative Agent" means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02 or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in substantially the form of Exhibit E-2 or any other form approved by the Administrative Agent.

"Affiliate" means, with respect to any Person, any other Person, directly or indirectly, controlling or that is controlled by or is under common control with such Person, each officer, director or general partner of such Person, and each Person that is the beneficial owner of 10% or more of any class of Voting Stock of such Person. For the purposes of this definition, *"control"* means the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Affiliate Agreements" means, collectively, the agreements listed on Schedule 1.01(a) hereto.

"Aggregate Commitments" means the Commitments of all the Lenders. As of the Closing Date, the Aggregate Commitments shall equal $700,000,000.

"Agreement" means this Credit Agreement.

"Alternative Currency" means (a) with respect to Existing Letters of Credit, the currencies (other than Dollars) in which such Letters of Credit are issued (but only with respect to such Existing Letters of Credit), and (b) with respect to any other Letters of Credit, those currencies (other than Dollars) that are approved by the L/C Issuer issuing such Letters of Credit in accordance with Section 1.06.

"Alternative Currency Equivalent" means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

"Alternative Currency Sublimit" means an amount equal to the lesser of the Aggregate Commitments and $100,000,000. The Alternative Currency Sublimit is part of, and not in addition to, the Aggregate Commitments.

"Applicable Percentage" means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender's Commitment at such time, subject to adjustment as provided in Section 2.16. If the commitment of each Lender to make Loans and the obligation of each L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means, from time to time, the following percentages per annum, based upon the Debt Rating as set forth below:

		Applicable Rate			
Pricing Level	Debt Ratings S&P/Moody's	Commitment Fee	Eurocurrency Rate/ Financial Letter of Credit Fees	Base Rate	Performance Letter of Credit Fees / Commercial Letter of Credit Fees
1	BBB / Baa2 or higher	0.375%	2.500%	1.500%	1.250%
2	BBB- / Baa3	0.375%	2.750%	1.750%	1.375%
3	BB+ / Ba1	0.500%	3.000%	2.000%	1.500%
4	BB/Ba2	0.500%	3.250%	2.250%	1.625%
5	BB-/Ba3 or lower	0.625%	3.500%	2.500%	1.750%

"Debt Rating" means, as of any date of determination, the rating as determined by either S&P or Moody's (collectively, the "Debt Ratings") of the credit facilities established pursuant to this Agreement; provided that (a) if the respective Debt Ratings issued by the foregoing rating agencies differ by one level, then the Pricing Level for the higher of such Debt Ratings shall apply (with the Debt Rating for Pricing Level 1 being the highest and the Debt Rating for Pricing Level 5 being the lowest); (b) if there is a split in Debt Ratings of more than one level, then the Pricing Level that is one level lower than the Pricing Level of the higher Debt Rating shall apply; (c) if the Borrower has only one Debt Rating, the Pricing Level that is one level lower than that of such Debt Rating shall apply; (d) if the Borrower does not have any Debt Rating (other than as a result of the circumstances described in clause (e) below), Pricing Level 5 shall apply; and (e) if the Borrower does not have a Debt Rating because S&P or Moody's cease to exist or cease to provide such ratings, the Borrower and the Lenders will negotiate in good faith to agree to a substitute rating agency or rating service, or otherwise to adjust the pricing grid set forth above to address such situation, but until agreement is reached, the applicable Debt Rating of the rating agency that either ceased to exist or ceased providing ratings shall be the last Debt Rating provided by such rating agency. Initially, the Applicable Rate shall be determined based upon the Debt Rating specified in the certificate delivered pursuant to Section 4.01(a)(ix). Thereafter, each change in the Applicable Rate resulting from an announced change in the Debt Rating shall be effective during the period commencing on the date of the announcement thereof and ending on the date immediately preceding the effective date of the next such change.

"Applicable Time" means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arranger" means Banc of America Securities LLC, BNP Paribas Securities Corp., and J.P. Morgan Securities Inc., each in its capacity as a joint lead arranger and joint book manager.

"Asset Sale" has the meaning specified in Section 7.04.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E-1 or any other form approved by the Administrative Agent.

"Availability Period" means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to

make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

"Bank of America" means Bank of America, N.A. and its successors.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate" and (c) the Eurocurrency Rate determined in accordance with clause (b) of the definition thereof, plus 1.00%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in the "prime rate" announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Committed Loan" means a Committed Loan that is a Base Rate Loan.

"Base Rate Loan" means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

"Borrower" means (a) prior to the Borrower Replacement Effectiveness Time, the Original Borrower, and (b) on and after the Borrower Replacement Effectiveness Time, the New Borrower.

"Borrower Materials" has the meaning specified in Section 6.01.

"Borrower Replacement Effectiveness Time" means the date and time on which the conditions set forth in Section 6.24 are satisfied for the substitution of the New Borrower for the Original Borrower as the borrower hereunder.

"Borrower's Accountants" means Deloitte & Touche LLP or another firm of independent nationally recognized public accountants.

"Borrowing" means a Committed Borrowing or a Swing Line Borrowing, as the context may require.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Requirements of Law of, or are in fact closed in, the state where the Administrative Agent's Office with respect to Obligations denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day that is also a London Banking Day; and

(b) if such day relates to any determination of the Spot Rate pursuant to this Agreement, means any such day on which banks are open for foreign exchange business in the principal financial center of the country of the relevant Alternative Currency for which the Spot Rate is being determined.

"BWPGG" means Babcock & Wilcox Power Generation Group, Inc., a Delaware corporation and a Wholly-Owned Subsidiary of the Borrower.

"BWXT" means BWX Technologies, Inc., a Delaware corporation and a Wholly-Owned Subsidiary of the Borrower.

"BWXT Entities" means, subject to Section 6.25(b), collectively or individually, BWXT and each of its Subsidiaries.

"Capital Expenditures" means, with respect to any Person for any period, (a) the aggregate of amounts that would be reflected as additions to property, plant or equipment on a consolidated balance sheet of such Person and its Subsidiaries prepared in conformity with GAAP, excluding interest capitalized during construction *less* (b) the aggregate of such amounts used to acquire assets useful in the Borrower's and its Subsidiaries' business to the extent such amounts arose from a sale or disposition of equipment described in Section 7.04(c); provided, however, that the Capital Expenditures of the Borrower shall exclude such amounts to the extent (i) financed with the proceeds of Indebtedness permitted to be incurred hereunder (other than the Loans), (ii) financed with insurance or condemnation proceeds received with respect to loss of, damage to or taking of property of the Borrower or any of its Subsidiaries, (iii) reimbursed, or promptly reimbursable, by any Governmental Authority pursuant to a contractual arrangement therefor between the Borrower and/or one or more of its Subsidiaries and such Governmental Authority or (iv) such amounts represent the purchase price of a Permitted Acquisition that in accordance with GAAP would otherwise be required to be accounted for as a Capital Expenditure.

"Capital Lease" means, with respect to any Person, any lease of (or other arrangement conveying the right to use) property by such Person as lessee that would be accounted for as a capital lease on a balance sheet of such Person prepared in conformity with GAAP.

"Capital Lease Obligations" means, with respect to any Person, the capitalized amount of all obligations of such Person or any of its Subsidiaries under Capital Leases, as determined on a consolidated basis in conformity with GAAP.

"Captive Insurance Subsidiaries" means, collectively or individually as of any date of determination, those regulated Subsidiaries of the Borrower primarily engaged in the business of providing insurance and insurance-related services to the Borrower, its other Subsidiaries and certain other Persons.

"Cash Collateralize" means to pledge and deposit with or deliver directly to an L/C Issuer or to the Administrative Agent, for the benefit of the Administrative Agent, any L/C Issuer or the Swing Line Lender (as applicable) and the Lenders, as the context may indicate, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the L/C Issuer or Swing Line Lender benefitting from such

collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent (but only if the Administrative Agent is a party to such Cash Collateral arrangement) and (b) the applicable L/C Issuer or the Swing Line Lender (as applicable). "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Collateralized Letter of Credit" has the meaning specified in Section 2.03(o).

"Cash Equivalents" means (a) securities issued or fully guaranteed or insured by the United States government or any agency thereof, (b) certificates of deposit, eurodollar time deposits, overnight bank deposits and bankers' acceptances of (i) any commercial bank organized under the laws of the United States, any state thereof, the District of Columbia, any foreign bank, or any branch or agency of any of the foregoing, in each case if such bank has a minimum rating at the time of investment of A-1+ by S&P or P-1 by Moody's, or (ii) any Lender or any branch or agency of any Lender, (c) commercial paper, (d) municipal issued debt securities, including notes and bonds, (e) (i) shares of any money market fund that has net assets of not less than $500,000,000 and satisfies the requirements of rule 2a-7 under the Investment Company Act of 1940 and (ii) shares of any offshore money market fund that has net assets of not less than $500,000,000 and a $1 net asset mandate, (f) fully collateralized repurchase agreements and (g) demand deposit accounts; provided, however, that (i) all obligations of the type specified in clauses (c) or (d) above shall have a minimum rating of A-1 or AAA by S&P or P-1 or Aaa by Moody's, in each case at the time of acquisition thereof, and (ii) the maturities of all obligations of the type described in clause (b) above shall not exceed one year from the date of acquisition thereof.

"Cash Interest Expense" means, with respect to any Person for any period, the Interest Expense of such Person for such period less, to the extent included in the calculation of Interest Expense of such Person for such period, (a) the amount of debt discount and debt issuance costs amortized, (b) charges relating to write-ups or write-downs in the book or carrying value of existing Financial Covenant Debt and (c) interest payable in evidences of Indebtedness or by addition to the principal of the related Indebtedness.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements in the ordinary course of business of the Borrower and its Subsidiaries, but excluding any such agreement providing for overdraft services or financing that may remain outstanding for more than three Business Days.

"Cash Management Bank" means (a) any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement, and (b) any Person that is a party to a Cash Management Agreement at the time it or its relevant Affiliate becomes a Lender (whether on the Closing Date or at a later date pursuant to Section 10.06), in its capacity as a party to such Cash Management Agreement.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"Change of Control" means an event or series of events by which:

(a) prior to the effective time of consummation of the Spinoff in accordance with the terms of this Agreement:

(i) MII shall cease to beneficially own and control, directly or indirectly, 100% of the issued and outstanding Voting Stock of the Borrower on a fully diluted basis; or

(ii) any "person" or "group" (within the meaning of Rule 13d-5 of the Securities Exchange Act of 1934 as in effect on the date hereof) (excluding MII and its Subsidiaries and excluding underwriters in the course of their distribution of Voting Stock in an underwritten registered public offering provided such underwriters shall not hold such Stock for longer than five Business Days) shall (A) own directly or indirectly, beneficially or of record, Stock representing more than 30% of either the aggregate ordinary voting power or the aggregate equity value represented by the issued and outstanding Stock in MII or (B) shall have obtained the power (whether or not exercised) to elect a majority of the members of the board of directors of the Borrower or MII; or

(iii) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the board of directors of either the Borrower or MII (together with any new directors whose election by the board of directors of the Borrower or MII, as applicable, or whose nomination for election by the stockholders of the Borrower, or MII, as applicable, 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 elections or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office and

(b) on and after the effective time of consummation of the Spinoff in accordance with the terms of this Agreement:

(i) any "person" or "group" (within the meaning of Rule 13d-5 of the Securities Exchange Act of 1934 as in effect on the date hereof) (excluding the Borrower and its Subsidiaries and excluding underwriters in the course of their distribution of Voting Stock in an underwritten registered public offering provided such underwriters shall not hold such Stock for longer than five Business Days) shall (A) own directly or indirectly, beneficially or of record, Stock representing more than 30% of either the aggregate ordinary voting power or the aggregate equity value represented by the issued and outstanding Stock in the Borrower or (B) shall have obtained the power (whether or

not exercised) to elect a majority of the members of the board of directors of the Borrower; or

(ii) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the board of directors of the Borrower (together with any new directors whose election by the board of directors of the Borrower or whose nomination for election by the stockholders of the Borrower 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 elections or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office; and

(c) for the avoidance of doubt, the consummation of the Spinoff in accordance with the terms of this Agreement shall not constitute a "Change of Control" hereunder.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"Code" means the Internal Revenue Code of 1986.

"Collateral" means, collectively, the Pledged Interests and all other personal and real property of the Borrower, any Guarantor or any other Person in which the Administrative Agent or any Secured Party is granted a Lien under any Security Instrument as security for all or any portion of the Obligations or any other obligation arising under any Loan Document.

"Collateral Agreement" means the Pledge and Security Agreement dated as of the date hereof by the Borrower and certain of the Guarantors to the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit G.

"Collateral Reinstatement Event" means, after a release of Collateral as provided for in Section 10.19(a), the occurrence of any of the following: (a) both (i) the corporate family rating of the Borrower and its Subsidiaries from Moody's is Ba1 and (ii) the corporate rating of the Borrower and its Subsidiaries from S&P is BB+, (b) the corporate family rating of the Borrower and its Subsidiaries from Moody's is Ba2 or below (regardless of the then applicable corporate rating of the Borrower and its Subsidiaries from S&P) or (c) the corporate rating of the Borrower and its Subsidiaries from S&P is BB or below (regardless of the then applicable corporate family rating of the Borrower and its Subsidiaries from Moody's); provided that for purposes of determining whether a Collateral Reinstatement Event shall have occurred, if, for any reason, only one rating agency shall maintain corporate or corporate family ratings of the Borrower and its Subsidiaries then the applicable rating provided by such rating agency (or its equivalent) shall apply for both rating agencies.

"Collateral Release Event" means the satisfaction of each of the following conditions: (a) the corporate family rating of the Borrower and its Subsidiaries from Moody's is Baa3 or better (with a stable outlook or better), (b) the corporate rating of the Borrower and its Subsidiaries from S&P is BBB- or better (with a stable outlook or better), (c) no Default exists,

and (d) the Administrative Agent's receipt of a certificate from the Borrower with respect to the foregoing.

"Collateral Release Period" means, each period commencing with the occurrence of a Collateral Release Event and continuing until the Collateral Reinstatement Event immediately following such Collateral Release Event.

"Commitment" means, as to each Lender, its obligation to (a) make Committed Loans to the Borrower pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the Dollar amount set forth opposite such Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Commitment Letter" means that certain commitment letter dated as of March 19, 2010 by and among the Borrower, the Arrangers, Bank of America, BNP Paribas and JPMorgan Chase Bank, N.A.

"Committed Borrowing" means a borrowing consisting of simultaneous Committed Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

"Committed Loan" has the meaning specified in Section 2.01.

"Committed Loan Notice" means a notice of (a) a Committed Borrowing, (b) a conversion of Committed Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

"Compliance Certificate" means a certificate substantially in the form of Exhibit D.

"Consolidated Net Income" means, for any period, the net income (or loss) of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

"Constituent Documents" means, with respect to any Person, (a) the articles of incorporation, certificate of incorporation or certificate of formation (or the equivalent organizational documents) of such Person and (b) the by laws, operating agreement (or the equivalent governing documents) of such Person.

"Contaminant" means any material, substance or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including any petroleum or petroleum derived substance or waste, asbestos and polychlorinated biphenyls.

"Contractual Obligation" of any Person means any obligation, agreement, undertaking or similar provision of any Security issued by such Person or of any agreement, undertaking, contract, lease, indenture, mortgage, deed of trust or other instrument (excluding the Loan Documents) to which such Person is a party or by which it or any of its property is bound.

"Credit Extension" means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

"Customary Permitted Liens" means, with respect to any Person, any of the following Liens:

(a) Liens with respect to the payment of taxes, assessments or governmental charges in each case that are not yet due or that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP and, in the case of Mortgaged Property, there is no material risk of forfeiture of such property;

(b) Liens of landlords arising by statute or lease contracts entered into in the ordinary course, inchoate, statutory or construction liens and liens of suppliers, mechanics, carriers, materialmen, warehousemen, producers, operators or workmen and other liens imposed by law created in the ordinary course of business for amounts not yet due or that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP;

(c) liens, pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other types of social security benefits, taxes, assessments, statutory obligations or other similar charges or to secure the performance of bids, tenders, sales, leases, contracts (other than for the repayment of borrowed money) or in connection with surety, appeal, customs or performance bonds or other similar instruments;

(d) encumbrances arising by reason of zoning restrictions, easements, licenses, reservations, covenants, rights-of-way, utility easements, building restrictions and other similar encumbrances on the use of Real Property not materially detracting from the value of such Real Property and not materially interfering with the ordinary conduct of the business conducted at such Real Property;

(e) encumbrances arising under leases or subleases of Real Property that do not, individually or in the aggregate, materially detract from the value of such Real Property or materially interfere with the ordinary conduct of the business conducted at such Real Property;

(f) financing statements with respect to a lessor's rights in and to personal property leased to such Person in the ordinary course of such Person's business;

(g) liens, pledges or deposits relating to escrows established in connection with the purchase or sale of property otherwise permitted hereunder and the amounts secured thereby shall not exceed the aggregate consideration in connection with such purchase or sale (whether established for an adjustment in purchase price or liabilities, to secure indemnities, or otherwise); and

(h) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or a Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness.

"Debt Rating" has the meaning specified in the definition of "Applicable Rate."

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Requirements of Law of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

"Defaulting Lender" means, subject to Section 2.16(b), any Lender that, as determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit or Swing Line Loans, within three Business Days of the date required to be funded by it hereunder, (b) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations hereunder, or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

"Disqualified Stock" means with respect to any Person, any Stock that, by its terms (or by the terms of any Security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is exchangeable for Indebtedness of such Person, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the Maturity Date.

"Dollar" and "$" mean lawful money of the United States.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of any political subdivision of the United States.

"EBITDA" means, for any period,

(a) Consolidated Net Income for such period;

plus

(b) the sum of, in each case to the extent deducted in the calculation of such Consolidated Net Income but without duplication,

(i) any provision for income taxes,

(ii) Interest Expense,

(iii) depreciation expense,

(iv) amortization of intangibles or financing or acquisition costs,

(v) any aggregate net loss from the sale, exchange or other disposition of business units by the Borrower or its Subsidiaries, and

(vi) all other non-cash charges (including impairment of intangible assets and goodwill) and non-cash losses for such period (excluding any non-cash item to the extent it represents an accrual of, or reserve for, cash disbursements for any period ending prior to the Maturity Date);

provided, that, to the extent that all or any portion of the income or gains of any Person is deducted pursuant to any of clauses (c)(v) or (c)(vi) below for a given period, any amounts set forth in any of the preceding clauses (b)(i) through (b)(vi) that are attributable to such Person shall not be included for purposes of this clause (b) for such period,

minus

(c) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income but without duplication,

(i) any credit for income tax,

(ii) non-cash interest income,

(iii) any other non-cash gains or other items which have been added in determining Consolidated Net Income (other than any such gain or other item that has been deducted in determining EBITDA for a prior period),

(iv) the income of any Subsidiary or Joint Venture to the extent that the declaration or payment of dividends or similar distributions or transfers or loans by such Subsidiary or Joint Venture, as applicable, of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, statute, rule or governmental regulation applicable to such Subsidiary or Joint Venture, as applicable,

(v) the income of any Person (other than a Subsidiary) in which any other Person (other than the Borrower or a Wholly-Owned Subsidiary or any director holding qualifying shares in accordance with applicable law) has an interest, except to the extent of the amount of dividends or other distributions or transfers or loans actually paid to the Borrower or a Wholly-Owned Subsidiary by such Person during such period, and

(vi) any aggregate net gains from the sale, exchange or other disposition of business units by the Borrower or any of its Subsidiaries out of the ordinary course of business.

For any period of measurement that includes any Permitted Acquisition or any sale, exchange or disposition of any Subsidiary or business unit of the Borrower or any Subsidiary, EBITDA (and the relevant elements thereof) shall be computed on a pro forma basis for each such transaction as if it occurred on the first day of the period of measurement thereof, so long as the Borrower provides to the Administrative Agent reconciliations and other detailed information relating to adjustments to the relevant financial statements (including copies of financial statements of the acquired Person or assets in any Permitted Acquisition) used in computing EBITDA (and the relevant elements thereof) sufficient to demonstrate such pro forma calculations in reasonable detail.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

"Eligible Line of Business" means the businesses and activities engaged in by the Borrower and its Subsidiaries on the Closing Date, any other businesses or activities reasonably related or incidental thereto and any other businesses that, when taken together with the existing businesses of the Borrower and its Subsidiaries, are immaterial with respect to the assets and liabilities of the Borrower and its Subsidiaries, taken as a whole.

"Employee Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates.

"Environmental Laws" means all applicable Requirements of Law now or hereafter in effect and as amended or supplemented from time to time, relating to pollution or the regulation and protection of human health, safety, the environment or natural resources, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et seq.*); the Hazardous Material Transportation Act, as amended (49 U.S.C. § 1801 *et seq.*); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 *et seq.*); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 *et seq.*); the Toxic Substance Control Act, as amended (15 U.S.C. § 2601 *et seq.*); the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 *et seq.*); the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et seq.*); and each of their state and local counterparts or equivalents.

"Environmental Liabilities and Costs" means, with respect to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute and arising under any Environmental Law, Permit, order or agreement with any Governmental Authority or other Person, in each case relating to and resulting from the past, present or future operations of, or ownership of property by, such Person or any of its Subsidiaries.

"Environmental Lien" means any Lien in favor of any Governmental Authority pursuant to any Environmental Law.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control or treated as a single employer with the Borrower, any of its Subsidiaries or any Guarantor within the meaning of Section 414(b), (c), (m) or (o) of the Code. Any former ERISA Affiliate of the Borrower, any of its Subsidiaries or any Guarantor shall continue to be considered an ERISA Affiliate of the Borrower, such Subsidiary or such Guarantor within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of the Borrower, such Subsidiary or such Guarantor and with respect to liabilities arising after such period for which the Borrower, such Subsidiary or such Guarantor could be liable under the Code or ERISA.

"ERISA Event" means (a) a reportable event described in Section 4043(b) or 4043(c) of ERISA with respect to a Title IV Plan, (b) the withdrawal of the Borrower, any of its Subsidiaries, any Guarantor or any ERISA Affiliate from a Title IV Plan subject to Section 4063 or Section 4064 of ERISA during a plan year in which any such entity was a "substantial employer" (as defined in Section 4001(a)(2) of ERISA) or the termination of any such Title IV Plan resulting, in either case, in a material liability to any such entity, (c) the "complete or partial withdrawal" (within the meaning of Sections 4203 and 4205 of ERISA) of the Borrower, any of its Subsidiaries, any Guarantor or any ERISA Affiliate from any Multiemployer Plan where the

Withdrawal Liability is reasonably expected to exceed $1,000,000 (individually or in the aggregate), (d) notice of reorganization, insolvency, intent to terminate or termination of a Multiemployer Plan is received by the Borrower, any of its Subsidiaries, any Guarantor or any ERISA Affiliate, (e) the filing of a notice of intent to terminate a Title IV Plan under Section 4041(c) of ERISA or the treatment of a plan amendment as a termination under Section 4041(e) of ERISA, where such termination constitutes a "distress termination" under Section 4041(c) of ERISA, (f) the institution of proceedings to terminate a Title IV Plan by the PBGC, (g) the failure to make any required contribution to a Title IV Plan or Multiemployer Plan or to meet the minimum funding standard of Section 412 of the Code (in either case, whether or not waived in accordance with Section 412(c) of the Code), (h) the imposition of a lien under Section 430 of the Code or Section 303 of ERISA on the Borrower, any of its Subsidiaries, any Guarantor or any ERISA Affiliate, (i) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, (j) the imposition of liability on the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA, (k) the occurrence of an act or omission which would reasonably be expected to give rise to the imposition on the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any "employee pension plan" (within the meaning of Section 3(2) of ERISA), (l) receipt from the IRS of notice of the failure of any employee pension plan that is intended to be qualified under Section 401(a) of the Code so to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any such employee pension plan to qualify for exemption from taxation under Section 501(a) of the Code; or (m) the imposition of a Lien pursuant to Section 401(a)(29) of the Code or pursuant to ERISA with respect to any employee pension plan.

"Eurocurrency Rate" means:

(a) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to (i) the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation of the Eurocurrency Rate with respect to a Base Rate Loan on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in Same Day Funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at the date and time of determination.

"Eurocurrency Rate Loan" means a Committed Loan that bears interest at a rate based on clause (a) of the definition of "Eurocurrency Rate."

"Event of Default" has the meaning specified in Section 8.01.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of a Loan Party hereunder or under any of the other Loan Documents, (a) Taxes imposed on or measured by its overall net income or profits (however denominated), and franchise Taxes imposed on it (in lieu of net income Taxes), by the jurisdiction (or any political subdivision thereof) under the Requirements of Law of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits Taxes imposed by the United States (or any political subdivision thereof) or any similar Tax imposed by any other jurisdiction (or any political subdivision thereof) in which the Borrower is located, (c) any Taxes imposed as a result of a present or former connection between the taxing jurisdiction and such recipient, other than a connection resulting from the transactions arising under this Agreement or the other Loan Documents, (d) any backup withholding Tax that is required by the Code to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii), and (e) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13), any United States withholding Tax that (i) is required to be imposed on amounts payable to such Foreign Lender pursuant to the Requirements of Law in force at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or (ii) is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with clause (B) of Section 3.01(e)(ii), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 3.01(a)(ii) or (iii).

"Existing Credit Agreements" means (a) that certain Revolving Credit Agreement dated as of December 9, 2003 among BWXT, as borrower, certain subsidiaries of BWXT, as guarantors, the initial lenders named therein, Credit Lyonnais New York Branch, as administrative agent, and Credit Lyonnais Securities, as lead arranger and sole bookrunner (as amended through the Closing Date) and (b) that certain Credit Agreement dated as of February 22, 2006, by and among BWPGG, as borrower, certain lenders and issuers party thereto, Credit

Suisse, Cayman Islands Branch, Credit Suisse Securities (USA) LLC, JPMorgan Chase Bank, National Association, Wachovia Bank, National Association and The Bank of Nova Scotia (as amended through the Closing Date).

"Existing Letters of Credit" means those letters of credit set forth on Schedule 1.01(b), each of which shall constitute a Letter of Credit hereunder. For each Existing Letter of Credit, Schedule 1.01(b) shall include (a) the Person for whose account such letter of credit was issued, (b) the L/C Issuer, (c) the beneficiary, (d) the maximum amount thereof, (e) the expiration date thereof, (f) whether such letter of credit is a Financial Letter of Credit or a Performance Letter of Credit, and (g) any other information reasonably requested by the Administrative Agent with respect thereto.

"Extended Letter of Credit" has the meaning specified in Section 2.03(a)(ii).

"Fair Market Value" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party; provided that, for any determination of Fair Market Value in connection with an Asset Sale to be made pursuant to Section 7.04(i) in which the Fair Market Value of the properties disposed of in such Asset Sale exceeds $10,000,000, the Borrower shall provide evidence reasonably satisfactory to the Administrative Agent with respect to the calculation of such Fair Market Value.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

"Fee Letters" means each of (a) the fee letter dated as of March 19, 2010 by and among the Borrower, Bank of America, JPMorgan Chase Bank, N.A., BNP Paribas, Banc of America Securities LLC, J.P. Morgan Securities Inc. and BNP Paribas Securities Corp., (b) the fee letter dated as of March 19, 2010 by and among the Borrower, Bank of America and Banc of America Securities LLC, (c) the fee letter dated as of March 19, 2010 by and among the Borrower , BNP Paribas and BNP Paribas Securities Corp., and (d) the fee letter dated as of March 19, 2010 by and among the Borrower, JPMorgan Chase Bank, N.A. and J.P. Morgan Securities Inc.

"Financial Covenant Debt" of any Person means, without duplication, Indebtedness of the type specified in clauses (a), (b), (c), (d), (e), (f), (g) and (h) of the definition of "Indebtedness". For the avoidance of doubt, the term "Financial Covenant Debt" shall not

include (a) reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees and (b) Indebtedness of the Borrower or any Subsidiary of the Borrower that is owed to the Borrower or any Subsidiary of the Borrower.

"Financial Letter of Credit" means (a) any Existing Letter of Credit that is identified as a "Financial Letter of Credit" on Schedule 1.01(b) and (b) any other standby Letter of Credit that is not a Performance Letter of Credit.

"First-Tier Foreign Subsidiary" mean a Foreign Subsidiary all or any portion of whose Stock is owned directly by the Borrower or a Domestic Subsidiary that is a Guarantor (other than a BWXT Entity).

"Fiscal Quarter" means the fiscal quarter of the Borrower ending on March 31, June 30, September 30 or December 31 of the applicable calendar year, as applicable.

"Fiscal Year" means the fiscal year of the Borrower, which is the same as the calendar year.

"Foreign Lender" means any Lender that is organized under the Requirements of Law of a jurisdiction other than that in which the Borrower is resident for tax purposes (including such a Lender when acting in the capacity of the L/C Issuer). For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiary" means any Subsidiary that is organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia.

"Form 10" means the Form 10 filed with the SEC on March 12, 2010 (as amended on April 23, 2010) with the Original Borrower as registrant, without giving effect to any other amendments, alterations, replacements or other modifications thereto after such date of filing with the SEC.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to each L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such L/C Issuer, other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantors" means, collectively, each Wholly-Owned Domestic Subsidiary of the Borrower listed on Schedule 1.01(c) hereto, and each other Person that is or becomes a party to the Guaranty (including by execution of a Joinder Agreement pursuant to Section 6.22), but expressly excludes all Captive Insurance Subsidiaries.

"Guaranty" means the Guaranty Agreement dated as of the date hereof made by the Guarantors in favor of the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit F, and any Joinder Agreement with respect thereto.

"Guaranty Obligation" means, as applied to any Person, without duplication, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Indebtedness of another Person, if the purpose of such Person in incurring such liability is to provide assurance to the obligee of such Indebtedness that such Indebtedness will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of Indebtedness of another Person and (b) any liability of such Person for Indebtedness of another Person through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor, or to provide funds for the payment or discharge of such Indebtedness (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another Person, (iii) to make take-or-pay or similar payments, regardless of non-performance by any other party or parties to an agreement, (iv) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss or (v) to supply funds to, or in any other manner invest in, such other Person (including to pay for property or services irrespective of whether such property is received or such services are rendered), if (and only if) in the case of any agreement described under clause (b)(i), (ii), (iii), (iv) or (v) above the primary purpose or intent thereof is to provide assurance to the obligee of Indebtedness of any other Person that such Indebtedness will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof. The

amount of any Guaranty Obligation shall be equal to the amount of the Indebtedness so guaranteed or otherwise supported or, if such amount is not stated or otherwise determinable, the maximum reasonable anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. For the avoidance of doubt, the term "Guaranty Obligation" shall not include reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees.

"Hedge Bank" means (a) any Person that, at the time it enters into a Secured Swap Contract, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Secured Swap Contract, and (b) any Person that is a party to a Secured Swap Contract at the time it or its relevant Affiliate becomes a Lender (whether on the Closing Date or at a later date pursuant to Section 10.06), in its capacity as a party to such Secured Swap Contract.

"Historical Financial Statements" means the unaudited consolidated balance sheet of the Borrower and its Subsidiaries for the Fiscal Year ended December 31, 2009, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year.

"Immaterial Subsidiary" means any Subsidiary of the Borrower that, together with its Subsidiaries, (a) contributed less than $2,000,000 to the EBITDA of the Borrower and its Subsidiaries during the most recently-ended four-quarter period of the Borrower (taken as a single period) and (b) as of any date of determination has assets with an aggregate net book value of $2,000,000 or less.

"Indebtedness" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by promissory notes, bonds, debentures or similar instruments, (c) all matured reimbursement obligations with respect to letters of credit, bankers' acceptances, surety bonds, performance bonds, bank guarantees, and other similar obligations, (d) all other obligations with respect to letters of credit, bankers' acceptances, surety bonds, performance bonds, bank guarantees and other similar obligations, whether or not matured, other than unmatured or undrawn, as applicable, obligations with respect to Performance Guarantees, (e) all indebtedness for the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business that are not overdue by more than ninety days or disputed in good faith, (f) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement (other than operating leases) with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (g) all Capital Lease Obligations of such Person, (h) all Guaranty Obligations of such Person, (i) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any Stock or Stock Equivalents of such Person, valued, in the case of redeemable preferred stock, at the greater of its voluntary liquidation preference and its involuntary liquidation preference plus accrued and unpaid dividends, (j) net payments that such Person would have to make in the event of an early termination as determined on the date Indebtedness of such Person is being determined in respect of Swap Contracts of such Person and (k) all Indebtedness of the type referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and general intangibles) owned by

such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, but limited to the value of the property owned by such Person securing such Indebtedness. For the avoidance of doubt, the term "Indebtedness" shall not include reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 10.04(b).

"Information" has the meaning specified in Section 10.07.

"Information Memorandum" means the Confidential Information Memorandum, dated March 2010, in respect of the credit facilities provided under this Agreement.

"Intercompany Subordinated Debt Payment" means any payment or prepayment, whether required or optional, of principal, interest or other charges on or with respect to any Subordinated Debt of the Borrower or any Subsidiary of the Borrower, so long as (a) such Subordinated Debt is owed to the Borrower or a Subsidiary of the Borrower and (b) no Event of Default under Sections 8.01(a), (b) or (f) shall have occurred and be continuing.

"Interest Coverage Ratio" means, with respect to the Borrower and its Subsidiaries as of any day, the ratio of (a) EBITDA for the Borrower and its Subsidiaries for the last four full Fiscal Quarters ending on or prior to such day to (b) the Cash Interest Expense of the Borrower and its Subsidiaries for the last four full Fiscal Quarters ending on or prior to such day.

"Interest Expense" means, for any Person for any period, total interest expense of such Person and its Subsidiaries for such period, as determined on a consolidated basis in conformity with GAAP and including, in any event (without duplication for any period or any amount included in any prior period), (a) net costs under Interest Rate Contracts for such period, (b) any commitment fee (including, in the case of the Borrower or any of its Subsidiaries, the commitment fees hereunder) accrued, accreted or paid by such Person during such period, (c) any fees and other obligations (other than reimbursement obligations) with respect to letters of credit (including, in respect of the Borrower or any of its Subsidiaries, the Letter of Credit Fees) and bankers' acceptances (whether or not matured) accrued, accreted or paid by such Person for such period and (d) the fronting fee with respect to each Letter of Credit. For purposes of the foregoing, interest expense shall (i) be determined after giving effect to any net payments made or received by the Borrower or any Subsidiary with respect to interest rate Swap Contracts, (ii) exclude interest expense accrued, accreted or paid by the Borrower or any Subsidiary of the Borrower to the Borrower or any Subsidiary of the Borrower and (iii) exclude credits to interest expense resulting from capitalization of interest related to amounts that would be reflected as additions to property, plant or equipment on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in conformity with GAAP.

"Interest Payment Date" means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective

dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date.

"Interest Period" means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six months thereafter, as selected by the Borrower in its Committed Loan Notice or such other period that is twelve months or less requested by the Borrower and consented to by all the Lenders; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

"Interest Rate Contracts" means all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and interest rate insurance.

"Investment" means, as to any Person, (a) any purchase or similar acquisition by such Person of (i) any Security issued by, (ii) a beneficial interest in any Security issued by, or (iii) any other equity ownership interest in, any other Person, (b) any purchase by such Person of all or substantially all of the assets of a business conducted by any other Person, or all or substantially all of the assets constituting what is known to the Borrower to be the business of a division, branch or other unit operation of any other Person, (c) any loan, advance (other than deposits with financial institutions available for withdrawal on demand, prepaid expenses, accounts receivable and similar items made or incurred in the ordinary course of business) or capital contribution by such Person to any other Person, including all Indebtedness of any other Person to such Person arising from a sale of property by such Person other than in the ordinary course of its business, (d) any Guaranty Obligation incurred by such Person in respect of Indebtedness of any other Person and (e) the drawn amounts of Performance Guarantees for the direct or indirect benefit of a Subsidiary or Affiliate or a contract counterparty thereof. For the avoidance of doubt, the term "Investment" shall not include reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees.

"Inventory" has the meaning specified in the Collateral Agreement.

"IP Security Agreement" means the Intellectual Property Security Agreement dated as of the date hereof by any Loan Party to the Administrative Agent for the benefit of the Secured Parties, in form and substance satisfactory to the Administrative Agent.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Borrower (or any permitted Subsidiary, Joint Venture or Affiliate) or in favor of the L/C Issuer and relating to such Letter of Credit.

"Joinder Agreement" means a joinder agreement, in form and substance satisfactory to the Administrative Agent, with respect to the Guaranty or any Security Instrument or, with respect to the New Borrower upon the effectiveness of the Spinoff in accordance with Section 6.24, this Agreement.

"Joint Venture" means any Person (a) in which the Borrower, directly or indirectly, owns any Stock and Stock Equivalents of such Person and (b) that is not a Subsidiary of the Borrower; provided that (i) the Administrative Agent, on behalf of the Secured Parties, has a valid, perfected, first priority security interest in the Stock and Stock Equivalents in such joint venture owned directly by any Loan Party except where (x) the Constituent Documents of such joint venture prohibit such a security interest to be granted to the Administrative Agent or (y) such joint venture has incurred Non-Recourse Indebtedness the terms of which either (A) require security interests in such Stock and Stock Equivalents to be granted to secure such Non-Recourse Indebtedness or (B) prohibit such a security interest to be granted to the Administrative Agent, and (ii) no Loan Party shall, whether pursuant to the Constituent Documents of such joint venture or otherwise, be under any Contractual Obligation to make Investments or incur Guaranty Obligations after the Closing Date, or, if later, at the time of, or at any time after, the initial formation of such joint venture, that would be in violation of any provision of this Agreement.

"Landlord Lien Waiver" means a lien waiver signed by a landlord in such form as is reasonably satisfactory to the Administrative Agent.

"L/C Advance" means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Borrowing. All L/C Borrowings shall be denominated in Dollars.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Issuer" means Bank of America, each other Lender that is listed on the signature pages hereto as an "L/C Issuer" and any other Lender that becomes an L/C Issuer in accordance with Section 2.03(l) hereof, each in its respective capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder (whether pursuant to Section

2.03(l), 2.03(m), 9.06, 10.06 or otherwise), but excluding any Lender that resigns or is removed as an L/C Issuer pursuant to the terms hereof (except to the extent such Person has continuing rights and/or obligations with respect to Letters of Credit after such resignation or removal). References to the L/C Issuer herein shall, as the context may indicate (including with respect to any particular Letter of Credit, L/C Credit Extension, L/C Borrowing or L/C Obligations), mean the applicable L/C Issuer, each L/C Issuer, any L/C Issuer, or all L/C Issuers.

"L/C Issuer Sublimit" means with respect to each L/C Issuer, such amount as may be separately agreed between such L/C Issuer and the Borrower from time to time (with specific notice of such amount, and any change thereto, with respect to each L/C Issuer being promptly communicated to the Administrative Agent), provided that the L/C Issuer Sublimit with respect to any Person that ceases to be an L/C Issuer for any reason pursuant to the terms hereof shall be $0 (subject to the Letters of Credit of such Person remaining outstanding in accordance with the provisions hereof).

"L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.08. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn. The L/C Obligations of (a) any Lender at any time shall be its Applicable Percentage of the total L/C Obligations at such time, and (b) any particular L/C Issuer at any time shall mean the L/C Obligations allocable to Letters of Credit issued by such L/C Issuer.

"Lender" has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

"Letter of Credit" means any letter of credit issued hereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit, and a standby Letter of Credit may be a Performance Letter of Credit or a Financial Letter of Credit.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

"Letter of Credit Expiration Date" means the day that is 30 days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in Section 2.03(i).

"Leverage Ratio" means, with respect to the Borrower and its Subsidiaries as of any day, the ratio of (a) Financial Covenant Debt of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP as of such day to (b) EBITDA for the Borrower and its Subsidiaries for the last four full Fiscal Quarters ending on or prior to such day.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, collateral assignment, charge, deposit arrangement, encumbrance, lien (statutory or other), security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever intended to assure payment of any Indebtedness or the performance of any other obligation, including any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease and any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any effective financing statement under the UCC or comparable law of any jurisdiction naming the owner of the asset to which such Lien relates as debtor.

"Loan" means an extension of credit by a Lender to the Borrower under Article II in the form of a Committed Loan or a Swing Line Loan.

"Loan Documents" means this Agreement, each Note, the Guaranty, each Security Instrument, each Joinder Agreement, each Committed Loan Notice, each Issuer Document, each Fee Letter, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.03 or 2.15 of this Agreement and all other instruments and documents heretofore or hereafter executed or delivered to or in favor of the Administrative Agent, any Lender or any L/C Issuer in connection with the Loans made, Letters of Credit issued and transactions contemplated by this Agreement.

"Loan Parties" means, collectively, the Borrower, each Guarantor and any other Person providing Collateral pursuant to any Security Instrument.

"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Material Adverse Effect" means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent), or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document or of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

"Material Intellectual Property" has the meaning specified in the Collateral Agreement.

"Material Real Property" means, any parcel of real property located in the United States and owned by any Loan Party that has a Fair Market Value in excess of $3,000,000.

"Material Subsidiary" means, as of any date of determination, any Subsidiary of the Borrower that (a) has assets that represent more than 10% of the consolidated GAAP value of the

assets of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, as of such date or (b) contributed more than 10% of the EBITDA of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, during the most recently-ended four-quarter period of the Borrower (taken as a single period), or (c) with respect to any new Person acquired or created by the Borrower, (i) would have contributed more than 10% of the EBITDA of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, on a pro forma basis as of the last day of the most recently ended four-quarter period of the Borrower (taken as a single period) or (ii) held more than 10% of the consolidated GAAP value of the assets of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, as of such date, or (d) owns, directly or indirectly, Stock or Stock Equivalents in one or more other Subsidiaries of the Borrower that, when aggregated with such Subsidiary, (i) contributed more than 10% of the EBITDA of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, during the most recently ended four-quarter period of the Borrower (taken as single period) or (ii) held more than 10% of the consolidated GAAP value of the assets of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, as of such date.

"Maturity Date" means May 3, 2014; provided that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

"MII" shall mean McDermott International, Inc. (a Panamanian corporation).

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgagee Policies" has the meaning specified in Section 4.01(a)(iv)(B).

"Mortgaged Properties" mean, initially, each parcel of Material Real Property and the improvements thereto specified on Schedule 4.01(a)(iv), and shall include each other parcel of Material Real Property and improvements thereto with respect to which a Mortgage is granted pursuant to Section 6.23.

"Mortgages" mean the fee or leasehold mortgages or deeds of trust, assignments of leases and rents and other security documents granting a Lien on any Mortgaged Property to secure the Obligations, each in form and substance reasonably satisfactory to the Administrative Agent, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

"Multiemployer Plan" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which the Borrower, any of its Subsidiaries, any Guarantor or any ERISA Affiliate has any obligation or liability, contingent or otherwise.

"New Borrower" means The Babcock & Wilcox Company, a Delaware corporation, which effective as of the Borrower Replacement Effectiveness Time shall be a publicly-traded corporation and the direct or indirect owner of 100% of the outstanding Stock and Stock Equivalents of the Original Borrower.

"Non-Recourse Indebtedness" means Indebtedness of a Joint Venture or Subsidiary of the Borrower (in each case that is not a Loan Party) (a) that, if it is incurred by a Subsidiary of

the Borrower, is on terms and conditions reasonably satisfactory to the Administrative Agent, (b) that is not, in whole or in part, Indebtedness of any Loan Party (and for which no Loan Party has created, maintained or assumed any Guaranty Obligation) and for which no holder thereof has or could have upon the occurrence of any contingency, any recourse against any Loan Party or the assets thereof (other than (i) the Stock or Stock Equivalents issued by the Joint Venture or Subsidiary that is primarily obligated on such Indebtedness that are owned by a Loan Party and (ii) a requirement that a Loan Party make an Investment of equity in such Joint Venture in connection with the terms of such Indebtedness), (c) owing to an unaffiliated third-party (which for the avoidance of doubt does not include the Borrower, any Subsidiary thereof, any other Loan Party, any Joint Venture (or owner of any interest therein) and any Affiliate of any of them) and (d) the source of repayment for which is expressly limited to (i) the assets or cash flows of such Subsidiary or Joint Venture and (ii) the Stock and Stock Equivalents of such Subsidiary or Joint Venture securing such Indebtedness in compliance with the provisions of clause (b) above.

"Note" means a promissory note made by the Borrower in favor of a Lender evidencing Loans made by such Lender to the Borrower, substantially in the form of Exhibit C.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"Original Borrower" means Babcock & Wilcox Investment Company, a Delaware corporation.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

"Outstanding Amount" means (a) with respect to Committed Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Committed Loans occurring on such date; (b) with respect to Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Swing Line Loans occurring on such date; and (c) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

"Overnight Rate" means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent, the L/C Issuer, or the Swing Line

Lender, as the case may be, in accordance with banking industry rules on interbank compensation.

"Participant" has the meaning specified in Section 10.06(d).

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Performance Guarantee" of any Person means (a) any letter of credit, bankers acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of such Person to support only trade payables or nonfinancial performance obligations of such Person, (b) any letter of credit, bankers acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of such Person to support any letter of credit, bankers acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of a Subsidiary or Joint Venture of such Person to support only trade payables or non-financial performance obligations of such Subsidiary or Joint Venture, and (c) any parent company guarantee or other direct or indirect liability, contingent or otherwise, of such Person with respect to trade payables or non-financial performance obligations of a Subsidiary or Joint Venture of such Person, if the purpose of such Person in incurring such liability is to provide assurance to the obligee that such contractual obligation will be performed, or that any agreement relating thereto will be complied with.

"Performance Letter of Credit" means (a) a standby Letter of Credit issued to secure ordinary course performance obligations in connection with project engineering, procurement, construction, maintenance and other similar projects (including projects about to be commenced) or bids for prospective project engineering, procurement, construction, maintenance and other similar projects, and (b) a standby Letter of Credit issued to back a bank guarantee, surety bond, performance bond or other similar obligation in each case issued to support ordinary course performance obligations in connection with project engineering, procurement, construction, maintenance and other similar projects (including projects about to be commenced) or bids for prospective project engineering, procurement, construction, maintenance and other similar projects. For the avoidance of doubt, the term "Performance Letter of Credit" includes each Existing Letter of Credit that is identified as a "Performance Letter of Credit" on Schedule 1.01(b).

"Permit" means any permit, approval, authorization, license, variance or permission required from a Governmental Authority under any applicable Requirements of Law.

"Permitted Acquisition" means, the acquisition of all or substantially all of the assets or line of business of, or all of the Stock and Stock Equivalents (other than director's qualifying shares and the like, as may be required by applicable Requirements of Law) of, a Person (referred to herein as the "Acquired Entity"); provided that:

(a) such acquisition was approved by the board of directors of such Acquired Entity;

(b) the Acquired Entity shall be in an Eligible Line of Business;

(c) the Borrower and its Subsidiaries shall comply with Section 6.22 and 6.23, as applicable, within the time periods set forth in such Sections;

(d) at the time of such transaction:

(i) both before and after giving effect thereto, no Default shall have occurred and be continuing;

(ii) the Borrower would be in compliance with the Leverage Ratio set forth in Section 7.18(b) as of the last day of the most recently completed four Fiscal Quarter period ended prior to such transaction for which the financial statements and certificates required by Section 6.01(a) or 6.01(b) have been delivered, after giving *pro forma* effect to such transaction and to any other event occurring after such period as to which *pro forma* recalculation is appropriate as if such transaction had occurred as of the first day of such period (assuming, for purposes of *pro forma* compliance with Section 7.18(b), that the maximum Leverage Ratio permitted at the time by such Section was in fact 0.25 to 1.00 more restrictive than the Leverage Ratio actually provided for in such Section at such time); and

(iii) if the purchase price for such acquisition is in excess of $10,000,000, the Borrower shall have delivered a certificate of a Responsible Officer, certifying as to the foregoing and containing reasonably detailed calculations in support thereof, in form and substance reasonably satisfactory to the Administrative Agent; and

(e) if (i) the Borrower is a party to such transaction, it shall be a surviving entity thereof and shall continue as the Borrower hereunder, and (ii) if any party to any such transaction is a Guarantor, the surviving entity of such transaction shall either be a Guarantor or become a Guarantor pursuant to Section 6.22.

"Permitted BWXT Owner" has the meaning specified in Section 7.19.

"Permitted L/C Party" means (a) the Borrower, (b) any Subsidiary of the Borrower, (c) any Joint Venture, and (d) prior to the effectiveness of the Spinoff in accordance with the terms of this Agreement, any Affiliate of the Borrower.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Platform" has the meaning specified in Section 6.01.

"Pledged Interests" means (a) the Stock and Stock Equivalents of each of the existing or hereafter organized or acquired direct Domestic Subsidiaries of a Loan Party; and (b) 65% of the Voting Stock (or if the relevant Person shall own less than 65% of such Voting Stock, then 100% of the Voting Stock owned by such Person) and 100% of the nonvoting Stock and Stock Equivalents of each existing or hereafter organized or acquired First-Tier Foreign Subsidiary; provided that Pledged Interests shall not include any Stock or Stock Equivalents in (i) any BWXT Entity, (ii) any Captive Insurance Subsidiary, (iii) any Joint Venture to the extent that the Constituent Documents of such Joint Venture prohibit such a security interest to be granted to

the Administrative Agent, or (iv) any Subsidiary that is not a Loan Party or any Joint Venture to the extent that such Joint Venture or Subsidiary has incurred Non-Recourse Indebtedness the terms of which either (A) require security interests in such Stock and Stock Equivalents to be granted to secure such Non-Recourse Indebtedness or (B) prohibit such a security interest to be granted to the Administrative Agent.

"Projections" means those financial projections of the Borrower and its Subsidiaries covering the Fiscal Years ending in 2010 through 2014, inclusive, delivered to the Administrative Agent by the Borrower.

"Public Lender" has the meaning specified in Section 6.01.

"Real Property" means all Mortgaged Property and all other real property owned or leased from time to time by any Loan Party or any of its Subsidiaries.

"Register" has the meaning specified in Section 10.06(c).

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates.

"Release" means, with respect to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration, in each case, of any Contaminant into the indoor or outdoor environment or into or out of any property owned by such Person, including the movement of Contaminants through or in the air, soil, surface water, ground water or property and, in each case, in violation of Environmental Law.

"Remedial Action" means all actions required by any applicable Requirement of Law to (a) clean up, remove, treat or in any other way address any Contaminant in the indoor or outdoor environment, (b) prevent the Release or threat of Release or minimize the further Release so that a Contaminant does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre remedial studies and investigations and post remedial monitoring and care.

"Request for Credit Extension" means (a) with respect to a Borrowing, conversion or continuation of Committed Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"Required Lenders" means, as of any date of determination, Lenders having more than 50% of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition); provided that the Commitment of, and the portion of the Total Outstandings held or

deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Requirement of Law" means, with respect to any Person, the common law and all federal, state, local and foreign laws, rules and regulations, orders, judgments, decrees and other determinations of any Governmental Authority or arbitrator, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer" means the chief executive officer, president, chief financial officer, treasurer or controller of a Loan Party and, solely for purposes of notices given for Credit Extensions, amendments to Letters of Credit, and continuations and conversions of Loans, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent (which such notice shall include a specimen signature and incumbency confirmation reasonably satisfactory to the Administrative Agent). Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" means (a) any dividend, distribution or any other payment whether direct or indirect, on account of any Stock or Stock Equivalents of the Borrower or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in Stock or Stock Equivalents (other than Disqualified Stock) or a dividend or distribution payable solely to the Borrower or one or more Guarantors, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Stock or Stock Equivalents of the Borrower or any of its Subsidiaries now or hereafter outstanding other than one payable solely to the Borrower or one or more Guarantors and (c) any payment or prepayment of principal, premium (if any), interest, fees (including fees to obtain any waiver or consent in connection with any Indebtedness) or other charges on, or redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Subordinated Debt of the Borrower or any other Loan Party, other than any Intercompany Subordinated Debt Payment or any required payment, prepayment, redemption, retirement, purchases or other payments, in each case to the extent permitted to be made by the terms of such Subordinated Debt.

"Revaluation Date" means, with respect to any Letter of Credit, each of the following: (a) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (b) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (c) each date of any payment by an L/C Issuer under any Letter of Credit denominated in an Alternative Currency, (d) in the case of the Existing Letters of Credit denominated in an Alternative Currency, the Closing Date, and (e) such additional dates as the Administrative Agent or the applicable L/C Issuer shall determine or the Required Lenders shall require.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Same Day Funds" means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Secured Cash Management Agreement" means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

"Secured Hedge Agreement" means any Secured Swap Contract that is entered into by and between any Loan Party and any Hedge Bank.

"Secured Swap Contracts" means all Swap Contracts in the nature of interest rate swap agreements, interest rate cap agreements, interest rate collar agreements, interest rate insurance, foreign exchange contracts, currency swap or option agreements, forward contracts, commodity swap, purchase or option agreements, other commodity price hedging arrangements, and all other similar agreements or arrangements designed to alter the risks of any Person arising from fluctuations in interest rates, currency values or commodity prices.

"Secured Parties" means, collectively, the Administrative Agent, the Lenders, each L/C Issuer, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Security Instruments.

"Security" means any Stock, Stock Equivalent, voting trust certificate, bond, debenture, promissory note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, or any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

"Security Instruments" means, collectively, the Collateral Agreement, the Mortgages, the IP Security Agreement, and all other agreements (including Joinder Agreements, control agreements, supplements, collateral assignments and similar agreements), instruments and other documents, whether now existing or hereafter in effect, pursuant to which the Borrower, any Subsidiary or other Person shall grant or convey to the Administrative Agent (for the benefit of the Secured Parties) a Lien in, or any other Person shall acknowledge any such Lien in, property as security for all or any portion of the Obligations or any other obligation under any Loan Document.

"Solvent" means, with respect to any Person, that the value of the assets of such Person (both at fair value and present fair saleable value) is, on the date of determination, greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person as

of such date and that, as of such date, such Person is able to pay all liabilities of such Person as such liabilities are expected to mature and does not have unreasonably small capital for its then current business activities. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Spinoff" means the distribution of the Stock and Stock Equivalents of New Borrower to the public shareholders of MII through a series of transactions so long as (a) no Default exists at the time of, or after giving effect to, the completion of all such transactions (including the absence of any Default under Section 8.01(h)) and the Borrower shall be in pro forma compliance with the covenants set forth in Section 7.18, as of the last day of the most recently completed four Fiscal Quarter period ended prior to such transaction for which the financial statements and certificates required by Section 6.01(a) or 6.01(b) have been delivered, (b) the New Borrower assumes the obligations as the "Borrower" hereunder substantially simultaneously therewith in accordance with the provisions of Sections 2.17 and 6.24, (c) such transactions are consummated on substantially the same terms (with non-material changes or other or additional non-material transactions, steps or terms being considered consistent with consummation "on substantially the same terms") as are set forth in the Form 10 and the other written information provided by the Borrower to the Administrative Agent with respect to such transactions, with only such changes or other or additional terms as are either (i) not materially adverse to the Lenders and approved by the Administrative Agent (which such approval shall not be unreasonably withheld, conditioned or delayed but may, in the Administrative Agent's sole discretion, be made in conjunction with a reasonably prompt consultation with the Lenders with respect thereto, with any such consultation with the Lenders not to require approval of more than the Required Lenders and not to be unreasonably withheld, conditioned or delayed) or (ii) approved by the Required Lenders (with any approval of the Required Lenders not to be unreasonably withheld, conditioned or delayed), (d) the Administrative Agent is reasonably satisfied with the terms of each of the Affiliate Agreements and each other material agreement between or among the Borrower and its Subsidiaries (or any of them), on the one hand, and MII and its Subsidiaries (or any of them, but excluding the Borrower and its Subsidiaries), on the other hand, to be, or remain, in effect after the Spinoff, including any other shared services, intercompany debt and separation agreements (which such approval shall not be unreasonably withheld, conditioned or delayed but may, in the Administrative Agent's sole discretion, be made in conjunction with a reasonably prompt consultation with the Lenders with respect thereto, with any such consultation with the Lenders not to require approval of more than the Required Lenders and not to be unreasonably withheld, conditioned or delayed), and (e) after giving effect thereto, the representations and warranties in Article V shall be true and correct in all material respects.

"Spot Rate" for a currency means the rate determined by the applicable L/C Issuer, with notice thereof to the Administrative Agent, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the applicable L/C Issuer may obtain such spot rate from another financial institution

designated by such L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that such L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

"Stock" means shares of capital stock (whether denominated as common stock or preferred stock), partnership or membership interests, equity participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or similar business entity, whether voting or non-voting.

"Stock Equivalents" means all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable.

"Subordinated Debt" means Indebtedness of the Borrower or any of its Subsidiaries that is, by its terms, expressly subordinated to the prior payment of any of the Obligations pursuant to subordination terms and conditions reasonably satisfactory to the Administrative Agent, and, in the case of intercompany loans permitted hereunder, subject to the terms of a Global Intercompany Note substantially in the form of Exhibit H hereto or such other documentation as the Administrative Agent shall deem appropriate. The terms of such Global Intercompany Note or such other documentation and any other Subordinated Debt may permit Intercompany Subordinated Debt Payments.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person; provided that any reference herein or in any other Loan Document to a "Subsidiary" of the Borrower shall exclude any Person whose financial statements are not consolidated with the financial statements of the Borrower in accordance with GAAP. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Swap Contract" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement,

or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swing Line Borrowing" means a borrowing of a Swing Line Loan pursuant to Section 2.04.

"Swing Line Lender" means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"Swing Line Loan" has the meaning specified in Section 2.04(a).

"Swing Line Loan Notice" means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B.

"Swing Line Sublimit" means an amount equal to the lesser of (a) $15,000,000 and (b) the Aggregate Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Commitments.

"Tax Affiliate" means, with respect to any Person, (a) any Subsidiary of such Person, and (b) any Affiliate of such Person with which such Person files or is eligible to file U.S. federal income tax returns.

"Tax Return" has the meaning specified in Section 5.08.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Title IV Plan" means a pension plan, other than a Multiemployer Plan, covered by Title IV of ERISA and to which the Borrower, any of its Subsidiaries, any Guarantor or any ERISA Affiliate has any obligation or liability (contingent or otherwise).

"Total Outstandings" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"Type" means, with respect to a Committed Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

"UCC" has the meaning specified in the Collateral Agreement.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning specified in Section 2.03(c)(i).

"Voting Stock" means Stock of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or similar controlling Persons, of such

Person (irrespective of whether, at the time, Stock of any other class or classes of such entity shall have or might have voting power by reason of the happening of any contingency).

"Wholly-Owned" means, in respect of any Subsidiary of any Person, a circumstance where all of the Stock of such Subsidiary (other than director's qualifying shares, and the like, as may be required by applicable law) is owned by such Person, either directly or indirectly through one or more Wholly-Owned Subsidiaries thereof.

"Withdrawal Liability" means, with respect to the Borrower, any of its Subsidiaries or any Guarantor at any time, the aggregate liability incurred (whether or not assessed) with respect to all Multiemployer Plans pursuant to Section 4201 of ERISA.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Constituent Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Historical Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Consolidation of Variable Interest Entities. All references herein to consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

1.04 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Exchange Rates; Currency Equivalents.

(a) The applicable L/C Issuer shall determine the Spot Rates (and notify the Administrative Agent of the same) as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of L/C Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the

Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the applicable L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be.

1.06 Alternative Currencies.

(a) The Borrower may from time to time request that one or more L/C Issuers issue and maintain Letters of Credit denominated in a currency other than Dollars. Any such request shall be subject to the approval of the L/C Issuer that will be issuing Letters of Credit in such currency.

(b) Any such request shall be made by the Borrower to one or more L/C Issuers not later than 11:00 a.m., ten Business Days prior to the date of the desired issuance of a Letter of Credit in such currency (or such other time or date as may be agreed by any such L/C Issuer, in its sole discretion).

(c) If any L/C Issuer consents to the issuance of Letters of Credit in such requested currency, such L/C Issuer shall so notify the Borrower and the Administrative Agent, and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances by each such approving L/C Issuer (but not by any L/C Issuer not approving such currency).

(d) Prior to the Closing Date, each L/C Issuer may agree with the Borrower to issue Letters of Credit in particular currencies (other than Dollars) immediately upon, and at all times after, the Closing Date, and each L/C Issuer and the Borrower shall notify the Administrative Agent of the currencies (other than Dollars) approved by such L/C Issuer prior to or on the Closing Date.

1.07 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.08 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE II.
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Committed Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans to the Borrower in Dollars (each such loan, a "Committed Loan") from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Commitment; provided, however, that after giving effect to any Committed Borrowing, (a) the Total Outstandings shall not exceed the Aggregate Commitments, and (b) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment. Within the limits of each Lender's Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01. Committed Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

2.02 Borrowings, Conversions and Continuations of Committed Loans.

(a) Each Committed Borrowing, each conversion of Committed Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 1:00 p.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or of any conversion of Eurocurrency Rate Loans to Base Rate Committed Loans, and (ii) on the requested date of any Borrowing of Base Rate Committed Loans; provided that if the Borrower wishes to request Eurocurrency Rate Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of "Interest Period," the applicable notice must be received by the Administrative Agent not later than 1:00 p.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 1:00 p.m., three Business Days before the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans (or four Business Days in the case of a Borrowing of Eurocurrency Rate Loans having an Interest period other than one, two, three or six months in duration as provided in the definition of "Interest Period") , the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each telephonic notice by the Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Committed Borrowing of or conversion to Base Rate Committed Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the

Borrower is requesting a Committed Borrowing, a conversion of Committed Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Committed Loans to be borrowed, converted or continued, (iv) the Type of Committed Loans to be borrowed or to which existing Committed Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Committed Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Committed Loans shall be made as, or converted to, Base Rate Loans. Any automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans as described in the preceding subsection. In the case of a Committed Borrowing, each Lender shall make the amount of its Committed Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than (i) 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice for Borrowing of any Committed Loan requested in a Committed Loan Notice that was received prior to the Business Day specified for such Borrowing in the applicable Committed Loan Notice and (ii) 3:00 p.m. in the case of any Borrowing of a Committed Loan requested in a Committed Loan Notice that was received on the same Business Day as the Business Day specified for Borrowing in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided that if, on the date the Committed Loan Notice with respect to such Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and, second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the

Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Committed Borrowings, all conversions of Committed Loans from one Type to the other, and all continuations of Committed Loans as the same Type, there shall not be more than ten Interest Periods in effect with respect to Committed Loans.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies applicable to such L/C Issuer for the account of any Permitted L/C Party, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of any Permitted L/C Party and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (v) the aggregate amount of L/C Obligations with respect to Letters of Credit issued for the account of one or more Affiliates of the Borrower that will not be Joint Ventures or Subsidiaries of the Borrower after the Spinoff does not exceed $22,000,000 at any time outstanding, (w) the Total Outstandings shall not exceed the Aggregate Commitments, (x) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment, (y) the Outstanding Amount of the L/C Obligations in Alternative Currencies shall not exceed the Alternative Currency Sublimit, and (z) the Outstanding Amount of L/C Obligations of any L/C Issuer shall not exceed the L/C Issuer Sublimit of such L/C Issuer; provided further that after the date that is three months after the Closing Date, no Letters of Credit shall be issued for the account of any Affiliate of the Borrower that is not at such time a Joint Venture or a Subsidiary of the Borrower. Each request by the Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit if the expiry date of such requested Letter of Credit would occur after the date that is seven Business Days prior to the Maturity Date (each such issued Letter of Credit, an "Extended Letter of Credit") unless the applicable L/C Issuer has approved such later expiry date, it being acknowledged and agreed that each such Extended Letter of Credit shall be Cash Collateralized in accordance with Section 6.28.

(iii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing the Letter of Credit, or any Requirement of Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by such L/C Issuer, the Letter of Credit is in an initial stated amount less than $100,000, in the case of a commercial Letter of Credit, or $500,000, in the case of a standby Letter of Credit;

(D) except as otherwise agreed by such L/C Issuer, the Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency applicable to such L/C Issuer;

(E) such L/C Issuer does not, as of the issuance date of such requested Letter of Credit, issue Letters of Credit in the requested currency; or

(F) any Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) No L/C Issuer shall amend any Letter of Credit if such L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vi) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuers with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuers or any of them.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) whether such requested Letter of Credit is a Performance Letter of Credit, a Financial Letter of Credit or a commercial Letter of Credit; (H) the Permitted L/C Party for whom such Letter of Credit is to be issued; and (I) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such

requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Permitted L/C Party or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If the Borrower so requests in any applicable Letter of Credit Application, the applicable L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once prior to the then applicable expiration date of such Letter of Credit (without giving effect to the next ensuing extension thereof) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit such extensions of such Letter of Credit; provided that if any such extension results in any such Letter of Credit becoming an Extended Letter of Credit the Borrower shall provide Cash Collateral therefor in accordance with Section 6.28; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. In the case of any draw under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. The Borrower agrees to pay to the L/C Issuer of any Letter of Credit that has been drawn upon the amount of all draws thereunder, in Dollars (or the Dollar Equivalent of such payment if such payment was made in an Alternative Currency), no later than (x) the Business Day on which the L/C Issuer has provided notice thereof to the Borrower if such notice has been provided prior to 11:00 a.m. on such Business Day, or (y) no later than 10:00 a.m. on the next succeeding Business Day after the Borrower receives such notice from such L/C Issuer if such notice is not received prior to 11:00 a.m. on such day (each such date, an "Honor Date"), and such L/C Issuer shall provide prompt notice to the Administrative Agent of such reimbursement. If the Borrower fails to so reimburse the applicable L/C Issuer by such time, such L/C Issuer shall promptly notify the Administrative Agent of the Honor Date and the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the "Unreimbursed Amount"), and the Administrative Agent shall provide such notice, along with the amount of such Lender's Applicable Percentage thereof, to each Lender. In such event, the Borrower shall be deemed to have requested a Committed Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by any L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer, in Dollars, at the Administrative Agent's Office for Dollar-denominated payments in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Lender that so makes funds available shall be deemed to have made a Base Rate Committed Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Committed Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Lender funds its Committed Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the applicable L/C Issuer.

(v) Each Lender's obligation to make Committed Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against any L/C Issuer, the Borrower, any Subsidiary or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Committed Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of any L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the applicable L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof in Dollars and in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the Borrower to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any

beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary or in the relevant currency markets generally; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any Subsidiary.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid, but only to the extent not prohibited by any applicable Requirement of Law.

(f) Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, no L/C Issuer shall have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the applicable L/C Issuer, and the applicable L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no L/C Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or

purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP and UCP. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(h) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Lender (subject to the limitations with respect to Defaulting Lenders set forth in the proviso below) in accordance with its Applicable Percentage, in Dollars, a Letter of Credit fee (the "Letter of Credit Fee") (i) for each commercial Letter of Credit equal to the Applicable Rate for commercial Letters of Credit times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit, and (ii) for each standby Letter of Credit equal to the Applicable Rate for such type (Financial Letter of Credit or Performance Letter of Credit) of such Letter of Credit times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit (but in each case, excluding from the calculation thereof any portion of any Letter of Credit that has been Cash Collateralized by the Borrower pursuant to Section 2.15(a) as a result of any Defaulting Lender during the period such portion is so Cash Collateralized); provided that any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit (or portion thereof) as to which neither the Borrower nor such Defaulting Lender has provided Cash Collateral satisfactory to the L/C Issuer pursuant to this Section 2.03 or Section 2.15(a) shall be payable, to the maximum extent permitted by applicable Requirements of Law, to the other Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.16(a)(iv), with the balance of such fee, if any, payable to the applicable L/C Issuer for its own account. For purposes of computing the Dollar Equivalent of the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.08. Letter of Credit Fees shall be (i) due and payable on the third Business Day after the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the Dollar Equivalent of the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The Borrower shall pay directly to the applicable L/C Issuer for its own account, in Dollars, a fronting fee (i) with respect to each commercial Letter of Credit, at a rate separately agreed to between the Borrower and such L/C Issuer, computed on the Dollar Equivalent of the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment

of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the Borrower and such L/C Issuer, computed on the Dollar Equivalent of the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each standby Letter of Credit, at the rate per annum specified in the applicable Fee Letter or otherwise agreed between such L/C Issuer and the Borrower, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee with respect to standby Letters of Credit shall be due and payable on the third Business Day after the last Business Day of each March, June, September and December in respect of the then-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. Such fronting fee with respect to commercial Letters of Credit shall be due and payable as provided in subparts (i) and (ii) above. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.08. In addition, the Borrower shall pay directly to the applicable L/C Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Letters of Credit Issued for Subsidiaries, Affiliates and Joint Ventures. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Permitted L/C Party other than the Borrower, the Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Permitted L/C Parties other than the Borrower inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Permitted L/C Parties.

(l) Additional L/C Issuers. In addition to Bank of America and each L/C Issuer listed on the signature pages hereto as an "L/C Issuer," the Borrower may from time to time, with notice to the Lenders and the consent of the Administrative Agent and the applicable Lender being so appointed, appoint additional Lenders to be L/C Issuers hereunder, provided that the total number of L/C Issuers at any time shall not exceed six Lenders (or such larger number of additional Lenders as the Administrative Agent may agree to permit from time to time, it being understood the Administrative Agent has consented to The Bank of Nova Scotia being a seventh L/C Issuer as of the Closing Date solely with respect to its Existing Letters of Credit hereunder). Upon the appointment of a Lender as an L/C Issuer hereunder such Person shall become vested with all of the rights, powers, privileges and duties of an L/C Issuer hereunder.

(m) Removal of L/C Issuers. The Borrower may at any time remove Bank of America or any L/C Issuer that is appointed pursuant to subpart (l) above, if (but only if) such Person is at such time a Defaulting Lender, in each such case upon not less than 30 days prior notice to such L/C Issuer; provided that such removed L/C Issuer shall retain all the rights, powers, privileges

and duties of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its removal as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Committed Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). Without limiting the foregoing, upon the removal of a Lender as an L/C Issuer hereunder, the Borrower may, or at the request of such removed L/C Issuer the Borrower shall use commercially reasonable efforts to, arrange for one or more of the other L/C Issuers to issue Letters of Credit hereunder in substitution for the Letters of Credit, if any, issued by such removed L/C Issuer and outstanding at the time of such removal, or make other arrangements satisfactory to the removed L/C Issuer to effectively cause another L/C Issuer to assume the obligations of the removed L/C Issuer with respect to any such Letters of Credit.

(n) Reporting of Letter of Credit Information and L/C Issuer Sublimit. At any time that there is more than one L/C Issuer, then on (i) the last Business Day of each calendar month, and (ii) each date that an L/C Credit Extension occurs with respect to any Letter of Credit, each L/C Issuer (or, in the case of part (ii), the applicable L/C Issuer) shall deliver to the Administrative Agent a report setting forth in form and detail reasonably satisfactory to the Administrative Agent information with respect to each Letter of Credit issued by such L/C Issuer that is outstanding hereunder, including any auto-renewal or termination of auto-renewal provisions in such Letter of Credit. In addition, each L/C Issuer shall provide notice to the Administrative Agent of its L/C Issuer Sublimit, or any change thereto, promptly upon it becoming an L/C Issuer or making any change to its L/C Issuer Sublimit. No failure on the part of any L/C Issuer to provide such information pursuant to this Section 2.03(n) shall limit the obligation of the Borrower or any Lender hereunder with respect to its reimbursement and participation obligations, respectively, pursuant to this Section 2.03.

(o) Cash Collateralized Letters of Credit. If the Borrower has fully Cash Collateralized the applicable L/C Issuer with respect to any Extended Letter of Credit issued by such L/C Issuer in accordance with Section 6.28 and the Borrower and the applicable L/C Issuer have made arrangements between them with respect to the pricing and fees associated therewith (each such Extended Letter of Credit a "Cash Collateralized Letter of Credit"), then on the day that is 91 days after the date of notice to the Administrative Agent thereof by the applicable L/C Issuer (so long as such Cash Collateral has remained in place for the entirety of such 91-day period), and for so long as such Cash Collateral remains in place (i) such Cash Collateralized Letter of Credit shall cease to be a "Letter of Credit" hereunder, (ii) such Cash Collateralized Letter of Credit shall not constitute utilization of the Aggregate Commitments, (iii) no Lender shall have any further obligation to fund participations, L/C Borrowings or Committed Loans to reimburse any drawing under any such Cash Collateralized Letter of Credit, (iv) no Letter of Credit Fee shall be due or payable to the Lenders, or any of them, hereunder with respect to such Cash Collateralized Letter of Credit, and (v) any fronting fee, issuance fee or other fee with respect to such Cash Collateralized Letter of Credit shall be as agreed separately between the Borrower and such L/C Issuer.

2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, may in its sole discretion make loans in Dollars (each such loan, a "Swing Line Loan") to the Borrower from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Committed Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Outstandings shall not exceed the Aggregate Commitments, and (ii) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment, and provided, further, that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Lender make a Base Rate Committed Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office for Dollar-denominated payments not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Lender that so makes funds available shall be deemed to have made a Base Rate Committed Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Committed Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Committed Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Committed Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Committed Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Lender funds its Base Rate Committed Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Prepayments.

(a) The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Committed Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three Business Days prior to any date of prepayment of Eurocurrency Rate Loans, and (B) on the date of prepayment of Base Rate Committed Loans; (ii) any prepayment of Eurocurrency Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of

$1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Committed Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Committed Loans to be prepaid and, if Eurocurrency Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.16, each such prepayment shall be applied to the Committed Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of $100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If the Administrative Agent notifies the Borrower at any time that the Total Outstandings at such time exceed the Aggregate Commitments then in effect, then, within two Business Days after receipt of such notice, the Borrower shall prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed the Aggregate Commitments then in effect; provided, however, that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the Loans the Total Outstandings exceed the Aggregate Commitments then in effect. The Administrative Agent may, at any time and from time to time after the initial deposit of such Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of further exchange rate fluctuations.

2.06 Termination or Reduction of Commitments. The Borrower may, upon notice to the Administrative Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments; provided that (a) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (b) any such partial reduction shall be in an aggregate amount of $10,000,000 or any whole multiple of $1,000,000 in excess thereof, (c) the Borrower shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments, and (d) if, after giving effect to any reduction of the Aggregate Commitments, the Alternative Currency Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Commitments, such Sublimit shall be automatically reduced by the amount of such excess.

Except as provided in the preceding sentence, the amount of any such Aggregate Commitment reduction shall not be applied to the Alternative Currency Sublimit or the Swing Line Sublimit unless otherwise specified by the Borrower. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination. A notice of termination of the Aggregate Commitments may state that such notice is conditioned upon the effectiveness of other credit facilities, and if any notice so states it may be revoked by the Borrower by notice to the Administrative Agent on or prior to the date specified for the termination of the Aggregate Commitments that the refinancing condition has not been met and the termination is to be revoked, provided that the Borrower will continue to be responsible for any costs or expenses pursuant to Section 3.05 in connection with the failure to prepay Loans resulting from such revocation.

2.07 Repayment of Loans.

(a) The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of Committed Loans made to the Borrower outstanding on such date.

(b) The Borrower shall repay each Swing Line Loan on the earlier to occur of (i) the date 10 Business Days after such Loan is made and (ii) the Maturity Date.

2.08 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Committed Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Requirements of Law.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Requirements of Law.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Requirements of Law.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees. In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Lender (subject to Section 2.16(a)(iii)(x) with respect to Defaulting Lenders) in accordance with its Applicable Percentage, a commitment fee in Dollars equal to the Applicable Rate times the actual daily amount by which the Aggregate Commitments exceed the sum of (i) the Outstanding Amount of Committed Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.16. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the third Business Day after the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees.

(i) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts, in Dollars, fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders, in Dollars, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All

other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Promptly after the request of any Lender to the Borrower made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans to the Borrower in addition to such accounts or records. Each Lender may attach schedules to a Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent or

the applicable L/C Issuer after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Committed Borrowing of Eurocurrency Rate Loans (or, in the case of any Committed Borrowing of Base Rate Loans, prior to (A) 12:00 noon on the date of such Committed Borrowing if such Committed Borrowing is to be made on a Business Day other than the date the Administrative Agent received the applicable Committed Loan Notice with respect to such Borrowing and (B) 2:00 p.m. on the date of such Committed Borrowing if such Committed Borrowing is to be made on the same Business Day as the date the Administrative Agent received the applicable Commitment Loan Notice with respect to such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Committed Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Committed Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Committed Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Committed Loan included in such Committed Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the

Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender to the Borrower as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Committed Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Committed Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.15, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this Section shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

2.14 Increase in Commitments.

(a) Request for Increase. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the Borrower may from time to time, request an increase in the Aggregate Commitments (which increase may take the form of one or more new revolving loan tranches) by an amount (for all such requests) not exceeding $150,000,000; provided that (i) any such request for an increase shall be in a minimum amount of $10,000,000, and (ii) the Borrower may make a maximum of three such requests (excluding any such requests that are not consummated). At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).

(b) Lender Elections to Increase. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment, and no Lender has any obligation to agree to increase its Commitment pursuant to this Section.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrower and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent, each L/C Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld), the Borrower may also invite additional Eligible Assignees to become

Lenders pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations. If the Aggregate Commitments are increased in accordance with this Section, the Administrative Agent and the Borrower shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects as of such earlier date, and except that for purposes of this Section 2.14, the representations and warranties contained in subsections (a) and (b) of Section 5.04 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01, and (B) no Default exists. The Borrower shall prepay any Committed Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Committed Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this Section.

(f) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

2.15 Cash Collateral.

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or any L/C Issuer (i) if any L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, the Borrower shall immediately Cash Collateralize such L/C Borrowing and, if requested by such L/C Issuer, all other Letters of Credit issued by such L/C Issuer, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower shall immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent, the L/C Issuer or the Swing Line Lender, the Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure (after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing (unless otherwise agreed by the depositary) deposit accounts at the Administrative Agent or the relevant

L/C Issuer, as applicable. To the extent provided by the Borrower, the Borrower, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the relevant L/C Issuer or to the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders (including the Swing Line Lender), as applicable, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral is less than the applicable Fronting Exposure and other obligations secured thereby, the Borrower or the relevant Defaulting Lender will, promptly (but in any event within five Business Days) after demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.04, 2.05, 2.16 or 8.02 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vi))) or (ii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; provided that (x) Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.03), and (y) the Person providing Cash Collateral and the L/C Issuer or Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Requirements of Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or

otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 10.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, if so determined by the Administrative Agent or requested by the L/C Issuer or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; *fourth*, as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing (unless otherwise agreed by the depositary) deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(h).

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Loans pursuant to Sections 2.03 and 2.04, the "Applicable Percentage" of each non-Defaulting Lender shall be computed

without giving effect to the Commitment of that Defaulting Lender; provided that (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default exists; and (ii) the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Commitment of that non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Committed Loans of that Lender.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, Swing Line Lender and the L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Committed Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.17 Borrower Succession. Upon the effectiveness of the Spinoff in accordance with the provisions of this Agreement and the satisfaction of the requirements and conditions set forth in Section 6.24 hereof, the New Borrower shall replace the Original Borrower as the Borrower hereunder, and all references herein to the "Borrower" shall be deemed to be references to the New Borrower.

ARTICLE III.
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall to the extent permitted by applicable Requirements of Law be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Requirements of Law require such Loan Party or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Requirements of Law as determined by such Loan Party or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If the Borrower or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding Taxes, from any payment made hereunder or under any other Loan Document, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction for Indemnified Taxes or Other Taxes been made.

(iii) If the Borrower or the Administrative Agent shall be required by any applicable Requirements of Law other than the Code to withhold or deduct any Taxes from any payment made hereunder or under any other Loan Document, then (A) the Borrower or the Administrative Agent, as required by such Requirements of Law, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Borrower or the Administrative Agent, to the extent required by such Requirements of Law, shall timely pay the full amount so withheld or deducted by it to the relevant Governmental Authority in accordance with such Requirements of Law, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction for Indemnified Taxes or Other Taxes been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of subsection (a) above, the each Loan Party shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(c) Tax Indemnifications.

(i) Without limiting the provisions of subsection (a) or (b) above, each Loan Party shall, and does hereby, indemnify the Administrative Agent, each Lender and the L/C Issuer, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, with respect to the Obligations hereunder and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not

such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Loan Party shall also, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the applicable Loan Party by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Loan Parties are not indemnifying any Person for Excluded Taxes.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender and the L/C Issuer shall, and does hereby, indemnify the Loan Parties and the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrower or the Administrative Agent) incurred by or imposed or asserted against any Loan Party or the Administrative Agent by any Governmental Authority, whether or not such Taxes were correctly or legally imposed or asserted, as a result of the failure by such Lender or the L/C Issuer, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or the L/C Issuer, as the case may be, to the applicable Loan Party or the Administrative Agent pursuant to subsection (e). Each Lender and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Requirements of Law to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Each Lender shall deliver to the Borrower and to the Administrative Agent, at the time or times prescribed by applicable Requirements of Law or when reasonably requested by the Borrower or the Administrative Agent, such properly

completed and executed documentation prescribed by applicable Requirements of Law or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made by the Borrower hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdictions.

(ii) Without limiting the generality of the foregoing, if the Borrower is resident for tax purposes in the United States,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent executed originals of IRS Form W-9 or such other documentation or information prescribed by applicable Requirements of Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed originals of IRS Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) executed originals of IRS Form W-8ECI,

(III) executed originals of IRS Form W-8IMY and all required supporting documentation,

(IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) executed originals of IRS Form W-

8BEN, or

(V) executed originals of any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in United States Federal withholding Tax together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(iii) Each Lender shall promptly (A) notify the Borrower and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Requirements of Law of any jurisdiction that the Borrower or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

(f) Treatment of Certain Refunds. Unless required by applicable Requirements of Law, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If the Administrative Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes or a direct offset against its Tax liabilities as to which it has been indemnified by a Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section, it shall promptly after such determination pay to the applicable Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section with respect to the Taxes or Other Taxes giving rise to such refund) or such direct offset (but only to the extent of the net Tax benefit obtained by it as a result of such payment by the applicable Loan Party), net of all out-of-pocket expenses and net of any loss or gain realized in the conversion of such funds from or to another currency incurred by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that such Loan Party, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to a Loan Party or any other Person.

3.02 Illegality. If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurocurrency Rate, or to determine or charge interest rates based upon the

Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (a) any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Committed Loans to Eurocurrency Rate Loans shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurocurrency Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs; Reserves on Eurocurrency Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e), other than as set forth below) or the L/C Issuer;

(ii) subject any Lender or the L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurocurrency Rate Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the L/C Issuer);

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the Eurocurrency Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Additional Reserve Requirements. The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable 10 days from receipt of such notice.

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

(c) any failure by the Borrower to make payment of any drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan, or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. A certificate of a Lender setting forth the amount of any such loss or expense provided for in this Section and delivered to the Borrower shall be conclusive absent manifest error.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension. The effectiveness of this Agreement, and the obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder, are each subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement and the Guaranty, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) a Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) executed counterparts of each Security Instrument to be entered into by any Loan Party (other than the BWXT Entities) on the Closing Date, duly executed by each Loan Party party thereto, together with:

(A) certificates representing the certificated Pledged Interests pledged under the Collateral Agreement, and accompanied by undated stock or other transfer powers executed in blank,

(B) proper financing statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Collateral Agreement, covering the Collateral described therein,

(C) completed requests for information, dated on or before the Closing Date, listing all effective financing statements filed in the jurisdictions referred to in clause (B) above that name any Loan Party as debtor, together with copies of such other financing statements, and

(D) evidence of the completion of all other actions, recordings and filings of or with respect to the Security Instruments to be entered into on the Closing Date that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created thereby (including receipt of duly executed payoff letters and UCC-3 termination statements), and

(E) evidence that all action that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the IP Security Agreement has been taken or will be taken on or after the Closing Date;

(iv) with respect to each of the Mortgaged Properties listed on Schedule 4.01(a)(iv), except to the extent waived by the Administrative Agent (in which case Section 6.29 shall apply to any matters set forth below that are so waived), each of the following:

(A) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may deem necessary or desirable in order to create a valid first and subsisting Lien on the property described therein in favor of the Administrative Agent for the benefit of the Secured Parties, excepting only Liens permitted under the Loan Documents, and that all filing, documentary, stamp, intangible and recording taxes and fees have been paid (or the Borrower has made arrangements satisfactory to the Administrative Agent for payment thereof),

(B) a mortgagee's title insurance policy (or policies) (the "Mortgagee Policies") or marked up unconditional binder for such insurance, with endorsements and in amounts acceptable to the Administrative Agent, issued, coinsured and reinsured by title insurers acceptable to the Administrative Agent, insuring the Mortgages to be valid first and subsisting Liens on the property described therein, free and clear of all defects (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances, excepting only Liens permitted under the Loan Documents,

(C) evidence that all premiums in respect of the Mortgagee Policies have been paid (or the Borrower has made arrangements satisfactory to the Administrative Agent for payment thereof),

(D) evidence that no such Mortgaged Property is located in a special flood hazard area as designated by any federal Governmental Authority other than those for which flood insurance has been provided, and evidence of any such flood insurance, and

(E) evidence that all other action that the Administrative Agent may deem necessary or desirable in order to create valid first and subsisting Liens (excepting only Liens permitted under the Loan Documents) on the property described in the Mortgages has been taken;

(v) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(vi) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that

each Loan Party is validly existing and in good standing in its jurisdiction of organization;

(vii) a favorable opinion of (A) Baker Botts L.L.P., counsel to the Loan Parties, (B) Liane K. Hinrichs, General Counsel of the Borrower, or James Canafax, Assistant General Counsel of the Borrower, (C) Vorys, Sater, Seymour and Pease LLP, local Ohio counsel to certain of the Loan Parties (except to the extent any such opinion relates to matters required by Section 4.01(a)(iv) which are waived to a post-closing date and covered by Section 6.29), and (D) Watkins Ludlam Winter & Stennis, P.A., local Mississippi counsel to certain of the Loan Parties (except to the extent any such opinion relates to matters required by Section 4.01(a)(iv) which are waived to a post-closing date and covered by Section 6.29), in each case addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders and addressing such matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(viii) a certificate of a Responsible Officer of the Borrower either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by each Loan Party and the validity against each Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(ix) a certificate signed by a Responsible Officer of the Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, (B) that there has been no event or circumstance since December 31, 2008 that has had or would be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect; and (C) to (and providing such backup evidence as may reasonably be requested) the current Debt Ratings and the current corporate family and corporate ratings of the Borrower and its Subsidiaries from each of Moody's and S&P;

(x) a duly completed Compliance Certificate signed by the Chief Financial Officer or the Treasurer of the Borrower, demonstrating compliance as of the last day of the Fiscal Year ended on December 31, 2009 with the financial covenants in Section 7.18 after giving pro forma to the incurrence and repayment of Indebtedness on the Closing Date (and providing such backup evidence as may reasonably be requested);

(xi) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with the certificates of insurance or other appropriate documentation, naming the Administrative Agent, on behalf of the Secured Parties, as an additional insured or loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitute Collateral;

(xii) evidence that each of the Existing Credit Agreements has been or concurrently with the Closing Date is being paid in full and terminated and all Liens securing obligations under each of the Existing Credit Agreements have been or

concurrently with the Closing Date are being released (including receipt of duly executed payoff letters and UCC-3 termination statements);

(xiii) such documentation and other information as has been reasonably requested by the Administrative Agent or any Lender prior to the Closing Date in connection with the provisions of Section 6.10 hereof;

(xiv) copies of the Historical Financial Statements and the audited consolidated financial statements of the Borrower and its Subsidiaries for Fiscal Years 2007 and 2008, and (if applicable) any interim unaudited financial statements for each quarterly period ended since December 31, 2009;

(xv) a copy of the Form 10, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders, with respect to the Spinoff (including the pro forma consolidated financial statements of the New Borrower required by such Form 10); and

(xvi) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer, the Swing Line Lender or the Required Lenders reasonably may require.

(b) (i) All fees required to be paid to the Administrative Agent and the Arrangers on or before the Closing Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Closing Date shall have been paid, in each case pursuant to the Fee Letters.

(c) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced at least one Business Day prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of (i) the Borrower contained in Article V and (ii) each Loan Party contained in each other Loan Document or in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.04 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01.

(b) No Default shall exist, or would result from such proposed Credit Extension or the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of an L/C Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the applicable L/C Issuer would make it impracticable for such L/C Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES

To induce the Lenders, the L/C Issuers and the Administrative Agent to enter into this Agreement, the Borrower represents and warrants each of the following to the Lenders, the L/C Issuers and the Administrative Agent, on and as of the Closing Date and the making of Credit Extensions on the Closing Date and on and as of each date as required by Section 4.02 or on any other date required by any Loan Document (with references in this Article V (other than Sections 5.03, 5.04 and 5.05) to "Subsidiaries" to exclude Captive Insurance Subsidiaries):

5.01 Corporate Existence, Compliance with Law. Each of the Borrower and the Borrower's Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization (other than, so long as it is an Immaterial Subsidiary, North County Recycling, Inc., a California corporation), (b) is duly qualified to do business as a foreign corporation and in good standing under the laws of each jurisdiction where such qualification is necessary, except where the failure to be so qualified or in good standing would not have a Material Adverse Effect, (c) has all requisite corporate or other organizational power and authority and the legal right to own, pledge, mortgage and operate its properties, to lease the

property it operates under lease and to conduct its business as now or currently proposed to be conducted, (d) is in compliance with its Constituent Documents, (e) is in compliance with all applicable Requirements of Law except where the failure to be in compliance would not, in the aggregate, have a Material Adverse Effect and (f) has all necessary licenses, permits, consents or approvals from or by, has made all necessary filings with, and has given all necessary notices to, each Governmental Authority having jurisdiction, to the extent required for such ownership, operation and conduct, except for licenses, permits, consents, approvals, filings or notices that can be obtained or made by the taking of ministerial action to secure the grant or transfer thereof or the failure of which to obtain or make would not, in the aggregate, have a Material Adverse Effect.

5.02 Corporate Power; Authorization; Enforceable Obligations.

(a) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby:

(i) are within such Loan Party's corporate, limited liability company, partnership or other organizational powers;

(ii) have been or, at the time of delivery thereof pursuant to Article IV will have been duly authorized by all necessary corporate, limited liability company or partnership action, including the consent of shareholders, partners and members where required;

(iii) do not and will not (A) contravene such Loan Party's or any of its Subsidiaries' respective Constituent Documents, (B) violate any other Requirement of Law applicable to such Loan Party (including Regulations T, U and X of the FRB), or any order or decree of any Governmental Authority or arbitrator applicable to such Loan Party, (C) conflict with or result in the breach of, or constitute a default under, or result in or permit the termination or acceleration of, any lawful Contractual Obligation of such Loan Party or any of its Subsidiaries, other than in the case of this clause (C) any such conflict, breach, default, termination or acceleration that could not reasonably be expected to have a Material Adverse Effect, or (D) result in the creation or imposition of any Lien upon any property of such Loan Party or any of its Subsidiaries, other than those in favor of the Secured Parties pursuant to the Security Instruments; and

(iv) do not require the consent of, authorization by, approval of, notice to, or filing or registration with, any Governmental Authority or any other Person, other than those listed on Schedule 5.02 or that have been or will be, prior to the Closing Date, obtained or made, copies of which have been or will be delivered to the Administrative Agent pursuant to Section 4.01, and each of which on the Closing Date will be in full force and effect and, with respect to the Collateral, filings required to perfect the Liens created by the Security Instruments.

(b) This Agreement has been, and each of the other Loan Documents will have been upon delivery thereof pursuant to the terms of this Agreement, duly executed and delivered by

each Loan Party who is a party thereto. This Agreement is, and the other Loan Documents will be, when delivered, the legal, valid and binding obligation of each Loan Party who is a party thereto, enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.03 Ownership of Borrower; Subsidiaries.

(a) All of the outstanding capital stock of the Borrower is validly issued, fully paid and non-assessable.

(b) Set forth on Schedule 5.03 is a complete and accurate list showing, as of the Closing Date, all Subsidiaries of the Borrower and, as to each such Subsidiary, the jurisdiction of its organization, the number of shares of each class of Stock authorized (if applicable), the number outstanding on the Closing Date, the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by the Borrower. Except as set forth on Schedule 5.03, no Stock of any Subsidiary of the Borrower is subject to any outstanding option, warrant, right of conversion or purchase of any similar right. Except as set forth on Schedule 5.03, all of the outstanding Stock of each Subsidiary of the Borrower owned (directly or indirectly) by the Borrower has been validly issued, is fully paid and non-assessable (to the extent applicable) and is owned by the Borrower or a Subsidiary of the Borrower, free and clear of all Liens (other than the Lien in favor of the Secured Parties created pursuant to the Security Instruments), options, warrants, rights of conversion or purchase or any similar rights. Except as set forth on Schedule 5.03, neither the Borrower nor any such Subsidiary is a party to, or has knowledge of, any agreement restricting the transfer or hypothecation of any Stock of any such Subsidiary, other than the Loan Documents and, with respect to any Subsidiary that is not a Wholly-Owned Subsidiary, the Constituent Documents of such Subsidiary. The Borrower does not own or hold, directly or indirectly, any Stock of any Person other than such Subsidiaries and Investments permitted by Section 7.03.

5.04 Financial Statements.

(a) The interim unaudited financial statements for the Borrower and its Subsidiaries for the most-recently ended Fiscal Quarter, copies of which have been furnished to each Lender, fairly present in all material respects, subject to the absence of footnote disclosure and normal recurring year-end audit adjustments, the consolidated financial condition of the Borrower and its Subsidiaries as at such dates and the consolidated results of the operations of the Borrower and its Subsidiaries for the period ended on such dates, all in conformity with GAAP, provided that this Section 5.04(a) shall not apply until the time for the delivery of the interim unaudited financial statements for the Fiscal Quarter ended March 31, 2010 as required hereunder.

(b) The unaudited consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the Fiscal Year ended December 31, 2009, and the related statements of income and cash flows of the Borrower and its Subsidiaries for such Fiscal Year, copies of which have been furnished to each Lender, (i) were prepared in conformity with GAAP and (ii) fairly present in all material respects, subject to the absence of footnote disclosure and normal recurring year-end

audit adjustments, the consolidated financial condition of the Borrower and its Subsidiaries as at the date indicated and the consolidated results of their operations and cash flow for the period indicated in conformity with GAAP applied on a basis consistent with prior years (except for changes with which the Borrower's Accountants shall concur and that shall have been disclosed in the notes to the financial statements).

(c) Except as set forth on Schedule 5.04, neither the Borrower nor any of its Subsidiaries has, as of the Closing Date, any material obligation, contingent liability or liability for taxes, long-term leases (other than operating leases) or unusual forward or long-term commitment that is not reflected in the financial statements referred to in clause (b) above and not otherwise permitted by this Agreement.

(d) The Projections have been prepared by the Borrower taking into consideration past operations of its business, and reflect projections for the period beginning approximately January 1, 2010 and ending approximately December 31, 2014 on a Fiscal Year by Fiscal Year basis. The Projections are based upon estimates and assumptions stated therein, all of which the Borrower believes, as of the Closing Date, to be reasonable in light of current conditions and current facts known to the Borrower (other than any necessary adjustments due to fees payable in accordance herewith) and, as of the Closing Date, reflect the Borrower's good faith estimates of the future financial performance of the Borrower and its Subsidiaries and of the other information projected therein for the periods set forth therein.

5.05 Material Adverse Change. Since December 31, 2008, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to result in a Material Adverse Effect.

5.06 Solvency. Both before and after giving effect to (a) the Credit Extensions to be made or extended on the Closing Date or such other date as Credit Extensions requested hereunder are made or extended, (b) the disbursement of the proceeds of such Loans pursuant to the instructions of the Borrower, (c) the consummation of the transactions contemplated hereby (including, with respect to the making of this representation and warranty upon and at any time after its consummation, the Spinoff) and (d) the payment and accrual of all transaction costs in connection with the foregoing, the Loan Parties, taken as a whole, are Solvent.

5.07 Litigation. Except as set forth on Schedule 5.07, there are no pending or, to the knowledge of the Borrower, threatened actions, investigations or proceedings against the Borrower or any of its Subsidiaries before any court, Governmental Authority or arbitrator other than those that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect. Schedule 5.07 lists all litigation pending against any Loan Party as of the Closing Date that, if adversely determined, could be reasonably expected to have a Material Adverse Effect.

5.08 Taxes. All federal income and other material tax returns, reports and statements (collectively, the "Tax Returns") required to be filed by the Borrower or any of its Tax Affiliates have been filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all material taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any fine, penalty, interest, late charge or

loss may be added thereto for non-payment thereof except where contested in good faith and by appropriate proceedings if adequate reserves therefor have been established on the books of the Borrower or such Tax Affiliate in conformity with GAAP. The Borrower and each of its Tax Affiliates have withheld and timely paid to the respective Governmental Authorities all material amounts required to be withheld.

5.09 Full Disclosure. The Information Memorandum and any other information prepared or furnished by or on behalf of any Loan Party and delivered to the Lenders in writing in connection with this Agreement or the consummation of the transactions contemplated hereunder or thereunder (in each case, taken as a whole) does not, as of the time of delivery of such information (with respect to the Information Memorandum, as of the Closing Date only), contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading; provided that to the extent any such information was based upon, or constituted, a forecast or projection, such Loan Party represents only, in respect of such projection or forecast, that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information.

5.10 Margin Regulations. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the FRB), and no proceeds of any Credit Extension will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock in contravention of Regulation T, U or X of the FRB.

5.11 No Burdensome Restrictions; No Defaults.

(a) Neither the Borrower nor any of its Subsidiaries (i) is a party to any Contractual Obligation (x) the compliance with which could reasonably be expected to have a Material Adverse Effect or (y) the performance of which by any thereof would result in the creation of a Lien (other than a Lien permitted under Section 7.02) on the property or assets of any thereof or (ii) is subject to any charter restriction that could reasonably be expected to have a Material Adverse Effect.

(b) Neither the Borrower nor any of its Subsidiaries is in default under or with respect to any Contractual Obligation owed by it, other than, in either case, those defaults that would not reasonably be expected to have a Material Adverse Effect.

(c) No Default has occurred and is continuing.

5.12 Investment Company Act. Neither the Borrower nor any of its Subsidiaries is an "*investment company*" or an "*affiliated person*" of, or "*promoter*" or "*principal underwriter*" for, an "*investment company,*" as such terms are defined in the Investment Company Act of 1940, as amended.

5.13 Use of Proceeds. The (a) proceeds of the Loans are being used by the Borrower only (i) for working capital needs, capital expenditures, Permitted Acquisitions, general corporate purposes and other lawful corporate purposes of the Borrower and its Subsidiaries, (ii) to refinance obligations under the Existing Credit Agreements on the Closing Date, and (iii) to

pay fees and expenses in connection with this Agreement and the related transactions, and (b) Letters of Credit are being solely used by the Borrower to support warranties, bid bonds, payment or performance obligations and for other general corporate purposes by Permitted L/C Parties.

5.14 Insurance. All policies of insurance of any kind or nature currently maintained by the Borrower or any of its Subsidiaries, including policies of fire, theft, product liability, public liability, property damage, other casualty, employee fidelity, workers' compensation and employee health and welfare insurance, are in full force and effect and are of a nature and provide such coverage as is sufficient and as is customarily carried by businesses of the size and character of such Person.

5.15 Labor Matters.

(a) There are no strikes, work stoppages, slowdowns or lockouts pending or, to the Borrower's knowledge, threatened against or involving the Borrower, any of its Subsidiaries or any Guarantor, other than those that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(b) There are no unfair labor practices, grievances or complaints pending, or, to the Borrower's knowledge, threatened, against or involving the Borrower, any of its Subsidiaries or any Guarantor, nor, to the Borrower's knowledge, are there any unfair labor practices, arbitrations or grievances threatened involving the Borrower, any of its Subsidiaries or any Guarantor, other than those that if resolved adversely to the Borrower, such Subsidiary or such Guarantor, as applicable, would not reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth on Schedule 5.15, as of the Closing Date, there is no collective bargaining agreement covering any employee of the Borrower or its Subsidiaries. With respect to employees of the Borrower or any of its Subsidiaries not already covered by a collective bargaining agreement set forth on Schedule 5.15, as of the Closing Date no union representation question exists with respect to such employees and, to Borrower's knowledge, no union organization activity is taking place as of the Closing Date.

5.16 ERISA.

(a) Except as set forth on Schedule 5.16, each Employee Benefit Plan that is intended to qualify under Section 401 of the Code has received a favorable determination letter from the IRS indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status. Any trust created under any Employee Benefit Plan is exempt from tax under the provisions of Section 501 of the Code, except where such failures could not reasonably be expected to have a Material Adverse Effect.

(b) The Borrower, each of its Subsidiaries, each Guarantor and each of their respective ERISA Affiliates is in material compliance with all applicable provisions and requirements of ERISA, the Code and applicable Employee Benefit Plan provisions with respect

to each Employee Benefit Plan except for non-compliances that would not reasonably be expected to have a Material Adverse Effect.

(c) With respect to each Title IV Plan and each Multiemployer Plan, the Borrower, each of its Subsidiaries, each Guarantor and each of their respective ERISA Affiliates has made all contributions required under ERISA and the Code and are in material compliance with the minimum funding standard of Section 412 of the Code (in each case, whether or not waived in accordance with Section 412(c) of the Code).

(d) There has been no, nor is there reasonably expected to occur, any ERISA Event other than those that would not reasonably be expected to have a Material Adverse Effect.

(e) Except (i) to the extent required under Section 4980B of the Code or similar state laws, and (ii) with respect to which the aggregate liability, calculated on a FAS 106 basis as of December 31, 2009, does not exceed $150,000,000, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) to any retired or former employees, consultants or directors (or their dependents) of the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates. None of the Borrower, its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates has incurred or reasonably expects to incur any withdrawal liability with respect to any Multiemployer Plan. The Borrower, each of its Subsidiaries, each Guarantor and each of their ERISA Affiliates has complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan.

5.17 Environmental Matters.

(a) Except as disclosed on Schedule 5.17, the operations of the Borrower and each of its Subsidiaries have been and are in compliance with all Environmental Laws, including obtaining and complying with all required environmental, health and safety Permits, other than non-compliances that, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) Except as disclosed on Schedule 5.17, none of the Borrower or any of its Subsidiaries or any Real Property currently or, to the knowledge of the Borrower, previously owned, operated or leased by or for the Borrower or any of its Subsidiaries is subject to any pending or, to the knowledge of the Borrower, threatened, claim, order, agreement, notice of violation, notice of potential liability or is the subject of any pending or threatened proceeding or governmental investigation under or pursuant to Environmental Laws other than those orders, agreements, notices, proceedings or investigations that, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(c) Except as disclosed on Schedule 5.17, to the knowledge of the Borrower, there are no facts, circumstances or conditions arising out of or relating to the operations or ownership of the Borrower or of Real Property owned, operated or leased by the Borrower or any of its Subsidiaries that are not specifically included in the financial information furnished to the

Lenders other than those that, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

5.18 Intellectual Property. Except where the failure to do so would not, taken as a whole, reasonably be expected to have a Material Adverse Effect, the Borrower and its Subsidiaries own or license or otherwise have the right to use all licenses, permits, patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, copyright applications, franchises, authorizations and other intellectual property rights (including all Intellectual Property as defined in the Collateral Agreement) that are necessary for the operations of their respective businesses, without infringement upon or conflict with the rights of any other Person with respect thereto. Except where the failure to do so would not, taken as a whole, reasonably be expected to have a Material Adverse Effect, no slogan or other advertising device, product, process, method, substance, part or component, or other material now employed, or now contemplated to be employed, by the Borrower or any of its Subsidiaries infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened.

5.19 Title; Real Property.

(a) Each of the Borrower and its Subsidiaries has valid and indefeasible title to, or valid leasehold interests in, all of its material properties and assets (including Real Property) and good title to, or valid leasehold interests in, all personal property, in each case that is purported to be owned or leased by it, including those reflected on the most recent financial statements delivered by the Borrower hereunder, and none of such properties and assets is subject to any Lien, except Liens permitted under Section 7.02. The Borrower and its Subsidiaries have received all deeds, assignments, waivers, consents, non-disturbance and recognition or similar agreements, bills of sale and other documents, and have duly effected all recordings, filings and other actions necessary to establish, protect and perfect the Borrower's and its Subsidiaries' right, title and interest in and to all such property, other than those that would not reasonably be expected to result in a Material Adverse Effect.

(b) Set forth on Schedule 5.19(b) is a complete and accurate list, as of the Closing Date, of all (i) owned Real Property located in the United States with a reasonably estimated Fair Market Value in excess of $3,000,000 showing, as of the Closing Date, the street address, county (or other relevant jurisdiction or state) and the record owner thereof and (ii) leased Real Property located in the United States with annual lease payments in excess of $1,000,000 showing, as of the Closing Date, the street address and county (or other relevant jurisdiction or state) thereof.

(c) No portion of any Real Property has suffered any material damage by fire or other casualty loss that has not heretofore been completely repaired and restored to its original condition other than those that would not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, no portion of any Mortgaged Property is located in a special flood hazard area as designated by any federal Governmental Authority other than those for which flood insurance has been provided in accordance with Section 4.01(a)(iv).

(d) Except as would not reasonably be expected to have a Material Adverse Effect, (a) each Loan Party has obtained and holds all Permits required in respect of all Real Property

and for any other property otherwise operated by or on behalf of, or for the benefit of, such person and for the operation of each of its businesses as presently conducted and as proposed to be conducted, (b) all such Permits are in full force and effect, and each Loan Party has performed and observed all requirements of such Permits, (c) no event has occurred that allows or results in, or after notice or lapse of time would allow or result in, revocation or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (d) no such Permits contain any restrictions, either individually or in the aggregate, that are materially burdensome to any Loan Party, or to the operation of any of its businesses or any property owned, leased or otherwise operated by such person, (e) each Loan Party reasonably believes that each of its Permits will be timely renewed and complied with, without material expense, and that any additional Permits that may be required of such Person will be timely obtained and complied with, without material expense and (f) the Borrower has no knowledge or reason to believe that any Governmental Authority is considering limiting, suspending, revoking or renewing on materially burdensome terms any such Permit.

(e) None of the Borrower or any of its Subsidiaries has received any notice, or has any knowledge, of any pending, threatened or contemplated condemnation proceeding affecting any Real Property or any part thereof, except those that would not reasonably be expected to have a Material Adverse Effect.

(f) Each of the Loan Parties, and, to the knowledge of the Borrower, each other party thereto, has complied with all obligations under all leases of Real Property to which it is a party other than those the failure with which to comply would not reasonably be expected to have a Material Adverse Effect and all such leases are legal, valid, binding and in full force and effect and are enforceable in accordance with their terms other than those the failure of which to so comply with the foregoing would not reasonably be expected to have a Material Adverse Effect. No landlord Lien has been filed, and, to the knowledge of the Borrower, no claim is being asserted, with respect to any lease payment under any lease of Real Property other than those that would not reasonably be expected to have a Material Adverse Effect.

(g) There are no pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting any material portion of the owned Real Property, nor are there any contemplated improvements to such owned Real Property that may result in such special or other assessments, other than those that would not reasonably be expected to have a Material Adverse Effect.

5.20 Security Instruments. The provisions of the Security Instruments are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Liens permitted by Section 7.02) on all right, title and interest of the respective Loan Parties (other than the BWXT Entities that are Loan Parties) in the Collateral described therein. Except for filings completed on or prior to the Closing Date and filings and other actions contemplated hereby and by the Security Instruments, no filing or other action in the United States will be necessary to perfect or protect such Liens.

ARTICLE VI.
AFFIRMATIVE COVENANTS

The Borrower agrees with the Lenders, L/C Issuers and the Administrative Agent to each of the following, as long as any Obligation or any Commitment remains outstanding and, in each case, unless the Required Lenders otherwise consent in writing (provided that those provisions under this Article VI with which Subsidiaries of the Borrower are required to comply shall exclude from such compliance any Captive Insurance Subsidiary):

6.01 Financial Statements. The Borrower shall furnish to the Administrative Agent each of the following:

(a) Quarterly Reports. Within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year (unless such period is extended pursuant to SEC guidelines), consolidated unaudited balance sheets as of the close of such quarter and the related statements of income and cash flow for such quarter and that portion of the Fiscal Year ending as of the close of such quarter, setting forth in comparative form the figures for the corresponding period in the prior year, in each case certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments).

(b) Annual Reports. Within 90 days after the end of each Fiscal Year (unless such period is extended pursuant to SEC guidelines), consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such Fiscal Year and related statements of income and cash flows of the Borrower and its Subsidiaries for such Fiscal Year, all prepared in conformity with GAAP and certified, in the case of such consolidated financial statements, without qualification as to the scope of the audit or as to the Borrower being a going concern by the Borrower's Accountants, together with the report of such accounting firm stating that (i) such financial statements fairly present in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except for changes with which the Borrower's Accountants shall concur and that shall have been disclosed in the notes to the financial statements) and (ii) the examination by the Borrower's Accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards.

(c) Compliance Certificate. Together with each delivery of any financial statement pursuant to clause (a) or (b) above, a Compliance Certificate (i) showing in reasonable detail the calculations used in determining the Leverage Ratio and demonstrating compliance with each of the other financial covenants contained in Section 7.18, and (ii) stating that no Default has occurred and is continuing or, if a Default has occurred and is continuing, stating the nature thereof and the action which the Borrower has taken or proposes to take with respect thereto.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or one or more of the Arrangers will make available to the Lenders and the L/C Issuers materials and/or

information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials that the Borrower intends to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, each Arranger, each L/C Issuer and the Lenders to treat the Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

6.02 Collateral Reporting Requirements. The Borrower shall furnish to the Administrative Agent each of the following:

(a) Updated Corporate Chart. If requested by the Administrative Agent, together with each delivery of any financial statement pursuant to Section 6.01(b), a corporate organizational chart or other equivalent list, current as of the date of delivery, in form and substance reasonably acceptable to the Administrative Agent and certified as true, correct and complete by a Responsible Officer of the Borrower, setting forth, for each of the Loan Parties, all Persons subject to Section 6.22 or Section 6.25, all Subsidiaries of any of them and any joint venture (including Joint Ventures) entered into by any of the foregoing, (i) its full legal name, (ii) its jurisdiction of organization and organizational number (if any) and (iii) the number of shares of each class of its Stock authorized (if applicable), the number outstanding as of the date of delivery, and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by the Borrower.

(b) Additional Information. From time to time, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral, all as the Administrative Agent may reasonably request, and in reasonable detail.

(c) Additional Filings. At any time and from time to time, upon the reasonable written request of the Administrative Agent, and at the sole expense of the Loan Parties, duly executed, delivered and recorded instruments and documents for the purpose of obtaining or preserving the full benefits of this Agreement, each Security Instrument and each other Loan Document and of the rights and powers herein and therein granted (and each Loan Party shall take such further action as the Administrative Agent may reasonably request for such purpose, including the filing of any financing or continuation statement under the UCC or other similar Requirement of Law in effect in any domestic jurisdiction with respect to the security interest

created by the Collateral Agreement but excluding (i) the execution and delivery of any control agreements with respect to deposit accounts or securities accounts (except with respect to deposit accounts holding Cash Collateral provided hereunder), (ii) any filings to perfect Liens on intellectual property, other than any such filings under the UCC or with the U.S. Patent and Trademark Office or U.S. Copyright Office and (iii) any filings or actions in any jurisdiction outside the United States.

The reporting requirements set forth in this Section 6.02 are in addition to, and shall not modify and are not in replacement of, any rights and other obligation set forth in any Loan Document (including notice and reporting requirements) and satisfaction of the reporting obligations in this Section 6.02 shall not, by itself, operate as an update of any Schedule or any schedule of any other Loan Document and shall not cure, or otherwise affect in any way, any Default, including any failure of any representation or warranty of any Loan Document to be correct in any respect when made.

6.03 Default and certain other Notices. Promptly and in any event within five Business Days after a Responsible Officer of the Borrower obtains actual knowledge thereof, the Borrower shall give the Administrative Agent notice:

(a) of the occurrence of any Default or Event of Default;

(b) of any announcement by Moody's or S&P of any change in a Debt Rating, corporate rating or corporate family rating that has not been publicly announced or is not otherwise publicly available; and

(c) of the issuance of a notice of proposed debarment or notice of proposed suspension by a Governmental Authority or Governmental Authorities.

Each notice pursuant to this Section 6.03 (other than Section 6.03(b)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein, the anticipated effect thereof, and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached. Any notice pursuant to this Section 6.03, if given by telephone, shall be promptly confirmed in writing on the next Business Day.

6.04 Litigation. Promptly after a Responsible Officer of the Borrower obtains actual knowledge of the commencement thereof, the Borrower shall give the Administrative Agent written notice of the commencement of all actions, suits and proceedings before any domestic or foreign Governmental Authority or arbitrator, regarding the Borrower, any of its Subsidiaries or any Joint Venture that (i) seeks injunctive or similar relief that, in the reasonable judgment of the Borrower, if adversely determined, would reasonably be expected to result in a Material Adverse Effect or (ii) in the reasonable judgment of the Borrower would expose the Borrower, such Subsidiary or such Joint Venture to liability in an amount aggregating $20,000,000 or more or that, if adversely determined, would reasonably be expected to have a Material Adverse Effect.

6.05 Labor Relations. Promptly after a Responsible Officer of the Borrower has actual knowledge of the same, the Borrower shall give the Administrative Agent written notice of (a) any material labor dispute to which the Borrower, any of its Subsidiaries, any Guarantors or any Joint Venture is a party, including any strikes, lockouts or other material disputes relating to any of such Person's plants and other facilities, provided that such dispute, strike or lockout involves a work stoppage exceeding 30 days, (b) any material Worker Adjustment and Retraining Notification Act or related liability incurred with respect to the closing of any plant or other facility of any such Person affecting 300 or more employees of the Borrower and its Subsidiaries and (c) any union organization activity with respect to employees of the Borrower or any of its Subsidiaries not covered by a collective bargaining agreement as of the Closing Date.

6.06 Tax Returns. Upon the reasonable request of any Lender, through the Administrative Agent, the Borrower shall provide copies of all federal, state, local and foreign tax returns and reports filed by the Borrower, any of its Subsidiaries or any Joint Venture in respect of taxes measured by income (excluding sales, use and like taxes).

6.07 Insurance. As soon as is practicable and in any event within 90 days after the end of each Fiscal Year, the Borrower shall furnish the Administrative Agent with a report on the standard "Acord" form outlining all material insurance coverage maintained as of the date of such report by the Borrower, its Subsidiaries and Joint Ventures and the duration of such coverage.

6.08 ERISA Matters. The Borrower shall furnish the Administrative Agent each of the following:

(a) promptly and in any event within 30 days after a Responsible Officer of the Borrower knows, or has reason to know, that any ERISA Event has occurred that, alone or together with any other ERISA Event, would reasonably be expected to result in liability of the Borrower, any Subsidiary, any Guarantor and/or any ERISA Affiliate in an aggregate amount exceeding $15,000,000, written notice describing the nature thereof, what action the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known by such Responsible Officer, any action taken or threatened by the IRS, the Department of Labor or the PBGC with respect to such event;

(b) promptly and in any event within 10 days after a Responsible Officer of the Borrower knows, or has reason to know, that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan, a written statement of a Responsible Officer of the Borrower describing such waiver request and the action, if any, the Borrower, its Subsidiaries and ERISA Affiliates propose to take with respect thereto and a copy of any notice filed with the PBGC or the IRS pertaining thereto;

(c) simultaneously with the date that the Borrower, any of its Subsidiaries or any ERISA Affiliate files with the PBGC a notice of intent to terminate any Title IV Plan, if, at the time of such filing, such termination would require material additional contributions in order to

be considered a standard termination within the meaning of Section 4041(b) of ERISA, a copy of each notice; and

(d) promptly, copies of (i) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates with the IRS with respect to each Title IV Plan; (ii) all notices received by the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event that would reasonably be expected to result in liability of the Borrower, any Subsidiary, any Guarantor and/or any ERISA Affiliate in an aggregate amount exceeding $7,500,000; and (iii) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as the Administrative Agent shall reasonably request.

6.09 Environmental Matters. The Borrower shall provide the Administrative Agent promptly, and in any event within 10 Business Days after any Responsible Officer of the Borrower obtains actual knowledge of any of the following, written notice of each of the following:

(a) that any Loan Party is or may be liable to any Person as a result of a Release or threatened Release that would reasonably be expected to subject such Loan Party to Environmental Liabilities and Costs of $10,000,000 or more;

(b) the receipt by any Loan Party of notification that any material real or personal property of such Loan Party is or is reasonably likely to be subject to any Environmental Lien;

(c) the receipt by any Loan Party of any notice of violation of or potential liability under, or knowledge by a Responsible Officer of the Borrower that there exists a condition that would reasonably be expected to result in a violation of or liability under, any Environmental Law, except for violations and liabilities the consequence of which, in the aggregate, would not be reasonably likely to subject the Loan Parties collectively to Environmental Liabilities and Costs of $10,000,000 or more; and

(d) promptly following reasonable written request by any Lender, through the Administrative Agent, a report providing an update of the status of any environmental, health or safety compliance, hazard or liability issue identified in any notice or report delivered pursuant to this Section 6.09.

6.10 Patriot Act Information. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Patriot Act. The Borrower shall promptly, following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing

obligations under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act.

6.11 Other Information. The Borrower shall provide the Administrative Agent or any Lender with such other information respecting the business, properties, condition, financial or otherwise, or operations of the Borrower, any of its Subsidiaries or any Joint Venture as the Administrative Agent or such Lender, through the Administrative Agent, may from time to time reasonably request. The Administrative Agent shall provide copies of any written information provided to it pursuant to Sections 6.01 through 6.10 above to any Lender requesting the same.

6.12 Preservation of Corporate Existence, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, preserve and maintain its legal existence, rights (charter and statutory) and franchises, except as permitted by Sections 7.03, 7.04 and 7.06 and except if, in the reasonable business judgment of the Borrower, it is in the business interest of the Borrower or such Subsidiary not to preserve and maintain such rights (charter and statutory) and franchises, and such failure to preserve the same would not reasonably be expected to have a Material Adverse Effect and would not reasonably be expected to materially affect the interests of the Secured Parties under the Loan Documents or the rights and interests of any of them in the Collateral.

6.13 Compliance with Laws, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, comply with all applicable Requirements of Law, Contractual Obligations and Permits, except where the failure so to comply would not reasonably be expected to have a Material Adverse Effect.

6.14 Conduct of Business. The Borrower shall, and shall cause each of its Subsidiaries to, (a) conduct its business in the ordinary course (except for non-material changes in the nature or conduct of its business as carried on as of the Closing Date) and (b) use its reasonable efforts, in the ordinary course, to preserve its business and the goodwill and business of the customers, suppliers and others having business relations with the Borrower or any of its Subsidiaries, except where the failure to comply with the covenants in each of clauses (a) and (b) above would not reasonably be expected to have a Material Adverse Effect.

6.15 Payment of Taxes, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, pay and discharge before the same shall become delinquent, all lawful governmental claims, taxes, assessments, charges and levies, except where (a) contested in good faith, by proper proceedings and adequate reserves therefor have been established on the books of the Borrower or the appropriate Subsidiary in conformity with GAAP or (b) the failure to so pay and discharge would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.16 Maintenance of Insurance. The Borrower shall, and shall cause each of its Subsidiaries to, (a) maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as, in the reasonable determination of the Borrower, is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates and (b) cause all property and general liability insurance to name the Administrative Agent on behalf

of the Secured Parties as additional insured (with respect to liability and property policies), loss payee (with respect to property policies) or lender's loss payee (with respect to property policies), as appropriate, and to provide that no cancellation, material addition in amount or material change in coverage shall be effective until after 30 days' written notice thereof to the Administrative Agent.

6.17 Access. The Borrower shall from time to time during normal business hours, and subject to national security and defense requirements of any Governmental Authority, permit the Administrative Agent, the L/C Issuers and the Lenders, or any agents or representatives thereof, within five Business Days after written notification of the same (except that during the continuance of an Event of Default, no such notice shall be required) to (a) examine and make copies of and abstracts from the records and books of account of the Borrower and each of its Subsidiaries, (b) visit the properties of the Borrower and each of its Subsidiaries, (c) discuss the affairs, finances and accounts of the Borrower and each of its Subsidiaries with any of their respective officers or directors; provided that the Borrower will not be required to permit any examination or visit as set forth in clauses (a) and (b) above with respect to each of the Administrative Agent, the L/C Issuers and the Lenders (or any agents or representatives thereof) (i) within the twelve-month period following the date of the most recent examination or visit by any L/C Issuer, any Lender or the Administrative Agent (or any agents or representatives thereof), as applicable, unless an Event of Default has occurred and is continuing and (ii) unless such visit is coordinated through the Administrative Agent.

6.18 Keeping of Books. The Borrower shall, and shall cause each of its Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made in conformity with GAAP of the financial transactions and assets and business of the Borrower and each such Subsidiary.

6.19 Maintenance of Properties, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve (a) in good working order and condition (ordinary wear and tear excepted) all of its properties necessary in the conduct of its business, (b) all rights, permits, licenses, approvals and privileges (including all Permits) necessary in the conduct of its business and (c) all Material Intellectual Property, except where failure to so maintain and preserve the items set forth in clauses (a), (b) and (c) above would not reasonably be expected to have a Material Adverse Effect.

6.20 Application of Proceeds. The Borrower shall use the entire amount of the proceeds of the Loans as provided in Section 5.13.

6.21 Environmental.

(a) The Borrower shall, and shall cause each of its Subsidiaries to, exercise reasonable due diligence in order to comply in all material respects with all Environmental Laws.

(b) The Borrower agrees that the Administrative Agent may, from time to time, retain, at the expense of the Borrower, an independent professional consultant reasonably acceptable to the Borrower to review any report relating to Contaminants prepared by or for the Borrower and to conduct its own investigation (the scope of which investigation shall be

reasonable based upon the circumstances) of any property currently owned, leased, operated or used by the Borrower or any of its Subsidiaries, if (x) a Default or an Event of Default shall have occurred and be continuing, or (y) the Administrative Agent reasonably believes (1) that an occurrence relating to such property is likely to give rise to any Environmental Liabilities and Costs or (2) that a violation of an Environmental Law on or around such property has occurred or is likely to occur, which could, in either such case, reasonably be expected to result in Environmental Liabilities and Costs in excess of $10,000,000, provided that, unless an Event of Default shall have occurred and be continuing, such consultant shall not drill on any property of the Borrower or any of its Subsidiaries without the Borrower's prior written consent. Borrower shall use its reasonable efforts to obtain for the Administrative Agent and its agents, employees, consultants and contractors the right, upon reasonable notice to Borrower, to enter into or on to the facilities currently owned, leased, operated or used by Borrower or any of its Subsidiaries to perform such tests on such property as are reasonably necessary to conduct such a review and/or investigation. Any such investigation of any property shall be conducted, unless otherwise agreed to by Borrower and the Administrative Agent, during normal business hours and shall be conducted so as not to unreasonably interfere with the ongoing operations at any such property or to cause any damage or loss at such property. Borrower and the Administrative Agent hereby acknowledge and agree that any report of any investigation conducted at the request of the Administrative Agent pursuant to this subsection will be obtained and shall be used by the Administrative Agent and the Lenders for the purposes of the Lenders' internal credit decisions, to monitor the Obligations and to protect the Liens created by the Loan Documents, and the Administrative Agent and the Lenders hereby acknowledge and agree any such report will be kept confidential by them to the extent permitted by law except as provided in the following sentence. The Administrative Agent agrees to deliver a copy of any such report to Borrower with the understanding that Borrower acknowledges and agrees that (i) it will indemnify and hold harmless the Administrative Agent and each Lender from any costs, losses or liabilities relating to Borrower's use of or reliance on such report, (ii) neither Administrative Agent nor any Lender makes any representation or warranty with respect to such report, and (iii) by delivering such report to Borrower, neither the Administrative Agent nor any Lender is requiring or recommending the implementation of any suggestions or recommendations contained in such report.

(c) Promptly after a Responsible Officer of the Borrower obtains actual knowledge thereof, the Borrower shall advise the Administrative Agent in writing and in reasonable detail of (i) any Release or threatened Release of any Contaminants required to be reported by Borrower or its Subsidiaries, to any Governmental Authorities under any applicable Environmental Laws and which would reasonably be expected to have Environmental Liabilities and Costs in excess of $10,000,000, (ii) any and all written communications with respect to any pending or threatened claims under Environmental Law in each such case which, individually or in the aggregate, have a reasonable possibility of giving rise to Environmental Liabilities and Costs in excess of $10,000,000, (iii) any Remedial Action performed by Borrower or any other Person in response to (x) any Contaminants on, under or about any property, the existence of which has a reasonable possibility of resulting in Environmental Liabilities and Costs in excess of $10,000,000, or (y) any other Environmental Liabilities and Costs in excess of $10,000,000 that could result in Environmental Liabilities and Costs in excess of $10,000,000, (iv) discovery by Borrower or its Subsidiaries of any occurrence or condition on any material property that could

cause Borrower's or its Subsidiaries' interest in any such property to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any applicable Environmental Laws or Environmental Liens, and (v) any written request for information from any Governmental Authority that fairly suggests such Governmental Authority is investigating whether Borrower or any of its Subsidiaries may be potentially responsible for a Release or threatened Release of Contaminants which has a reasonable possibility of giving rise to Environmental Liabilities and Costs in excess of $10,000,000.

(d) Borrower shall promptly notify the Administrative Agent of (i) any proposed acquisition of Stock, assets, or property by Borrower or any of its Subsidiaries that would reasonably be expected to expose Borrower or any of its Subsidiaries to, or result in Environmental Liabilities and Costs in excess of $10,000,000 and (ii) any proposed action to be taken by Borrower or any of its Subsidiaries to commence manufacturing, industrial or other similar operations that would reasonably be expected to subject Borrower or any of its Subsidiaries to additional Environmental Laws, that are materially different from the Environmental Laws applicable to the operations of Borrower or any of its Subsidiaries as of the Closing Date.

(e) Borrower shall, at its own expense, provide copies of such documents or information as the Administrative Agent may reasonably request in relation to any matters disclosed pursuant to this subsection.

(f) To the extent required by Environmental Laws or Governmental Authorities under applicable Environmental Laws, Borrower shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all necessary Remedial Action in connection with the presence, handling, storage, use, disposal, transportation or Release or threatened Release of any Contaminants on, under or affecting any property in order to comply in all material respects with all applicable Environmental Laws and Permits. In the event Borrower or any of its Subsidiaries undertakes any Remedial Action with respect to the presence, Release or threatened Release of any Contaminants on or affecting any property, Borrower or any of its Subsidiaries shall conduct and complete such Remedial Action in material compliance with all applicable Environmental Laws, and in material accordance with the applicable policies, orders and directives of all relevant Governmental Authorities except when, and only to the extent that, Borrower or any such Subsidiaries' liability for such presence, handling, storage, use, disposal, transportation or Release or threatened Release of any Contaminants is being contested in good faith by Borrower or any of such Subsidiaries. In the event Borrower fails to take required actions to address such Release or threatened Release of Contaminants or to address a violation of or liability under Environmental Law, the Administrative Agent may, upon providing the Borrower with 5 Business Days' prior written notice, enter the property and, at Borrower's sole expense, perform whatever action the Administrative Agent reasonably deems prudent to rectify the situation.

6.22 Additional Collateral and Guaranties. Notify the Administrative Agent promptly after any Person (i) becomes a Wholly-Owned Domestic Subsidiary (including in connection with the Spinoff) that is not an Immaterial Subsidiary (including a Wholly-Owned Domestic Subsidiary that ceases for any reason to satisfy the definition of "Immaterial Subsidiary" at any time), (ii) becomes a First-Tier Foreign Subsidiary, or (iii) is required to become a Guarantor and/or grant Collateral in compliance with Section 6.24 or 6.25, and

promptly thereafter (and in any event within 30 days, or such longer period of time permitted by the Administrative Agent in its sole discretion):

(a) if such Person is a Wholly-Owned Domestic Subsidiary and is not a Captive Insurance Subsidiary:

(i) cause such Wholly-Owned Domestic Subsidiary to become a Guarantor by executing and delivering to the Administrative Agent a Joinder Agreement or such other document as the Administrative Agent shall deem reasonably appropriate for such purpose; and

(ii) without duplication of clause (b)(iii) below, cause such Person to deliver to the Administrative Agent documents of the types referred to in clauses (v), (vi) and (viii) of Section 4.01(a) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)(i)), all in form, content and scope reasonably satisfactory to the Administrative Agent;

(b) except during a Collateral Release Period, if such Person is a Wholly-Owned Domestic Subsidiary other than a BWXT Entity or a Captive Insurance Subsidiary:

(i) cause such Person to deliver to the Administrative Agent for the benefit of the Secured Parties, Security Instruments (or supplements thereto), as specified by and in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all certificated Pledged Interests in and of such Subsidiary, and other instruments of the type specified in Section 4.01(a)(iii) and (iv)), securing payment of all the Obligations and constituting Liens on all such real and personal properties,

(ii) take whatever action (including the filing of Uniform Commercial Code financing statements and the giving of notices) as may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the Security Instruments (or supplements thereto) delivered pursuant to this Section 6.22, enforceable against all third parties in accordance with their terms (subject to Liens permitted by the Loan Documents), provided that no such actions shall be required in any jurisdiction outside the United States; and

(iii) without duplication of clause (a)(ii) above, cause such Person to deliver to the Administrative Agent documents of the types referred to in clauses (v), (vi) and (viii) of Section 4.01(a) and, at the request of the Administrative Agent, favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (b)(i)), all in form, content and scope reasonably satisfactory to the Administrative Agent; and

(c) except during a Collateral Release Period, if such Person is a First-Tier Foreign Subsidiary any of whose Stock is owned by a Loan Party (or a Person becoming a Loan Party

pursuant to this Section), cause such Loan Party to deliver to the Administrative Agent for the benefit of the Secured Parties all certificated Pledged Interests in and of such First-Tier Foreign Subsidiary, and any Security Instruments (or supplements thereto), as specified by and in form and substance reasonably satisfactory to the Administrative Agent, in each case securing payment of all the Obligations and constituting Liens on all such Pledged Interests.

6.23 Real Property. Except during a Collateral Release Period, with respect to any fee interest in any Material Real Property that is acquired or any lease of domestic Real Property that is leased for more than $10,000,000 annually, in either case after the Closing Date by the Borrower or any other Loan Party (other than a BWXT Entity), the Borrower or the applicable Loan Party shall promptly (and, in any event, within thirty days following the date of such acquisition, unless such date is extended by the Administrative Agent in its sole discretion) (i) in the case of any Material Real Property, execute and deliver a first priority Mortgage (subject only to Liens permitted by this Agreement and such Mortgage) in favor of the Administrative Agent, for the benefit of the Secured Parties, covering such Real Property and complying with the provisions herein and in the Security Instruments, (ii) in the case of any leased domestic Real Property that is leased for more than $10,000,000 annually, if requested by the Administrative Agent, execute and deliver a first priority Mortgage (subject only to Liens permitted by this Agreement and such Mortgage) in favor of the Administrative Agent, for the benefit of the Secured Parties, covering such Real Property and complying with the provisions herein and in the Security Instruments, (iii) provide the Secured Parties with title insurance in an amount at least equal to the purchase price of such Real Property (or such other amount as the Administrative Agent shall reasonably specify) described in clauses (i) or (ii) above, and if applicable, flood insurance and lease estoppel certificates, all in accordance with the standards for deliveries contemplated on the Closing Date, as described in Section 4.01(a)(iv) hereof, (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent, and (v) if requested by the Administrative Agent, use commercially reasonable efforts to obtain Landlord Lien Waivers for each domestic Real Property leasehold interest on which a manufacturing facility or warehouse or other facility where Collateral is stored or held (but excluding any office lease that does not include manufacturing or warehouse facilities), provided that no such landlord Lien Waiver shall be required for any location at which Collateral is stored or located unless the aggregate value of Collateral stored or held at such location exceeds $10,000,000.

6.24 Replacement of Borrower. Substantially simultaneously with, and in no event later than five Business Days after, the effectiveness of the Spinoff in accordance with the provisions of this Agreement, the New Borrower shall become the Borrower hereunder, the Original Borrower and each Wholly-Owned Domestic Subsidiary of the New Borrower that is not an Immaterial Subsidiary and is not already a Guarantor shall become Guarantors hereunder, and each such Person (as applicable) shall: (a) deliver to the Administrative Agent and the Lenders (i) a Joinder Agreement executed and delivered by the New Borrower, the Original Borrower and the Administrative Agent with respect to the New Borrower becoming the Borrower hereunder, (ii) a Joinder Agreement executed and delivered by the Original Borrower, each Wholly-Owned Domestic Subsidiary of the New Borrower (other than Immaterial Subsidiaries) that is not already a Guarantor, and the Administrative Agent with respect to such

Persons becoming Guarantors hereunder; and (iii) a reaffirmation agreement from each Guarantor reaffirming such Person's obligations under the Loan Documents to which it is a party, (b) cause the New Borrower and each Wholly-Owned Domestic Subsidiary of the New Borrower (other than Immaterial Subsidiaries) that is not already a Guarantor to deliver to the Administrative Agent documents of the types referred to in clauses (v), (vi) and (viii) of Section 4.01(a) and, at the request of the Administrative Agent, favorable legal opinions of counsel to each such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clauses (a) and, if applicable, (c) of this Section), all in form, content and scope reasonably satisfactory to the Administrative Agent, (c) except during a Collateral Release Period, cause the New Borrower and each Wholly-Owned Domestic Subsidiary of the New Borrower (other than Immaterial Subsidiaries and BWXT Entities) to deliver documents of the type described in Section 6.22(b)(i) and take actions of the type described in Section 6.22(b)(ii) and (d) take all such other actions reasonably requested by the Administrative Agent to give effect to Section 2.17.

6.25 BWXT Entities. If, on or after the Closing Date, any BWXT Entity shall pledge its assets or properties in support of or otherwise create or suffer to exist any Lien upon or with respect to any of their respective properties or assets, whether now owned or hereafter acquired, to secure any Indebtedness described in clause (a) or (b) of such definition incurred on or after the Closing Date (other than the Obligations) then such Person shall immediately cease to be a BWXT Entity and the Borrower shall promptly cause such BWXT Entity to pledge its assets and properties as Collateral pursuant to the Security Instruments and take all such other actions of the type described in Section 6.22, 6.23 and 6.26 with respect to Wholly-Owned Domestic Subsidiaries that are required to provide Collateral pursuant to the Security Instruments (including without limitation, the execution and delivery of any intercreditor agreement or other applicable documentation reasonably requested by the Administrative Agent and reasonably satisfactory to the Administrative Agent to ensure that the Administrative Agent's Lien on behalf of the Secured Parties with respect to the properties and assets securing such other Financial Covenant Debt will rank equal and ratable with such the Liens securing such other Financial Covenant Debt).

6.26 Further Assurances. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, the Borrower or the applicable Loan Party shall (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) except during a Collateral Release Period, to the fullest extent permitted by applicable law, subject any Loan Party's (other than any BWXT Entity's) or any of its Subsidiaries' properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Security Instruments, (iii) except during a Collateral Release Period, perfect and maintain the validity, effectiveness and priority of any of the Security Instruments and any of the Liens intended to be created thereunder and (iv) except during a Collateral Release Period, assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended

to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party (other than any BWXT Entity) or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so. Notwithstanding anything to the contrary contained in this Section 6.26 or any Loan Document, no Loan Party shall be required to (i) execute or deliver any control agreements with respect to deposit accounts (other than with respect to Cash Collateral), commodities accounts or securities accounts, (ii) make any filings to perfect Liens on intellectual property, other than any such filings under the UCC or with the U.S. Patent and Trademark Office or U.S. Copyright Office, and (iii) make any filings or take any actions in any jurisdiction outside the United States to create or perfect any Liens created by the Security Instruments.

6.27 Post-Closing Deliveries. In the event the Spinoff has not been consummated in full on or prior to September 30, 2010, the Original Borrower shall deliver consolidated balance sheets of the Original Borrower and its Subsidiaries as of the end of the Fiscal Year ended December 31, 2009, and related statements of income and cash flows of the Original Borrower and its Subsidiaries for such Fiscal Year, all prepared in conformity with GAAP and certified, in the case of such consolidated financial statements, without qualification as to the scope of the audit or as to the Original Borrower being a going concern by the Borrower's Accountants, together with the report of such accounting firm stating that (i) such financial statements fairly present in all material respects the consolidated financial position of the Original Borrower and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except for changes with which the Borrower's Accountants shall concur and that shall have been disclosed in the notes to the financial statements) and (ii) the examination by the Borrower's Accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards.

6.28 Cash Collateralization of Extended Letters of Credit. The Borrower shall provide Cash Collateral (in an amount equal to 105% of the maximum face amount of each Extended Letter of Credit, calculated in accordance with Section 1.08) to each applicable L/C Issuer with respect to each Extended Letter of Credit issued by such L/C Issuer by a date that is no earlier than 120 days prior to the Maturity Date, but no later than 95 days prior to the Maturity Date (or, if such Letter of Credit is issued on or after the date that is 95 days prior to the Maturity Date, on the date of issuance thereof); provided that if the Borrower fails to provide Cash Collateral with respect to any such Extended Letter of Credit by such time, such event shall be treated as a drawing under such Extended Letter of Credit (in an amount equal to 105% of the maximum face amount of each such Letter of Credit, calculated in accordance with Section 1.08), which shall be reimbursed (or participations therein funded) in accordance with Section 2.03(c), with the proceeds being utilized to provide Cash Collateral for such Letter of Credit.

6.29 Post-Closing Real Property Matters. To the extent not delivered on or prior to the Closing Date pursuant to Section 4.01(a)(iv), then not later than the date that is 30 days after the Closing Date (which date may be extended by an additional 30 days by the Administrative Agent in its discretion) the Borrower will deliver each of the following to the Administrative Agent with respect to each of the Mortgaged Properties listed on Schedule 4.01(a)(iv):

(a) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may deem necessary or desirable in order to create a valid first and subsisting Lien on the property described therein in favor of the Administrative Agent for the benefit of the Secured Parties, excepting only Liens permitted under the Loan Documents, and that all filing, documentary, stamp, intangible and recording taxes and fees have been paid (or the Borrower has made arrangements satisfactory to the Administrative Agent for payment thereof);

(b) a Mortgagee Policy, with endorsements and in amounts acceptable to the Administrative Agent, issued, coinsured and reinsured by title insurers acceptable to the Administrative Agent, insuring the Mortgages to be valid first and subsisting Liens on the property described therein, free and clear of all defects (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances, excepting only Liens permitted under the Loan Documents;

(c) evidence that all premiums in respect of the Mortgagee Policies have been paid;

(d) evidence that no such Mortgaged Property is located in a special flood hazard area as designated by any federal Governmental Authority other than those for which flood insurance has been provided, and evidence of any such flood insurance;

(e) evidence that all other action that the Administrative Agent may deem necessary or desirable in order to create valid first and subsisting Liens (excepting only Liens permitted under the Loan Documents) on the property described in the Mortgages has been taken; and

(f) to the extent applicable to any Mortgaged Property and the documents being delivered in connection therewith, a favorable opinion of (i) Vorys, Sater, Seymour and Pease LLP, local Ohio counsel to certain of the Loan Parties, and (ii) Watkins Ludlam Winter & Stennis, P.A., local Mississippi counsel to certain of the Loan Parties, in each case addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders and addressing such matters concerning the relevant Loan Parties, Loan Documents and Mortgaged Properties as the Required Lenders may reasonably request.

Notwithstanding anything to the contrary contained in this Article VI, nothing in this Article VI shall prohibit the consummation of any one or more individual transactions entered into in connection with the Spinoff in accordance with and subject to compliance with each of the conditions set forth in the definition of "Spinoff".

ARTICLE VII.
NEGATIVE COVENANTS

The Borrower agrees with the Lenders and the Administrative Agent to each of the following, as long as any Obligation or any Commitment remains outstanding and, in each case, unless the Required Lenders otherwise consent in writing (provided that references herein to "Subsidiaries"

shall exclude any Captive Insurance Subsidiary for all Sections under this Article VII except Sections 7.01 and 7.02):

7.01 Indebtedness. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or otherwise become or remain directly or indirectly liable with respect to any Indebtedness except for the following:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and listed on Schedule 7.01;

(c) Guaranty Obligations incurred by the Borrower or any Guarantor in respect of Indebtedness of the Borrower or any Guarantor that is permitted by this Section 7.01 (other than clause (g) below);

(d)(i) Indebtedness in respect of Capital Lease Obligations and purchase money obligations for tangible property, (ii) Indebtedness in respect of sale and leaseback transactions permitted by Section 7.13 and (iii) other secured Indebtedness (including secured Indebtedness incurred or assumed by the Borrower and its Subsidiaries in connection with a Permitted Acquisition); provided, however, that the aggregate principal amount of all such Indebtedness permitted by this subsection (d) at any one time outstanding shall not exceed $200,000,000 and the Liens securing such Indebtedness shall be within the limitations set forth in Sections 7.02(d), 7.02(e) or 7.02(k);

(e) renewals, extensions, refinancings and refundings of Indebtedness permitted by clause (b) or (d) above or this clause (e); provided, however, that any such renewal, extension, refinancing or refunding is in an aggregate principal amount not greater than the principal amount of (plus reasonable fees, expenses and any premium incurred in connection with the renewal, extension, refinancing or refunding of such Indebtedness), and is on terms that in the aggregate are not materially less favorable to the Borrower or such Subsidiary, including as to weighted average maturity, than the Indebtedness being renewed, extended, refinanced or refunded;

(f) Indebtedness arising from intercompany loans (i) from the Borrower to any Guarantor; (ii) from any Subsidiary of the Borrower to the Borrower or any Guarantor; (iii) from any Subsidiary of the Borrower that is not a Loan Party to any other Subsidiary of the Borrower that is not a Loan Party; (iv) from the Borrower or any Guarantor to any Subsidiary of the Borrower that is not a Guarantor; or (v) prior to the Spinoff, from MII or any Affiliate of MII (other than the Borrower or a Subsidiary of the Borrower) to the Borrower or any Subsidiary of the Borrower; provided, however, that (x) all such Indebtedness (other than the Indebtedness described in clause (iii) or (v) of this clause (f)) shall be evidenced by promissory notes and all such notes shall be subject to a first priority Lien pursuant to the Collateral Agreement (if the payee is a Loan Party that is a party to the Collateral Agreement), (y) all such Indebtedness (other than the Indebtedness described in clauses (i), (iii) and (iv) of this clause (f)) shall be Subordinated Debt and, in the case of Indebtedness described in clause (v) only, shall not permit any cash payments of any kind prior to the Maturity Date, and (z) any payment by any such

Guarantor under any guaranty of the Obligations shall result in a pro tanto reduction of the amount of any Indebtedness owed by such Subsidiary to the Borrower or to any of its Subsidiaries for whose benefit such payment is made; provided, further that, in the case of Indebtedness described in clauses (i), (ii), (iii) and (iv) above, the Investment in the intercompany loan by the lender thereof is permitted under Section 7.03;

(g) Non-Recourse Indebtedness;

(h) Indebtedness under or in respect of Swap Contracts that are not speculative in nature;

(i) unsecured Indebtedness (including unsecured Indebtedness incurred or assumed by the Borrower and its Subsidiaries in connection with a Permitted Acquisition) in an aggregate principal amount not to exceed $200,000,000 at any time outstanding;

(j) Indebtedness in respect of any insurance premium financing for insurance being acquired by the Borrower or any Subsidiary under customary terms and conditions and not in connection with the borrowing of money;

(k) Indebtedness under or in respect of Cash Management Agreements; and

(l) Cash Collateralized Letters of Credit.

7.02 Liens. The Borrower shall not, and shall not permit any of its Subsidiaries to, create or suffer to exist any Lien upon or with respect to any of their respective properties or assets, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, except for the following:

(a) Liens created pursuant to any Loan Document;

(b) Liens existing on the date hereof and listed on Schedule 7.02;

(c) Customary Permitted Liens;

(d) Liens granted by the Borrower or any Subsidiary of the Borrower under a Capital Lease and Liens to which any property is subject at the time, on or after the Closing Date, of the Borrower's or such Subsidiary's acquisition thereof in accordance with this Agreement, in each case securing Indebtedness permitted under Section 7.01(d) and limited to the property purchased (and proceeds thereof) with the proceeds subject to such Capital Lease or Indebtedness;

(e) purchase money security interests in real property, improvements thereto or equipment (including any item of equipment purchased in connection with a particular construction project that the Borrower or a Subsidiary expects to sell to its customer with respect to such project and that, pending such sale, is classified as inventory) hereafter acquired (or, in the case of improvements, constructed) by the Borrower or any of its Subsidiaries; provided, however, that (i) such security interests secure purchase money Indebtedness permitted under Section 7.01(d) and are limited to the property purchased with the proceeds of such purchase

money Indebtedness (and proceeds thereof), (ii) such security interests are incurred, and the Indebtedness secured thereby is created, within ninety days of such acquisition or construction, and (iii) the Indebtedness secured thereby does not exceed the lesser of the cost or Fair Market Value of such real property, improvements or equipment at the time of such acquisition or construction;

(f) any Lien securing the renewal, extension, refinancing or refunding of any Indebtedness secured by any Lien permitted by clause (b), (d) or (e) above, this clause (f) or clause (k) below, without any material change in the assets subject to such Lien;

(g) Liens in favor of lessors securing operating leases permitted hereunder;

(h) Liens securing Non-Recourse Indebtedness permitted under Section 7.01(g) on (i) the assets of the Subsidiary or Joint Venture financed by such Non-Recourse Indebtedness and (ii) the Stock of the Joint Venture or Subsidiary financed by such Non-Recourse Indebtedness;

(i) Liens arising out of judgments or awards and not constituting an Event of Default under Section 8.01(g);

(j) Liens encumbering inventory, work-in-process and related property in favor of customers or suppliers securing obligations and other liabilities to such customers or suppliers (other than Indebtedness) to the extent such Liens are granted in the ordinary course of business and are consistent with past business practices;

(k) Liens not otherwise permitted hereunder securing Indebtedness permitted by Section 7.01(d)(ii) or (iii) and encumbering assets of (i) Foreign Subsidiaries or (ii) Domestic Subsidiaries that are not (and are not required to be) Guarantors, in each case that do not constitute Collateral;

(l) Liens with respect to foreign exchange netting arrangements to the extent incurred in the ordinary course of business and consistent with past business practices; provided, that the aggregate outstanding amount of all such obligations and liabilities secured by such Liens shall not exceed $15,000,000 at any time;

(m) Liens securing insurance premium financing permitted under Section 7.01(j) under customary terms and conditions; provided, that no such Lien may extend to or cover any property other than the insurance being acquired with such financing, the proceeds thereof and any unearned or refunded insurance premiums related thereto;

(n) Liens not otherwise permitted by this Section securing obligations or other liabilities (other than Indebtedness for borrowed money) of the Borrower or its Subsidiaries; provided however, that the aggregate outstanding amount of all such obligations and liabilities secured by such Liens shall not exceed $20,000,000 at any time; and

(o) Liens on Cash Collateral securing only Cash Collateralized Letters of Credit.

7.03 Investments. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly make or maintain any Investment except for the following:

(a) Investments existing on the Closing Date and disclosed on Schedule 7.03, and any refinancings of such Investments to the extent constituting Indebtedness otherwise permitted under Section 7.01(b), provided such refinancing complies with the provisions of Section 7.01(e);

(b) Investments held by the Borrower or such Subsidiary in the form of cash or Cash Equivalents;

(c) Investments in accounts, contract rights and chattel paper (each as defined in the UCC), notes receivable and similar items arising or acquired from the sale of Inventory in the ordinary course of business consistent with the past practice of the Borrower and its Subsidiaries;

(d) Investments received in settlement of amounts due to the Borrower or any Subsidiary of the Borrower effected in the ordinary course of business;

(e) Investments by (i) the Borrower in any Guarantor or by any Guarantor in the Borrower or another Guarantor, (ii) a Subsidiary of the Borrower that is not a Guarantor in the Borrower or any of its Subsidiaries, or (iii) the Borrower or any Subsidiary of the Borrower in (A) Joint Ventures; (B) Subsidiaries that are not Guarantors; or (C) or an Affiliate of the Borrower that is neither a Guarantor nor a Joint Venture; provided that, the aggregate outstanding amount of all such Investments pursuant to this clause (iii) (including Letters of Credit and other credit support obligations from the Borrower or its Subsidiaries, and including obligations to make Investments of equity in Joint Ventures or Subsidiaries in connection with the terms of Non-Recourse Indebtedness) shall not exceed $200,000,000 at any time;

(f) loans or advances to employees of the Borrower or any of its Subsidiaries (or guaranties of loans and advances made by a third party to employees of the Borrower or any of its Subsidiaries) in the ordinary course of business; provided, that the aggregate principal amount of all such loans and advances and guaranties of loans and advances shall not exceed $1,000,000 at any time;

(g) Investments constituting Guaranty Obligations permitted by Section 7.01;

(h) Investments in connection with a Permitted Acquisition;

(i) Investments in that certain joint venture between Thermax Ltd., an entity organized under the laws of India, and BWPGG or any of its Subsidiaries for the design, manufacture and supply of equipment, including supercritical boilers, to the Indian energy and power sector in an aggregate amount not exceed $150,000,000 at any time outstanding; and

(j) Investments not otherwise permitted hereby; provided, however, that the aggregate outstanding amount of all such Investments shall not exceed $25,000,000 at any time.

For purposes of covenant compliance, the amount of any Investment shall be the original cost of such Investment, minus the amount of any portion of such Investment repaid to the investor as a dividend, repayment of loan or advance, release or discharge of a guarantee or other obligation or other transfer of property or return of capital, as the case may be, but without any other adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment or interest earned on such Investment.

7.04 Asset Sales. The Borrower shall not, and shall not permit any of its Subsidiaries to, sell, convey, transfer, lease or otherwise dispose of any of their respective assets or any interest therein (including the sale or factoring at maturity of any accounts) to any Person, or permit or suffer any other Person to acquire any interest in any of their respective assets or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Stock or Stock Equivalent (any such disposition being an "Asset Sale") except for the following:

(a) the sale or disposition of inventory in the ordinary course of business;

(b) transfers resulting from any taking or condemnation of any property of the Borrower or any of its Subsidiaries (or, as long as no Default exists or would result therefrom, deed in lieu thereof);

(c) as long as no Default exists or would result therefrom, the sale or disposition of equipment that the Borrower reasonably determines is no longer useful in its or its Subsidiaries' business, has become obsolete, damaged or surplus or is replaced in the ordinary course of business;

(d) as long as no Default exists or would result therefrom, the sale or disposition of assets of any Subsidiary that is not a Wholly-Owned Subsidiary that, both at the time of such sale and as of the Closing Date, do not constitute, in the aggregate, all or a material part of the assets of such Subsidiary;

(e) as long as no Default exists or would result therefrom, the lease or sublease of Real Property not constituting a sale and leaseback, to the extent not otherwise prohibited by this Agreement or the Mortgages;

(f) as long as no Default exists or would result therefrom, non-exclusive assignments and licenses of intellectual property of the Borrower and its Subsidiaries in the ordinary course of business;

(g) as long as no Default exists or would result therefrom, discounts, adjustments, settlements and compromises of Accounts and contract claims in the ordinary course of business;

(h) any Asset Sale (i) to the Borrower or any Guarantor or (ii) by any Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party;

(i) as long as no Default exists or would result therefrom, any other Asset Sale for Fair Market Value, at least 75% of which is payable in cash or Cash Equivalents upon such sale;

provided, however, that with respect to any such Asset Sale in accordance with this clause (i), the aggregate consideration received for the sale of all assets sold in accordance with this clause (i) during any Fiscal Year, including such Asset Sale, shall not exceed $20,000,000 in the aggregate;

(j) any single transaction or series of related transactions so long as neither such single transaction nor such series of related transactions involves assets having a Fair Market Value of more than $1,000,000; and

(k) Asset Sales permitted by Section 7.13.

7.05 Restricted Payments. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, declare, order, pay or make any sum for any Restricted Payment except for:

(a) Restricted Payments by the Borrower to any Guarantor;

(b) Restricted Payments by (i) any Subsidiary of the Borrower to the Borrower or any Guarantor or (ii) any Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party;

(c) Restricted Payments by any Subsidiary that is not a Wholly-Owned Subsidiary to the Borrower or any Guarantor and to any other direct or indirect holders of equity interests in such Subsidiary to the extent (i) such Restricted Payments are made pro rata among the holders of the equity interests in such Subsidiary or (ii) pursuant to the terms of the joint venture or other distribution agreement for such Subsidiary in form and substance approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed);

(d) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Stock or Stock Equivalents of the Borrower or any of its Subsidiaries (i) made solely with the proceeds received from the exercise of any warrant or option or (ii) that is deemed to occur upon the cashless exercise of stock options or warrants;

(e) the repurchase, redemption or other acquisition or retirement for value of any Stock or Stock Equivalents of the Borrower or any Subsidiary held by any current or former officer, director or employee pursuant to any equity-based compensation plan, equity subscription agreement, stock option agreement, shareholders' agreement or similar agreement in an aggregate amount not to exceed $10,000,000 in any Fiscal Year; and

(f) so long as no Default exists, or would result therefrom, the Borrower may make Restricted Payments of the type described in clauses (a) and (b) of the definition thereof (including Restricted Payments of the type described in clause (e) of this Section that are in excess of the aggregate amount permitted in clause (e) of this Section), in an aggregate amount not to exceed $50,000,000 in any Fiscal Year.

7.06 Fundamental Changes. Except in connection with a Permitted Acquisition, the Borrower shall not, and shall not permit any of its Subsidiaries to, (a) merge or consolidate with

any Person (provided that, if at the time thereof and immediately after giving effect thereto no Default exists (i) any Wholly-Owned Subsidiary may merge into the Borrower so long as the Borrower is the surviving company, (ii) any Subsidiary may merge into or consolidate with any other Subsidiary in a transaction in which the surviving entity is a Subsidiary and no Person other than the Borrower or a Subsidiary receives any consideration (provided that if any party to any such transaction is a Loan Party, the surviving entity of such transaction shall be a Loan Party) and (iii) any Subsidiary of the Borrower may merge with another Person in a transaction constituting an Asset Sale permitted hereunder), (b) acquire all or substantially all of the Stock or Stock Equivalents of any Person (other than the acquisition of the Stock or Stock Equivalents of a Person that is a Subsidiary of the Borrower prior to such acquisition, provided that if the acquired Subsidiary is a Loan Party, the acquiring Subsidiary must be either the Borrower or a Wholly-Owned Domestic Subsidiary that will comply with Sections 6.22 and 6.23), (c) acquire all or substantially all of the assets of any Person or all or substantially all of the assets constituting what is known by the Borrower to be the business of a division, branch or other unit operation of any Person (other than an Asset Sale permitted by Section 7.04(h)), (d) enter into any joint venture or partnership with any Person that is not a Loan Party other than any Joint Venture or (e) acquire or create any Subsidiary unless, after giving effect to such acquisition or creation, (i) the Borrower is in compliance with Sections 6.22 and 6.23 and (ii) the Investment in such Subsidiary is permitted under Section 7.03.

7.07 Change in Nature of Business. The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than the Eligible Line of Business.

7.08 Transactions with Affiliates. The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any transaction of any kind with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate except (a) transactions among the Borrower and its Subsidiaries otherwise permitted under the Loan Documents, (b) Restricted Payments and Investments otherwise permitted by this Agreement, and (c) transactions in accordance with the Affiliate Agreements.

7.09 Burdensome Agreements. Other than pursuant to the Loan Documents and any agreements governing any Non-Recourse Indebtedness, or any Indebtedness permitted by Section 7.01(b), (d), (e) or (g) (in the case of any such Indebtedness, so long as any prohibition or limitation is only effective against the assets financed thereby), the Borrower shall not, and shall not permit any of its Subsidiaries to, (a) other than for any Subsidiary that is not a Wholly-Owned Subsidiary, agree to enter into or suffer to exist or become effective any consensual encumbrance or consensual restriction of any kind on the ability of such Subsidiary to pay dividends or make any other distribution or transfer of funds or assets or make loans or advances to or other Investments in, or enter into any Guaranty Obligation or pay any Indebtedness owed to, the Borrower or any other Subsidiary of the Borrower or (b) other than customary non-assignment provisions in contracts entered into in the ordinary course of business, enter into or permit to exist or become effective any enforceable agreement prohibiting or limiting the ability of the Borrower or any Subsidiary to create, incur, assume or permit to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, to secure the

Obligations, including any agreement requiring any other Indebtedness or Contractual Obligation to be equally and ratably secured with the Obligations.

7.10 Amendments of Constituent Documents. The Borrower shall not, and shall not permit any of its Subsidiaries to, change its capital structure (including the terms of its outstanding Stock) or otherwise amend its Constituent Documents, except for changes and amendments that do not materially and adversely affect the rights and privileges of the Borrower or any of its Subsidiaries and do not materially and adversely affect the interests of the Secured Parties under the Loan Documents or the rights and interests of any of them in the Collateral.

7.11 Accounting Changes. The Borrower shall not, and shall not permit any of its Subsidiaries to, (a) make any material change in its accounting treatment and reporting practices or tax reporting treatment, except as required by GAAP or any Requirement of Law and disclosed to the Lenders and the Administrative Agent or (b) change its Fiscal Year.

7.12 Use of Proceeds. The Borrower shall not, and shall not permit any of its Subsidiaries to, use all or any portion of the proceeds of any credit extended hereunder to purchase or carry margin stock (within the meaning of Regulation U of the FRB) in contravention of Regulation U of the FRB.

7.13 Sale Leasebacks. The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any sale and leaseback transaction unless the proceeds of such transaction received by the Loan Parties equal the Fair Market Value of the properties subject to such transaction and, after giving effect to such sale and leaseback transaction, the aggregate Fair Market Value of all properties covered at any one time by all sale and leaseback transactions permitted hereunder (other than any sale and leaseback transaction of property entered into within 90 days of the acquisition of such property) does not exceed $20,000,000.

7.14 Capital Expenditures. The Borrower shall not make or incur, or permit any of its Subsidiaries to make or incur, Capital Expenditures that, in the aggregate, exceed $150,000,000 during any Fiscal Year; provided that up to $75,000,000 of the amount permitted for any Fiscal Year, if not expended in the Fiscal Year for which it is so permitted, may be carried over for expenditure only in the next following Fiscal Year (with amounts available to be carried over to a subsequent fiscal year being calculated by assuming amounts expended in any Fiscal Year first utilized the $150,000,000 basket for such Fiscal Year, and only then utilized any amounts carried over from a prior Fiscal Year).

7.15 Cancellation of Indebtedness Owed To It. The Borrower shall not, and shall not permit any of its Subsidiaries to, cancel any material claim or Indebtedness owed to any of them except in the ordinary course of business.

7.16 No Speculative Transactions. The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any material speculative transaction or in any material transaction involving the entry into of Swap Contracts by such Person except for the sole purpose of hedging in the normal course of business.

7.17 Post-Termination Benefits. Except to the extent required under Section 4980B of the Code or similar state laws, the Borrower shall not, and shall not permit any of its Subsidiaries to, without the consent of the Required Lenders, adopt any Employee Benefit Plan that provides health or welfare benefits (through the purchase of insurance or otherwise) to any retired or former employees, consultants or directors (or their dependents) of the Borrower or any of its Subsidiaries.

7.18 Financial Covenants.

(a) Interest Coverage Ratio. The Borrower shall not permit the Interest Coverage Ratio as of the end of any Fiscal Quarter (commencing with the Fiscal Quarter ending June 30, 2010, but with effect prior thereto with respect to any required pro forma compliance calculations made prior to such time) to be less than 4.00 to 1.00.

(b) Leverage Ratio. The Borrower shall not permit the Leverage Ratio as of the end of any Fiscal Quarter (commencing with the Fiscal Quarter ending June 30, 2010, but with effect prior thereto with respect to any required pro forma compliance calculations made prior to such time) to be greater than 2.50 to 1.00.

7.19 BWXT Ownership. The Borrower shall not permit any Stock or Stock Equivalents in BWXT to be owned (a) prior to the Spinoff, by any Person other than the Original Borrower, and (b) at any time after the Spinoff, by any Person other than the New Borrower or a Permitted BWXT Owner. A "Permitted BWXT Owner" is any Wholly Owned Subsidiary of the New Borrower all of whose Stock or Stock Equivalents are owned, directly or indirectly, only by the New Borrower and Subsidiaries of the New Borrower that are holding companies without material assets other than Stock or Stock Equivalents in other Subsidiaries of the New Borrower and without material operations other than those related to such ownership, provided that the Original Borrower may also have assets in the form of Investments in cash and Cash Equivalents in addition to Stock and Stock Equivalents.

Notwithstanding anything to the contrary contained in this Article VII, nothing in this Article VII shall prohibit the consummation of any one or more individual transactions entered into in connection with the Spinoff in accordance with and subject to compliance with each of the conditions set forth in the definition of "Spinoff".

ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an "Event of Default":

(a) Non-Payment of Principal. the Borrower shall fail to pay any principal of any Loan or any L/C Obligation when the same becomes due and payable; or

(b) Non-Payment of Interest and Other Amounts. the Borrower shall fail to pay any interest on any Loan, any fee under any of the Loan Documents or any other Obligation (other than one referred to in clause (a) above) and such non-payment continues for a period of three Business Days after the due date therefor; or

(c) Representations and Warranties. any representation or warranty made or deemed made by any Loan Party in any Loan Document shall prove to have been incorrect in any material respect when made or deemed made; or

(d) Failure to Perform Covenants. any Loan Party shall fail to perform or observe (i) any term, covenant or agreement contained in Sections 6.03(a), 6.12, 6.17, 6.28, 6.29 or Article VII or (ii) any other term, covenant or agreement contained in this Agreement or in any other Loan Document if such failure under this clause (ii) shall remain unremedied for 30 days after the earlier of (A) the date on which a Responsible Officer of the Borrower obtains actual knowledge of such failure and (B) the date on which written notice thereof shall have been given to the Borrower by the Administrative Agent, any Lender or any L/C Issuer; or

(e) Cross-Default. (i) the Borrower or any of its Material Subsidiaries shall fail to make any payment on any recourse Indebtedness of the Borrower or any such Material Subsidiary (other than the Obligations) or any Guaranty Obligation in respect of Indebtedness of any other Person, and, in each case, such failure relates to Indebtedness having a principal amount of $10,000,000 or more when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness or (iii) any such Indebtedness shall become or be declared to be due and payable, or required to be prepaid or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; provided that clauses (ii) and (iii) above shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; or

(f) Insolvency Proceedings, Etc. (i) the Borrower or any of its Material Subsidiaries shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors, (ii) any proceeding shall be instituted by or against the Borrower or any of its Material Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts, under any Requirement of Law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee or other similar official for it or for any substantial part of its property; provided, however, that, in the case of any such proceedings instituted against the Borrower or any of its Material Subsidiaries (but not instituted by the Borrower or any of its Subsidiaries), either such proceedings shall remain undismissed or unstayed for a period of 60 days or more or an order or decree approving or ordering any of the foregoing shall be entered, or (iii) the Borrower or any of its Material Subsidiaries shall take any corporate action to authorize any action set forth in clauses (i) or (ii) above; or

(g) Judgments. one or more judgments, injunctions or orders (or other similar process) involving, in the case of a money judgment, an amount in excess of $10,000,000 in the aggregate (to the extent not covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage), shall be rendered against one or more of the Borrower and its Material Subsidiaries and shall remain unpaid and either (x) enforcement proceedings

shall have been commenced by any creditor upon such judgment, injunction or order or (y) there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment, injunction or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(h) ERISA. (i) one or more ERISA Events shall occur and the amount of all liabilities and deficiencies resulting therefrom imposed on or which could reasonably be expected to be imposed directly on the Borrower, any of its Subsidiaries or any Guarantor, whether or not assessed, when taken together with amounts of all such liabilities and deficiencies for all other such ERISA Events exceeds $20,000,000 in the aggregate, or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest under Section 430 of the Code or under ERISA; or

(i) Invalidity of Loan Documents. either:

(i) any provision of any Security Instrument or the Guaranty after delivery thereof pursuant to this Agreement or any other Loan Document shall for any reason, except as permitted by the Loan Documents, cease to be valid and binding on, or enforceable against, any Loan Party which is a party thereto, or any Loan Party shall so state in writing; or

(ii) any Security Instrument shall for any reason fail or cease to create a valid Lien on any Collateral with an aggregate value of $5,000,000 or more purported to be covered thereby or, except as permitted by the Loan Documents, such Lien shall fail or cease to be a perfected and first priority Lien or any Loan Party shall so state in writing; or

(j) Change of Control. there occurs any Change of Control.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuers all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.15 and 2.16, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuers (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuers arising under the Loan Documents and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the L/C Issuers, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuers, to Cash Collateralize that portion of L/C Obligations composed of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.15; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by any applicable Requirement of Law.

Subject to Sections 2.03(c) and 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a "Lender" party hereto.

ARTICLE IX.
ADMINISTRATIVE AGENT

9.01 Appointment and Authority.

(a) Each of the Lenders and each L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and the Borrower shall not have any rights as a third party beneficiary of any of such provisions.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Instruments, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Administrative Agent is further authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action, or permit the any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent to

take any action, with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Loan Document.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the

performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Instruments, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

9.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall

be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Administrative Agent on behalf of the Secured Parties under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the applicable L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as an L/C Issuer and as the Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Swing Line Lender and, unless the Borrower elects not to have such Person serve in such capacity, a retiring L/C Issuer, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the L/C Issuers hereunder (including such successor, if applicable) shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agent or Documentation Agents listed on the cover

page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an L/C Issuer hereunder.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or any L/C Issuer in any such proceeding.

9.10 Collateral and Guaranty Matters. Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank, and on behalf of their Affiliates in such capacities) and each L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements either (x) as to which arrangements satisfactory to the applicable Cash Management

Bank or Hedge Bank shall have been made or (y) notice has not been received by the Administrative Agent from the applicable Cash Management Bank or Hedge Bank that such amounts are then due and payable) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the applicable L/C Issuer shall have been made), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, (iii) in connection with the release of the Collateral provided in Section 10.19(a), or (iv) subject to Section 10.01, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate or release any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.02(b), (d), (e) or (f) or (h), and to enter into any intercreditor agreement, subordination agreement or similar agreement with respect to any such property; and

(c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Instruments or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

9.11 Secured Cash Management Agreements and Secured Hedge Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Security Instrument shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

ARTICLE X.
MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01 (other than Section 4.01(b)(i) or (c)) without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments, if any) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender entitled to such payment;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest, commitment fees or Letter of Credit Fees at the Default Rate;

(e) change Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) amend Section 1.06 or the definition of "Alternative Currency" without the written consent of the Administrative Agent and each affected L/C Issuer;

(g) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender; or

(h) release all or substantially all of the Collateral in any transaction or series of related transactions, or release all or substantially all of the value of the Guaranty, in each case without the written consent of each Lender, except to the extent the release of any Collateral or any Guarantor is permitted pursuant to Section 10.19(a) and/or Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the applicable L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) each Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, (x) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (1) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (2) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender and (y) the Administrative Agent, the Borrower and the applicable L/C Issuer may, without the consent of any other Lender or L/C Issuer, make such changes as may be necessary to incorporate provisions with respect to the issuance of Letters of Credit in any Alternative Currency approved by such L/C Issuer. Notwithstanding anything to the contrary contained in this Section, if the Administrative Agent and the Borrower shall have jointly identified (each in its sole discretion) an obvious error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the applicable Loan Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following the posting of such amendment to the Lenders.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of such Lender and that has been approved by the Required Lenders, the Borrower may replace such non-consenting Lender in accordance with Section 10.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

10.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent, Bank of America as an L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender or any other L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to Article II if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT

OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, the L/C Issuers and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, each L/C Issuer and the Swing Line Lender. In addition, each Lender and each L/C Issuer agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender or L/C Issuer. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Requirements of Law, including United States Federal and state securities laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent) and, to the extent provided in the Commitment Letter, each Arranger, in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by each L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by the Administrative Agent, any Lender or any L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of

pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Contaminants on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (y) are solely between or among Indemnified Parties (other than the Administrative Agent acting in such capacity), or (z) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay (and without limiting any obligation of the Borrower so to pay) any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the applicable L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the applicable L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the

Administrative Agent (or any such sub-agent) or such L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and the Borrower hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, any L/C Issuer and/or the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that, other than as permitted and required by Sections 2.17 and 6.24, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund, provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of each L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person, or (D) to any competitor of the Borrower or any of its Subsidiaries that is primarily engaged in an Eligible Line of Business and that has been previously identified as such by the Borrower to the Administrative Agent.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be

effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Requirements of Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection

by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note(s), if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as L/C Issuer or Swing Line Lender after Assignment.

(i) Notwithstanding anything to the contrary contained herein, if at any time Bank of America or any other L/C Issuer assigns all of its Commitment and Loans

pursuant to subsection (b) above, then (i) Bank of America or such other L/C Issuer may, upon 30 days' notice to the Borrower and the Lenders, resign as an L/C Issuer and/or (ii) Bank of America may, upon 30 days' notice to the Borrower, resign as the Swing Line Lender. In the event of any such resignation of an L/C Issuer or the Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America or the applicable L/C Issuer as an L/C Issuer or of Bank of America as the Swing Line Lender, as the case may be.

(ii) If Bank of America or any other L/C Issuer resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Committed Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). Upon the appointment of a successor L/C Issuer with respect to such resigning L/C Issuer (x) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and (y) such successor L/C Issuer (or another of the L/C Issuers, as may be arranged by the Borrower) shall issue letters of credit in substitution for the Letters of Credit, if any, issued by the resigning L/C Issuer and outstanding at the time of such succession, or make other arrangements satisfactory to Bank of America or such other resigning L/C Issuer to effectively assume the obligations of Bank of America or such other resigning L/C Issuer with respect to such Letters of Credit. The provisions of subparts (g)(i) and (g)(ii) of this Section shall not limit the ability of the Borrower to appoint and remove L/C Issuers pursuant to Sections 2.03(l) and (m).

(iii) If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Committed Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor Swing Line Lender, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Swing Line Lender.

10.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and each L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in

connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.14(c) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section, "Information" means all information received from the Borrower, any Subsidiary or any Affiliate of the Borrower relating to the Borrower, any Subsidiary or any Affiliate of the Borrower or any of their respective businesses, other than any such information that is (i) available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower, any Subsidiary or any Affiliate of the Borrower, or (ii) is clearly and conspicuously marked "PUBLIC" by the Borrower, which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the page thereof. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

The Administrative Agent, the Lenders and the L/C Issuers acknowledge that the Borrower and its Subsidiaries perform classified contracts funded by or for the benefit of the United States Federal government and, accordingly, neither the Borrower nor any Subsidiary will be obligated to release, disclose or otherwise make available to the Administrative Agent, any Lender or any L/C Issuer any classified or special nuclear material to any parties not in possession of a valid security clearance and authorized by the appropriate agency of the United States Federal government to receive such material. The Administrative Agent, the Lenders and the L/C Issuers agree that in connection with any exercise of a right or remedy the United States Federal government may remove classified information or government-issued property prior to any remedial action implicating such classified information or government-issued property. Upon notice from the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall take such steps in accordance with this Agreement as may reasonably be requested by the Borrower to enable the Borrower or any Subsidiary thereof to comply with the Foreign Ownership Control or Influence requirements of the United States Federal government imposed from time to time.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Requirements of Law, including United States Federal and state securities laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or such L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office of such Lender or such L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Requirements of Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Requirements of Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts

hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, any L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, or if any Lender is subject to replacement pursuant to the last paragraph of Section 10.01, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any

amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Requirements of Law.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT

PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arrangers are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Arrangers, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each of the Administrative Agent and the Arrangers is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor any Arranger has any obligation to the Borrower or any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent nor any Arranger has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower hereby waives and releases any claims that it may have

against the Administrative Agent or any Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10.18 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

10.19 Release and Reinstatement of Collateral.

(a) Notwithstanding anything to the contrary contained in this Agreement, any Loan Document or any other document executed in connection herewith, if at any time (including after a Collateral Reinstatement Event shall have occurred) a Collateral Release Event shall have occurred and be continuing, then all Collateral (other than Cash Collateral) and the Security Instruments (other than Security Instruments entered into in connection with Cash Collateral) shall be released automatically and terminated without any further action. In connection with the foregoing, the Administrative Agent shall, at Borrower's expense and at the Borrower's request, promptly execute and file in the appropriate location and deliver to Borrower such termination and full or partial release statements or confirmation thereof, as applicable, and do such other

things as are reasonably necessary to release the liens to be released pursuant hereto promptly upon the effectiveness of any such release.

(b) Notwithstanding clause (a) above, if a Collateral Reinstatement Event shall have occurred all Collateral and Security Instruments shall, at the Borrower's sole cost and expense, be reinstated and all actions reasonably necessary, or reasonably requested by the Administrative Agent, to provide to the Administrative Agent for the benefit of the Secured Parties valid, perfected, first priority security interests in the Collateral (including without limitation the delivery of documentation and taking of actions of the type described in clauses (a), (b) and (c) of Section 6.22) shall be taken within 30 days of such event, which 30 day period may be extended by the Administrative Agent in its sole discretion.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

BABCOCK & WILCOX INVESTMENT COMPANY

By: /s/ James C. Lewis

Name: James C. Lewis

Title: Treasurer

BANK OF AMERICA, N.A., as Administrative Agent

By: /s/ Bridgett J. Manduk

Name: Bridgett J. Manduk

Title: Assistant Vice President

BANK OF AMERICA, N.A., as a Lender, an L/C Issuer and Swing Line Lender

By: /s/ Mathew Griesbach

Name: Mathew Griesbach

Title: Vice President

BNP PARIBAS, as a Lender and an L/C Issuer

By: /s/ Nicolas Rabier

Name: Nicolas Rabier

Title: Director

By: /s/ John Treadwell, Jr.

Name: John Treadwell, Jr.

Title: Director

JPMORGAN CHASE BANK, N.A., as a Lender and an L/C Issuer

By: /s/ Patrick S. Thornton

Name: Patrick S. Thornton

Title: Senior Vice President

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, as a Lender and an L/C Issuer

By: /s/ Page Dillehunt

Name: Page Dillehunt

Title: Managing Director

By: /s/ Michael Willis

Name: Michael Willis

Title: Managing Director

WELLS FARGO BANK, N.A., as a Lender

By: /s/ J.C. Hernandez

Name: J.C. Hernandez

Title: Vice President

COMPASS BANK, as a Lender and an L/C Issuer

By: /s/ Stuart Murray

Name: Stuart Murray

Title: Senior Vice President

THE BANK OF NOVA SCOTIA, as a Lender and an L/C Issuer

By: /s/ David G. Mills

Name: David G. Mills

Title: Managing Director and Head of Energy Execution

US BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Michael P. Dickman

Name: Michael P. Dickman

Title: Vice President

REGIONS BANK, as a Lender

By: /s/ Randy Petersen

Name: Randy Petersen

Title: Senior Vice President

UNION BANK, N.A., as a Lender

By: /s/ Peter C. Thompson

Name: Peter C. Thompson

Title: Vice President

BRANCH BANKING AND TRUST CO., as a Lender

By: /s/ Stuart M. Jones

Name: Stuart M. Jones

Title: Senior Vice President

PNC BANK, NATIONAL ASSOCIATION, as a Lender and an L/C Issuer

By: /s/ Dale A. Stein

Name: Dale A. Stein

Title: Senior Vice President

FIFTH THIRD BANK, as a Lender

By: /s/ Mary J. Ramsey

Name: Mary J. Ramsey

Title: Vice President

COMERICA BANK, as a Lender

By: /s/ De Von J. Lang

Name: De Von J. Lang

Title: Assistant Vice President

WHITNEY NATIONAL BANK, as a Lender

By: /s/ Paul W. Cole

Name: Paul W. Cole

Title: Vice President

SUMITOMO MITSUI BANKING CORPORATION, as a Lender

By: /s/ William M. Ginn

Name: William M. Ginn

Title: Executive Officer

ALLIED IRISH BANKS, p.l.c., as a Lender

By: /s/ Shreya Shah

Name: Shreya Shah

Title: Vice President

By: /s/ Gregory J. Wiske

Name: Gregory J. Wiske

Title: Senior Vice President

EXHIBIT A

FORM OF COMMITTED LOAN NOTICE

Date: _____, _____

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of May 3, 2010 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement;" the terms defined therein being used herein as therein defined), among BABCOCK & WILCOX INVESTMENT COMPANY, a Delaware corporation, as the borrower thereunder (or, after the effectiveness of the Spinoff and the satisfaction of the other terms and conditions therein relating to the substitution thereof, the New Borrower, as the borrower thereunder), the Lenders, the Administrative Agent, the Swing Line Lender and each L/C Issuer.

The Borrower hereby requests (select one):

☐ A Committed Borrowing

☐ A conversion of [Type] to [Type]

☐ A continuation of Eurocurrency Rate Loans

1. On , (a Business Day).
2. In the amount of $.
   [principal amount to be borrowed, converted or continued]
3. Comprised of .
   [Type of Committed Borrowing requested or to which an existing Committed Borrowing is to be converted]
4. For Eurocurrency Rate Loans: with an Interest Period of months.
5. For conversions or continuations of Eurocurrency Rate Loans: Loan Number _____

[The Committed Borrowing requested herein complies with the proviso to the first sentence of Section 2.01 of the Credit Agreement.][1]

BABCOCK & WILCOX INVESTMENT COMPANY[2]

By: _____

[1] Applicable if requesting a Committed Borrowing.

[2] Update to reflect the New Borrower post Spinoff.

Name: _____

Title: _____

EXHIBIT B

FORM OF SWING LINE LOAN NOTICE

Date: _____, ____

To: Bank of America, N.A., as Swing Line Lender
Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of May 3, 2010 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement;" the terms defined therein being used herein as therein defined), among BABCOCK & WILCOX INVESTMENT COMPANY, a Delaware corporation, as the borrower thereunder (or, after the effectiveness of the Spinoff and the satisfaction of the other terms and conditions therein relating to the substitution thereof, the New Borrower, as the borrower thereunder), the Lenders, the Administrative Agent, the Swing Line Lender and each L/C Issuer.

The undersigned hereby requests a Swing Line Borrowing:

1. On , (a Business Day).
2. In the amount of $.

The Swing Line Borrowing requested herein complies with the requirements of the proviso to the first sentence of Section 2.04(a) of the Credit Agreement.

BABCOCK & WILCOX INVESTMENT COMPANY[3]

By: _____

Name: _____

Title: _____

[3] Update to reflect the New Borrower post Spinoff.

EXHIBIT C

FORM OF NOTE

FOR VALUE RECEIVED, the undersigned (the "Borrower") hereby promises to pay to or its registered assigns (the "Lender"), in accordance with the provisions of the Credit Agreement (as hereinafter defined), the principal amount of each Loan (as defined in the Credit Agreement) from time to time made by the Lender to the Borrower under that certain Credit Agreement, dated as of May 3, 2010 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement;" the terms defined therein being used herein as therein defined), among BABCOCK & WILCOX INVESTMENT COMPANY, a Delaware corporation, as the borrower thereunder (or, after the effectiveness of the Spinoff and the satisfaction of the other terms and conditions therein relating to the substitution thereof, the New Borrower, as the borrower thereunder), the Lenders, the Administrative Agent, the Swing Line Lender and each L/C Issuer.

The Borrower promises to pay interest on the unpaid principal amount of each Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Credit Agreement. Except as otherwise provided in Section 2.04(f) of the Credit Agreement with respect to Swing Line Loans, all payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Credit Agreement for such unpaid amount.

This Note is one of the Notes referred to in the Credit Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also entitled to the benefits of the Guaranty and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Credit Agreement. Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

In accordance with the Credit Agreement, the Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

BABCOCK & WILCOX INVESTMENT COMPANY[4]

By: _____

Name: _____

Title: _____

[4] Update to reflect the New Borrower post Spinoff.

EXHIBIT D

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: _____, ____

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of May 3, 2010 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement;" the terms defined therein being used herein as therein defined), among BABCOCK & WILCOX INVESTMENT COMPANY, a Delaware corporation, as the borrower thereunder (or, after the effectiveness of the Spinoff and the satisfaction of the other terms and conditions therein relating to the substitution thereof, the New Borrower, as the borrower thereunder), the Lenders, the Administrative Agent, the Swing Line Lender and each L/C Issuer.

The undersigned Responsible Officer hereby certifies as of the date hereof that he/she is the [Chief Financial Officer/Treasurer] of the Borrower, and that, as such, he/she is authorized to execute and deliver this Compliance Certificate to the Administrative Agent on behalf of the Borrower in his or her capacity as a Responsible Officer of the Borrower and not in his or her individual capacity, and that:

1.

*[Use following paragraph 1 for fiscal **year-end** financial statements]*

The Borrower has delivered the year-end consolidated audited financial statements required by Section 6.01(b) of the Credit Agreement for the Fiscal Year ended as of the above date, together with the report and opinion of Borrower's Accountant required by such section.

*[Use following paragraph 1 for fiscal **quarter-end** financial statements]*

The Borrower has delivered the consolidated unaudited financial statements required by Section 6.01(a) of the Credit Agreement for the Fiscal Quarter ended as of the above date. Such financial statements fairly present in all material respects the consolidated financial position of the Borrower and its Subsidiaries as at such date and the results of operations and cash flows of the Borrower and its Subsidiaries for the periods indicated in accordance with GAAP (subject only to normal year-end audit adjustments and the absence of footnotes).

2. The undersigned has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made under his/her supervision, a reasonably detailed review of the transactions and consolidated condition (financial or otherwise) of the Borrower and its Subsidiaries during the accounting period covered by such financial statements.

3. A review of the activities of the Borrower and its Subsidiaries during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Borrower and its Subsidiaries performed and observed all their respective Obligations under the Loan Documents, and

[select one:]

[to the best knowledge of the undersigned, during such fiscal period each of the Borrower and its Subsidiaries performed and observed each covenant and condition of the Loan Documents applicable to it, and no Default has occurred and is continuing.]

—or—

[to the best knowledge of the undersigned, during such fiscal period the following covenants or conditions have not been performed or observed and the following is a list of each Default and its nature and status:]

4. The financial covenant analyses and information set forth on Annex A attached hereto are true and accurate on and as of the date of this Compliance Certificate.

IN WITNESS WHEREOF, the undersigned has executed this Compliance Certificate as of , .

BABCOCK & WILCOX INVESTMENT COMPANY[5]

By: _____

Name: _____

Title: _____

[5] Update to reflect the New Borrower post Spinoff.

EXHIBIT E-1

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the "Assignor") and the Assignee identified in item 2 below (the "Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (a) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including, without limitation, the Letters of Credit and the Swing Line Loans included in such facilities) and (b) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (a) and (b) above being referred to herein collectively as the "Assigned Interest"). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignors: _____

2. Assignee: _____
   [for each Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]]

3. Borrower: Babcock and Wilcox Investment Company[6]

4. Administrative Agent: Bank of America, N.A., as the administrative agent under the Credit Agreement

[6] Update to reflect the New Borrower post Spinoff.

5. Credit Agreement: Credit Agreement, dated as of May 3, 2010 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement;" the terms defined therein being used herein as therein defined), among the Borrower, the Lenders, the Administrative Agent, the Swing Line Lender and each L/C Issuer

6. Assigned Interests in the Commitment:

Aggregate Amount of Commitment/Loans for all Lenders[7]	Amount of Commitment/ Loans Assigned	Percentage Assigned of Commitment/Loans[8]	CUSIP Number

[7. Trade Date:][9]

Effective Date: , 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____
Name: _____
Title: _____

ASSIGNEE

By: _____
Name: _____
Title: _____

[7] Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

[8] Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

[9] To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

[Consented to and][10] Accepted:

BANK OF AMERICA, N.A.,
as Administrative Agent

By: _____
Name: _____
Title: _____

Consented to:

BANK OF AMERICA, N.A.,
as L/C Issuer and Swing Line Lender

By: _____
Name: _____
Title: _____

[Consented to:

BABCOCK & WILCOX INVESTMENT COMPANY[11]

By: _____
Name: _____
Title: _____]

[10] To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

[11] Update to reflect the New Borrower post Spinoff.

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 10.06(b) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

FORM OF ADMINISTRATIVE QUESTIONNAIRE

EXHIBIT F

FORM OF GUARANTY

EXHIBIT G

FORM OF COLLATERAL AGREEMENT

EXHIBIT H

FORM OF GLOBAL INTERCOMPANY NOTE

Exhibit 10.17

Execution Version

PLEDGE AND SECURITY AGREEMENT

made by

BABCOCK & WILCOX INVESTMENT COMPANY

and certain Subsidiaries of the Borrower

in favor of

BANK OF AMERICA, N.A., as Administrative Agent,
for the ratable benefit of the Secured Parties

Dated as of May 3, 2010

TABLE OF CONTENTS

Schedule 3.3 – Perfected First Priority Liens

Schedule 3.4 – Name; Jurisdiction of Organization, etc

Schedule 3.5 – Inventory and Equipment

Schedule 3.7 – Investment Property

Schedule 3.9 – Intellectual Property

Schedule 3.10 – Commercial Tort Claims

Exhibit A – Intellectual Property Notices

This PLEDGE AND SECURITY AGREEMENT, dated as of May 3, 2010, made by each of the signatories hereto (together with any other grantor that may become a party hereto as provided herein, the "Grantors"), in favor of BANK OF AMERICA, N.A., as administrative agent (in such capacity and together with its successors in such capacity, the "Administrative Agent") for the benefit of the Secured Parties in connection with that certain Credit Agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement") among BABCOCK & WILCOX INVESTMENT COMPANY, a Delaware corporation, as the borrower thereunder (or, after the effectiveness of the Spinoff and the satisfaction of the other terms and conditions therein relating to the replacement thereof, the New Borrower, as the borrower thereunder), the Lenders, the Administrative Agent, the Swing Line Lender and the L/C Issuers.

Pursuant to the Credit Agreement, the Lenders have severally agreed to make Credit Extensions to the Borrower.

This Agreement is required by the terms of the Credit Agreement.

In consideration of the mutual covenants and agreements contained herein and in the other Loan Documents, the parties hereto covenant and agree as follows:

SECTION 1. DEFINED TERMS

1.1. Definitions.

(a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement, and the following terms are used herein as defined in the New York UCC: Accounts, Account Debtor, As-Extracted Collateral, Certificated Security, Chattel Paper, Commercial Tort Claim, Commodity Account, Commodity Contract, Commodity Intermediary, Consumer Goods, Deposit Account, Documents, Electronic Chattel Paper, Equipment, Farm Products, Financial Asset, Fixtures, General Intangibles, Goods (as defined in Article 9 of the New York UCC), Instruments, Inventory, Letter-of-Credit Rights, Manufactured Homes, Money, Payment Intangibles, Securities Account, Securities Intermediary, Security, Security Entitlement, Supporting Obligations, Tangible Chattel Paper and Uncertificated Security.

(b) The following terms shall have the following meanings:

"Administrative Agent" shall have the meaning assigned to such term in the preamble.

"After-Acquired Intellectual Property" shall have the meaning assigned to such term in Section 4.10(i).

"Agreement" shall mean this Pledge and Security Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Collateral" shall have the meaning assigned to such term in Section 2.1.

"Collateral Account" shall mean any collateral account established by the Administrative Agent as provided in Sections 5.1 or 5.4.

"Collateral Account Funds" shall mean, collectively, the following: all funds (including all trust monies) and investments (including all cash equivalents) credited to, or purchased with funds from, any Collateral Account and all certificates and instruments from time to time representing or evidencing such investments; all Money, notes, certificates of deposit, checks and other instruments from time to time hereafter delivered to or otherwise possessed by the Administrative Agent for or on behalf of any Grantor in substitution for, or in addition to, any or all of the Collateral; and all interest, dividends, cash, instruments and other property from time to time received in, receivable or otherwise distributed to the Collateral Account in respect of or in exchange for any or all of the items constituting Collateral.

"Contracts" shall mean all contracts and agreements between any Grantor and any other Person (in each case, whether written or oral, or third party or intercompany) as the same may be amended, assigned, extended, restated, supplemented, replaced or otherwise modified from time to time including (a) all rights of any Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (b) all rights of any Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (c) all rights of any Grantor to damages arising thereunder and (d) all rights of any Grantor to terminate and to perform and compel performance of, such Contracts and to exercise all remedies thereunder.

"Copyright Licenses" shall mean any agreement, whether written or oral, naming any Grantor as licensor or licensee (including those listed in Schedule 3.9(a) (as such schedule may be amended or supplemented from time to time)), granting any right in, to or under any Copyright, including the grant of rights to publicly perform, display, copy, prepare derivative works or distribute under any Copyright. This term shall exclude implied licenses and any rights obtained or granted under a copyright pursuant to the doctrines of first sale or estoppel.

"Copyrights" shall mean (a) all copyrights arising under the laws of the United States, any other country, or union of countries, or any political subdivision of any of the foregoing, whether registered or unregistered and whether published or unpublished (including those listed in Schedule 3.9(a) (as such schedule may be amended or supplemented from time to time)), all registrations and recordings thereof, and all applications in connection therewith and rights corresponding thereto throughout the world, including all registrations, recordings and applications in the United States Copyright Office, and all Mask Works (as defined in 17 USC 901), (b) the right to, and to obtain, all extensions and renewals thereof, and the right to sue for past, present and future infringements of any of the foregoing, (c) all proceeds of the foregoing, including license, royalties, income, payments, claims, damages, and proceeds of suit and (d) all other rights of any kind whatsoever accruing thereunder or pertaining thereto.

"Credit Agreement" shall have the meaning assigned to such term in the preamble.

"Excluded Assets" shall mean:

(a) any lease, license, contract, property right or agreement to which any Grantor is a party or any of its rights or interests thereunder if, and only for so long as, the grant

of a security interest hereunder shall constitute or result in a breach, termination or default under any such lease, license, contract, property right or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable law or principles of equity); provided, however, that such security interest shall attach immediately to any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified above;

(b) all Security Entitlements, Securities Accounts, Deposit Accounts, Financial Assets, Letter-of-Credit Rights (other than Letter-of-Credit Rights constituting a Supporting Obligation), Commodity Contracts and Commodity Accounts to which any Grantor has any right, title or interest;

(c) the Excluded Stock; and

(d) all cars, trucks, trailers and other vehicles covered by a certificate of title under the laws of any state to which any Grantor has any right, title or interest.

"Excluded Stock" shall mean:

(e) the Voting Stock of any Foreign Subsidiary in excess of 65% of the outstanding Voting Stock of such Foreign Subsidiary;

(f) the Stock and Stock Equivalents of any BWXT Entity;

(g) the Stock and Stock Equivalents of any Captive Insurance Subsidiary;

(h) the Stock and Stock Equivalents of any Joint Venture to the extent that the Constituent Documents of such Joint Venture prohibit such a security interest to be granted to the Administrative Agent; and

(i) the Stock and Stock Equivalents of (i) any Subsidiary that is not a Loan Party or (ii) any Joint Venture, to the extent that such Subsidiary or Joint Venture has incurred Non-Recourse Indebtedness the terms of which either (A) require security interests in such Stock and Stock Equivalents to be granted to secure such Non-Recourse Indebtedness or (B) prohibit such a security interest to be granted to the Administrative Agent.

"Grantors" shall have the meaning assigned to such term in the preamble.

"Insurance" shall mean all insurance policies covering any or all of the Collateral (regardless of whether the Administrative Agent is the loss payee thereof).

"Intellectual Property" shall mean the collective reference to all intellectual property rights whether arising under United States, multinational or foreign laws or otherwise, including the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets and the Trade Secret Licenses.

"Intellectual Property Security Agreement" shall mean a Notice of Grant of Security Interest in substantially the form of Exhibit A or such other form as may be approved by the Administrative Agent and the applicable Grantor.

"Intercompany Note" shall mean any promissory note evidencing Indebtedness permitted to be incurred pursuant to Section 7.01(f) of the Credit Agreement with respect to any outstanding intercompany obligations and advances owed by or to a Loan Party.

"Investment Property" shall mean the collective reference to (a) all "investment property" as such term is defined in Section 9-102(a)(49) of the New York UCC (other than any Excluded Stock), including all Certificated Securities and Uncertificated Securities and (b) whether or not otherwise constituting "investment property," all Pledged Notes and all Pledged Equity Interests.

"Licensed Intellectual Property" shall have the meaning assigned to such term in Section 3.9(a).

"Material Intellectual Property" shall have the meaning assigned to such term in Section 3.9(b).

"New York UCC" shall mean the Uniform Commercial Code as from time to time in effect in the State of New York.

"Owned Intellectual Property" shall have the meaning assigned to such term in Section 3.9(a).

"Patent License" shall mean all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to make, use, import, offer for sale, or sell any invention covered in whole or in part by a Patent, including any of the foregoing listed in Schedule 3.9(a) (as such schedule may be amended or supplemented from time to time). This term shall exclude implied licenses and any rights obtained or granted under a patent pursuant to the doctrines of exhaustion or estoppel.

"Patents" shall mean (a) all United States patents, patents issued by any other country, union of countries or any political subdivision of any of the foregoing, and all reissues and extensions thereof, including any of the foregoing listed in Schedule 3.9(a) (as such schedule may be amended or supplemented from time to time), (b) all patent applications pending in the United States or any other country or union of countries or any political subdivision of any of the foregoing and all divisions, continuations and continuations-in-part thereof, including any of the foregoing listed in Schedule 3.9(a) (as such schedule may be amended or supplemented from time to time), (c) all rights to, and to obtain, any reissues or extensions of the foregoing and (d) all proceeds of the foregoing, including licenses, royalties, income, payments, claims, damages and proceeds of suit.

"Pledged Equity Interests" means the Pledged Interests, including the Stock and Stock Equivalents of the Subsidiaries owned by such Grantor as set forth on Schedule 3.7(a) (as such schedule may be amended or supplemented from time to time), in each case together with the certificates (or other agreements or instruments), if any, representing such shares, and all options

and other rights, contractual or otherwise, with respect thereto, including, but not limited to, the following:

(j) all Stock and Stock Equivalents representing a dividend thereon, or representing a distribution or return of capital upon or in respect thereof, or resulting from a stock split, reclassification or other exchange therefor, and any subscriptions, warrants, rights or options issued to the holder thereof, or otherwise in respect thereof; and

(k) in the event of any consolidation or merger involving the issuer thereof and in which such issuer is not the surviving Person, all shares of each class of the Stock and Stock Equivalents of the successor Person formed by or resulting from such consolidation or merger, to the extent that such successor Person is a direct Subsidiary of a Grantor.

"Pledged LLC/Partnership Interests" means, with respect to any Grantor, the entire partnership, membership interest or limited liability company interest, as applicable, of such Grantor in each partnership, limited partnership or limited liability company owned thereby, including, without limitation, such Grantor's capital account, its interest as a partner or member, as applicable, in the net cash flow, net profit and net loss, and items of income, gain, loss, deduction and credit of any such partnership, limited partnership or limited liability company, as applicable, such Grantor's interest in all distributions made or to be made by any such partnership, limited partnership or limited liability company, as applicable, to such Grantor and all of the other economic rights, titles and interests of such Grantor as a partner or member, as applicable, of any such partnership, limited partnership or limited liability company, as applicable, whether set forth in the partnership agreement or membership agreement, as applicable, of such partnership, limited partnership or limited liability company, as applicable, by separate agreement or otherwise.

"Pledged Notes" shall mean all promissory notes now owned or hereafter acquired by any Grantor, including those listed on Schedule 3.7(b) (as such schedule may be amended or supplemented from time to time) and all Intercompany Notes at any time issued to or held by any Grantor (other than (a) promissory notes in an aggregate principal amount not to exceed $1,000,000 at any time outstanding issued in connection with extensions of trade credit by any Grantor in the ordinary course of business and (b) promissory notes constituting Cash Equivalents that are held by any Grantor).

"Pledged Securities" shall mean the collective reference to the Pledged Notes and the Pledged Equity Interests.

"Proceeds" shall mean all "proceeds" as such term is defined in Section 9-102(a)(64) of the New York UCC and, in any event, shall include all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto.

"Receivable" shall mean all Accounts and any other right to payment for goods or other property sold, leased, licensed or otherwise disposed of or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper or classified as a Payment Intangible and whether or not it has been earned by performance. References herein to Receivables shall include any Supporting Obligation or collateral securing such Receivable.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Trademark License" shall mean any agreement, whether written or oral, providing for the grant by or to any Grantor of any right in, to or under any Trademark, including any of the foregoing referred to in Schedule 3.9(a) (as such schedule may be amended or supplemented from time to time). This term shall exclude implied licenses and any rights obtained or granted under a trademark pursuant to the doctrines of first sale or estoppel.

"Trademarks" shall mean (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, designs and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country, union of countries, or any political subdivision of any of the foregoing, or otherwise, and all common-law rights related thereto, including any of the foregoing listed in Schedule 3.9(a) (as such schedule may be amended or supplemented from time to time), (b) the right to, and to obtain, all renewals thereof, (c) the goodwill of the business symbolized by the foregoing and (d) the right to sue for past, present and future infringements or dilution of any of the foregoing or for any injury to goodwill, and all proceeds of the foregoing, including royalties, income, payments, claims, damages and proceeds of suit.

"Trade Secret License" shall mean any agreement, whether written or oral, providing for the grant by or to any Grantor of any right in, to or under any Trade Secret, including any of the foregoing listed in Schedule 3.9(a) (as such schedule may be amended or supplemented from time to time). This term shall exclude implied licenses and any rights obtained or granted under a trade secret pursuant to the doctrine of estoppel.

"Trade Secrets" shall mean (a) all trade secrets and all other confidential or proprietary information and know how whether or not reduced to a writing or other tangible form, (b) all documents and things embodying, incorporating or describing such Trade Secrets, and (c) the right to sue for past, present and future misappropriations of any Trade Secret and all proceeds of the foregoing, including royalties, income, payments, claims, damages and proceeds of suit.

1.2. Other Definitional Provisions. Without limiting the general applicability of the terms of the other Loan Documents to this Agreement and the parties hereto, the terms of Sections 1.02 of the Credit Agreement are incorporated herein by reference, *mutatis mutandis*, and the parties hereto agree to such terms.

SECTION 2. GRANT OF SECURITY INTEREST; CONTINUING LIABILITY UNDER COLLATERAL

2.1. Grant of Security Interest. Each Grantor hereby grants and pledges to the Administrative Agent, for the ratable benefit of the Secured Parties, a security interest in all of such Grantor's right, title and interest in and to the following property, in each case, wherever located and whether now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest

(collectively, the "Collateral"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of all Obligations:

(a) all Accounts;

(b) all As-Extracted Collateral;

(c) all Chattel Paper;

(d) all Collateral Accounts and all Collateral Account Funds;

(e) all Commercial Tort Claims from time to time specifically described on Schedule 3.10;

(f) all Contracts;

(g) all Documents;

(h) all Equipment;

(i) all Fixtures;

(j) all General Intangibles;

(k) all Goods;

(l) all Instruments;

(m) all Insurance;

(n) all Intellectual Property;

(o) all Inventory;

(p) all Investment Property;

(q) all books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and other electronic storage media and related data processing software and similar items that at any time pertain to or evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon; and

(r) to the extent not otherwise included, all Proceeds, goodwill, products, accessions, rents and profits of any and all of the foregoing and all collateral security, Supporting Obligations and guarantees given by any Person with respect to any of the foregoing;

provided that, notwithstanding any other provision set forth in this Section 2.1, this Agreement shall not, at any time, constitute a grant of a security interest in any property that is,

at such time, an Excluded Asset, and the term "Collateral" and each of the defined terms incorporated therein shall exclude the Excluded Assets.

2.2. Continuing Liability Under Collateral. Notwithstanding anything herein to the contrary, (a) each Grantor shall remain liable for all obligations under and in respect of the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Administrative Agent or any other Secured Party, (b) each Grantor shall remain liable under and each of the agreements included in the Collateral, including any Receivables, any Contracts and any agreements relating to Pledged LLC/Partnership Interests, to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related hereto nor shall the Administrative Agent nor any other Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including any agreements relating to any Receivables, any Contracts or any agreements relating to Pledged LLC/Partnership Interests and (c) the exercise by the Administrative Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral, including any agreements relating to any Receivables, any Contracts and any agreements relating to Pledged LLC/Partnership Interests.

2.3. Foreign Action. Notwithstanding anything to the contrary herein, to the extent any Collateral is located in any jurisdiction outside the United States, or the creation or perfection of a lien in any Collateral requires any action or documentation outside the United States, no such action or documentation outside the United States shall be required with respect to such Collateral.

SECTION 3. REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into the Credit Agreement and make their respective Credit Extensions, each Grantor hereby represents and warrants to the Secured Parties that:

3.1. Representations in Credit Agreement.

In the case of each Grantor, the representations and warranties set forth in Article V of the Credit Agreement as they relate to such Grantor or to the Loan Documents to which such Grantor is a party, each of which is hereby incorporated herein by reference, are true and correct, in all material respects, except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and the Secured Parties shall be entitled to rely on each of them as if they were fully set forth herein, provided that each reference in each such representation and warranty to the Borrower's knowledge shall, for the purposes of this Section 3.1, be deemed to be a reference to such Grantor's knowledge.

3.2. Title; No Other Liens. Such Grantor owns or licenses or otherwise has the right to use each item of the Collateral free and clear of any and all Liens, including Liens arising as a result of such Grantor becoming bound (as a result of merger or otherwise) as grantor under a security agreement entered into by another Person, except for Liens expressly permitted by Section 7.02 of the Credit Agreement. No effective financing statement, mortgage or other public notice indicating the existence of a Lien with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, pursuant to this Agreement or as are expressly permitted by Section 7.02 of the Credit Agreement.

3.3. Perfected First Priority Liens. The security interests granted pursuant to this Agreement (a) upon completion of the filings and other actions specified on Schedule 3.3 (all of which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Administrative Agent in duly completed and duly executed form, as applicable, and may be filed by the Administrative Agent at any time) and payment of all filing fees, will constitute valid fully perfected security interests in all of the Collateral in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as collateral security for such Grantor's Obligations, enforceable in accordance with the terms hereof, to the extent such security interest in such Collateral can be perfected by (i) the filing of a financing statement under the Uniform Commercial Code of any jurisdiction, (ii) the filing with the United States Patent and Trademark Office or the United States Copyright Office of an Intellectual Property Security Agreement, or (iii) the possession of such Collateral, and (b) are prior to all other Liens on the Collateral, except for Liens expressly permitted by Section 7.02 of the Credit Agreement. Without limiting the foregoing, each Grantor has taken all actions necessary or desirable under all Requirements of Law of the United States and of any state, territory or possession thereof, including those specified in Section 4.2 to (i) establish the Administrative Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the New York UCC) over any portion of the Investment Property constituting Certificated Securities, Uncertificated Securities (each as defined in the New York UCC), other than any such Investment Property issued by a Foreign Subsidiary to the extent establishing "control" over such Investment Property would require actions under the Requirements of Law of a jurisdiction other than the United States or any state, territory or possession thereof, (ii) establish the Administrative Agent's control (within the meaning of Section 9-105 of the New York UCC) over all Electronic Chattel Paper and (iii) establish the Administrative Agent's "control" (within the meaning of Section 16 of the Uniform Electronic Transaction Act as in effect in the applicable jurisdiction "UETA") over all "transferable records" (as defined in UETA).

3.4. Name; Jurisdiction of Organization, etc. On the date hereof, such Grantor's exact legal name (as indicated on the public record of such Grantor's jurisdiction of formation or organization), jurisdiction of organization, organizational identification number, if any, United States taxpayer identification number, if any, and the location of such Grantor's chief executive office or sole place of business are specified on Schedule 3.4. Each Grantor is organized solely under the law of the jurisdiction so specified and has not filed any certificates of domestication, transfer or continuance in any other jurisdiction. Except as otherwise indicated on Schedule 3.4, the jurisdiction of each such Grantor's organization of formation is required to maintain a public record showing the Grantor to have been organized or formed. Except as specified on Schedule 3.4, as of the Closing Date (or the date of any applicable Joinder Agreement hereto in the case of

an Additional Grantor) no such Grantor has changed its name, jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five years and has not within the last five years become bound (whether as a result of merger or otherwise) as a grantor under a security agreement entered into by another Person, which has not heretofore been terminated.

3.5. Inventory and Equipment.

(a) On the date hereof, the material Inventory, Fixtures and Equipment (other than mobile goods, Inventory in transit, and Inventory, Fixtures and Equipment located outside the United States of America) that is included in the Collateral are kept at the locations listed on Schedule 3.5.

(b) Any Inventory now or hereafter produced by any Grantor included in the Collateral have been and will be produced in compliance in all material respects with the requirements of all applicable laws and regulations, including the Fair Labor Standards Act, as amended.

(c) No material portion of the Inventory, Fixtures or Equipment that is included in the Collateral is in the possession of an issuer of a negotiable document (as defined in Section 7-104 of the New York UCC) therefor or is otherwise in the possession of any bailee or warehouseman.

3.6. Types of Collateral. None of the Collateral constitutes, or is the Proceeds of (a) Farm Products, (b) As-Extracted Collateral, (c) Consumer Goods, (d) Manufactured Homes, (e) standing timber, or (f) as of the Closing Date, aircraft, airframe, aircraft engine, aircraft lease or any other related property.

3.7. Investment Property.

(a) Schedule 3.7(a) hereto sets forth under the heading "Pledged Equity Interests" all of the Pledged Equity Interests as of the Closing Date, and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated on such schedule. Schedule 3.7(b) sets forth under the heading "Pledged Notes" all of the Pledged Notes owned by any Grantor as of the Closing Date, and all of such Pledged Notes have been duly authorized, authenticated or issued, and delivered and are the legal, valid and binding obligation of the issuers thereof enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principals of equity, regardless of whether considered in a proceeding in equity or at law, and constitute all of the issued and outstanding indebtedness evidenced by an instrument or certificated security of the respective issuers thereof owing to such Grantor.

(b) The shares of Pledged Equity Interests pledged by such Grantor hereunder constitute all of the issued and outstanding shares of all classes of Stock and Stock Equivalents owned by such Grantor in each issuer thereof (other than Excluded Stock).

(c) The Pledged Equity Interests have been duly and validly issued and, except as set forth on Schedule 3.7(a) hereto, are fully paid and nonassessable (to the extent applicable).

(d) Such Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except Liens expressly permitted by Section 7.02 of the Credit Agreement, and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests.

3.8. Receivables.

(a) No amount payable to such Grantor under or in connection with any Receivable in excess of $1,000,000 that is included in the Collateral is evidenced by any Instrument or Tangible Chattel Paper which has not been delivered to the Administrative Agent or constitutes Electronic Chattel Paper that has not been subjected to the control (within the meaning of Section 9-105 of the New York UCC) of the Administrative Agent.

(b) Each Receivable that is included in the Collateral (i) is and will be the legal, valid and binding obligation of the Account Debtor in respect thereof, representing an unsatisfied obligation of such Account Debtor, (ii) is and will be enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principals of equity, regardless of whether considered in a proceeding in equity or at law, (iii) is not and will not be subject to any setoffs, defenses, taxes or counterclaims (except with respect to refunds, returns and allowances in the ordinary course of business) and (iv) is and will be in compliance with all applicable laws and regulations, except where the failure to comply with this Section 3.8(b) with respect to each Receivable would not reasonably be expected to have a Material Adverse Effect.

3.9. Intellectual Property.

(a) Schedule 3.9(a) lists all Copyrights, Patents, and Trademarks which are registered with the U.S. Patent and Trademark Office or the U.S. Copyright Office or are the subject of an application for registration with any such Governmental Authority, in each case which is owned by such Grantor in its own name on the date hereof (collectively, the "Owned Intellectual Property"). Except as set forth in Schedule 3.9(a), such Grantor is the exclusive owner of the entire and unencumbered right, title and interest in and to all material Owned Intellectual Property and is otherwise entitled to grant to others the right to use (and, where applicable, itself use) all such material Owned Intellectual Property. Such Grantor has a valid and enforceable right to use all material Intellectual Property used by, or licensed to others by, such Grantor which is not Owned Intellectual Property either pursuant to one of the written material Copyright Licenses, Patent Licenses, Trademark Licenses, and/or Trade Secret Licenses listed on Schedule 3.9(a) and subject to the terms thereof (collectively, the "Licensed Intellectual Property") or otherwise.

(b) On the date hereof all Owned Intellectual Property and all Licensed Intellectual Property, in each case, which is material to such Grantor's business (collectively, the "Material Intellectual Property"), is valid, subsisting, unexpired and enforceable and has not been abandoned. The operation of such Grantor's business as currently conducted or as contemplated to be conducted does not infringe, constitute a misappropriation of, dilute, or otherwise violate the Intellectual Property rights of any other Person where the same would have a Material Adverse Effect.

(c) No claim has been asserted that the use of the Material Intellectual Property does or may infringe upon or constitute a misappropriation of the rights of any other Person.

(d) To such Grantor's knowledge, no decision or judgment has been rendered by any Governmental Authority or arbitrator in the United States or outside the United States which would materially limit or cancel the validity or enforceability of, or such Grantor's rights in, any Material Intellectual Property. Such Grantor is not aware of any uses of any item of Material Intellectual Property that could reasonably be expected to lead to such item becoming invalid or unenforceable including unauthorized trademark uses by third parties and uses which were not supported by the goodwill of the business connected with Trademarks and Trademark Licenses.

(e) No action or proceeding is pending, or, to such Grantor's knowledge, threatened, on the date hereof (i) seeking to limit, cancel or invalidate any Owned Intellectual Property, (ii) alleging that any services provided by, processes used by, or products manufactured or sold by such Grantor infringe any Patent, Trademark, Copyright, or misappropriate any Trade Secret or violate any other right of any other Person, or (iii) alleging that any Material Intellectual Property (A) owned by such Grantor or (B) licensed by such Grantor (to such Grantor's knowledge), is being licensed or sublicensed in violation of any intellectual property or any other right of any other Person, in each case, which, if adversely determined, would reasonably be expected to have a Material Adverse Effect. To such Grantor's knowledge, no Person is engaging in any activity that infringes upon or misappropriates, or is otherwise an unauthorized use of, any Material Intellectual Property owned by Grantor. The consummation of the transactions contemplated by this Agreement and the other Loan Documents will not result in the termination of any of the Material Intellectual Property.

(f) With respect to each Copyright License, Trademark License, Trade Secret License and Patent License which license constitutes Material Intellectual Property or the loss of which could otherwise have a Material Adverse Effect: (i) such license is binding and enforceable against the other party thereto; (ii) such license will not cease to be valid and binding and in full force and effect on terms identical to those currently in effect as a result of the rights and interests granted herein (including, but not limited to, the enforceability of such rights and interests with respect to each such license), nor will the grant of such rights and interests (or the enforceability thereof) constitute a breach or default under such license or otherwise give the licensor or licensee a right to terminate such license; (iii) such Grantor has not received any notice of termination or cancellation under such license; (iv) such Grantor has not received any notice of a breach or default under such license, which breach or default has not been cured; and (v) such Grantor is not in breach or default in any material respect, and no event has occurred

that, with notice and/or lapse of time, would constitute such a breach or default or permit termination, modification or acceleration under such license.

(g) Except as set forth on Schedule 3.9(g), such Grantor has made all filings and recordations and paid all required fees and taxes to maintain each and every item of registered Material Intellectual Property in full force and effect and to protect and maintain its interest therein.

(h) To the knowledge of such Grantor, (i) none of the Trade Secrets that constitute Material Intellectual Property of such Grantor have been used, divulged, disclosed or appropriated to the detriment of such Grantor for the benefit of any other Person without permission of such Grantor; and (ii) no employee, independent contractor or agent of such Grantor has misappropriated any Trade Secrets of any other Person in the course of the performance of his or her duties as an employee, independent contractor or agent of such Grantor where the same would reasonably be expected to have a Material Adverse Effect.

(i) Such Grantor has taken commercially reasonable steps to exercise quality control over any licensee of such Grantor's Trademarks.

3.10. Commercial Tort Claims. No Grantor has knowledge that it has any Commercial Tort Claims as of the date hereof individually or in the aggregate in excess of $1,000,000, except as set forth on Schedule 3.10.

3.11. Contracts. No amount payable to such Grantor under or in connection with any Contract which has a value in excess of $1,000,000 individually or $5,000,000 in the aggregate is evidenced by any Instrument or Tangible Chattel Paper which has not been delivered to the Administrative Agent or constitutes Electronic Chattel Paper that is not under the control (within the meaning of Section 9-105 of the New York UCC) of the Administrative Agent.

SECTION 4. COVENANTS

Each Grantor covenants and agrees with the Secured Parties that, as of the date hereof and until the termination of this Agreement in accordance with its terms:

4.1. Covenants in Credit Agreement. Each Grantor shall take, or shall refrain from taking, as the case may be, each action that is within its control and is necessary to be taken or not taken, as the case may be, so that no Default or Event of Default is caused by the failure to take such action or to refrain from taking such action by such Grantor or any of its Subsidiaries.

4.2. Delivery and Control of Instruments, Chattel Paper, Negotiable Documents and Investment Property.

(a) If any of the Collateral having a value in excess of $1,000,000 individually or $5,000,000 in the aggregate is or shall become evidenced or represented by any Instrument, Certificated Security, Negotiable Document or Tangible Chattel Paper, such Instrument (other than checks received in the ordinary course of business), Certificated Security, Negotiable Documents or Tangible Chattel Paper shall be promptly delivered to the Administrative Agent, duly endorsed in a manner reasonably satisfactory to the Administrative Agent, to be held as

Collateral pursuant to this Agreement, and all of such property owned by any Grantor as of the Closing Date and represented in such form shall be delivered on the Closing Date.

(b) If any of the Collateral having a value in excess of $1,000,000 individually or $5,000,000 in the aggregate is or shall become "Electronic Chattel Paper" such Grantor shall ensure that (i) a single authoritative copy shall exist which is unique, identifiable, unalterable (except as provided in clauses (iii), (iv) and (v) of this paragraph), (ii) such authoritative copy identifies the Administrative Agent as the assignee and is communicated to and maintained by the Administrative Agent or its designee, (iii) copies or revisions that add or change the assignee of the authoritative copy can only be made with the participation of the Administrative Agent, (iv) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy and that is not the authoritative copy; (v) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision, and (vi) the Administrative Agent has "control" within the meaning of the New York UCC of such Electronic Chattel Paper.

(c) If any Collateral having a value in excess of $1,000,000 individually or $5,000,000 in the aggregate is or shall become an Uncertificated Security, such Grantor shall cause the issuer thereof, if such issuer is a Subsidiary of the Borrower, either (i) to register the Administrative Agent as the registered owner of such Uncertificated Security, upon original issue or registration of transfer or (ii) to agree in writing with such Grantor and the Administrative Agent that such issuer will comply with instructions with respect to such Uncertificated Security originated by the Administrative Agent without further consent of such Grantor and such actions shall be taken on or prior to the Closing Date with respect to any such Uncertificated Securities owned as of the Closing Date by any Grantor and the Grantor shall take or cause to be taken all such other actions as may be necessary for the Administrative Agent to have "control" defined in Article 8 of the New York UCC.

4.3. Maintenance of Insurance.

(a) Such Grantor will maintain insurance in accordance with Section 6.16 of the Credit Agreement, and furnish to the Administrative Agent, upon written request, of a copy of such insurance policies.

(b) Such Grantor will deliver to the Administrative Agent on behalf of the Secured Parties, (i) on the Closing Date, a certificate dated as of a recent date showing the amount and types of insurance coverage as of such date, (ii) upon reasonable request of the Administrative Agent from time to time, reasonably detailed information as to the insurance carried, (iii) promptly following receipt of notice from any insurer, a copy of any notice of cancellation or material change in coverage from that existing on the Closing Date and (iv) forthwith, notice of any cancellation or nonrenewal of coverage by such Grantor. To the extent applicable, the Administrative Agent shall be named as additional insured on all such liability insurance policies of such Grantor and the Administrative Agent shall be named as loss payee (and, where applicable, mortgagee) on all property and casualty insurance policies of such Grantor.

4.4. Payment of Obligations. Such Grantor shall pay and discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all taxes,

assessments and governmental charges or levies imposed upon the Collateral or in respect of income or profits therefrom, as well as all claims of any kind (including claims for labor, materials and supplies) against or with respect to the Collateral, except that no such tax, assessment or charge need be paid if (a) the amount or validity thereof is currently being contested in good faith by appropriate proceedings, reserves in conformity with GAAP with respect thereto have been provided on the books of such Grantor and such proceedings could not reasonably be expected to result in the sale, forfeiture or loss of any material portion of the Collateral or any interest therein, or (b) the failure to so pay and discharge would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.5. Maintenance of Perfected Security Interest; Further Documentation.

(a) Except as otherwise expressly permitted by the Credit Agreement, such Grantor shall maintain each of the security interests created by this Agreement as a perfected security interest under all Requirements of Law of the United States and of any state, territory or possession thereof, having at least the priority described in Section 3.3 and shall defend such security interest against any claims and demands of any Persons (other than the Secured Parties), subject to the provisions of Section 7.13.

(b) Such Grantor shall furnish to the Secured Parties from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the assets and property of such Grantor as the Administrative Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Administrative Agent, and at the sole expense of such Grantor, such Grantor shall promptly and duly authorize, execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Administrative Agent may reasonably request to be taken in the United States for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, the filing of any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in the United States or any State, territory or possession thereof with respect to the security interests created hereby and in the case of Investment Property and any other relevant Collateral, taking any actions necessary to enable the Administrative Agent to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto.

4.6. Changes in Locations, Name, Jurisdiction of Incorporation, etc. Such Grantor shall not, except upon at least 10 days' prior written notice (or such shorter period consented to by the Administrative Agent in writing), in each case, to the Administrative Agent and delivery to the Administrative Agent of duly authorized and, where required, executed copies of all additional financing statements and other documents reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the security interests provided for herein:

(a) change its legal name, jurisdiction of organization or the location of its chief executive office or sole place of business from that referred to in Section 3.4; or

(b) change its legal name, identity or structure to such an extent that any financing statement filed by the Administrative Agent in connection with this Agreement would become misleading; provided, however, that no such notices shall be required in connection with the Spinoff so long as (i) the Grantors comply with each of their respective obligations under Sections 6.22 and 6.24 of the Credit Agreement and (ii) such notice is given to the Administrative Agent within 30 days after the applicable event necessitating such notice.

4.7. Notices. Such Grantor shall advise the Administrative Agent promptly, in reasonable detail, of:

(a) any Lien (other than any Lien expressly permitted by Section 7.02 of the Credit Agreement) on any of the Collateral which would adversely affect the ability of the Administrative Agent to exercise any of its remedies hereunder;

(b) the occurrence of any other event of which such Grantor becomes aware that would reasonably be expected to have a Material Adverse Effect on the aggregate value of the Collateral or on the security interests created hereby; and

(c) the acquisition or ownership by any Grantor of any aircraft, airframe, aircraft engine, aircraft lease or any other related property with a value in excess of $3,000,000 individually or in the aggregate.

4.8. Investment Property.

(a) If such Grantor shall become entitled to receive or shall receive any stock or other ownership certificate (including any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of Stock and Stock Equivalents in any issuer thereof, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares of or other ownership interests in the Pledged Securities, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Secured Parties, hold the same in trust for the Secured Parties and promptly deliver the same to the Administrative Agent in the exact form received (other than Excluded Stock), duly endorsed by such Grantor to the Administrative Agent, if required, together with an undated stock power or similar instrument of transfer covering such certificate duly executed in blank by such Grantor and with, if the Administrative Agent so requests, signature guaranteed, to be held by the Administrative Agent, subject to the terms hereof, as additional collateral security for the Obligations. Any sums paid upon or in respect of the Pledged Securities upon the liquidation or dissolution of any issuer thereof shall be paid over to the Administrative Agent to be held by it hereunder as additional collateral security for the Obligations if an Event of Default then exists, and in case any distribution of capital shall be made on or in respect of the Pledged Securities or any property shall be distributed upon or with respect to the Pledged Securities pursuant to the recapitalization or reclassification of the capital of any issuer thereof or pursuant to the reorganization thereof, the property so distributed shall, if an Event of Default then exists, and unless otherwise subject to a perfected security interest in favor of the Administrative Agent, be delivered to the Administrative Agent to be held by it hereunder as additional collateral security for the Obligations. If any sums of money or property so paid or distributed in respect of the

Pledged Securities shall be received by such Grantor in violation of the immediately preceding sentence, such Grantor shall, until such money or property is paid or delivered to the Administrative Agent, hold such money or property in trust for the Secured Parties, segregated from other funds of such Grantor, as additional collateral security for the Obligations.

(b) Without the prior written consent of the Administrative Agent, such Grantor shall not (i) vote to enable, or take any other action to permit, any Subsidiary of the Borrower that is an issuer of Pledged Securities to issue any stock, partnership interests, limited liability company interests or other equity securities of any nature or to issue any other securities convertible into or granting the right to purchase or exchange for any stock, partnership interests, limited liability company interests or other equity securities of any nature of any such issuer (except, in each case, pursuant to a transaction expressly permitted by the Credit Agreement), (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, any of the Investment Property or Proceeds thereof or any interest therein (except, in each case, pursuant to a transaction expressly permitted by the Credit Agreement), (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for the security interests created by this Agreement or any Lien expressly permitted thereon pursuant to Section 7.02 of the Credit Agreement, (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Administrative Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof or any interest therein or (v) without the prior written consent of the Administrative Agent, cause or permit any Subsidiary of the Borrower that is an issuer of any Pledged LLC/Partnership Interests which are not securities (for purposes of the New York UCC) on the date hereof to elect or otherwise take any action to cause such Pledged LLC/Partnership Interests to be treated as Securities for purposes of the New York UCC; provided, however, notwithstanding the foregoing, if any issuer of any Pledged LLC/Partnership Interests takes any such action in violation of the provisions in this clause (v) or any non-Subsidiary of the Borrower that is an issuer takes any of the foregoing actions, such Grantor shall promptly notify the Administrative Agent in writing of any such election or action and, in such event, shall take all steps necessary or advisable to establish the Administrative Agent's "control" thereof.

(c) In the case of each Grantor which is an issuer of Pledged Securities, such issuer agrees that (i) it shall be bound by the terms of this Agreement relating to the Pledged Securities issued by it and shall comply with such terms insofar as such terms are applicable to it, (ii) it shall notify the Administrative Agent promptly in writing of the occurrence of any of the events described in Section 4.8(a) with respect to the Pledged Securities issued by it and (iii) the terms of Sections 5.3(c) and 5.7 shall apply to it, *mutatis mutandis*, with respect to all actions that may be required of it pursuant to Section 5.3(c) or 5.7 with respect to the Pledged Securities issued by it. In addition, each Grantor which is either an issuer or an owner of any Pledged Security hereby consents to the grant by each other Grantor of the security interest hereunder in favor of the Administrative Agent and to the transfer of any Pledged Security to the Administrative Agent or its nominee following the occurrence and during the continuance of an Event of Default and to the substitution of the Administrative Agent or its nominee as a partner, member or shareholder of the issuer of the related Pledged Security.

4.9. Receivables. Other than in the ordinary course of business, such Grantor shall not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could adversely affect the value thereof.

4.10. Intellectual Property.

(a) Such Grantor (either itself or through licensees) shall, in the exercise of its reasonable business judgment, taking into account the Secured Parties' interests under this Agreement, (i) continue to use each owned Trademark material to its business, (ii) maintain commercially reasonable quality of products and services offered under such Trademarks and take all necessary steps to ensure that all licensed users of such Trademarks comply with such Grantor's quality control requirements and maintain reasonable quality, (iii) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademarks unless the Administrative Agent, for the ratable benefit of the Secured Parties, shall obtain a perfected security interest in such mark pursuant to this Agreement and an Intellectual Property Security Agreement, and (iv) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark may become invalidated or impaired in any way.

(b) Such Grantor (either itself or through licensees), subject to the exercise of its reasonable business judgment, taking into account the Secured Parties' interests under this Agreement, shall not do any act, or omit to do any act, whereby any Patent owned by such Grantor material to its business may become forfeited, abandoned or dedicated to the public.

(c) Such Grantor (either itself or through licensees), subject to the exercise of its reasonable business judgment, taking into account the Secured Parties' interests under this Agreement, shall not (and shall not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any material portion of Copyrights owned by such Grantor and material to its business may become invalidated or otherwise impaired. Such Grantor shall not (either itself or through licensees) do any act whereby any material portion of such Copyrights may fall into the public domain.

(d) Such Grantor shall notify the Administrative Agent promptly if it knows or suspects that any application or registration relating to any Material Intellectual Property owned by such Grantor may become forfeited, abandoned or dedicated to the public, or of any adverse determination (including the institution of, or any such determination in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of, or the validity of, any such Material Intellectual Property or such Grantor's right to register the same or to own and maintain the same.

(e) Promptly after such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property that is material to the business of such Grantor with the United States Patent and

Trademark Office or the United States Copyright Office, such Grantor shall report such filing to the Administrative Agent (i) in the case of any Copyrights, within five Business Days (or such longer period of time permitted by the Administrative Agent in its sole discretion) after applying for a registration and again within five Business Days (or such longer period of time permitted by the Administrative Agent in its sole discretion) after receiving a registration and (ii) in the case of material Patents, Trademarks or other Intellectual Property, within five Business Days after the last day of the fiscal quarter in which such filing occurs. Upon request of the Administrative Agent, such Grantor shall execute and deliver, and have recorded in the United States Patent and Trademark office or the United States Copyright Office, as applicable, any and all agreements, instruments, documents, and papers as the Administrative Agent may request to evidence the Secured Parties' security interest in any Copyright, Patent, Trademark or other Intellectual Property of such Grantor.

(f) Such Grantor, subject to the exercise of its reasonable business judgment, taking into account the Secured Parties' interests under this Agreement, shall take reasonable and necessary steps, including in any proceeding before the United States Patent and Trademark Office or the United States Copyright Office, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of Intellectual Property material to its business, including the payment of required fees and taxes, the filing of responses to office actions issued by the United States Patent and Trademark Office and the United States Copyright Office, the filing of applications for renewal or extension, the filing of affidavits of use and affidavits of incontestability, the filing of divisional, continuation, continuation-in-part, reissue and renewal applications or extensions, the payment of maintenance fees, and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings.

(g) Such Grantor (either itself or through licensees), subject to the exercise of its reasonable business judgment, taking into account the Secured Parties' interests under this Agreement, shall not, without the prior written consent of the Administrative Agent, discontinue use of or otherwise abandon any of its registered Owned Intellectual Property, or abandon any application or any right to file an application for any patent, trademark, or copyright, unless such Grantor shall have previously determined that such use or the pursuit or maintenance of such Intellectual Property is no longer desirable in the conduct of such Grantor's business and that the loss thereof could not reasonably be expected to have a Material Adverse Effect.

(h) In the event that any Intellectual Property material to its business is infringed, misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Administrative Agent after it learns thereof and sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution.

(i) Such Grantor agrees that, should it obtain an ownership interest in any item of intellectual property which is not, as of the Closing Date, a part of the Intellectual Property Collateral (the "After-Acquired Intellectual Property"), (i) the provisions of Section 2.1 shall automatically apply thereto, (ii) any such After-Acquired Intellectual Property, and in the

case of trademarks, the goodwill of the business connected therewith or symbolized thereby, shall automatically become part of the Intellectual Property Collateral, (iii) in the case of any Copyrights, within five Business Days (or such longer period of time permitted by the Administrative Agent in its sole discretion) after obtaining such ownership, provide written notice thereof, (iv) in the case of material Patents, Trademarks or other Intellectual Property, within five Business Days after the last day of the fiscal quarter in which such ownership is obtained, and (v) promptly after the Administrative Agent's request, it shall provide the Administrative Agent with an amended Schedule 3.9(a) and take the actions specified in clauses (j) and (k) of Section 4.10.

(j) Such Grantor agrees to execute an Intellectual Property Security Agreement with respect to its Intellectual Property in order to record the security interest granted herein to the Administrative Agent for the ratable benefit of the Secured Parties with the United States Patent and Trademark Office and the United States Copyright Office.

(k) Such Grantor agrees to execute an Intellectual Property Security Agreement with respect to its After-Acquired Intellectual Property in order to record the security interest granted herein to the Administrative Agent for the ratable benefit of the Secured Parties with the United States Patent and Trademark Office and the United States Copyright Office.

(l) Such Grantor shall take commercially reasonable steps to protect the secrecy of all trade secrets or confidential information material to its business, including entering into confidentiality agreements with employees and labeling and restricting access to secret information and documents.

4.11. Contracts.

(a) Such Grantor shall perform and comply in all material respects with all its obligations under the Contracts, except where the failure to so perform and comply would not reasonably be expected to have a Material Adverse Effect.

(b) Such Grantor shall not amend, modify, terminate, waive or fail to enforce any provision of any Contract in any manner which would reasonably be expected to have a Material Adverse Effect.

(c) Such Grantor shall exercise promptly and diligently each and every material right which it may have under each contract (other than any right of termination), except where the failure to so exercise would not reasonably be expected to have a Material Adverse Effect.

(d) Such Grantor shall not permit to become effective in any document creating, governing or providing for any permit, lease, license or contract, a provision that would limit the creation, perfection or scope of, or exercise or enforcement of remedies in connection with, a Lien on such permit, lease, license or contract in favor of the Administrative Agent for the ratable benefit of the Secured Parties unless such Grantor believes, in its reasonable judgment, that such prohibition is usual and customary in transactions of such type.

4.12. Commercial Tort Claims. Such Grantor shall advise the Administrative Agent promptly after such Grantor becomes aware of any Commercial Tort Claim held by such Grantor individually or in the aggregate in excess of $1,000,000 and shall promptly execute a supplement to this Agreement in form and substance reasonably satisfactory to the Administrative Agent to grant a security interest in such Commercial Tort Claim to the Administrative Agent for the ratable benefit of the Secured Parties.

SECTION 5. REMEDIAL PROVISIONS

5.1. Certain Matters Relating to Receivables.

(a) The Administrative Agent shall have the right (but shall in no way be obligated), at its own expense if an Event of Default does not then exist, to make test verifications of the Receivables that are included in the Collateral in any manner and through any medium that it reasonably considers advisable, and each Grantor shall furnish all such assistance and information as the Administrative Agent may reasonably require in connection with such test verifications.

(b) Subject to the rights of the Administrative Agent under Section 5.2(b), each Grantor hereby agrees to use its commercially reasonable efforts to continue to collect all amounts due or to become due to such Grantor under the Receivables and any Supporting Obligation and diligently exercise each material right it may have under any Receivable and any Supporting Obligation, in each case, at its own expense. If required by the Administrative Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by any Grantor, (i) shall be promptly (and, in any event, within two Business Days) deposited by such Grantor in the exact form received, duly endorsed by such Grantor to the Administrative Agent if required, in a Collateral Account maintained under the sole dominion and control of the Administrative Agent, subject to withdrawal by the Administrative Agent for the account of the Secured Parties only as provided in Section 5.5, and (ii) until so turned over, shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor. Each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) At the Administrative Agent's request but subject to the confidentiality provisions set forth in the Credit Agreement, during the continuance of an Event of Default each Grantor shall make available to the Administrative Agent original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables that are included in the Collateral, including original orders, invoices and shipping receipts.

5.2. Communications with Obligors; Grantors Remain Liable.

(a) The Administrative Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables and parties to the Contracts to verify with them to the Administrative Agent's satisfaction the existence, amount and terms of any Receivables or Contracts.

(b) The Administrative Agent may at any time after the occurrence and during the continuance of an Event of Default notify, or require any Grantor to so notify, the Account Debtor or counterparty on any Receivable or Contract of the security interest of the Administrative Agent therein. In addition, after the occurrence and during the continuance of an Event of Default, the Administrative Agent may upon written notice to the applicable Grantor, notify, or require any Grantor to notify, the Account Debtor or counterparty to make all payments under the Receivables and/or Contracts directly to the Administrative Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable under each of the Receivables and Contracts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. No Secured Party shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by any Secured Party of any payment relating thereto, nor shall any Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto) or Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

5.3. Pledged Securities.

(a) Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given notice to the relevant Grantor of the Administrative Agent's intent to exercise its corresponding rights pursuant to Section 5.3(b), each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Equity Interests and all payments made in respect of the Pledged Notes, to the extent not prohibited by the Credit Agreement, and to exercise all voting, corporate and other ownership (or other similar) rights with respect to the Pledged Securities; provided, however, that no vote shall be cast or corporate or other ownership (or other similar) right exercised or other action taken which would materially impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) If an Event of Default shall occur and be continuing and the Administrative Agent shall have given notice to the relevant Grantor of the Administrative Agent's intent to exercise its rights pursuant to this Section 5.3(b): (i) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Administrative Agent who shall thereupon have the sole right, but shall be under no obligation, to exercise or refrain from exercising such voting and other consensual rights; (ii) the Administrative Agent shall have the right, without notice to any Grantor (where permitted by applicable law), to transfer all or any portion of the Investment Property to its name or the name of its nominee or agent; and (iii) the Administrative Agent shall have the right, without notice to any Grantor, to exchange any certificates or instruments representing any Investment Property for certificates or instruments of smaller or larger denominations. In order

to permit the Administrative Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Administrative Agent all proxies, dividend payment orders and other instruments as the Administrative Agent may from time to time reasonably request and each Grantor acknowledges that the Administrative Agent may utilize the power of attorney set forth herein.

(c) Each Grantor hereby authorizes and instructs each issuer of any Pledged Securities pledged by such Grantor hereunder to (i) comply with any instruction received by it from the Administrative Agent in writing that (A) states that an Event of Default has occurred and is continuing and (B) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each such issuer shall be fully protected in so complying, and (ii) upon any such instruction following the occurrence and during the continuance of an Event of Default, pay any dividends or other payments with respect to the Investment Property, including Pledged Securities, directly to the Administrative Agent.

5.4. Proceeds to be Turned Over To Administrative Agent. In addition to the rights of the Secured Parties specified in Section 5.1 with respect to payments of Receivables, if an Event of Default shall occur and be continuing, all Proceeds received by any Grantor consisting of cash, cash equivalents, checks and other near-cash items shall, if requested in writing by the Administrative Agent, be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Administrative Agent in the exact form received by such Grantor (duly endorsed by such Grantor to the Administrative Agent, if required). All Proceeds received by the Administrative Agent hereunder shall be held by the Administrative Agent in a Collateral Account maintained under its sole dominion and control. All Proceeds while held by the Administrative Agent in a Collateral Account (or by such Grantor in trust for the Secured Parties) shall continue to be held as collateral security for all the Obligations and shall not constitute payment thereof until applied as provided in Section 5.5.

5.5. Application of Proceeds. At such intervals as may be agreed upon by the Borrower and the Administrative Agent, or, if an Event of Default shall have occurred and be continuing, at any time at the Administrative Agent's election, the Administrative Agent may apply all or any part of the net Proceeds (after deducting fees and reasonable out-of-pocket expenses as provided in Section 5.6) constituting Collateral realized through the exercise by the Administrative Agent of its remedies hereunder, whether or not held in any Collateral Account, and any proceeds of the guarantee set forth in the Guaranty, in payment of the Obligations in accordance with the Credit Agreement.

5.6. Code and Other Remedies.

(a) If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the New York UCC

(whether or not the New York UCC applies to the affected Collateral) or its rights under any other applicable law or in equity. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may sell, lease, license, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of any Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Each Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten days notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The Administrative Agent may sell the Collateral without giving any warranties as to the Collateral. The Administrative Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely effect the commercial reasonableness of any sale of the Collateral. Each Grantor agrees that it would not be commercially unreasonable for the Administrative Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. To the extent permitted by applicable law, each Grantor hereby waives any claims against the Administrative Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Administrative Agent accepts the first offer received and does not offer such Collateral to more than one offeree. Each Grantor further agrees, at the Administrative Agent's request, to assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall reasonably select, whether at such Grantor's premises or elsewhere. To the extent permitted by applicable law, and so long as an Event of Default is continuing, the Administrative Agent shall have the right to enter onto the property where any Collateral is located and take possession thereof with or without judicial process.

(b) The Administrative Agent shall apply the net proceeds of any action taken by it pursuant to this Section 5.6, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral

or in any way relating to the Collateral or the rights of the Secured Parties hereunder, including reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations and only after such application and after the payment by the Administrative Agent of any other amounts required by any provision of law, including Section 9-615(a) of the New York UCC, need the Administrative Agent account for the surplus, if any, to any Grantor. If the Administrative Agent sells any of the Collateral upon credit, the Grantor will be credited only with payments actually made by the purchaser and received by the Administrative Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Administrative Agent may resell the Collateral and the Grantor shall be credited with proceeds of the sale. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against any Secured Party arising out of the exercise by any Secured Party of any rights hereunder.

(c) In the event of any disposition of any of the Intellectual Property, the goodwill of the business connected with and symbolized by any Trademarks subject to such disposition shall be included, and the applicable Grantor shall, to the extent commercially reasonable and feasible under the circumstances, supply the Administrative Agent or its designee with such Grantor's know-how and expertise, and with documents and things embodying the same, relating to the manufacture, distribution, advertising and sale of products or the provision of services relating to any Intellectual Property subject to such disposition, and such Grantor's customer lists and other records and documents relating to such Intellectual Property and to the manufacture, distribution, advertising and sale of such products and services.

5.7. Private Sales, etc.

(a) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Pledged Equity Interests, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Administrative Agent shall be under no obligation to delay a sale of any of the Pledged Equity Interests for the period of time necessary to permit the issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such issuer would agree to do so.

(b) Each Grantor agrees to use commercially reasonable efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Pledged Equity Interests pursuant to this Section 5.7 valid and binding and in compliance with any and all other applicable Requirements of Law. Each Grantor further agrees that a breach of any of the covenants contained in this Section 5.7 will cause irreparable injury to the Secured Parties, that the Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 5.7 shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to

assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing under the Credit Agreement or a defense of payment.

5.8. Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations and the reasonable fees and disbursements of any outside attorneys employed by any Secured Party to collect such deficiency.

5.9. BWXT Entities. Notwithstanding anything contained herein to the contrary, the Administrative Agent will not take any action with respect to any pledge of Stock or Stock Equivalents of any Person that directly or indirectly owns Stock or Stock Equivalents in any BWXT Entity if such action would constitute or result in the change of ownership of any Person that directly or indirectly owns Stock in a BWXT Entity if such change of ownership would require under then-existing law or any material contract, the prior approval of the U.S. Navy, the U.S. Department of Energy or any other Governmental Authority, without first obtaining such approval. Each Grantor covenants that, after the occurrence and during the continuance of an Event of Default, it will take all actions as may be requested by the Administrative Agent to obtain such approval.

SECTION 6. THE ADMINISTRATIVE AGENT

6.1. Administrative Agent's Appointment as Attorney-in-Fact, etc.

(a) Each Grantor hereby irrevocably constitutes and appoints the Administrative Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Administrative Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or Contract or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Receivable or Contract or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Administrative Agent may request to evidence the Secured Parties' security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 5.7, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate; (7) assign any Copyright, Patent or Trademark (along with the goodwill of the business to which any such Copyright, Patent or Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its sole discretion determine; and (8) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and do, at the Administrative Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 6.1(a) to the contrary notwithstanding, the Administrative Agent agrees that, except as provided in Section 6.1(b), it will not exercise any rights under the power of attorney provided for in this Section 6.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement; provided, however, that unless an Event of Default has occurred and is continuing or time is of the essence, the Administrative Agent shall not exercise this power without first making demand on the Grantor and the Grantor failing to promptly comply therewith.

(c) The expenses of the Administrative Agent incurred in connection with actions undertaken as provided in this Section 6.1, together with interest thereon at a rate *per annum* equal to the rate *per annum* at which interest would then be payable on past due Committed Loans that are Base Rate Loans under the Credit Agreement, from the date of payment by the Administrative Agent to the date reimbursed by the relevant Grantor, shall be payable by such Grantor to the Administrative Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

6.2. Duty of Administrative Agent. The Administrative Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. Neither the Administrative Agent, nor any other Secured Party nor any of their respective officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Secured Parties hereunder are solely to protect the Secured Parties' interests in the Collateral and shall not impose any duty upon any Secured Party to exercise any such powers. The Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, partners, employees, agents, attorneys and other advisors, attorneys-in-fact or affiliates shall be responsible to any Grantor for any act or failure to act hereunder, except to the extent that any such act or failure to act is found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from their own gross negligence or willful misconduct in breach of a duty owed to such Grantor.

6.3. Execution of Financing Statements. Each Grantor acknowledges that pursuant to Section 9-509(b) of the New York UCC and any other applicable law, each Grantor authorizes the Administrative Agent to file or record financing or continuation statements, and amendments thereto, and other filing or recording documents or instruments with respect to the Collateral, without the signature of such Grantor, in such form and in such offices as the Administrative Agent reasonably determines appropriate to perfect or maintain the perfection of the security interests of the Administrative Agent under this Agreement. Each Grantor agrees that such financing statements may describe the collateral in the same manner as described in this Agreement or as "all assets," "all personal property" or words of similar effect, regardless of whether or not the Collateral includes all assets or all personal property of such Grantor, or such other description as the Administrative Agent, in its sole judgment, determines is necessary or advisable that is of an equal or lesser scope or with greater detail. A photographic or other reproduction of this Agreement shall, where permitted by applicable law, be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

6.4. Authority of Administrative Agent. Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Administrative Agent and the other Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Administrative Agent and the Grantors, the Administrative Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

6.5. Appointment of Co-Administrative Agents. At any time or from time to time, in order to comply with any applicable requirement of law, the Administrative Agent may appoint another bank or trust company or one of more other Persons, either to act as co-agent or agents on behalf of the Secured Parties with such power and authority as may be necessary for the effectual operation of the provisions hereof and which may be specified in the instrument of appointment (which may, in the discretion of the Administrative Agent, include provisions for indemnification and similar protections of such co-agent or separate agent).

SECTION 7. MISCELLANEOUS

7.1. Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by each affected Grantor and the Administrative Agent, subject to any consents required under Section 10.01 of the Credit Agreement; provided that any provision of this Agreement imposing obligations on any Grantor may be waived by the Administrative Agent in a written instrument executed thereby.

7.2. Notices. All notices and communications hereunder shall be given to the addresses and otherwise made in accordance with Section 10.02 of the Credit Agreement; provided that notices and communications to any Grantor other than the Borrower shall be directed to such Grantor, at the address of the Borrower.

7.3. No Waiver by Course of Conduct; Cumulative Remedies. No Secured Party shall by any act (except by a written instrument pursuant to Section 7.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by any Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

7.4. Enforcement Expenses; Indemnification.

(a) Each Grantor agrees to pay or reimburse each Secured Party for its reasonable out-of-pocket costs and expenses incurred in collecting against such Grantor under the guarantee contained in the Guaranty or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Grantor is a party, including the reasonable fees and disbursements of outside counsel to each Secured Party and outside counsel to the Administrative Agent.

(b) Each Grantor agrees to pay, and to hold the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits and reasonable out-of-pocket costs, expenses or disbursements of any kind or nature whatsoever with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes (other than Excluded Taxes) which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) Each Grantor agrees to pay, and to hold the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits and reasonable out-of-pocket costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Borrower would be required to do so pursuant to Section 10.04 of the Credit Agreement.

(d) The agreements in this Section shall survive repayment of the Obligations and all other amounts payable under the Credit Agreement and the other Loan Documents.

7.5. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Secured Parties and their permitted successors and assigns; provided that, except as otherwise permitted by the Credit Agreement, no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent, and any attempted assignment without such consent shall be null and void.

7.6. Set-off; Governing Law; Submission to Jurisdiction; Venue; WAIVER OF JURY TRIAL. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. Without limiting the general applicability of the foregoing and the terms of the other Loan Documents to this Agreement and the parties hereto, the terms of Sections 10.08, 10.14 and 10.15 of the Credit Agreement are incorporated herein by reference, *mutatis mutandis*, with each reference to the "Borrower" therein (whether express or by reference to the Borrower as a "party" thereto) being a reference to the Grantors, and the parties hereto agree to such terms.

7.7. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

7.8. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such

prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

7.9. Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

7.10. Integration. This Agreement and the other Loan Documents represent the agreement of the Grantors, the Administrative Agent and the other Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by any Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Loan Documents.

7.11. Acknowledgments. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) no Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and the Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantors and the Secured Parties.

7.12. Additional Grantors. Each Subsidiary of the Borrower that is required to become a party to this Agreement pursuant to Section 6.22 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of a Joinder Agreement.

7.13. Releases; Termination of this Agreement.

(a) At such time as the Loans and the other Obligations (other than (i) contingent indemnification obligations and (ii) Obligations in respect of Secured Cash Management Agreements and Secured Hedge Agreements either (A) as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made or (B) notice has not been received by the Administrative Agent from the applicable Cash Management Bank or Hedge Bank that such amounts are then due and payable) shall have been paid in full, the Commitments under the Credit Agreement have been terminated or expired and each Letter of Credit issued under the Credit Agreement shall be Cash Collateralized or no longer outstanding (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the applicable L/C Issuer shall have been made), the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any

act by any party, and all rights to the Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, the Administrative Agent shall deliver to such Grantor any Collateral held by the Administrative Agent hereunder, and execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold or otherwise disposed of by any Grantor in a transaction permitted by the Credit Agreement, then the Administrative Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary for the release of the Liens created hereby on such Collateral. At the request and sole expense of the Borrower, a Grantor shall be released from its obligations hereunder in the event that all the Stock and Stock Equivalents in such Grantor shall be sold or otherwise disposed of in a transaction permitted by the Credit Agreement; provided that the Borrower shall have delivered to the Administrative Agent, at least three Business Days (or such lesser period permitted in writing by the Administrative Agent) prior to the date of the proposed release, a written request for such release identifying the relevant Grantor and the terms of the relevant sale or other disposition in reasonable detail, including the price thereof and any expenses incurred in connection therewith, together with a certification by the Borrower stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents.

(c) After the occurrence and during the continuance of Collateral Release Event and in accordance with Section 10.19(a) of the Credit Agreement, the Administrative Agent, at the request and sole expense of the Borrower, shall promptly execute and deliver to the Borrower all releases and other documents, and take such other action, reasonably necessary for the release of the Liens created hereby or by any other Security Instrument on the applicable Collateral

(d) Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement originally filed in connection herewith without the prior written consent of the Administrative Agent, subject to such Grantor's rights under Sections 9-509(d)(2) and 9-518 of the New York UCC.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the undersigned has caused this Pledge and Security Agreement to be duly executed and delivered as of the date first above written.

BABCOCK AND WILCOX INVESTMENT COMPANY

By: /s/ James C. Lewis
Name: James C. Lewis
Title: Treasurer

AMERICON EQUIPMENT SERVICES, INC.
AMERICON, INC.
APPLIED SYNERGISTICS, INC.
BABCOCK & WILCOX CHINA HOLDINGS, INC.
BABCOCK & WILCOX CONSTRUCTION CO., INC.
BABCOCK & WILCOX DENMARK HOLDINGS, INC.
BABCOCK & WILCOX EBENSBURG POWER, INC.
BABCOCK & WILCOX EQUITY INVESTMENTS, INC.
BABCOCK & WILCOX INTERNATIONAL SALES AND SERVICE CORPORATION
BABCOCK & WILCOX INTERNATIONAL, INC.
BABCOCK & WILCOX MODULAR NUCLEAR ENERGY LLC
BABCOCK & WILCOX NUCLEAR ENERGY, INC.
BABCOCK & WILCOX POWER GENERATION GROUP, INC.
BABCOCK & WILCOX TECHNOLOGY, INC.
DELTA POWER SERVICES, LLC
DIAMOND OPERATING CO., INC.
DIAMOND POWER AUSTRALIA HOLDINGS, INC.
DIAMOND POWER CHINA HOLDINGS, INC.
DIAMOND POWER EQUITY INVESTMENTS, INC.
DIAMOND POWER INTERNATIONAL, INC.
DPS BERKELEY, LLC
DPS CADILLAC, LLC
DPS FLORIDA, LLC
DPS GREGORY, LLC
DPS LOWELL COGEN, LLC
DPS MECKLENBURG, LLC
DPS MICHIGAN, LLC
DPS MOJAVE, LLC
DPS SABINE, LLC
INTECH, INC.
INVEY-COOPER SERVICES, L.L.C.
O&M HOLDING COMPANY
PALM BEACH RESOURCE RECOVERY CORPORATION
POWER SYSTEMS OPERATIONS, INC.
REVLOC RECLAMATION SERVICE, INC.
SOFCO - EFS HOLDINGS LLC

By: /s/ James C. Lewis
Name: James C. Lewis
Title: Treasurer

NATIONAL ECOLOGY CAMPANY

By: /s/ James C. Lewis
Name: James C. Lewis
Title: Authorized Signatory

BANK OF AMERICA, as Administrative Agent

By: /s/ Bridgett J. Manduk
Name: Bridgett J. Manduk
Title: Assistant Vice President

EXHIBIT A

NOTICE
OF
GRANT OF SECURITY INTEREST
IN
PATENTS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Pledge and Security dated as of May 3, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement") among the Grantor (as defined below), the other grantors party thereto and the Administrative Agent for the Secured Parties referenced therein, the undersigned Grantor has granted a continuing security interest in and continuing lien upon the patents and patent applications on Schedule 1 to the Administrative Agent for the ratable benefit of the Secured Parties.

The Grantors and the Administrative Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in such patents and patent applications (a) may only be terminated in accordance with the terms of the Agreement and (b) is not to be construed as an assignment of any patent or patent application.

GRANTOR:

[Address]

Very truly yours,

[GRANTOR]

By: _____
Name: _____
Title: _____

ADMINISTRATIVE AGENT:

[Address]

Acknowledged and accepted:

BANK OF AMERICA, N.A.,

By: _____
Name: _____
Title: _____

SCHEDULE 1

PATENTS

Patent No.	Description of Patent Item	Date of Patent

PATENT APPLICATIONS

Patent Applications No.	Description of Patent Applied for	Date of Patent Applications

NOTICE
OF
GRANT OF SECURITY INTEREST
IN
TRADEMARKS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Pledge and Security dated as of May 3, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement") among the Grantor (as defined below), the other grantors party thereto and the Administrative Agent for the Secured Parties referenced therein, the undersigned Grantor has granted a continuing security interest in and continuing lien upon the trademarks and trademark applications on Schedule 1 to the Administrative Agent for the ratable benefit of the Secured Parties.

The Grantors and the Administrative Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in such trademarks and trademark applications (a) may only be terminated in accordance with the terms of the Agreement and (b) is not to be construed as an assignment of any trademark or trademark application.

GRANTOR:

[Address]

Very truly yours,

[GRANTOR]

By: _____
Name: _____
Title: _____

ADMINISTRATIVE AGENT:

[Address]

Acknowledged and accepted:

BANK OF AMERICA, N.A.,

By: _____
Name: _____
Title: _____

SCHEDULE 1

TRADEMARKS

Trademark No.	Description of Trademark Item	Date of Trademark

TRADEMARK APPLICATIONS

Trademark Applications No.	Description of Trademark Applied for	Date of Trademark Applications

NOTICE
OF
GRANT OF SECURITY INTEREST
IN
COPYRIGHTS

United States Copyright Office

Ladies and Gentlemen:

Please be advised that pursuant to the Pledge and Security dated as of May 3, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement") among the Grantor (as defined below), the other grantors party thereto and the Administrative Agent for the Secured Parties referenced therein, the undersigned Grantor has granted a continuing security interest in and continuing lien upon the copyrights and copyright applications on Schedule 1 to the Administrative Agent for the ratable benefit of the Secured Parties.

The Grantors and the Administrative Agent, on behalf of the Secured Parties, hereby acknowledge and agree that the security interest in such copyrights and copyright applications (a) may only be terminated in accordance with the terms of the Agreement and (b) is not to be construed as an assignment of any copyright or copyright application.

GRANTOR:

[Address]

Very truly yours,

[GRANTOR]

By: _____
Name: _____
Title: _____

ADMINISTRATIVE AGENT:

[Address]

Acknowledged and accepted:

BANK OF AMERICA, N.A.,

By: _____
Name: _____
Title: _____

SCHEDULE 1

COPYRIGHTS

Copyright No.	Description of Copyright Item	Date of Copyright

COPYRIGHT APPLICATIONS

Copyright Applications No.	Description of Copyright Applied for	Date of Copyright Applications

Index to Financial Statements

Information contained herein is subject to completion or amendment. A registration statement on Form 10 relating to these securities has been filed with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

Subject to Completion, dated May 19, 2010

EXHIBIT 99.1

INFORMATION STATEMENT

The Babcock & Wilcox Company

Common Stock

(par value $0.01 per share)

This information statement is being furnished in connection with the distribution by McDermott International, Inc., or McDermott, to its stockholders of all the outstanding shares of common stock of The Babcock & Wilcox Company, or B&W. As of the date of this information statement, McDermott owns all of B&W's outstanding common stock.

On [ ], 2010, after consultation with financial and other advisors, McDermott's board of directors approved the distribution of 100% of McDermott's interest in B&W. You, as a holder of McDermott common stock, will be entitled to receive one share of B&W common stock for every [ ] shares of McDermott common stock held as of 5:00 p.m., New York City time, on the record date, [ ], 2010. The distribution date for the spin-off will be [ ], 2010.

You will not be required to pay any cash or other consideration for the shares of B&W common stock that will be distributed to you or to surrender or exchange your shares of McDermott common stock in order to receive shares of B&W common stock in the spin-off. The distribution will not affect the number of shares of McDermott common stock that you hold. No approval by McDermott stockholders of the spin-off is required or being sought. You are not being asked for a proxy and you are requested not to send a proxy.

As discussed under "The Spin-Off—Trading of McDermott Common Stock After the Record Date and Prior to the Distribution," if you sell your shares of McDermott common stock in the "regular way" market after the record date and on or prior to the distribution date, you also will be selling your right to receive shares of B&W common stock in connection with the spin-off. You are encouraged to consult with your financial advisor regarding the specific implications of selling your shares of McDermott common stock on or prior to the spin-off.

There is no current trading market for our common stock. However, we expect that a limited market, commonly known as a "when-issued" trading market, for B&W common stock will begin on or about [ ] and will continue up to and including the spin-off date, and we expect that "regular way" trading of B&W common stock will begin the first day of trading following the spin-off. Subject to the consummation of the spin-off, B&W has applied to list its common stock on the New York Stock Exchange under the symbol "BWC."

In reviewing this information statement, you should carefully consider the matters described under the caption "Risk Factors" beginning on page 14.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this information statement is truthful or complete. Any representation to the contrary is a criminal offense.

This information statement does not constitute an offer to sell or the solicitation of an offer to buy any securities.

McDermott first mailed this information statement to its stockholders on or about [ ], 2010.

The date of this information statement is [ ], 2010.

TABLE OF CONTENTS

Unless we otherwise state or the context otherwise indicates, all references in this information statement to "B&W," "our company," "we," "our," "ours" or "us" mean The Babcock & Wilcox Company and its subsidiaries as of the distribution date, and all references to "McDermott" mean McDermott International, Inc. and its subsidiaries, other than, for all periods following the spin-off, B&W.

The transaction in which B&W will be separated from McDermott and become an independent, publicly traded company is referred to in this information statement alternatively as the "distribution" or the "spin-off."

This information statement is being furnished solely to provide information to McDermott stockholders who will receive shares of B&W common stock in connection with the spin-off. It is not provided as an inducement or encouragement to buy or sell any securities. This information statement describes our business, the relationship between McDermott and us, and how the spin-off affects McDermott and its stockholders, and provides other information to assist you in evaluating the benefits and risks of holding or disposing of our common stock that you will receive in the spin-off. You should be aware of certain risks relating to the spin-off, our business and ownership of our common stock, which are described under the heading "Risk Factors." You should not assume that the information contained in this information statement is accurate as of any date other than the date set forth on the front cover. Changes to the information contained in this information statement may occur after that date, and we undertake no obligation to update the information contained in this information statement, unless we are required by applicable securities laws to do so.

QUESTIONS AND ANSWERS ABOUT THE SPIN-OFF

Q: What is the spin-off?

A: The spin-off involves McDermott's pro rata distribution to its stockholders of all the shares of our common stock. Following the spin-off, we will be a separate, publicly traded company, and McDermott will not retain any ownership interest in our company. You do not have to pay any consideration or give up any of your shares of McDermott common stock to receive shares of our common stock in the spin-off.

Q: Why is McDermott separating B&W from McDermott's business?

A: McDermott's board and management believe the benefits of the spinoff will include: the improved positioning of each of McDermott and B&W to accelerate growth; a more efficient allocation of capital for each company; the establishment of a distinct publicly traded stock for each company, which may be used as "currencies" to facilitate future acquisitions; the elimination of the risk to the combined businesses posed by recent modifications to the rules under the U.S. Federal Acquisition Regulations ("FAR") that limit the U.S. Government's ability to contract with "inverted" companies and their subsidiaries; and sharpened management focus and strategic vision and closer alignment of management incentives with stockholder value creation. Because of the likelihood that McDermott would be considered an "inverted" company under the recent modifications to the FAR (and, therefore, we would be considered a subsidiary of an "inverted" company), those modifications had a significant impact on the McDermott board's decision to effect the spin-off at this time. In approving the spin-off, McDermott's board of directors considered the fact that we derive a substantial amount of our revenues and profits from services provided to the U.S. Government, and the fact that any significant restriction on our ability to pursue future U.S. Government contract work consistent with our past operations would have a material adverse effect on the financial condition, results of operations and cash flows of the combined companies. The independent operation of the two businesses, with B&W as a Delaware corporation, will permit us to continue to serve the needs of our U.S. Government customers without interruption as a result of these rule modifications, while allowing McDermott the opportunity to pursue its independent business strategy. For more information, see "The Spin-Off —Reasons for the Spin-Off."

Q: What is being distributed in the spin-off?

A: McDermott will distribute one share of B&W common stock for every [ ] shares of McDermott common stock outstanding as of the record date for the spin-off. Approximately [ ] million shares of our common stock will be distributed in the spin-off, based upon the number of shares of McDermott common stock outstanding on [ ], 2010. The shares of our common stock to be distributed by McDermott will constitute all of the issued and outstanding shares of our common stock. For more information on the shares being distributed in the spin-off, see "Description of Capital Stock."

Q: What is the record date for the spin-off, and when will the spin-off occur?

A: The record date is [ ], 2010, and ownership is determined as of 5:00 p.m. New York City time on that date. Shares of B&W common stock will be distributed on [ ], 2010, which we refer to as the distribution date.

Q: As a holder of shares of McDermott common stock as of the record date, what do I have to do to participate in the spin-off?

A: Nothing. You will receive one share of B&W common stock for every [ ] shares of McDermott common stock held as of the record date and retained through the distribution date. You may also participate in the spin-off if you purchase McDermott common stock in the "regular way" market and retain your McDermott shares through the distribution date. See "The Spin-Off—Trading of McDermott Common Stock After the Record Date and Prior to the Distribution."

Q: If I sell my shares of McDermott common stock before or on the distribution date, will I still be entitled to receive B&W shares in the spin-off?

A: If you sell your shares of McDermott common stock prior to or on the distribution date, you

may also be selling your right to receive shares of B&W common stock. See "The Spin-Off—Trading of McDermott Common Stock After the Record Date and Prior to the Distribution." You are encouraged to consult with your financial advisor regarding the specific implications of selling your McDermott common stock prior to or on the distribution date.

Q: How will fractional shares be treated in the spin-off?

A: Any fractional share of our common stock otherwise issuable to you will be sold on your behalf, and you will receive a cash payment with respect to that fractional share. For an explanation of how the cash payments for fractional shares will be determined, see "The Spin-Off—Treatment of Fractional Shares."

Q: Will the spin-off affect the number of shares of McDermott I currently hold?

A: The number of shares of McDermott common stock held by a stockholder will be unchanged. The market value of each McDermott share, however, will decline to reflect the impact of the spin-off.

Q: What are the U.S. federal income tax consequences of the distribution of our shares of common stock to U.S. stockholders?

A: McDermott has requested a private letter ruling from the Internal Revenue Service (the "IRS") and intends to obtain an opinion of Baker Botts L.L.P., in each case, substantially to the effect that, for U.S. federal income tax purposes, the spin-off will qualify under Section 355 of the Internal Revenue Code of 1986, as amended (the "Code"), and certain transactions related to the spin-off will qualify under Sections 355 and/or 368 of the Code. The private letter ruling and the tax opinion will each be subject to certain qualifications and limitations.

Assuming the spin-off so qualifies, for U.S. federal income tax purposes, no gain or loss will be recognized by you, and no amount will be included in your taxable income (other than with respect to cash received in lieu of fractional shares), as a result of the spin-off. Certain U.S. federal income tax consequences of the spin-off are described in more detail under "The Spin-Off—Material U.S. Federal Income Tax Consequences of the Spin-Off."

Q: How will I determine the tax basis I will have in the shares of stock I receive in the spin-off?

A: Generally, your aggregate basis in the stock you hold in McDermott and the shares of our common stock received in the spin-off will equal the aggregate basis of McDermott common stock held by you immediately before the spin-off. This aggregate basis should be allocated between your McDermott common stock and our common stock you receive in the spin-off in proportion to the relative fair market value of each immediately after the distribution. You should consult your tax advisor about how this allocation will work in your situation (including a situation where you have purchased McDermott shares at different times or for different amounts) and regarding any particular consequences of the spin-off to you, including the application of state, local, and foreign tax laws. Certain material U.S. federal income tax consequences of the spin-off are described in more detail under "The Spin-Off—Material U.S. Federal Income Tax Consequences of the Spin-Off."

Q: Is the spin-off tax free to non-U.S. stockholders?

A: Non-U.S. stockholders will generally not be subject to U.S. tax on the spin-off. However, non-U.S. stockholders may be subject to tax on the spin-off in jurisdictions outside the U.S. The foregoing is for general information purposes and does not constitute tax advice. Stockholders should consult their own tax advisors regarding the particular consequences of the spin-off to them.

Q: Will I receive a stock certificate for B&W shares distributed as a result of the spin-off?

A: Registered holders of McDermott common stock who are entitled to participate in the spin-off will receive a book-entry account statement reflecting their ownership of B&W common stock. For additional information, registered stockholders in the United States should contact McDermott's transfer agent, Computershare Trust Company, N.A., at 1 (800) 446-2617, or through its website at *www.computershare.com*. Stockholders from outside the United States may call (781) 575-2723. See "The Spin-Off—When and How You Will Receive Your Shares."

Q: What if I hold my shares through a broker, bank or other nominee?

A: McDermott stockholders who hold their shares through a broker, bank or other nominee will have their brokerage account credited with shares of B&W common stock. For additional information, those stockholders should contact their broker or bank directly.

Q: What if I have stock certificates reflecting my shares of McDermott common stock? Should I send them to the transfer agent or to McDermott?

A: No, you should not send your stock certificates to the transfer agent or to McDermott. You should retain your McDermott stock certificates.

Q: What are the conditions to the spin-off?

A: The spin-off is subject to a number of conditions, including, among others, (1) the receipt of a private letter ruling from the IRS and an opinion of counsel, in each case, substantially to the effect that, for U.S. federal income tax purposes, the spin-off will qualify under Section 355 of the Code and certain transactions related to the spin-off will qualify under Sections 355 and/or 368 of the Code, and (2) the SEC declaring effective the registration statement of which this information statement forms a part. However, even if all of the conditions have been satisfied, McDermott may amend, modify or abandon any and all terms of the distribution and the related transactions at any time prior to the distribution date. See "The Spin-Off—Spin-Off Conditions and Termination."

Q: Will B&W incur any debt prior to or at the time of the spin-off?

A: We do not currently anticipate borrowing any amounts under our revolving credit facility prior to or at the time of the spin-off. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

Q: Are there risks to owning shares of B&W common stock?

A: Yes. B&W's business is subject both to general and specific business risks relating to its operations. In addition, the spin-off involves specific risks, including risks relating to B&W being an independent, publicly traded company. See "Risk Factors."

Q: Does B&W plan to pay cash dividends?

A: No. We do not currently plan to pay a regular dividend on our common stock following the spin-off. Our credit agreement includes restrictions on our ability to pay dividends. The declaration and amount of future dividends, if any, will be determined by our board of directors and will depend on our financial condition, earnings, capital requirements, financial covenants, industry practice and other factors our board of directors deems relevant. See "Dividend Policy."

Q: Will the B&W common stock trade on a stock market?

A: Currently, there is no public market for our common stock. Subject to the consummation of the spin-off, we intend to list our common stock on the New York Stock Exchange under the symbol "BWC." We anticipate that limited trading in shares of B&W common stock will begin on a "when-issued" basis on or shortly before the record date and will continue up to and including through the distribution date and that "regular-way" trading in shares of B&W common stock will begin on the first trading day following the distribution date. The "when-issued" trading market will be a market for shares of B&W common stock that will be distributed to McDermott stockholders on the distribution date. If you owned shares of McDermott common stock at the close of business on the record date, you would be entitled to shares of our common stock distributed pursuant to the spin-off. You may trade this entitlement to shares of B&W common stock, without the shares of McDermott common stock you own, on the "when-issued" market.

We cannot predict the trading prices for our common stock before, on or after the distribution date.

Q: What will happen to McDermott stock options, restricted shares, restricted stock units, deferred stock units and performance shares?

A: We currently expect that, subject to approval of the compensation committee of McDermott's board of directors, equity-based compensation awards will generally be treated as follows:

- Each outstanding option to purchase shares of McDermott common stock that is held by a director, officer or employee of McDermott who will remain a director, officer or employee of McDermott and will not be a director, officer or employee of B&W immediately after the spin-off will be replaced with an adjusted option to purchase McDermott common stock. Each of those adjusted options will reflect adjustments that will be generally intended to preserve the intrinsic value of the original option and the ratio of the exercise price to the fair market value of the stock subject to the option. To the extent the options being adjusted are vested, the adjusted options will also be vested.
- Each outstanding option to purchase shares of McDermott common stock that is held by a person who is or will be a director of B&W (but not of McDermott) or by a person who is or will be an officer or employee of B&W immediately after the spin-off will be replaced with substitute options to purchase shares of B&W common stock. Each of those substitute options will have terms that will be generally intended to preserve the intrinsic value of the original option and the ratio of the exercise price to the fair market value of the stock subject to the option. To the extent the options being replaced are vested, the substitute options will also be vested.
- Each outstanding option to purchase shares of McDermott common stock that is held by a director of McDermott who will remain on the board of directors of McDermott and will also serve on the board of directors of B&W immediately after the spin-off will be replaced with both an adjusted McDermott stock option and a substitute B&W stock option. Both options, when combined, will have terms that will be generally intended to preserve the intrinsic value of the original option and the ratio of the exercise price to the fair market value of the stock subject to the option. All McDermott stock options held by directors of McDermott as of the distribution date will have previously become vested pursuant to their existing terms. Accordingly, all adjusted or substitute options issued to McDermott directors will also be vested.
- Each outstanding option to purchase shares of McDermott common stock that is held by a director, officer or employee of McDermott who will, as a result of termination or retirement from service in connection with the spin-off, not be a director, officer or employee of either McDermott or B&W immediately after the spin-off will, to the extent vested or to the extent vesting is accelerated pursuant to our existing agreements with such persons, be replaced with both an adjusted vested McDermott stock option and a substitute vested B&W stock option. Both options, when combined, will have terms that will be generally intended to preserve the intrinsic value of the original option and the ratio of the exercise price to the fair market value of the stock subject to the option.
- The McDermott restricted stock awards, restricted stock unit awards and deferred stock unit awards of officers or employees of McDermott who will remain officers or employees of McDermott and will not become officers or employees of B&W immediately after the spin-off will be replaced with adjusted McDermott awards, each of which will generally preserve the value of the original award. As of the distribution date, none of McDermott's directors will hold any restricted stock awards, restricted stock unit awards or deferred stock unit awards.
- The McDermott restricted stock awards, restricted stock unit awards and deferred stock unit awards of persons who are or will be officers or employees of B&W immediately after the spin-off will be converted into substitute B&W awards, each of which will generally preserve the value of the original award.

- The McDermott restricted stock awards, restricted stock unit awards and deferred stock unit awards of officers or employees of McDermott who will, as a result of termination in connection with the spin-off, not be officers or employees of either McDermott or B&W immediately after the spin-off will, to the extent that vesting is accelerated or the restrictions lapse pursuant to our existing agreements with such persons, be converted into rights to receive (1) an equivalent number of unrestricted shares of McDermott common stock and (2) [ ] shares of B&W common stock for each such share of McDermott common stock, in accordance with the spin-off distribution.
- The McDermott performance share awards of officers or employees of McDermott who will remain officers or employees of McDermott and will not become officers or employees of B&W immediately after the spin-off will be converted into unvested rights to receive the value of deemed target performance in unrestricted shares of McDermott common stock, with the same vesting terms as the original awards.
- The McDermott performance share awards of persons who are or will be officers or employees of B&W immediately after the spin-off will be converted into unvested rights to receive the value of deemed target performance in unrestricted shares of B&W common stock, with the same vesting terms as the original awards.
- The McDermott performance share awards of officers or employees of McDermott who will, as a result of termination in connection with the spin-off, not be officers or employees of either McDermott or B&W immediately after the spin-off will, to the extent that vesting is accelerated pursuant to our existing agreements with such persons, be converted into rights to receive the value of deemed target performance in unrestricted shares of McDermott common stock and B&W common stock, in accordance with the spin-off distribution.

For additional information on the treatment of McDermott equity-based compensation awards, see “The Spin-Off—Treatment of Stock-Based Awards.”

Q: What will the relationship between McDermott and B&W be following the spin-off?

A: After the spin-off, McDermott will not own any shares of B&W common stock, and each of McDermott and B&W will be an independent, publicly traded company with its own management team and board of directors. However, in connection with the spin-off, we are entering into a number of agreements with McDermott that will govern the spin-off and allocate responsibilities for obligations arising before and after the spin-off, including, among others, obligations relating to our employees and taxes. See “Relationship with McDermott After the Spin-Off.”

Q: Will I have appraisal rights in connection with the spin-off?

A: No. Holders of shares of McDermott common stock are not entitled to appraisal rights in connection with the spin-off.

Q: Who is the transfer agent for your common stock?

A: Computershare Trust Company, N.A.
250 Royall Street
Canton, Massachusetts 02021-1011

Q: Who is the distribution agent for the spin-off?

A: Computershare Trust Company, N.A.
250 Royall Street
Canton, Massachusetts 02021-1011

Q: Whom can I contact for more information?

A: If you have questions relating to the mechanics of the distribution of B&W shares, you should contact the distribution agent:

Computershare Trust Company, N.A.
250 Royall Street
Canton, Massachusetts 02021-1011
Telephone: 1 (800) 446-2617

Before the spin-off, if you have questions relating to the spin-off, you should contact McDermott’s corporate secretary at:

McDermott International, Inc.
777 N. Eldridge Pkwy.
Houston, Texas 77079
Attention: Corporate Secretary
Telephone: (281) 870-5901

SUMMARY

The following is a summary of some of the information contained in this information statement. It does not contain all the details concerning us or the spin-off, including information that may be important to you. We urge you to read this entire document carefully, including the risk factors, our historical and pro forma combined financial statements and the notes to those financial statements.

Unless the context requires otherwise or we specifically indicate otherwise, the terms "B&W," "our company," "we," "our," "ours" and "us" refer to The Babcock & Wilcox Company, a company incorporated under the laws of the state of Delaware, and its subsidiaries as of the distribution date; and the term "McDermott" refers to McDermott International, Inc., a publicly traded Panamanian corporation, and its subsidiaries (excluding us and any of our subsidiaries).

We describe in this information statement the business to be held by us after the spin-off as if it were our business for all historical periods described. However, we are an entity that will not have independently conducted any operations before the spin-off. References in this document to our historical assets, liabilities, products, business or activities generally refer to the historical assets, liabilities, products, business or activities of the B&W business as it was conducted as part of McDermott and its subsidiaries before the spin-off. Our historical combined financial results as part of McDermott contained in this information statement may not be indicative of our financial results in the future as an independent company or reflect what our financial results would have been had we been an independent company during the periods presented.

Except as otherwise indicated or unless the context otherwise requires, the information included in this information statement assumes the completion of the separation of B&W from McDermott and the related distribution of our common stock.

Our Company

We are currently a wholly owned subsidiary of McDermott. Following the spin-off, we will be an independent, publicly traded company. McDermott will not retain any ownership interest in our company. Our assets and businesses primarily consist of those that McDermott reports as its Power Generation Systems and Government Operations segments in its consolidated financial statements.

B&W is a leading technology innovator in power generation systems, a specialty manufacturer of nuclear components and a premier service provider in its segments, with an operating history of more than 140 years. We provide a variety of products and services to customers in the power and other steam-using industries, including electric utilities and other power generators, industrial customers in various other industries, and the U.S. Government. We operate in two business segments: Power Generation Systems and Government Operations. Through our Power Generation Systems segment, we design, engineer, manufacture, supply, construct and maintain power generation systems and environmental control systems, primarily for large utility and industrial customers, and we provide related aftermarket parts and services. Through our Government Operations segment, we manufacture nuclear components and provide various services to the U.S. Government, including uranium processing, environmental site restoration services, and management and operating services for various U.S. Government-owned facilities. These services are provided to the U.S. Department of Energy (the "DOE"), including the National Nuclear Security Administration (the "NNSA"), the Office of Nuclear Energy, the Office of Science and the Office of Environmental Management.

We participate in the ownership of a variety of entities with third parties, primarily through corporations, limited liability companies and partnerships, which we refer to as "joint ventures." Our Government Operations segment manages and operates complex, high-consequence nuclear and national security operations for the DOE and the NNSA through joint ventures. We employ approximately 13,000 people worldwide, not including approximately 10,000 joint venture employees.

For the year ended December 31, 2009, we generated revenues of approximately $2.9 billion and operating income of approximately $270 million. For the year ended December 31, 2008, we generated revenues of approximately $3.4 billion and operating income of approximately $444.5 million.

In connection with the spin-off, we and McDermott are entering into certain agreements, including a master separation agreement, a tax sharing agreement and an employee matters agreement, under which we and McDermott will, among other things, indemnify each other against certain liabilities arising from our respective businesses. See “Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us.”

Following the spin-off, the parent company in our group of companies will be The Babcock & Wilcox Company, which was incorporated in Delaware as a subsidiary of McDermott. The address of our principal executive offices is The Harris Building, 13024 Ballantyne Corporate Place, Suite 700, Charlotte, North Carolina 28277. Our main telephone number is (704) 625-4900.

Summary of the Spin-Off

The following is a brief summary of the terms of the spin-off. Please see "The Spin-Off" for a more detailed description of the matters described below.

Distributing company	McDermott, which is the parent company of B&W. After the distribution, McDermott will not retain any shares of our common stock.
Distributed company	B&W, which is currently a wholly owned subsidiary of McDermott. After the distribution, B&W will be an independent, publicly traded company.
Distribution ratio	Each holder of McDermott common stock will receive one share of our common stock for every [ ] shares of McDermott common stock held on the record date. Approximately [ ] million shares of our common stock will be distributed in the spin-off, based upon the number of shares of McDermott common stock outstanding on [ ], 2010. The shares of our common stock to be distributed by McDermott will constitute all of the issued and outstanding shares of our common stock. For more information on the shares being distributed in the spin-off, see "Description of Capital Stock."
Fractional shares	The transfer agent identified below will aggregate fractional shares into whole shares and sell them on behalf of stockholders in the open market at prevailing market prices and distribute the proceeds pro rata to each McDermott stockholder who otherwise would have been entitled to receive a fractional share in the spin-off. You will not be entitled to any interest on the amount of payment made to you in lieu of a fractional share. See "The Spin-Off—Treatment of Fractional Shares."
Distribution procedures	On or about the distribution date, the distribution agent identified below will distribute the shares of our common stock to be distributed by crediting those shares to book-entry accounts established by the transfer agent for persons who were stockholders of McDermott as of 5:00 p.m., New York City time, on the record date. Shares of B&W common stock will be issued only in book-entry form. No paper stock certificates will be issued. You will not be required to make any payment or surrender or exchange your shares of McDermott common stock or take any other action to receive your shares of our common stock. However, as discussed below, if you sell shares of McDermott common stock in the "regular way" market between the record date and the distribution date, you will be selling your right to receive the associated shares of our common stock in the distribution. Registered stockholders will receive additional information from the transfer agent shortly after the distribution date. Beneficial stockholders will receive information from their brokerage firms.
Distribution agent, transfer agent and registrar for our shares of common stock	Computershare Trust Company, N.A.

Record date	5:00 p.m., New York City time, on [ ], 2010.
Distribution date	[ ], 2010.
Trading prior to or on the distribution date	It is anticipated that, beginning shortly before the record date, McDermott's shares will trade in two markets on the New York Stock Exchange, a "regular way" market and an "ex-distribution" market. Investors will be able to purchase McDermott shares without the right to receive shares of our common stock in the "ex-distribution" market for McDermott common stock. Any holder of McDermott common stock who sells McDermott shares in the "regular way" market on or before the distribution date will also be selling the right to receive shares of our common stock in the spin-off. You are encouraged to consult with your financial advisor regarding the specific implications of selling McDermott common stock prior to or on the distribution date.
Assets and liabilities of the distributed company	Before the distribution date, we and McDermott will enter into a master separation agreement that will contain the key provisions relating to the separation of our business from McDermott and the distribution of our shares of common stock. The master separation agreement will identify the assets to be transferred, liabilities to be assumed and contracts to be assigned either to us by McDermott or by us to McDermott in the spin-off and describe when and how these transfers, assumptions and assignments will occur. See "Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us—Master Separation Agreement."
Relationship with McDermott after the spin-off	Before the distribution date, we and McDermott will also enter into agreements to define various continuing relationships between McDermott and us in various contexts. In particular, we will enter into transition services agreements under which we and McDermott will provide each other certain transition services on an interim basis. We and a subsidiary of McDermott will also enter into an agreement providing for the sharing of taxes incurred before and after the distribution, various indemnification rights with respect to tax matters and restrictions to preserve the tax-free status of the distribution to McDermott. See "Relationship with McDermott After the Spin-Off —Agreements Between McDermott and Us."
Indemnities	Under the terms of the tax sharing agreement we will enter into in connection with the spin-off, we will generally be responsible for any taxes imposed on us or McDermott and its subsidiaries in the event that certain transactions related to the spin-off were to fail to qualify for tax-free treatment. However, if these transactions were to fail to qualify for tax-free treatment because of actions or failures to act by McDermott or its subsidiaries, a subsidiary of McDermott would be responsible for all such taxes. Please see "The Spin-Off—Material

	U.S. Federal Income Tax Consequences of the Spin-Off." Please see also "Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us—Tax Sharing Agreement." Under the master separation agreement entered into in connection with the spin-off, we will also indemnify McDermott and its remaining subsidiaries against various claims and liabilities relating to the past operation of our business. Please see "Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us—Master Separation Agreement."
U.S. federal income tax consequences	McDermott has requested a private letter ruling from the IRS and expects to obtain an opinion of counsel, in each case, substantially to the effect that, for U.S. federal income tax purposes, the spin-off will qualify under Section 355 of the Code and certain transactions related to the spin-off will qualify under Sections 355 and/or 368 of the Code. Certain United States federal income tax consequences of the spin-off are described in more detail under "The Spin-Off—Material U.S. Federal Income Tax Consequences of the Spin-Off."
Conditions to the spin-off	We expect that the spin-off will be effective on [ ], 2010, provided that the conditions set forth under the caption "The Spin-Off—Spin-Off Conditions and Termination" have been satisfied in McDermott's sole and absolute discretion. However, even if all of the conditions have been satisfied, McDermott may amend, modify or abandon any and all terms of the distribution and the related transactions at any time prior to the distribution date.
Reasons for the spin-off	McDermott's board and management believe the benefits of the spinoff will include: the improved positioning of each of McDermott and B&W to accelerate growth; a more efficient allocation of capital for each company; the establishment of a distinct publicly traded stock for each company, which may be used as "currencies" to facilitate future acquisitions; the elimination of the risk to the combined businesses posed by recent modifications to the rules under the FAR that limit the U.S. Government's ability to contract with "inverted" companies and their subsidiaries; and sharpened management focus and strategic vision and closer alignment of management incentives with stockholder value creation. Because of the likelihood that McDermott would be considered an "inverted" company under the recent modifications to the FAR (and, therefore, we would be considered a subsidiary of an "inverted" company), those modifications had a significant impact on the McDermott board's decision to effect the spin-off at this time. In approving the spin-off, McDermott's board of directors considered the fact that we derive a substantial amount of our revenues and profits from services provided to the U.S. Government, and the fact that any significant restriction on our ability to pursue future U.S. Government contract work consistent with our past operations would have a material adverse effect on the financial condition, results of operations and

	cash flows of the combined companies. The independent operation of the two businesses, with B&W as a Delaware corporation, will permit us to continue to serve the needs of our U.S. Government customers without interruption as a result of these rule modifications, while allowing McDermott the opportunity to pursue its independent business strategy. For more information, see "The Spin-Off—Reasons for the Spin-Off."
Stock exchange listing	Currently there is no public market for our common stock. We intend to list our common stock on the New York Stock Exchange, or the NYSE, under the symbol "BWC." We anticipate that trading will commence on a "when-issued" basis on or shortly before the record date. "When-issued" trading refers to a transaction made conditionally because the security has been authorized but not yet issued. On the first trading day following the distribution of our shares of common stock in the spin-off, "when-issued" trading in respect of our common stock will end and "regular way" trading will begin. "Regular way" trading refers to trading after a security has been issued and typically involves a transaction that settles on the third full business day following the date of the transaction. We cannot predict the trading prices for our common stock following the spin-off. In addition, McDermott common stock will remain outstanding and will continue to trade on the NYSE.
Incurrence of debt	Our credit agreement provides a revolving credit facility to satisfy our anticipated working capital requirements and other financing needs. We anticipate that, immediately prior to the distribution date, we will have combined cash and equivalents and available liquidity under the revolving credit facility totaling at least $[ ] million. The credit agreement includes customary covenants that, among other things, will require us to maintain certain financial ratios and restrict our ability to incur additional indebtedness. To the extent permitted, we may also incur additional indebtedness from time to time for general corporate purposes, including working capital requirements, capital expenditures and future acquisitions. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources." See also "Risk Factors—Risks Relating to Our Industry and Our Business—Our debt obligations could restrict our operations."
Risk factors	You should review the risks relating to the spin-off, our industry and our business and ownership of our common stock described in "Risk Factors."

SUMMARY HISTORICAL AND PRO FORMA COMBINED FINANCIAL INFORMATION

The following table presents our summary historical combined financial information and unaudited pro forma combined financial information. We derived the historical combined statement of operations information for each of the years ended December 31, 2009, 2008 and 2007, and the balance sheet information as of December 31, 2009 and 2008, from our audited combined financial statements included in this information statement. We derived the historical condensed combined statement of operations information for the three months ended March 31, 2010 and 2009, and the balance sheet information as of March 31, 2010 and 2009, from our unaudited condensed combined financial statements included in this information statement. We derived the historical combined statement of operations information for the years ended December 31, 2006 and 2005, and the balance sheet information as of December 31, 2007, 2006 and 2005, from our unaudited combined financial statements not included in this information statement. The summary historical combined financial information reflects the effects of certain assets to be transferred to, and liabilities to be assumed by, McDermott in connection with the spin-off, and does not reflect the effects of certain liabilities to be assumed by B&W in connection with the spin-off. See "Unaudited Pro Forma Combined Financial Data."

The unaudited pro forma combined financial information set forth below is based on available information and assumptions that we believe are factually supportable. The information has been prepared on a combined basis using historical results of operations and bases of assets and liabilities of The Babcock & Wilcox Operations of McDermott International, Inc. and includes intercompany allocations of expenses. The costs to operate our business as an independent public entity may exceed the historical allocations of expenses related to areas that include, but are not limited to, litigation and other legal matters, compliance with the Sarbanes-Oxley Act and other corporate governance matters, insurance and claims management and the related cost of insurance, as well as general overall purchasing power. These possible increased costs are not included in the unaudited pro forma combined financial information, as their impact on our results of operations cannot be reasonably estimated. The unaudited pro forma combined financial information also does not reflect any significant changes that may occur after the spin-off in our financing plans and cost structure, including expenditures related to our growth initiatives.

The unaudited pro forma combined statement of operations information for the year ended December 31, 2009 and the three months ended March 31, 2010 includes adjustments to give effect to:

- the deemed transfer by B&W to McDermott of certain assets that will not be held by B&W;
- the deemed assumption by B&W of certain liabilities that were previously liabilities of McDermott or other subsidiaries of McDermott; and
- the deemed assumption by McDermott or other subsidiaries of McDermott of certain liabilities that were previously liabilities of B&W;

in each case as if such transfers occurred on January 1, 2009. The unaudited pro forma combined balance sheet information as of March 31, 2010 includes adjustments to give effect to these deemed transactions as if they had occurred on March 31, 2010.

You should read the summary historical and pro forma combined financial information in conjunction with our combined financial statements and the accompanying notes, "Selected Historical Combined Financial Data," "Unaudited Pro Forma Combined Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," included in this information statement. The financial information presented below is not necessarily indicative of our future performance or what our financial position and results of operations would have been had we operated as an independent public company during the periods presented or, in the case of the unaudited pro forma information, had the transactions reflected in the pro forma adjustments actually occurred as of the dates assumed.

	Pro Forma		Historical						
	Three Months Ended March 31, 2010	Year Ended December 31, 2009	Three Months Ended March 31,		Year Ended December 31,				
			2010	2009	2009	2008	2007	2006[1]	2005[1]
						(In thousands)			
Statement of Operations Information:									
Revenues	$ 662,388	$ 2,854,632	$ 662,388	$ 785,053	$2,854,632	$3,398,574	$3,199,944	$2,517,606	$ 601,042
Costs and expenses	635,397	2,630,631	637,661	700,090	2,640,162	3,005,883	2,907,958	2,348,569	560,223
Equity in income of investees	14,019	55,094	14,019	10,345	55,094	51,792	45,647	39,809	37,705
Operating income	41,010	279,095	38,746	95,308	269,564	444,483	337,633	208,846	78,524
Other income (expense)	(3,134)	(15,527)	(8,634)	(6,062)	(37,263)	(11,744)	(23,285)	7,990	(2,439)
Income before provision for income taxes	37,876	263,568	30,112	89,246	232,301	432,739	314,348	216,836	76,085
Provision for (benefit from) income taxes	20,328	99,319	13,256	35,710	84,381	108,885	99,018	84,826	(17,666)
Net income attributable to The Babcock & Wilcox Operations of McDermott International, Inc.	$ 17,535	$ 164,093	$ 16,843	$ 53,484	$ 147,764	$ 323,766	$ 215,250	$ 131,976	$ 93,751

	Pro Forma		Historical						
	As of March 31, 2010	As of December 31, 2009	As of March 31,		As of December 31,				
			2010	2009	2009	2008	2007	2006[1]	2005[1]
						(In thousands)			
Balance Sheet Information:									
Working capital	$ 96,027	$ 93,992	$ (51,440)	$ (32,128)	$ 71,539	$ (90,040)	$ (192,874)	$ (297,286)	$ 429
Total assets	2,403,245	2,435,119	2,588,769	2,498,580	2,603,859	2,506,841	2,149,636	2,222,818	508,772
Notes payable and current maturities of long-term debt	4,993	6,432	4,993	4,161	6,432	9,021	6,599	257,492	4,250
Long-term debt	5,343	4,222	5,343	5,915	4,222	6,109	10,609	15,242	12,975
Other Data:									
Depreciation and amortization	$ 16,812	$ 72,212	$ 16,812	$ 16,263	$ 72,212	$ 45,985	$ 41,672	$ 32,484	$ 14,493
Capital expenditures	18,981	93,725	18,981	20,029	93,725	63,014	60,709	43,203	27,109
Backlog	4,571,972	4,740,060	4,571,972	4,918,507	4,740,060	5,358,740	5,064,226	3,494,477	1,772,258

(1) Results for the year ended December 31, 2006 include approximately ten months for the principal operating subsidiaries of our Power Generation Systems segment, which were included in our results effective February 22, 2006. We did not include the results of operations of these entities in our financial statements from February 22, 2000 through February 22, 2006 due to the Chapter 11 proceedings involving several of our subsidiaries. On February 22, 2000, Babcock & Wilcox Power Generation Group, Inc. (formerly known as The Babcock & Wilcox Company) ("B&W PGG") and certain of its subsidiaries (collectively, the "Debtors") filed a voluntary bankruptcy petition in the U.S. Bankruptcy Court for the Eastern District of New Orleans to reorganize under Chapter 11 of the U.S. Bankruptcy Code. The Debtors took this action as a means to determine and comprehensively resolve their asbestos liability as a result of asbestos-containing boilers and other products the Debtors sold, installed or serviced in prior decades. On February 22, 2000, the Debtors' operations became subject to the jurisdiction of the Bankruptcy Court. Because we lost control of the Debtors while their operations were subject to the jurisdiction of the Bankruptcy Court, consistent with the requirements of ASC 810-10-15-10 (a), (1) (ii), we deconsolidated the results of the Debtors in our financial statements on February 22, 2000 and presented our investment in the Debtors on the cost basis of accounting. Subsequent to February 22, 2000, we wrote this investment down to zero as impaired. On February 22, 2006, the Debtors emerged from bankruptcy. The results of the Debtors were reconsolidated into our financial statements effective February 22, 2006 and for all periods after such date. We accounted for this reconsolidation in a manner similar to the acquisition of the non-controlling interest in a subsidiary.

RISK FACTORS

You should carefully consider each of the following risks and all of the other information contained in this information statement. Some of these risks relate principally to our spin-off from McDermott, while others relate principally to our business and the industry in which we operate or to the securities markets generally and ownership of our common stock.

If any of these risks develop into actual events, our business, financial condition, results of operations or cash flows could be materially adversely affected by any of these risks, and, as a result, the trading price of our common stock could decline.

Risks Relating to Our Industry and Our Business

We derive substantial revenues from electric power generating companies and other steam-using industries, with demand for our products and services depending on capital expenditures in these historically cyclical industries. Additionally, recent legislative and regulatory developments relating to greenhouse gas emissions are impacting plans for new coal-fired power plants within the United States.

The demand for power generation products and services depends primarily on the capital expenditures of electric power generating companies, paper companies and other steam-using industries. These capital expenditures are influenced by such factors as:

- prices for electricity, along with the cost of production and distribution;
- prices for natural resources such as coal and natural gas;
- demand for electricity, paper and other end products of steam-generating facilities;
- availability of other sources of electricity, paper or other end products;
- requirements of environmental legislation and regulation, including potential requirements applicable to carbon dioxide emissions;
- levels of capacity utilization at operating power plants, paper mills and other steam-using facilities;
- requirements for maintenance and upkeep at operating power plants and paper mills to combat the accumulated effects of wear and tear;
- ability of electric generating companies and other steam users to raise capital; and
- total costs of electricity production using boilers compared to total costs using gas turbines and other alternative forms of generation.

A material decline in capital expenditures by electric power generating companies, paper companies and other steam-using industries over a sustained period of time could materially and adversely affect the demand for our power generation products and services and, therefore, our financial condition, results of operations and cash flows.

U.S. coal-fired power plants have been scrutinized by environmental groups and government regulators over the emissions of potentially harmful pollutants. In addition to recent legislation at the state level, the U.S. Congress is considering legislation that would limit greenhouse gas emissions, including carbon dioxide. In April 2007, the U.S. Supreme Court ruled that the U.S. Environmental Protection Agency (the “EPA”) has some authority to regulate greenhouse gases under the Clean Air Act. In 2009, the EPA published a final rule requiring the reporting of greenhouse gas emissions from specified large sources in the United States beginning in 2011 for emissions occurring in 2010 and a final rule finding that current and projected concentrations of six key greenhouse gases in the atmosphere threaten public health and welfare of current and future generations. In addition, in 2009, the EPA issued a “Mandatory Reporting of Greenhouse Gases” final rule. As a result of these

and other developments, some plans for coal-fired power plants have been cancelled or suspended. We cannot predict the ultimate impact that legislative and regulatory developments in this area will have on the overall demand for our products and services.

We rely on U.S. Government contracts for a large percentage of our revenue, and some of those contracts are subject to continued appropriations by Congress and may be terminated or delayed if future funding is not made available. In addition, the U.S. Government may not renew our existing contracts.

For the year ended December 31, 2009, we relied on U.S. Government contracts for approximately 33% of our revenue. Government contracts are subject to various uncertainties, restrictions and regulations, including oversight audits, which could result in withholding or delaying of payments to us. In addition, some of our large, multi-year contracts with the U.S. Government are subject to annual funding determinations and the continuing availability of Congressional appropriations. Although multi-year operations may be planned in connection with major procurements, Congress generally appropriates funds on a fiscal-year basis even though a program may continue for several years. Consequently, programs often are only partially funded initially, and additional funds are committed only as Congress makes further appropriations. As a result, we are subject to ongoing uncertainties associated with U.S. Government budget restraints and other factors affecting government funding.

The U.S. Government typically can terminate or modify any of its contracts with us either for its convenience or if we default by failing to perform under the terms of the applicable contract. A termination arising out of our default could expose us to liability and have an adverse effect on our ability to compete for future contracts and orders. If any of our contracts reflected in backlog are terminated by the U.S. Government, our backlog would be reduced by the expected value of the remaining work under such contracts. In addition, on those contracts for which we are teamed with others and are not the prime contractor, the U.S. Government could terminate a prime contract under which we are a subcontractor, irrespective of the quality of our products and services as a subcontractor. The reduction or termination of funding, or changes in the timing of funding, for a U.S. Government program in which we provide products or services would result in a reduction or loss of anticipated future revenues attributable to that program and could have a negative impact on our results of operations.

We also have several significant contracts with the U.S. Government that are subject to periodic renewal and rebidding through a competitive process. If the U.S. Government fails to renew these contracts, our results of operations and cash flows would be adversely affected.

As a result of these and other factors, the termination of one or more of our significant government contracts, our suspension from government contract work, the failure of the U.S. Government to renew our existing contracts or the disallowance of the payment of our contract costs could have a material adverse effect on our financial condition, results of operations and cash flows.

Demand for our products and services is vulnerable to economic downturns and reductions in private sector and government spending.

Demand for our products and services has been, and we expect that demand will continue to be, subject to significant fluctuations due to a variety of factors beyond our control, including economic and industry conditions. The global economic downturn that began in 2008 continued throughout 2009. Since 2008, concerns over inflation, energy costs, geopolitical issues, the availability and cost of credit and other market factors have contributed to increased volatility and diminished expectations for the global economy and expectations of slower global economic growth for the foreseeable future. Volatile oil prices, low business and consumer confidence and high unemployment have accompanied the global economic downturn.

As a result of the ongoing economic downturn, some of our customers have delayed, curtailed or cancelled proposed and existing projects and may continue to do so, thus decreasing the overall demand for our products and services and adversely affecting our results of operations. We have experienced and expect to continue to

experience delays or deferrals of proposed projects. For example, for the year ended December 31, 2009, our Power Generation Systems segment experienced a decline in revenues compared to 2008 and an overall slowdown in project awards. In light of current macroeconomic conditions, revenues from our Power Generation Systems segment may continue to decline in 2010.

In addition, our Government Operations segment depends on U.S. Government funding, particularly funding levels at the DOE. Significant changes in the level of funding (for example, the annual budget of the DOE) or specifically mandated levels for individual programs that are important to our business could have an unfavorable impact on us. In addition, if Congress does not pass annual appropriations bills in a timely fashion, spending delays under our U.S. Government contracts may result. Any reduction in the level of U.S. Government funding, particularly at the DOE, may result in, among other things, a reduction in the number and scope of projects put out for bid by the U.S. Government or the curtailment of existing U.S. Government programs, either of which may result in a reduction in the number of contract award opportunities available to us, a reduction of activities at DOE sites and an increase in costs, including the costs of obtaining contract awards.

In addition, our customers may find it more difficult to raise capital in the future due to limitations on the availability of credit, increases in interest rates and other factors affecting the federal, municipal and corporate credit markets. Also, our customers may demand more favorable pricing terms and find it increasingly difficult to timely pay invoices for our services, which would impact our future cash flows and liquidity. Inflation or significant changes in interest rates could reduce the demand for our products and services. Any inability to timely collect our invoices may lead to an increase in our accounts receivables and potentially to increased write-offs of uncollectible invoices. If the economy remains weak or uncertain, or customer spending declines further, then our backlog, revenues, net income and overall financial condition could deteriorate.

Our backlog is subject to unexpected adjustments and cancellations.

There can be no assurance that the revenues projected in our backlog will be realized or, if realized, will result in profits. Because of project cancellations or changes in project scope and schedule, we cannot predict with certainty when or if backlog will be performed. In addition, even where a project proceeds as scheduled, it is possible that contracted parties may default and fail to pay amounts owed to us or poor project performance could increase the cost associated with a project. Delays, suspensions, cancellations, payment defaults, scope changes and poor project execution could materially reduce or eliminate the revenues and profits that we actually realize from projects in backlog.

Reductions in our backlog due to cancellation or modification by a customer or for other reasons may adversely affect, potentially to a material extent, the revenues and earnings we actually receive from contracts included in our backlog. Many of the contracts in our backlog provide for cancellation fees in the event customers cancel projects. These cancellation fees usually provide for reimbursement of our out-of-pocket costs, revenues for work performed prior to cancellation and a varying percentage of the profits we would have realized had the contract been completed. However, we typically have no contractual right upon cancellation to the total revenues reflected in our backlog. Projects may remain in our backlog for extended periods of time. If we experience significant project terminations, suspensions or scope adjustments to contracts reflected in our backlog, our financial condition, results of operations and cash flows may be adversely impacted.

We are subject to risks associated with contractual pricing in our industries, including the risk that, if our actual costs exceed the costs we estimate on our fixed-price contracts, our profitability will decline, and we may suffer losses.

We are engaged in highly competitive industries, and we have priced a substantial number of our projects on a fixed-price basis. Our actual costs could exceed our projections. We attempt to cover the increased costs of anticipated changes in labor, material and service costs of long-term contracts, either through estimates of cost increases, which are reflected in the original contract price, or through price escalation clauses. Despite these

attempts, however, the cost and gross profit we realize on a fixed-price contract could vary materially from the estimated amounts because of supplier, contractor and subcontractor performance, changes in job conditions, variations in labor and equipment productivity and increases in the cost of labor and raw materials, particularly steel, over the term of the contract. These variations and the risks generally inherent in our industries may result in actual revenues or costs being different from those we originally estimated and may result in reduced profitability or losses on projects. Some of these risks include:

- difficulties encountered on our large-scale projects related to the procurement of materials or due to schedule disruptions, equipment performance failures or other factors that may result in additional costs to us, reductions in revenue, claims or disputes;
- our inability to obtain compensation for additional work we perform or expenses we incur as a result of customer change orders or our customers providing deficient design or engineering information or equipment or materials;
- requirements to pay liquidated damages upon our failure to meet schedule or performance requirements of our contracts; and
- difficulties in engaging third-party subcontractors, equipment manufacturers or materials suppliers or failures by third-party subcontractors, equipment manufacturers or materials suppliers to perform could result in project delays and cause us to incur additional costs.

Our use of percentage-of-completion method of accounting could result in volatility in our results of operations.

We recognize revenues and profits under our long-term contracts on a percentage-of-completion basis. Accordingly, we review contract price and cost estimates periodically as the work progresses and reflect adjustments proportionate to the percentage of completion in income in the period when we revise those estimates. To the extent these adjustments result in a reduction or an elimination of previously reported profits with respect to a project, we would recognize a charge against current earnings, which could be material. Our current estimates of our contract costs and the profitability of our long-term projects, although reasonably reliable when made, could change as a result of the uncertainties associated with these types of contracts, and if adjustments to overall contract costs are significant, the reductions or reversals of previously recorded revenue and profits could be material in future periods.

Maintaining adequate bonding and letter of credit capacity is necessary for us to successfully bid on and win various contracts.

In line with industry practice, we are often required to post standby letters of credit and surety bonds to support contractual obligations to customers as well as other obligations. These letters of credit and bonds generally indemnify customers should we fail to perform our obligations under the applicable contracts. If a letter of credit or bond is required for a particular project and we are unable to obtain it due to insufficient liquidity or other reasons, we will not be able to pursue that project. We utilize bonding facilities, but, as is typically the case, the issuance of bonds under each of those facilities is at the surety's sole discretion. In addition, we have limited capacity under our credit facility for letters of credit. Moreover, due to events that affect the insurance and bonding and credit markets generally, bonding and letters of credit may be more difficult to obtain in the future or may only be available at significant additional cost. There can be no assurance that letters of credit or bonds will continue to be available to us on reasonable terms, particularly given our pro forma tangible net worth as of March 31, 2010. Our inability to obtain adequate letters of credit and bonding and, as a result, to bid on new work could have a material adverse effect on our business, financial condition and results of operations. As of March 31, 2010, we had $248.4 million in letters of credit issued under our credit facilities and $112.9 million in surety bonds outstanding.

Volatility and uncertainty of the credit markets may negatively impact our ability to obtain financing.

We intend to finance our existing operations and initiatives with cash and cash equivalents, cash flows from operations, and potential borrowings, including under our revolving credit facility. In the past several years, the credit markets and the financial services industry have been experiencing a period of unprecedented turmoil and upheaval characterized by the bankruptcy, failure, collapse or sale of various financial institutions and an unprecedented level of intervention from the U.S. federal government. These circumstances and events have led to a scarcity of credit, tighter lending standards and higher interest rates on loans. While we cannot predict the ultimate outcome on us, continued turmoil in the credit markets could have a material adverse effect on us. If adverse national and international economic conditions continue or deteriorate further, it is possible that we may not be able to fully draw upon our revolving credit facility and we may not be able to obtain financing on favorable terms.

Our debt obligations could restrict our operations.

The terms of our credit agreement impose various restrictions and covenants on us that could have adverse consequences, including:

- limiting our ability to react to changing economic, regulatory and industry conditions;
- limiting our ability to compete and our flexibility in planning for, or reacting to, changes in our business and the industry;
- limiting our ability to pay dividends to our stockholders; and
- limiting our ability to borrow additional funds.

Our business strategy includes acquisitions to support our growth. Acquisitions of other businesses can create certain risks and uncertainties.

We intend to pursue growth through the acquisition of businesses or assets that we believe will enable us to strengthen our existing businesses and expand into new industries and regions. We may be unable to continue this growth strategy if we cannot identify suitable businesses or assets, reach agreement on potential strategic acquisitions on acceptable terms or for other reasons. Moreover, business acquisitions involve certain risks, including:

- difficulties relating to the assimilation of personnel, services and systems of an acquired business and the assimilation of marketing and other operational capabilities;
- challenges resulting from unanticipated changes in customer relationships subsequent to acquisition;
- additional financial and accounting challenges and complexities in areas such as tax planning, treasury management, financial reporting and internal controls;
- assumption of liabilities of an acquired business, including liabilities that were unknown at the time the acquisition transaction was negotiated;
- diversion of management’s attention from day-to-day operations;
- failure to realize anticipated benefits, such as cost savings and revenue enhancements;
- potentially substantial transaction costs associated with business combinations; and
- potential impairment of goodwill or other intangible assets resulting from the overpayment for an acquisition.

Acquisitions may be funded by the issuance of additional equity or debt financing, which may not be available on attractive terms. Moreover, to the extent an acquisition transaction financed by non-equity consideration results in goodwill, it will reduce our tangible net worth, which might have an adverse effect on potential credit and bonding capacity.

Additionally, an acquisition may bring us into businesses we have not previously conducted and expose us to additional business risks that are different than those we have historically experienced.

Our business strategy also includes development and commercialization of new technologies to support our growth, which requires significant investment and involves various risks and uncertainties.

Our future growth will depend on our ability to continue to innovate by developing and commercializing new product and service offerings. Investments in new technologies involve varying degrees of uncertainties and risk. Commercial success depends on many factors, including the levels of innovation, the development costs and the availability of capital resources to fund those costs, the levels of competition from others developing similar or other competing technologies, our ability to obtain or maintain government permits or certifications, the effectiveness of production, distribution and marketing efforts, and the costs to customers to deploy and provide support for the new technologies. We may not achieve significant revenue from new product and service investments for a number of years, if at all. Moreover, new products and services may not be profitable, and, even if they are profitable, our operating margins from new products and services may not be as high as the margins we have experienced historically. In addition, new technologies may not be patentable and, as a result, we may face increased competition.

Among our opportunities involving new technologies, we are developing the B&W mPower™ reactor, a small modular reactor designed with the flexibility to provide between 125 MW to 1,000 MW of electrical power generation (in increments of 125 MW), and the capability to operate for a four- to five-year cycle without refueling. The development, general and administrative and capital costs to develop and commercialize this technology will require a substantial amount of investment over a period of years. We expect that funding will be authorized at major milestones based on measurable and demonstrated progress, and the funding requirements may vary significantly from period to period. We intend to continue with our plan to seek third-party funding and/or participation to pursue the development and commercialization of this technology; however, we can provide no assurance that such third-party funding or participation will be provided. Commercialization of this technology will require certification from the Nuclear Regulatory Commission (“NRC”), which we intend to seek in time to begin deploying this technology as early as 2020. There can be no assurance that we will be successful in addressing all the technological challenges to developing and commercializing this technology or in obtaining the required NRC certification. Furthermore, while there currently are various small reactor competitors with limited capability, the potential exists for other competitors to emerge with competing technologies, in some cases with funding readily available, and we can provide no assurance that those competitors will not develop and commercialize similar or superior technologies sooner than we can or at a significant cost or price advantage.

Our operations are subject to operating risks, which could expose us to potentially significant professional liability, product liability, warranty and other claims. Our insurance coverage may be inadequate to cover all of our significant risks or our insurers may deny coverage of material losses we incur, which could adversely affect our profitability and overall financial condition.

We engineer, construct and perform services in large industrial facilities where accidents or system failures can have significant consequences. Risks inherent in our operations include:

- accidents resulting in injury or the loss of life or property;
- environmental or toxic tort claims, including delayed manifestation claims for personal injury or loss of life;
- pollution or other environmental mishaps;
- adverse weather conditions;
- mechanical failures;
- property losses;
- business interruption due to political action in foreign countries or other reasons; and
- labor stoppages.

Any accident or failure at a site where we have provided products or services could result in significant professional liability, product liability, warranty and other claims against us, regardless of whether our products or services caused the incident. We have been, and in the future we may be, named as defendants in lawsuits asserting large claims as a result of litigation arising from events such as those listed above.

We endeavor to identify and obtain in established markets insurance agreements to cover significant risks and liabilities. Insurance against some of the risks inherent in our operations is either unavailable or available only at rates or on terms that we consider uneconomical. Also, catastrophic events customarily result in decreased coverage limits, more limited coverage, additional exclusions in coverage, increased premium costs and increased deductibles and self-insured retentions. Risks that we have frequently found difficult to cost-effectively insure against include, but are not limited to, business interruption, property losses from wind, flood and earthquake events, nuclear hazards, war and confiscation or seizure of property in some areas of the world, pollution liability, liabilities related to occupational health exposures (including asbestos), professional liability/errors and omissions coverage, the failure, misuse or unavailability of our information systems, the failure of security measures designed to protect our information systems, and liability related to risk of loss of our work in progress and customer-owned materials in our care, custody and control. Depending on competitive conditions and other factors, we endeavor to obtain contractual protection against certain uninsured risks from our customers. When obtained, such contractual indemnification protection may not be as broad as we desire or may not be supported by adequate insurance maintained by the customer. Such insurance or contractual indemnity protection may not be sufficient or effective under all circumstances or against all hazards to which we may be subject. A successful claim for which we are not insured or for which we are underinsured could have a material adverse effect on us. Additionally, disputes with insurance carriers over coverage may affect the timing of cash flows and, if litigation with the carrier becomes necessary, an outcome unfavorable to us may have a material adverse effect on our results of operations.

Through two limited liability companies, we are also involved in management and operating activities for the U.S. Government at the Y-12 National Security Complex and Pantex Plant facilities. These activities involve, among other things, handling nuclear devices and their components from the aging stockpile of the U.S. Government. Most insurable liabilities arising from these sites are not protected in our corporate insurance program. Instead, we rely on government contractual agreements, some insurance purchased specifically for the sites and certain specialized self-insurance programs funded by the U.S. Government. The U.S. Government has historically fulfilled its contractual agreement to reimburse for insurable claims, and we expect it to continue this process during our administration of these two facilities. However, it should be noted that, in most situations, the U.S. Government is contractually obligated to pay subject to the availability of authorized government funds. The reimbursement obligation of the U.S. Government is also conditional, and provisions of the relevant contract or applicable law may preclude reimbursement.

In January 2010, we received notice from our existing nuclear liability underwriter that it intends to cancel our nuclear liability insurance, effective as of May 10, 2010, for our licensed facility in Erwin, Tennessee, which we acquired in December 2008 through our acquisition of Nuclear Fuel Services, Inc. The underwriter stated that the reason for the cancellation was a material change in risk that increased the risk of loss, and that this assessment was based on new information regarding the commercial development line at the facility. After the occurrence of the two incidents at the facility described under “Our nuclear operations subject us to various environmental, regulatory, financial and other risks” and prior to suspension of operations at the facility, the underwriter conducted a special inspection of the facility. We believe the underwriter’s decision to cancel the policy was based on its assessment of insured risk following that inspection. The cancellation occurred after the suspension of operations at the facility. We have obtained replacement coverage from a new nuclear insurance underwriter to cover the facility, which became effective as of April 1, 2010. There can be no assurance, however, that any of our insurance coverages will be renewable upon the expiration of the coverage period or that future coverage will be available at preferred or required limits, which could increase our overall risk exposure for certain commercial activities at the Erwin facility.

We have a captive insurance company subsidiary which provides us with various insurance coverages. Claims as a result of our operations could adversely impact the ability of our captive insurance company subsidiary to respond to all claims presented.

Additionally, upon the February 22, 2006 effectiveness of the settlement relating to the Chapter 11 proceedings involving several of our subsidiaries, most of our subsidiaries contributed substantial insurance rights providing coverage for, among other things, asbestos and other personal injury claims, to an asbestos personal injury trust. With the contribution of these insurance rights to the asbestos personal injury trust, we may have underinsured or uninsured exposure for non-derivative asbestos claims or other personal injury or other claims that would have been insured under these coverages had the insurance rights not been contributed to the asbestos personal injury trust.

Our nuclear operations subject us to various environmental, regulatory, financial and other risks.

Our operations in designing, engineering, manufacturing, supplying, constructing and maintaining nuclear fuel and nuclear power equipment and components subject us to various risks, including:

- potential liabilities relating to harmful effects on the environment and human health resulting from nuclear operations and the storage, handling and disposal of radioactive materials;
- unplanned expenditures relating to maintenance, operation, security, upgrades and repairs required by the NRC;
- limitations on the amounts and types of insurance commercially available to cover losses that might arise in connection with nuclear operations; and
- potential liabilities arising out of a nuclear incident, whether or not it is within our control.

Our nuclear operations are subject to various safety-related requirements imposed by the U.S. Government, the DOE and the NRC. In the event of non-compliance, these agencies might increase regulatory oversight, impose fines or shut down our operations, depending upon the assessment of the severity of the situation. Revised security and safety requirements promulgated by these agencies could necessitate substantial capital and other expenditures.

In December 2009, our subsidiary Nuclear Fuel Services, Inc., which we acquired in December 2008, implemented a suspension of some operations at its Erwin, Tennessee manufacturing facility while implementing organizational, facility and management changes to enhance safety controls and processes. We suspended the operations in consultation with the NRC following the occurrence of two separate incidents that we reported to the NRC in October and November 2009. The October 2009 incident involved the generation of excessive heat and a hazardous gas at a specialized cleaning station. The incident was caused by the processing of a small amount of uranium-aluminum material in nitric acid. This incident resulted in some damage to piping, but did not result in any injuries to personnel or offsite releases of chemical or radioactive material. The November 2009 incident involved a fire in a glovebox enclosure. The incident was caused by a reaction between fluorine gas in a cylinder of uranium and the fiberglass backing of the teflon lining of a vent hose attached to the cylinder within the glovebox enclosure. This incident resulted in damage to a hose and a faceplate within the glove box enclosure, but did not result in any injuries to personnel or offsite releases of chemical or radioactive material. Inspections conducted separately by the NRC, our existing nuclear liability underwriter and us revealed specific modifications necessary to improve Nuclear Fuel Services, Inc.’s overall safety performance. Although the NRC did not issue any directive or order to us to suspend these operations, we believe the NRC likely would have done so had we not voluntarily suspended the operations. Although we were already in the process of implementing safety, cultural and procedural improvements at Nuclear Fuel Services, Inc., we have refined and accelerated those changes and have developed other specific enhancements in consultation with the NRC, as confirmed in the NRC’s January 7, 2010 confirmatory action letter to Nuclear Fuel Services, Inc.

The suspended operations include production operations, the commercial development line and the highly enriched uranium down-blending facility. These operations are in the process of being brought back on line through a phased restart, which we commenced in March 2010 following completion of a third-party review and NRC review of the modifications that were implemented. The production operations are now fully operational. We expect to bring the highly enriched uranium down-blending facility back on line, through a phased restart,

beginning in May 2010, and we expect that the facility will be fully operational in June 2010. We expect to bring the commercial development line back on line by the end of January 2011. There can be no assurance that we will not have to suspend our operations in the future to implement additional changes to enhance our safety controls and processes in order to comply with applicable laws and regulations.

Limitations or modifications to indemnification regulations of the U.S. or foreign countries could adversely affect our business.

The Price-Anderson Act partially indemnifies the nuclear industry against liability arising from nuclear incidents in the United States, while ensuring compensation for the general public. The Price-Anderson Act comprehensively regulates the manufacture, use and storage of radioactive materials, while promoting the nuclear industry by offering broad indemnification to commercial nuclear power plant operators and DOE contractors. Because we provide nuclear fabrication and other services to the DOE relating to its nuclear devices facilities and other programs and the nuclear power industry in the ongoing maintenance and modifications of its nuclear power plants, including the manufacture of equipment and other components for use in such nuclear power plants, we may be entitled to some of the indemnification protections under the Price-Anderson Act against liability arising from nuclear incidents in the United States. The indemnification authority under the Price-Anderson Act was extended through December 2025 by the Energy Policy Act of 2005. We also provide nuclear fabrication and other services to the nuclear power industry in Canada. Canada's Nuclear Liability Act generally conforms to international conventions and is conceptually similar to the Price-Anderson Act in the United States. Accordingly, indemnification protections and the possibility of exclusions under Canada's Nuclear Liability Act are similar to those under the Price-Anderson Act in the United States.

The Price-Anderson Act's indemnification provisions may not apply to all liabilities that we might incur while performing services as a contractor for the DOE and the nuclear power industry. If an incident or evacuation is not covered under the Price-Anderson Act's indemnification provisions, we could be held liable for damages, regardless of fault, which could have an adverse effect on our results of operations and financial condition. In connection with the international transportation of toxic, hazardous and radioactive materials, it is possible for a claim to be asserted which may not fall within the indemnification provided by the Price-Anderson Act. If such indemnification authority is not applicable in the future, our business could be adversely affected if the owners and operators of nuclear power plants fail to retain our services in the absence of commercially adequate insurance and indemnification.

Moreover, because we manufacture nuclear components for the U.S. Government's defense program, we may be entitled to some of the indemnification protections afforded by Public Law 85-804 for certain of our nuclear operations risks. Public Law 85-804 authorizes certain agencies of the U.S. Government, such as the DOE and the U.S. Department of Defense, to indemnify their contractors against unusually hazardous or nuclear risks when such action would facilitate the national defense. However, because the indemnification protections afforded by Public Law 85-804 are granted on a discretionary basis, situations could arise where the U.S. Government elects not to offer such protections. In such situations, our business could be adversely affected by either our inability to obtain commercially adequate insurance or indemnification or our refusal to pursue such operations in the absence of such protections.

We are subject to government regulations that may adversely affect our future operations.

Many aspects of our operations and properties are affected by political developments and are subject to both domestic and foreign governmental regulations, including those relating to:

- constructing and manufacturing power generation products and nuclear components;
- currency conversions and repatriation;
- clean air and other environmental protection legislation;

- taxation of foreign earnings and earnings of expatriate personnel; and
- use of local employees and suppliers.

In addition, a substantial portion of the demand for our products and services is from electric power generating companies and other steam-using customers. The demand for power generation products and services can be influenced by state and federal governmental legislation setting requirements for utilities related to operations, emissions and environmental impacts. The legislative process is unpredictable and includes a platform that continuously seeks to increase the restrictions on power producers. Potential legislation limiting emissions from power plants, including carbon dioxide, could affect our markets and the demand for our products and services related to power generation.

We cannot determine the extent to which our future operations and earnings may be affected by new legislation, new regulations or changes in existing regulations.

Our businesses require us to obtain, and to comply with, national, state and local government permits and approvals.

Our businesses are required to obtain, and to comply with, national, state and local government permits and approvals. Any of these permits or approvals may be subject to denial, revocation or modification under various circumstances. Failure to obtain or comply with the conditions of permits or approvals may adversely affect our operations by temporarily suspending our activities or curtailing our work and may subject us to penalties and other sanctions. Although existing licenses are routinely renewed by various regulators, renewal could be denied or jeopardized by various factors, including:

- failure to provide adequate financial assurance for decommissioning or closure;
- failure to comply with environmental and safety laws and regulations or permit conditions;
- local community, political or other opposition;
- executive action; and
- legislative action.

In addition, if new environmental legislation or regulations are enacted or implemented, or existing laws or regulations are amended or are interpreted or enforced differently, we may be required to obtain additional operating permits or approvals. Our inability to obtain, and to comply with, the permits and approvals required for our businesses could have a material adverse effect on us.

We rely on intellectual property law and confidentiality agreements to protect our intellectual property. We also rely on intellectual property we license from third parties. Our failure to protect our intellectual property rights, or our inability to obtain or renew licenses to use intellectual property of third parties, could adversely affect our business.

Our success depends, in part, on our ability to protect our proprietary information and other intellectual property. Our intellectual property could be challenged, invalidated, circumvented or rendered unenforceable. In addition, effective intellectual property protection may be limited or unavailable in some foreign countries where we operate.

Our failure to protect our intellectual property rights may result in the loss of valuable technologies or adversely affect our competitive business position. We rely significantly on proprietary technology, information, processes and know-how that are not subject to patent or copyright protection. We seek to protect this information through trade secret or confidentiality agreements with our employees, consultants, subcontractors or other parties, as well as through other security measures. These agreements and security measures may be

inadequate to deter or prevent misappropriation of our confidential information. In the event of an infringement of our intellectual property rights, a breach of a confidentiality agreement or divulgence of proprietary information, we may not have adequate legal remedies to protect our intellectual property. Litigation to determine the scope of intellectual property rights, even if ultimately successful, could be costly and could divert management's attention away from other aspects of our business. In addition, our trade secrets may otherwise become known or be independently developed by competitors.

In some instances, we have augmented our technology base by licensing the proprietary intellectual property of third parties. In the future, we may not be able to obtain necessary licenses on commercially reasonable terms.

Our operations involve the handling, transportation and disposal of radioactive and hazardous materials, and environmental laws and regulations and civil liability for contamination of the environment or related personal injuries may result in increases in our operating costs and capital expenditures and decreases in our earnings and cash flow.

Our operations involve the handling, transportation and disposal of radioactive and hazardous materials, including nuclear devices and their components. Failure to properly handle these materials could pose a health risk to humans or wildlife and could cause personal injury and property damage (including environmental contamination). If an accident were to occur, its severity could be significantly affected by the volume of the materials and the speed of corrective action taken by emergency response personnel, as well as other factors beyond our control, such as weather and wind conditions. Actions taken in response to an accident could result in significant costs.

Governmental requirements relating to the protection of the environment, including solid waste management, air quality, water quality, the decontamination and decommissioning of nuclear manufacturing and processing facilities and cleanup of contaminated sites, have had a substantial impact on our operations. These requirements are complex and subject to frequent change. In some cases, they can impose liability for the entire cost of cleanup on any responsible party without regard to negligence or fault and impose liability on us for the conduct of others or conditions others have caused, or for our acts that complied with all applicable requirements when we performed them. Our compliance with amended, new or more stringent requirements, stricter interpretations of existing requirements or the future discovery of contamination may require us to make material expenditures or subject us to liabilities that we currently do not anticipate. Such expenditures and liabilities may adversely affect our business, financial condition, results of operations and cash flows. In addition, some of our operations and the operations of predecessor owners of some of our properties have exposed us to civil claims by third parties for liability resulting from alleged contamination of the environment or personal injuries caused by releases of hazardous substances into the environment. See "Business—Governmental Regulations and Environmental Matters."

In our contracts, we seek to protect ourselves from liability associated with accidents, but there can be no assurance that such contractual limitations on liability will be effective in all cases or that our or our customers' insurance will cover all the liabilities we have assumed under those contracts. The costs of defending against a claim arising out of a nuclear incident or precautionary evacuation, and any damages awarded as a result of such a claim, could adversely affect our results of operations and financial condition.

We maintain insurance coverage as part of our overall risk management strategy and due to requirements to maintain specific coverage in our financing agreements and in many of our contracts. These policies do not protect us against all liabilities associated with accidents or for unrelated claims. In addition, comparable insurance may not continue to be available to us in the future at acceptable prices, or at all.

We conduct a portion of our operations through joint venture entities, over which we may have limited control.

We currently have equity interests in several significant joint ventures and may enter into additional joint venture arrangements in the future. We do not manage all of these entities. Even in those joint ventures that we

manage, we are often required to consider the interests of our joint venture partners in connection with decisions concerning the operations of the joint ventures. In any case, differences in views among the joint venture participants may result in delayed decisions or disputes. We also cannot control the actions of our joint venture participants, and we sometimes have joint and several liabilities with our joint venture partners under the applicable contracts for joint venture projects. These factors could potentially harm the business and operations of a joint venture and, in turn, our business and operations.

Operating through joint ventures in which we are minority holders results in us having limited control over many decisions made with respect to projects and internal controls relating to projects. These joint ventures may not be subject to the same requirements regarding internal controls and internal control over financial reporting that we follow. As a result, internal control problems may arise with respect to the joint ventures that could adversely affect our ability to respond to requests or contractual obligations to customers or to meet the internal control requirements to which we are otherwise subject.

In addition, our arrangements involving joint ventures may restrict us from gaining access to the cash flows or assets of these entities. In some cases, our joint ventures have governmentally imposed restrictions on their abilities to transfer funds to us.

If our co-venturers fail to perform their contractual obligations on a project or if we fail to coordinate effectively with our co-venturers, we could be exposed to legal liability, loss of reputation and reduced profit on the project.

We often perform projects jointly with third parties. For example, we enter into contracting consortia and other contractual arrangements to bid for and perform jointly on large projects. Success on these joint projects depends in part on whether our co-venturers fulfill their contractual obligations satisfactorily. If any one or more of these third parties fail to perform their contractual obligations satisfactorily, we may be required to make additional investments and provide additional services in order to compensate for that failure. If we are unable to adequately address any such performance issues, then our customer may exercise its right to terminate a joint project, exposing us to legal liability, loss of reputation and reduced profit.

Our collaborative arrangements also involve risks that participating parties may disagree on business decisions and strategies. These disagreements could result in delays, additional costs and risks of litigation. Our inability to successfully maintain existing collaborative relationships or enter into new collaborative arrangements could have a material adverse effect on our results of operations.

Employee, agent or partner misconduct or our overall failure to comply with laws or regulations could weaken our ability to win contracts, lead to the suspension of our operations and result in reduced revenues and profits.

Misconduct, fraud, non-compliance with applicable laws and regulations, or other improper activities by one or more of our employees, agents or partners could have a significant negative impact on our business and reputation. Such misconduct could include the failure to comply with government procurement regulations, regulations regarding the protection of classified information, regulations regarding the pricing of labor and other costs in government contracts, regulations on lobbying or similar activities, regulations pertaining to the internal controls over financial reporting and various other applicable laws or regulations. For example, we regularly provide services that may be highly sensitive or that are related to critical national security matters; if a security breach were to occur, our ability to procure future government contracts could be severely limited. The precautions we take to prevent and detect these activities may not be effective, and we could face unknown risks or losses.

We are routinely audited and reviewed by the U.S. Government and its agencies. These agencies review our performance under our contracts, our cost structure and our compliance with applicable laws, regulations and standards, as well as the adequacy of, and our compliance with, our internal control systems and policies. Systems

that are subject to review include our purchasing systems, billing systems, property management and control systems, cost estimating systems, compensation systems and management information systems. Any costs found to be improperly allocated to a specific contract will not be reimbursed or must be refunded if already reimbursed. If an audit or review uncovers improper or illegal activities, we could be subject to civil and criminal penalties and administrative sanctions, including termination of contracts, forfeiture of profits, suspension of payments, fines, loss of security clearance and suspension or debarment from contracting with the U.S. Government. In addition, we could suffer serious reputational harm if allegations of impropriety were made against us.

We could be adversely affected by violations of the U.S. Foreign Corrupt Practices Act.

The U.S. Foreign Corrupt Practices Act ("FCPA") generally prohibits companies and their intermediaries from making improper payments to non-U.S. officials. Our training program and policies mandate compliance with the FCPA. We operate in some parts of the world that have experienced governmental corruption to some degree, and, in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. Although we have procedures and controls in place to monitor internal and external compliance, if we are found to be liable for violations of the FCPA (either due to our own acts or our inadvertence, or due to the acts or inadvertence of others), we could suffer from civil and criminal penalties or other sanctions.

We may not be able to compete successfully against current and future competitors.

Some of our competitors or potential competitors have greater financial or other resources than we have. Our operations may be adversely affected if our current competitors or new market entrants introduce new products or services with better features, performance, prices or other characteristics than those of our products and services. Furthermore, we operate in industries where capital investment is critical. We may not be able to obtain as much purchasing and borrowing leverage and access to capital for investment as an independent public company, which may impair our ability to compete against competitors or potential competitors.

The loss of the services of one or more of our key personnel, or our failure to attract, assimilate and retain trained personnel in the future, could disrupt our operations and result in loss of revenues.

Our success depends on the continued active participation of our executive officers and key operating personnel. The unexpected loss of the services of any one of these persons could adversely affect our operations.

Our operations require the services of employees having the technical training and experience necessary to obtain the proper operational results. As such, our operations depend, to a considerable extent, on the continuing availability of such personnel. If we should suffer any material loss of personnel to competitors or be unable to employ additional or replacement personnel with the requisite level of training and experience to adequately operate our business, our operations could be adversely affected. While we believe our wage rates are competitive and our relationships with our employees are satisfactory, a significant increase in the wages paid by other employers could result in a reduction in our workforce, increases in wage rates, or both. If either of these events occurred for a significant period of time, our financial condition, results of operations and cash flows could be adversely impacted.

Negotiations with labor unions and possible work stoppages and other labor problems could divert management attention and disrupt operations. In addition, new collective bargaining agreements or amendments to agreements could increase our labor costs and operating expenses.

A significant number of our employees are members of labor unions. Although we have recently negotiated and renewed nearly all of our current union contracts for multi-year terms without incident, if we are unable to negotiate acceptable new contracts with our unions in the future, we could experience strikes or other work stoppages by the affected employees. If any such strikes or other work stoppages were to occur, we could experience a significant disruption of operations. In addition, negotiations with unions could divert management

attention. New union contracts could result in increased operating costs, as a result of higher wages or benefit expenses, for both union and nonunion employees. If nonunion employees were to unionize, we would experience higher ongoing labor costs.

Pension and medical expenses associated with our retirement benefit plans may fluctuate significantly depending on changes in actuarial assumptions, future market performance of plan assets, future trends in health care costs and legislative or other regulatory actions.

A substantial portion of our current and retired employee population is covered by pension and post-retirement benefit plans, the costs and funding requirements of which depend on our various assumptions, including estimates of rates of return on benefit-related assets, discount rates for future payment obligations, rates of future cost growth and trends for future costs. Variances from these estimates could have a material adverse effect on us. In addition, funding requirements for benefit obligations of our pension and post-retirement benefit plans are subject to legislative and other government regulatory actions. As of December 31, 2009, our defined benefit pension and post-retirement benefit plans were underfunded by approximately $869 million. See Note 7 to the combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement.

Our internal controls may not be sufficient to achieve all stated goals and objectives.

Our internal controls and procedures were developed through a process in which our management applied its judgment in assessing the costs and benefits of such controls and procedures, which, by their nature, can provide only reasonable assurance regarding the control objectives. You should note that the design of any system of internal controls and procedures is based in part upon various assumptions about the likelihood of future events, and we cannot assure you that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

Our Government Operations segment relies on several single-source suppliers, which could, under certain circumstances, adversely affect our revenues and operating results.

Our Government Operations segment relies on several single-source suppliers for materials used in its products. If the supply of a single-sourced material is delayed or ceases, we may not be able to produce the related product in a timely manner or in sufficient quantities, if at all, which could adversely affect our revenues and operating results. In addition, a single-source supplier of a key component could potentially exert significant bargaining power over price, quality, warranty claims, or other terms relating to the single-sourced materials.

Systems and information technology interruption could adversely impact our ability to operate.

In 2010, we expect to replace current key financial and human resources legacy systems with enterprise systems. This implementation subjects us to inherent costs and risks associated with replacing and changing these systems, including potential disruption of our internal control structure, substantial capital expenditures, demands on management time and other risks of delays or difficulties in transitioning to new systems or of integrating new systems into our current systems. Our systems implementations may not result in productivity improvements at the levels anticipated, or at all. In addition, the implementation of new technology systems may cause disruptions in our business operations. This disruption and any other information technology system disruptions and our ability to mitigate those disruptions, if not anticipated and appropriately mitigated, could have a material adverse effect on us.

Our international operations are subject to political, economic and other uncertainties not generally encountered in our domestic operations.

We derive a portion of our revenues from international operations. Our international operations are subject to political, economic and other uncertainties not generally encountered in our U.S. operations. These include:

- risks of war, terrorism and civil unrest;
- expropriation, confiscation or nationalization of our assets;

- renegotiation or nullification of our existing contracts;
- changing political conditions and changing laws and policies affecting trade and investment;
- overlap of different tax structures; and
- risk of changes in foreign currency exchange rates.

Various foreign jurisdictions have laws limiting the right and ability of foreign subsidiaries and joint ventures to pay dividends and remit earnings to affiliated companies. Our international operations sometimes face the additional risks of fluctuating currency values, hard currency shortages and controls of foreign currency exchange.

War, other armed conflicts or terrorist attacks could have a material adverse effect on our business.

The wars in Iraq and Afghanistan and terrorist attacks and unrest have caused and may continue to cause instability in the world's financial and commercial markets and have significantly increased political and economic instability in some of the geographic areas in which we operate. Threats of war or other armed conflict may cause further disruption to financial and commercial markets. In addition, continued unrest could lead to acts of terrorism in the United States or elsewhere, and acts of terrorism could be directed against companies such as ours. Also, acts of terrorism and threats of armed conflicts in or around various areas in which we operate could limit or disrupt our markets and operations, including disruptions from evacuation of personnel, cancellation of contracts or the loss of personnel or assets. Armed conflicts, terrorism and their effects on us or our markets may significantly affect our business and results of operations in the future.

Risks Relating to the Spin-Off

We may be unable to achieve some or all of the benefits that we expect to achieve from our separation from McDermott.

As an independent public company, we believe that we will be able to more effectively focus on our operations and growth strategies than we could as a subsidiary of McDermott. However, by separating from McDermott there is a risk that our results of operations and cash flows may be susceptible to greater volatility due to fluctuations in our business levels and other factors that may adversely affect our operating and financial performance. In addition, as part of the McDermott group of companies, we have enjoyed certain benefits from McDermott's financial resources, including substantial borrowing capacity and capital for investment. As a result of the fact that McDermott's other operations will no longer be available to offset any volatility in our results of operations and cash flows and McDermott's financial and other resources will no longer be available to us, we may not be able to achieve some or all of the benefits that we expect to achieve as an independent public company.

Our historical combined and pro forma financial information are not necessarily indicative of our future financial condition, future results of operations or future cash flows nor do they reflect what our financial condition, results of operations or cash flows would have been as an independent public company during the periods presented.

The historical combined financial information we have included in this information statement does not reflect what our financial condition, results of operations or cash flows would have been as an independent public company during the periods presented and is not necessarily indicative of our future financial condition, future results of operations or future cash flows. This is primarily a result of the following factors:

- our historical combined financial results reflect allocations of expenses for services historically provided by McDermott, and those allocations may be significantly lower than the comparable expenses we would have incurred as an independent company;
- our cost of debt and other capitalization may be significantly different from that reflected in our historical combined financial statements;
- the historical combined financial information does not reflect the changes that will occur in our cost structure, management, financing arrangements and business operations as a result of our separation from McDermott, including the costs related to being an independent company; and

- the historical combined financial information does not reflect the effects of certain liabilities that will be assumed by our company and does reflect the effects of certain assets that will be transferred to, and liabilities that will be assumed by, McDermott.

The pro forma adjustments are based on available information and assumptions that we believe are factually supportable. However, it is possible that our assumptions may prove not to be accurate. In addition, our unaudited pro forma combined financial statements do not give effect to certain on-going additional costs that we expect to incur in connection with being an independent public company. Accordingly, our unaudited pro forma combined financial statements do not reflect what our financial condition or results of operations would have been as an independent public company and are not necessarily indicative of our future financial condition or future results of operations. Please refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Unaudited Pro Forma Combined Financial Data" and our historical combined financial statements and the notes to those statements included in this information statement.

We do not have a recent history of operating as an independent public company, we may encounter difficulties in making the changes necessary to operate as an independent public company, and we may incur greater costs as an independent public company.

We have historically used McDermott's infrastructure to support our business functions, including the following functions:

- accounting and financial reporting;
- information technology and communications;
- legal;
- human resources and employee benefits;
- tax administration; and
- treasury and corporate finance.

Following the spin-off, we will no longer have access to McDermott's infrastructure, and we will need to establish our own. We expect to incur costs in 2010 to establish the necessary infrastructure to enable us to establish these business functions. We currently pay McDermott for these services on a cost-allocation basis. Following the spin-off, McDermott will continue to provide some of these services to us on a transitional basis for a period of up to one year, pursuant to a transition services agreement we will enter into with McDermott. For more information regarding the transition services agreement, see "Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us—Transition Services Agreements." At the end of this transition period, we will need to perform these functions ourselves or hire third parties to perform these functions on our behalf. The costs associated with performing or outsourcing these functions may exceed those charged by McDermott when we were part of McDermott or during the transition period. A significant increase in the costs of performing or outsourcing these functions could adversely affect our business, financial condition, results of operations and cash flows.

Our accounting and other management systems and resources may not be adequately prepared to meet the financial reporting and other requirements to which we will be subject following the spin-off and may strain our resources.

Our financial results previously were included within the consolidated results of McDermott, and our reporting and control systems were appropriate for those of subsidiaries of a public company. However, we were not directly subject to reporting and other requirements of the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act. As a result of the spin-off, we will be directly subject to reporting and other obligations under the Exchange Act, including the requirements of Section 404 of the Sarbanes-Oxley Act of 2002, which will require, beginning with the filing of our Annual Report on Form 10-K for the year ending December 31, 2011, annual management assessments of the effectiveness of our internal controls over financial

reporting and a report by our independent registered public accounting firm addressing these assessments. These reporting and other obligations will place significant demands on our management and administrative and operational resources, including accounting resources.

To comply with these requirements, we anticipate that we will need to upgrade our systems, including information technology, implement additional financial and management controls, reporting systems and procedures and hire additional accounting and finance staff. We expect to incur additional annual expenses related to these steps and, among other things, directors and officers liability insurance, director fees, SEC reporting, transfer agent fees, increased auditing and legal fees and similar expenses, which expenses may be significant. If we are unable to upgrade our financial and management controls, reporting systems, information technology and procedures in a timely and effective fashion, our ability to comply with our financial reporting requirements and other rules that apply to reporting companies under the Exchange Act could be impaired. Any failure to achieve and maintain effective internal controls could have an adverse effect on our business, financial condition, results of operations and cash flows.

We will be subject to continuing contingent liabilities of McDermott following the spin-off.

After the spin-off, there will be several significant areas where the liabilities of McDermott may become our obligations. For example, under the Code and the related rules and regulations, each corporation that was a member of our consolidated tax reporting group during any taxable period or portion of any taxable period ending on or before the effective time of the spin-off is jointly and severally liable for the federal income tax liability of our entire consolidated tax reporting group for that taxable period. We intend to enter into a tax sharing agreement with a subsidiary of McDermott that will allocate the responsibility for prior period taxes of our consolidated tax reporting group between us and McDermott and its subsidiaries. See “Relationship with McDermott After the Spin-Off —Agreements Between McDermott and Us—Tax Sharing Agreement.” However, if the subsidiary of McDermott were unable to pay, we could be required to pay the entire amount of such taxes. Other provisions of federal law establish similar liability for other matters, including laws governing tax-qualified pension plans as well as other contingent liabilities.

The spin-off could result in substantial tax liability.

McDermott has requested a private letter ruling from the IRS substantially to the effect that, for U.S. federal income tax purposes, the spin-off will qualify under Section 355 of the Code and certain transactions related to the spin-off will qualify under Sections 355 and/or 368 of the Code. McDermott’s receipt of the private letter ruling is a condition to the completion of the spin-off. If the factual assumptions or representations made in the private letter ruling request are inaccurate or incomplete in any material respect, then we will not be able to rely on the ruling. Furthermore, the IRS will not rule on whether a distribution such as the spin-off satisfies certain requirements necessary to obtain tax-free treatment under section 355 of the Code. Rather, the private letter ruling will be based on representations by McDermott that those requirements have been satisfied, and any inaccuracy in those representations could invalidate the ruling.

The spin-off is also conditioned on McDermott’s receipt of an opinion of Baker Botts L.L.P., in form and substance satisfactory to McDermott, substantially to the effect that, for U.S. federal income tax purposes, the spin-off will qualify under Section 355 of the Code and certain transactions related to the spin-off will qualify under Sections 355 and/or 368 of the Code. The opinion will rely on, among other things, the continuing validity of the private letter ruling and various assumptions and representations as to factual matters made by McDermott and us which, if inaccurate or incomplete in any material respect, would jeopardize the conclusions reached by such counsel in its opinion. The opinion will not be binding on the IRS or the courts, and there can be no assurance that the IRS or the courts will not challenge the conclusions stated in the opinion or that any such challenge would not prevail.

Neither we nor McDermott are aware of any facts or circumstances that would cause the assumptions or representations that will be relied on in the private letter ruling or in the opinion to be inaccurate or incomplete in

any material respect. If, notwithstanding receipt of the private letter ruling and opinion, the spin-off were determined not to qualify under Section 355 of the Code, each U.S. holder of McDermott common stock who receives shares of our common stock in the spin-off would generally be treated as receiving a taxable distribution of property in an amount equal to the fair market value of the shares of our common stock received. That distribution would be taxable to each such stockholder as a dividend to the extent of McDermott's current and accumulated earnings and profits. For each such stockholder, any amount that exceeded McDermott's earnings and profits would be treated first as a non-taxable return of capital to the extent of such stockholder's tax basis in its shares of McDermott common stock with any remaining amount being taxed as a capital gain. In addition, if certain related preparatory transactions were to fail to qualify for tax-free treatment, we would be treated as if we had sold part of our assets (which will be retained by McDermott) in a taxable sale for fair market value and McDermott could be treated as receiving such assets from us as a taxable dividend. See "The Spin-Off—Material U.S. Federal Income Tax Consequences of the Spin-Off."

Under the terms of the tax sharing agreement we will enter into in connection with the spin-off, we will generally be responsible for any taxes imposed on us or McDermott and its subsidiaries in the event that the spin-off and/or certain related preparatory transactions were to fail to qualify for tax-free treatment. However, if the spin-off and/or certain related preparatory transactions were to fail to qualify for tax-free treatment because of actions or failures to act by McDermott or its subsidiaries, a subsidiary of McDermott would be responsible for all such taxes. If we are liable for taxes under the tax sharing agreement, that liability could have a material adverse effect on us. See "Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us—Tax Sharing Agreement."

Potential liabilities associated with certain obligations under the tax sharing agreement cannot be precisely quantified at this time.

Under the terms of the tax sharing agreement we will enter into in connection with the spin-off, we will generally be responsible for all taxes attributable to us or any of our subsidiaries, whether accruing before, on or after the date of the spin-off. We have also agreed to be responsible for all taxes imposed on us or McDermott and its subsidiaries in the event the spin-off and/or certain related preparatory transactions were to fail to qualify for tax-free treatment. However, if the spin-off and/or certain related preparatory transactions were to fail to qualify for tax-free treatment because of actions or failures to act by McDermott or its subsidiaries, a subsidiary of McDermott would be responsible for all such taxes. Our liabilities under the tax sharing agreement could have a material adverse effect on us. At this time, we cannot precisely quantify the amount of liabilities we may have under the tax sharing agreement and there can be no assurances as to their final amounts. For a more detailed discussion, see "Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us—Tax Sharing Agreement."

Under some circumstances, we could be liable for any resulting adverse tax consequences from engaging in significant strategic or capital raising transactions.

Even if the spin-off otherwise qualifies as a tax-free distribution under section 355 of the Code, certain preparatory transactions related to the spin-off may result in significant U.S. federal income tax liabilities to us under Section 355(e) or applicable provisions of the Code if 50% or more of McDermott's stock or our stock (in each case, by vote or value) is treated as having been acquired, directly or indirectly, by one or more persons as part of a plan (or series of related transactions) that includes the spin-off. Any acquisitions of McDermott stock or our stock (or similar acquisitions), or any understanding, arrangement or substantial negotiations regarding such an acquisition of McDermott stock or our stock (or similar acquisitions), within two years before or after the spin-off are subject to special scrutiny. The process for determining whether an acquisition triggering those provisions has occurred is complex, inherently factual and subject to interpretation of the facts and circumstances of a particular case.

Under the terms of the tax sharing agreement we will enter into in connection with the spin-off, we would generally be liable for any such tax liabilities. However, a subsidiary of McDermott will be required to indemnify us against any such tax liabilities that result from actions taken or failures to act by McDermott or its

subsidiaries. See “Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us—Tax Sharing Agreement.” As a result of these rules and contractual provisions, we may be unable to engage in strategic or capital raising transactions that our stockholders might consider favorable, or to structure potential transactions in the manner most favorable to us, without certain adverse tax consequences.

Potential indemnification liabilities to McDermott pursuant to the master separation agreement could materially adversely affect our company.

The master separation agreement with McDermott provides for, among other things, the principal corporate transactions required to effect the spin-off, certain conditions to the spin-off and provisions governing the relationship between our company and McDermott with respect to and resulting from the spin-off. For a description of the master separation agreement, see “Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us—Master Separation Agreement.” Among other things, the master separation agreement provides for indemnification obligations designed to make our company financially responsible for substantially all liabilities that may exist relating to our business activities, whether incurred prior to or after the spin-off, as well as those obligations of McDermott assumed by us pursuant to the master separation agreement. If we are required to indemnify McDermott under the circumstances set forth in the master separation agreement, we may be subject to substantial liabilities.

In connection with our separation from McDermott, McDermott will indemnify us for certain liabilities. However, there can be no assurance that the indemnity will be sufficient to insure us against the full amount of such liabilities, or that McDermott’s ability to satisfy its indemnification obligation will not be impaired in the future.

Pursuant to the master separation agreement, McDermott will agree to indemnify us for certain liabilities. However, third parties could seek to hold us responsible for any of the liabilities that McDermott has agreed to retain, and there can be no assurance that the indemnity from McDermott will be sufficient to protect us against the full amount of such liabilities, or that McDermott will be able to fully satisfy its indemnification obligations. Moreover, even if we ultimately succeed in recovering from McDermott any amounts for which we are held liable, we may be temporarily required to bear these losses.

The terms of our separation from McDermott and the related agreements were determined in the context of a related-party transaction, and thus may not be comparable to terms that would be obtained in a transaction between unaffiliated parties.

Transactions and agreements entered into with McDermott on or before the closing of the spin-off present conflicts between our interests and those of McDermott. These transactions and agreements include the following:

- agreements related to the separation of our business from McDermott that will provide for, among other things, the assumption by us of liabilities related to our business or subsidiaries, the assumption by McDermott of liabilities unrelated to our business, our respective rights, responsibilities and obligations with respect to taxes and tax benefits and the terms of our various interim and ongoing relationships, as described under “Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us”; and
- administrative support services provided by McDermott to us, as well as by us to McDermott, and other transactions with McDermott, as described under “Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us—Transition Services Agreements.”

Because the terms of our separation from McDermott and these agreements are being entered into in the context of a related-party transaction, these terms may not be comparable to terms that would be obtained in a transaction between unaffiliated parties. We may not be able to resolve potential conflicts, and even if we do, the resolutions may be less favorable than if we were dealing with an unaffiliated third party. See “Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us.”

Several members of our board and management may have conflicts of interest because of their ownership of shares of common stock of McDermott or because of their continuing service on the McDermott board of directors.

Several members of our board and management own shares of common stock of McDermott and/or options to purchase common stock of McDermott because of their current or prior relationships with McDermott. In addition, all of the current members of our board of directors were, and two of our directors will continue to serve as, members of the McDermott board of directors. This share ownership and the continuing role as a director of both companies by these two directors could create, or appear to create, potential conflicts of interest when our directors and executive officers are faced with decisions that could have different implications for our company and McDermott. See "Management."

Risks Relating to Ownership of Our Common Stock

Because there has not been any public market for our common stock, the market price and trading volume of our common stock may be volatile and you may not be able to resell your shares of our common stock at or above the initial market price of our common stock following the spin-off.

Prior to the spin-off, there will have been no trading market for our common stock. We cannot assure you that an active trading market will develop or be sustained for our common stock after the spin-off, nor can we predict the prices at which our common stock will trade after the spin-off. The market price of our common stock could fluctuate significantly due to a number of factors, many of which are beyond our control, including:

- fluctuations in our quarterly or annual earnings results or those of other companies in our industry;
- failures of our operating results to meet the estimates of securities analysts or the expectations of our stockholders or changes by securities analysts in their estimates of our future earnings;
- announcements by us or our customers, suppliers or competitors;
- changes in laws or regulations which adversely affect our industry or us;
- changes in accounting standards, policies, guidance, interpretations or principles;
- general economic, industry and stock market conditions;
- future sales of our common stock; and
- the other factors described in these "Risk Factors" and other parts of this information statement.

Substantial sales of our common stock could cause our stock price to decline and issuances by us may dilute your ownership in our company.

Any sales of substantial amounts of our common stock in the public market after the spin-off, or the perception that these sales might occur, could lower the market price of our common stock and impede our ability to raise capital through the issuance of equity securities. Although we have no actual knowledge of any plan or intention on the part of any 5% or greater stockholder to sell our common stock following the spin-off, it is possible that some McDermott stockholders, including possibly some of McDermott's largest stockholders, will sell the shares of our common stock they receive in the spin-off for various reasons. For example, such investors may not believe that our business profile or level of market capitalization as an independent company fits their investment objectives. Further, if we issue additional equity securities to raise additional capital, your ownership interest in our company will be diluted and the value of your investment may be reduced.

We have no plans to pay regular dividends on our common stock, so you may not receive funds without selling your shares of our common stock.

We have no current intent to pay a regular dividend. The credit agreement relating to our revolving credit facility includes restrictions on our ability to pay dividends. Our board of directors will determine the payment of future dividends on our common stock, if any, and the amount of any dividends in light of applicable law, contractual restrictions limiting our ability to pay dividends, our earnings and cash flows, our capital requirements,

our financial condition, and other factors our board of directors deems relevant. Accordingly, you may have to sell some or all of your shares of our common stock in order to generate cash flow from your investment.

Provisions in our corporate documents and Delaware law could delay or prevent a change in control of our company, even if that change may be considered beneficial by some stockholders.

The existence of some provisions of our certificate of incorporation and bylaws and Delaware law could discourage, delay or prevent a change in control of our company that a stockholder may consider favorable. These include provisions:

- providing that our board of directors fixes the number of members of the board;
- providing for the division of our board of directors into three classes with staggered terms;
- limiting who may call special meetings of stockholders;
- prohibiting stockholder action by written consent, thereby requiring stockholder action to be taken at a meeting of the stockholders;
- establishing advance notice requirements for nominations of candidates for election to our board of directors or for proposing matters that can be acted on by stockholders at stockholder meetings;
- establishing supermajority vote requirements for certain amendments to our certificate of incorporation and bylaws;
- limiting the right of stockholders to remove directors;
- authorizing a large number of shares of common stock that are not yet issued, which would allow our board of directors to issue shares to persons friendly to current management, thereby protecting the continuity of our management, or which could be used to dilute the stock ownership of persons seeking to obtain control of us; and
- authorizing the issuance of "blank check" preferred stock, which could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt.

In addition, following the spin-off, we will be subject to Section 203 of the Delaware General Corporation Law, which may have an anti-takeover effect with respect to transactions not approved in advance by our board of directors, including discouraging takeover attempts that might result in a premium over the market price for shares of our common stock.

We believe these provisions protect our stockholders from coercive or otherwise unfair takeover tactics by requiring potential acquirors to negotiate with our board of directors and by providing our board of directors with more time to assess any acquisition proposal, and are not intended to make our company immune from takeovers. However, these provisions 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 our company and our stockholders. See "Description of Capital Stock—Anti-Takeover Effects of Provisions of our Certificate of Incorporation and Bylaws."

We may issue preferred stock that could dilute the voting power or reduce the value of our common stock.

Our certificate of incorporation authorizes us to issue, without the approval of our stockholders, one or more classes or series of preferred stock having such designation, powers, preferences and relative, participating, optional and other special rights, including preferences over our common stock respecting dividends and distributions, as our board of directors generally may determine. The terms of one or more classes or series of preferred stock could dilute the voting power or reduce the value of our common stock. For example, we could grant holders of preferred stock the right to elect some number of our directors in all events or on the happening of specified events or the right to veto specified transactions. Similarly, the repurchase or redemption rights or liquidation preferences we could assign to holders of preferred stock could affect the residual value of the common stock. See "Description of Capital Stock—Preferred Stock."

CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING INFORMATION

This information statement includes forward-looking statements. You can identify our forward-looking statements by words such as “anticipate,” “believe,” “estimate,” “expect,” “forecast,” “goal,” “intend,” “plan,” “predict,” “project,” “seek,” “target,” “could,” “may,” “should” or “would” or other similar expressions that convey the uncertainty of future events or outcomes. When considering these forward-looking statements, you should keep in mind the risk factors and other cautionary statements contained in this information statement.

Forward-looking statements include, but are not limited to, statements that relate to, or statements that are subject to risks, contingencies or uncertainties that relate to:

- the expected benefits of the spin-off;
- our business strategies;
- future levels of revenues, operating margins, income from operations, net income or earnings per share;
- anticipated levels of demand for our products and services;
- future levels of capital, environmental or maintenance expenditures;
- the success or timing of completion of ongoing or anticipated capital or maintenance projects;
- expectations regarding the acquisition or divestiture of assets and businesses;
- our ability to obtain surety bonding capacity;
- our ability to obtain appropriate insurance and indemnities;
- timing for bringing the operations of Nuclear Fuel Services, Inc. back online;
- the potential effects of judicial or other proceedings on our business, financial condition, results of operations and cash flows; and
- the anticipated effects of actions of third parties such as competitors, or federal, foreign, state or local regulatory authorities, or plaintiffs in litigation.

We have based our forward-looking statements on our current expectations, estimates and projections about our industries and our company. We caution that these statements are not guarantees of future performance and you should not rely unduly on them, as they involve risks, uncertainties and assumptions that we cannot predict. In addition, we have based many of these forward-looking statements on assumptions about future events that may prove to be inaccurate. While our management considers these assumptions to be reasonable, they are inherently subject to significant business, economic, competitive, regulatory and other risks, contingencies and uncertainties, most of which are difficult to predict and many of which are beyond our control. Accordingly, our actual results may differ materially from the future performance that we have expressed or forecast in our forward-looking statements. Differences between actual results and any future performance suggested in our forward-looking statements could result from a variety of factors, including the following:

- general economic and business conditions and industry trends;
- general developments in the industries in which we are involved;
- decisions on spending by the U.S. Government and electric power generating companies;
- the highly competitive nature of our businesses;
- cancellations of and adjustments to backlog and the resulting impact from using backlog as an indicator of future earnings;
- the ability of our suppliers to deliver raw materials in sufficient quantities and in a timely manner;
- volatility and uncertainty of the credit markets;

- our ability to comply with covenants in our credit agreement and other debt instruments and availability, terms and deployment of capital;
- the continued availability of qualified personnel;
- the operating risks normally incident to our lines of business, including the potential impact of liquidated damages;
- changes in, or our failure or inability to comply with, government regulations;
- adverse outcomes from legal and regulatory proceedings;
- the impact of potential regional, national and/or global requirements to significantly limit or reduce greenhouse gas and other emissions in the future;
- changes in, and liabilities relating to, existing or future environmental regulatory matters;
- rapid technological changes;
- the realization of deferred tax assets, including through a reorganization McDermott completed in December 2006;
- the consequences of significant changes in interest rates and currency exchange rates;
- our ability to realize expected benefits from the spin-off;
- a determination by the IRS that the spin-off or certain related transactions should be treated as a taxable transaction;
- our different capital structure as an independent company, including our access to capital, credit ratings, debt and ability to raise additional financing;
- difficulties we may encounter in obtaining regulatory or other necessary approvals of any strategic transactions;
- the risks associated with integrating acquired businesses;
- social, political and economic situations in foreign countries where we do business;
- the possibilities of war, other armed conflicts or terrorist attacks;
- the effects of asserted and unasserted claims;
- our ability to obtain surety bonds, letters of credit and financing;
- our ability to maintain builder’s risk, liability, property and other insurance in amounts and on terms we consider adequate and at rates that we consider economical;
- the aggregated risks retained in our captive insurance subsidiary; and
- the impact of the loss of insurance rights as part of the final settlement in 2006 of the Chapter 11 proceedings involving several of our subsidiaries.

We believe the items we have outlined above are important factors that could cause estimates in our financial statements to differ materially from actual results and those expressed in the forward-looking statements made in this information statement. We have discussed many of these factors in more detail elsewhere in this information statement. These factors are not necessarily all the factors that could affect us. Unpredictable or unanticipated factors we have not discussed in this information statement could also have material adverse effects on actual results of matters that are the subject of our forward-looking statements. Neither we nor McDermott undertake any obligation to update the forward-looking statements included in this information statement to reflect events or circumstances after the date of this information statement, unless we are required by applicable securities laws to do so. We advise our security holders that they should (1) be aware that factors not referred to above could affect the accuracy of our forward-looking statements and (2) use caution and common sense when considering our forward-looking statements.

THE SPIN-OFF

General

The board of directors of McDermott regularly reviews the various operations conducted by McDermott to ensure that resources are deployed and activities are pursued in the best interest of its stockholders. On December 7, 2009, McDermott announced that its board of directors had approved in principle a plan involving the pro rata distribution of all of our shares of common stock to McDermott's stockholders in a tax-free spin-off. The spin-off is subject to final approval by the McDermott board of directors, which approval is subject to, among other things, the conditions described below under "—Spin-Off Conditions and Termination."

Our company is currently a wholly owned subsidiary of McDermott. McDermott owns the capital stock or other equity interests in subsidiaries that own generally all the assets, and are obligated on generally all the liabilities, comprising McDermott's power generation systems and government operations businesses, which McDermott intends to separate from its other operations and transfer to us prior to our separation. McDermott will accomplish our separation through a pro rata distribution of 100% of our outstanding common stock to McDermott's stockholders, which we refer to as the distribution or the spin-off, on [ ], 2010, the distribution date. As a result of the spin-off, each holder of McDermott common stock as of 5:00 p.m., New York City time, on [ ], 2010, the record date, will be entitled to:

- receive one share of our common stock for every [ ] shares of McDermott common stock owned by such holder; and
- retain such holder's shares of McDermott common stock.

McDermott stockholders will not be required to pay for shares of our common stock received in the spin-off or to surrender or exchange shares of McDermott common stock in order to receive our common stock or to take any other action in connection with the spin-off. No vote of McDermott stockholders will be required or sought in connection with the spin-off, and McDermott stockholders will have no appraisal rights in connection with the spin-off.

Reasons for the Spin-Off

McDermott's board and management believe that our separation from McDermott will provide the following benefits:

- improved positioning for each company to accelerate growth based on its distinct corporate strategy, market opportunities, free cash flow and customer relationships;
- more efficient allocation of capital, which will allow each company to develop an independent investment program without the constraints of a holding company, conglomerate structure;
- establishment of distinct publicly traded stock for each company, which may be used as "currencies" to facilitate future acquisitions;
- elimination of the risk to the combined businesses posed by recent modifications to the rules under the FAR that limit the U.S. Government's ability to contract with "inverted" companies and their subsidiaries; and
- sharpened management focus and strategic vision and closer alignment of management incentives with stockholder value creation.

As discussed below, the recent modifications to the rules under the FAR had a significant impact on the McDermott board's decision to effect the spin-off at this time.

Improved positioning for each company to accelerate growth

McDermott's board of directors and senior management believe that McDermott and B&W will be better positioned to accelerate their growth as two separate, publicly traded companies as compared to the current

combined company structure. McDermott's board of directors believes that opportunities for growth will result from the improved ability of each company to focus on and implement its distinct corporate strategy, take advantage of available market opportunities on a more timely basis, reinvest its cash flows within the business as its board of directors and management deem appropriate, and develop stronger and broader relationships with its customers.

As part of a combined company, each company's growth initiatives have effectively competed with the other company's investment opportunities in terms of available funding, resources, prioritization and time permitted for review and approval. The businesses of McDermott and B&W have typically operated autonomously. However, due to the different cyclicality characteristics of the McDermott and B&W businesses, each company has not had the ability to reinvest its cash flows in internal growth as quickly as may have been desirable for its business on a standalone basis. For the same reason, the capital structure of the combined company has been relatively conservative. While this capital structure was appropriate for the combined company, it had a negative impact on the ability of each company to implement strategies for its own business on a standalone basis. Finally, so long as McDermott and B&W were a combined company, part of the strategy of the combined company was to maintain a balance between its businesses and not become overly concentrated in either one of these businesses. However, this strategy reduced the ability of each company to pursue its own growth initiatives.

More efficient allocation of capital

As discussed above, as part of the combined company, McDermott and B&W effectively competed for capital resources. In addition, the combined company maintained an appropriate level of liquidity for that type of structure. As a result, the flexibility of each company to invest capital in its business in a time and manner as its separate strategy would dictate was limited. McDermott's board of directors and senior management believe that the separation of the offshore oil and gas construction business from the power generation systems and government operations businesses will enable a more efficient allocation of capital by providing each separate company's board of directors and management the ability to reinvest that company's free cash flow, utilize cash and investments and access the capital markets, if needed, in a manner responsive to the needs of that specific company, rather than the needs of the combined company. We expect that this more efficient allocation of capital will provide the separated companies with greater flexibility to pursue their strategic initiatives within their capital-intensive industries.

Establishment of distinct publicly traded stock "currencies" to facilitate future acquisitions

As separate offshore oil and gas construction and power generation systems and government operations companies, we believe each company's stock can also serve as a more attractive acquisition "currency" to potential targets than the existing McDermott common stock. In the case of an acquisition of a business in which part of the consideration is to be paid in stock, we believe that the existing investors in the acquisition target company would generally prefer to receive stock of another company in the same sector as the target, rather than stock of an integrated company that has exposure to other sectors that they may not prefer or as to which they may not have sufficient familiarity to remain as long-term investors.

Elimination of the risk to the combined businesses posed by recent modifications to the rules under the FAR

On July 1, 2009, the U.S. Civilian Agency Acquisition Council and the U.S. Defense Acquisition Regulations Council (the "FAR Councils"), acting under the FAR, adopted interim rules, with an immediate effective date, that established contracting procedures to implement a mandate in the Omnibus Appropriations Act, 2009, that generally prohibits U.S. federal agencies from awarding new contracts to inverted companies and their subsidiaries with U.S. federal appropriated funds for fiscal year 2009 and certain prior fiscal years. The current version of the proposed U.S. federal appropriations legislation for 2010 contains restrictions on contracting with inverted companies similar to those in the 2009 Omnibus Appropriations Act.

As a result of a 1982 reorganization transaction, pursuant to which McDermott International, Inc., a corporation organized under the laws of the Republic of Panama, became the parent entity within the McDermott group of companies, McDermott International, Inc. would likely be considered an "inverted" company under the interim rules under the FAR, and, if so, B&W would be considered a subsidiary of an "inverted" company. The interim rules are not clear as to their impact on joint ventures, including those in which we are the majority or controlling owner. As of the date of this information statement, it is uncertain as to when the FAR Councils will adopt the final version of the interim rules and whether and the extent to which the final rules may differ from the interim rules. Although we believe the interim rules do not impact any of our existing contracts and should not adversely impact our ability to enter into subcontracts relating to government projects, the interim rules will impact our ability to pursue new contract awards directly with the U.S. Government, unless we are able to obtain waivers, which are available only on a very limited basis, or change our status as a subsidiary of an "inverted" company.

In approving the spin-off, McDermott's board of directors considered the fact that we derive a substantial amount of our revenues and profits from services provided to the U.S. Government, and the fact that any significant restriction on our ability to pursue future U.S. Government contract work consistent with our past operations would have a material adverse effect on the financial condition, results of operations and cash flows of the combined companies.

McDermott's board of directors also considered the fact that various tax legislative proposals intending to eliminate some perceived tax advantages of companies that have legal domiciles outside the United States but operate in the United States through one or more subsidiaries have repeatedly been introduced in the U.S. Congress. McDermott's board of directors and management considered that, if legislation were to be enacted in this area, the combined companies could be subject to a substantial increase in corporate income taxes, which could have a material adverse effect on the financial condition, results of operations and cash flows of the combined companies.

In light of these considerations, McDermott's board of directors, with input from its independent financial and legal advisors, engaged in a fresh, comprehensive review of the combined company and its businesses, focusing on the best way for us to continue serving the U.S. Government's defense and nuclear operations objectives, while enhancing long-term value for McDermott's stockholders. As a result of the spin-off, B&W will be an independent company still incorporated in Delaware, but without a foreign-organized parent entity. As such, we believe B&W will be able to compete for new contracts with the U.S. Government without restriction from the interim rules under the FAR and without any concern of the possible impact of future tax legislation aimed at companies that have legal domiciles outside the United States but operate in the United States through one or more subsidiaries. Furthermore, the independent operation of the two businesses, with B&W as a Delaware corporation, will permit us to continue to serve the needs of our U.S. Government customers without interruption as a result of these rule modifications, while allowing McDermott the opportunity to pursue its independent business strategy. Taking these considerations into account, the modifications to the rules under the FAR had a significant impact on the McDermott board's decision to effect the spin-off at this time.

Sharpened management focus and strategic vision and closer alignment of management incentives with stockholder value creation

McDermott's board of directors and management also took into account the fact that each company has different business strategies and offers significantly different business opportunities for growth. They determined that the spin-off should allow the management team of each company to improve its focus on its strategic priorities and make business and operational decisions that are in the best interest of its operations, taking into consideration the different challenges and opportunities and different financial profiles and capital needs pertinent to its business. As separate companies, each will be able independently to prioritize allocation of resources and capital in support of its business strategies. As a combined company, our projects have effectively competed with other investment opportunities within McDermott. As separate companies, each of McDermott and our company will no longer have to compete for investment capital with the other, and each would be in a position to pursue a growth strategy to optimize its own operations. By eliminating the necessary time and

resources required to resolve conflicting business priorities and strategic needs, the two businesses will be better able to compete through quicker decision making, more efficient deployment of capital and corporate resources and enhanced responsiveness to market demands.

In addition, McDermott's board of directors and management concluded that the separation of the two businesses through the spin-off will allow each company to provide incentive compensation to its key employees in the form of equity-based incentive compensation that is more closely aligned with the performance of each business. By separating the two companies, management of each company should be in an improved position to attract employees with the correct skill set, to motivate them appropriately and to retain them for the long term.

McDermott's board of directors also considered a number of potentially negative factors in evaluating the spin-off, including:

- the potential loss of synergies from operating as one company and potential increased costs;
- potential loss of joint purchasing power;
- potential disruptions to the businesses as a result of the spin-off;
- the limitations placed on our company as a result of the tax sharing agreement and other agreements it will enter into with McDermott in connection with the spin-off;
- risks of being unable to achieve the benefits expected to be achieved by the spin-off;
- the risk that the spin-off might not be completed;
- the costs of the spin-off; and
- the risk that the trading price of a share of McDermott common stock after the spin-off plus the trading price of the [ ]/[ ] of a share of B&W common stock distributed for each share of McDermott common stock will, in the aggregate, be less than the trading price of a share of McDermott common stock before the spin-off.

Except in connection with its overall determination with respect to our company as a viable, stand-alone public company following the spin-off, McDermott's board of directors did not consider existing or reasonably likely future litigation against B&W for personal injury, property damage or wrongful death claims as a significant factor in its deliberations relating to the spin-off.

The McDermott board of directors concluded that the potential long-term benefits of the spin-off outweighed these factors.

In view of the wide variety of factors considered in connection with the evaluation of the spin-off and the complexity of these matters, McDermott's board of directors did not find it useful to, and did not attempt to, quantify, rank or otherwise assign relative weights to the factors considered. The individual members of the McDermott board of directors likely may have given different weights to different factors.

Results of the Spin-Off

After the spin-off, we will be an independent public company. Immediately following the spin-off, we expect that approximately [ ] shares of our common stock will be issued and outstanding, based on the distribution of one share of our common stock for every [ ] shares of McDermott common stock outstanding and the number of shares of McDermott common stock outstanding on [ ], 2010. The actual number of shares of our common stock to be distributed will be determined based on the number of shares of McDermott common stock outstanding as of the record date. We also expect to have approximately [ ] stockholders of record, based on the number of stockholders of record of McDermott common stock on [ ], 2010.

We and McDermott will be parties to a number of agreements that govern the spin-off and our future relationship. For a more detailed description of these agreements, please see "Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us."

You will not be required to make any payment for the shares of B&W common stock you receive, nor will you be required to surrender or exchange your shares of McDermott common stock or take any other action in order to receive the shares of B&W common stock to which you are entitled. The spin-off will not affect the number of outstanding shares of McDermott common stock or any rights of McDermott stockholders, although it will affect the market value of the outstanding McDermott common stock.

Manner of Effecting the Spin-Off

The general terms and conditions relating to the spin-off are set forth in a master separation agreement between McDermott and us. For a description of the terms of that agreement, see "Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us—Master Separation Agreement." Under the master separation agreement, the spin-off will be effective on the distribution date. As a result of the spin-off, each McDermott stockholder will be entitled to receive one share of our common stock for every [ ] shares of McDermott common stock owned on the record date. As discussed under "—Trading of McDermott Common Stock After the Record Date and Prior to the Distribution," if a holder of record of McDermott common stock sells those shares in the "regular way" market after the record date and on or prior to the distribution date, that stockholder also will be selling the right to receive shares of our common stock in the distribution. The distribution will be made in book-entry form. For registered McDermott stockholders, our transfer agent will credit their shares of our common stock to book-entry accounts established to hold their shares of our common stock. Book-entry refers to a method of recording stock ownership in our records in which no physical certificates are issued. For stockholders who own McDermott common stock through a bank or brokerage firm, their shares of our common stock will be credited to their accounts by the bank or broker. See "—When and How You Will Receive B&W Shares" below. Each share of our common stock that is distributed will be validly issued, fully paid and nonassessable. Holders of shares of our common stock will not be entitled to preemptive rights. See "Description of Capital Stock."

When and How You Will Receive B&W Shares

On the distribution date, McDermott will release its shares of B&W common stock for distribution by Computershare Trust Company, N.A., the distribution agent. The distribution agent will cause the shares of B&W common stock to which you are entitled to be registered in your name or in the "street name" of your bank or brokerage firm.

"Street Name" Holders. Many McDermott stockholders hold McDermott common stock through an account with a bank or brokerage firm. If this applies to you, that bank or brokerage firm is the registered holder that holds the shares on your behalf. For stockholders who hold their shares of McDermott common stock in an account with a bank or brokerage firm, the B&W common stock distributed to you will be registered in the "street name" of your bank or broker, who in turn will electronically credit your account with the B&W shares that you are entitled to receive in the distribution. We anticipate that banks and brokers will generally credit their customers' accounts with B&W common stock on or shortly after the distribution date. We encourage you to contact your bank or broker if you have any questions regarding the mechanics of having shares of B&W common stock credited to your account.

Registered Holders. If you are the registered holder of shares of McDermott common stock and hold your shares of McDermott common stock either in physical form or in book-entry form, the shares of B&W common stock distributed to you will be registered in your name and you will become the holder of record of that number of shares of B&W common stock. Our distribution agent will send you a statement reflecting your ownership of our common stock.

Direct Registration System. As part of the spin-off, we will be adopting a direct registration system for book-entry share registration and transfer of our common stock. The shares of our common stock to be distributed in the spin-off will be distributed as uncertificated shares registered in book-entry form through the direct registration system. No certificates representing your shares will be mailed to you in connection with the spin-off. Under the direct registration system, instead of receiving stock certificates, you will receive a statement reflecting your ownership interest in our shares. Contact information for our transfer agent and registrar is provided under "Questions and Answers About the Spin-Off." The distribution agent will begin mailing book-entry account statements reflecting your ownership of shares promptly after the distribution date. You can obtain more information regarding the direct registration system by contacting our transfer agent and registrar.

Treatment of Fractional Shares

The transfer agent will not deliver any fractional shares of our common stock in connection with the spin-off. Instead, the transfer agent will aggregate all fractional shares and sell them on behalf of those holders who otherwise would be entitled to receive a fractional share. We anticipate that these sales will occur as soon as practicable after the distribution date. Those holders will then receive a cash payment in the form of a check in an amount equal to their pro rata share of the total net proceeds of those sales. If you physically hold McDermott stock certificates, your check for any cash that you may be entitled to receive instead of fractional shares of our common stock will be mailed to you separately. We expect that checks will generally be distributed to stockholders within one to two weeks after the distribution date. Broker selling expenses in connection with these sales will be paid by McDermott.

It is expected that all fractional shares held in street name will be aggregated and sold by brokers or other nominees according to their standard procedures. You should contact your broker or other nominee for additional details.

None of McDermott, our company or the transfer agent will guarantee any minimum sale price for the fractional shares of our common stock. Neither we nor McDermott will pay any interest on the proceeds from the sale of fractional shares. The receipt of cash in lieu of fractional shares will generally be taxable to the recipient stockholders. See "—Material U.S. Federal Income Tax Consequences of the Spin-Off."

Market for Our Common Stock

There is currently no public market for our common stock. A condition to the spin-off is the listing on the NYSE of our common stock. We intend to apply to list our common stock on the NYSE under the symbol "BWC." We anticipate that trading of our common stock will commence on a "when-issued" basis on or shortly before the record date. When-issued trading refers to a sale or purchase made conditionally because the security has been authorized but not yet issued. On the first trading day following the distribution date, when-issued trading with respect to our common stock will end and "regular way" trading will begin. Regular way trading refers to trading after a security has been issued and typically involves a transaction that settles on the third full business day following the date of the transaction. Neither we nor McDermott can assure you as to the trading price of our common stock after the spin-off or as to whether the trading price of a share of McDermott common stock after the spin-off plus the trading price of the [ ] shares of our common stock distributed for each share of McDermott common stock will not, in the aggregate, be less than the trading price of a share of McDermott common stock before the spin-off. The trading price of our common stock is likely to fluctuate significantly, particularly until an orderly market develops. See "Risk Factors—Risks Relating to Ownership of Our Common Stock." In addition, we cannot predict any change that may occur in the trading price of McDermott's common stock as a result of the spin-off.

Trading of McDermott Common Stock After the Record Date and Prior to the Distribution

Beginning on or shortly before the record date and through the distribution date, there will be two concurrent markets in which to trade McDermott common stock: a "regular way" market and an

"ex-distribution" market. Shares of McDermott common stock that trade in the "regular way" market will trade with an entitlement to shares of our common stock distributed in connection with the spin-off. Shares that trade in the "ex-distribution" market will trade without an entitlement to shares of our common stock distributed in connection with the spin-off. Therefore, if you owned shares of McDermott common stock at 5:00 p.m., New York City time, on the record date and sell those shares in the "regular way" market on or prior to the distribution date, you also will be selling your right to receive the shares of our common stock that would have been distributed to you in connection with the spin-off. If you sell those shares of McDermott common stock in the "ex-distribution" market prior to or on the distribution date, you will still receive the shares of our common stock that were to be distributed to you in connection with the spin-off as a result of your ownership of the shares of McDermott common stock.

We expect to have approximately [ ] million shares of our common stock outstanding immediately after the spin-off, based upon the number of shares of McDermott common stock outstanding on [ ], 2010. The shares of our common stock distributed to McDermott stockholders will be freely transferable, except for shares received by persons who may be deemed to be our "affiliates" under the Securities Act of 1933, as amended, or the Securities Act, and except for shares issued as restricted stock under our incentive plan. Persons who may be deemed to be our affiliates after the spin-off generally include individuals or entities that control, are controlled by, or are under common control with us, and may include some or all of our directors and executive officers. Our affiliates will be permitted to sell their shares of B&W common stock only pursuant to an effective registration statement under the Securities Act or an exemption from the registration requirements of the Securities Act, such as the exemption afforded by Rule 144.

Treatment of Stock-Based Awards

In connection with the spin-off, we currently expect that, subject to the approval of the compensation committee of McDermott's board of directors, McDermott's outstanding equity-based compensation awards will generally be treated as follows:

- Each outstanding option to purchase shares of McDermott common stock that is held by a director, officer or employee of McDermott who will remain a director, officer or employee of McDermott and will not be a director, officer or employee of B&W immediately after the spin-off will be replaced with an adjusted option to purchase McDermott common stock. Each of those adjusted options will reflect adjustments that will be generally intended to preserve the intrinsic value of the original option and the ratio of the exercise price to the fair market value of the stock subject to the option by adjusting the number of shares purchasable and the exercise price, by reference to the "regular way" closing price for McDermott common stock as of the distribution date and the volume-weighted-average trading price of the McDermott common stock in the first five trading days following the distribution date. The replacement options will generally be made subject to the same terms and conditions as the options being replaced. To the extent the options being replaced are vested, the replacement options will also be vested.
- Each outstanding option to purchase shares of McDermott common stock that is held by a person who is or will be a director of B&W (but not of McDermott) or by a person who is or will be an officer or employee of B&W immediately after the spin-off will be replaced with substitute options to purchase shares of B&W common stock. Each of those substitute options will have terms that will be generally intended to preserve the intrinsic value of the original option and the ratio of the exercise price to the fair market value of the stock subject to the option by adjusting the number of shares purchasable and the exercise price, by reference to the opening prices of a share of McDermott common stock and a share of B&W common stock on the first trading day following the distribution date. The substitute options will generally be made subject to the same terms and conditions as the options being replaced. To the extent the options being replaced are vested, the substitute options will also be vested.
- Each outstanding option to purchase shares of McDermott common stock that is held by a director of McDermott who will remain on the board of directors of McDermott and will also be on the board of

directors of B&W immediately after the spin-off will be replaced with both an adjusted McDermott stock option and a substitute B&W stock option. Both options, when combined, will have terms that will be generally intended to preserve the intrinsic value of the original option and the ratio of the exercise price to the fair market value of the stock subject to the option, by reference to the ratio of [ ] shares of B&W common stock being distributed for each share of McDermott common stock in the spin-off, the "regular way" closing price for McDermott common stock as of the distribution date, and the volume-weighted-average trading prices of the McDermott common stock and the B&W common stock in the first five trading days following the distribution date. Both the replacement and the substitute options will generally be made subject to the same terms and conditions as the original options. All McDermott stock options held by directors of McDermott as of the distribution date will have previously become vested pursuant to their existing terms. Accordingly, all adjusted or substitute options issued to McDermott directors will also be vested.

- Each outstanding option to purchase shares of McDermott common stock that is held by a director, officer or employee of McDermott who will, as a result of termination or retirement from service in connection with the spin-off, not be a director, officer or employee of either McDermott or B&W immediately after the spin-off will, to the extent vested or to the extent vesting is accelerated pursuant to our existing agreements with such persons, be replaced with both an adjusted vested McDermott stock option and a substitute vested B&W stock option. Both options, when combined, will have terms that will be generally intended to preserve the intrinsic value of the original option and the ratio of the exercise price to the fair market value of the stock subject to the option, by reference to the ratio of [ ] shares of B&W common stock being distributed for each share of McDermott common stock in the spin-off, the "regular way" closing price for McDermott common stock as of the distribution date, and the volume-weighted-average trading prices of the McDermott common stock and the B&W common stock in the first five trading days following the Distribution Date. Both the adjusted and the substitute options will generally be made subject to the same terms and conditions as the original options.
- The McDermott restricted stock awards, restricted stock unit awards and deferred stock unit awards of officers or employees of McDermott who will remain officers or employees of McDermott and will not become officers or employees of B&W immediately after the spin-off will be replaced with adjusted McDermott awards, each of which will generally preserve the value of the original award. The adjusted awards will generally be made subject to the same terms and conditions as the awards being replaced. As of the distribution date, none of McDermott's directors will hold any restricted stock awards, restricted stock unit awards, deferred stock unit awards or performance share awards.
- The McDermott restricted stock awards, restricted stock unit awards and deferred stock unit awards of persons who are or will be officers or employees of B&W immediately after the spin-off will be converted into substitute B&W awards, each of which will generally preserve the value of the original award. The adjusted awards will generally be made subject to the same terms and conditions as the awards being replaced.
- The McDermott restricted stock awards, restricted stock unit awards and deferred stock unit awards of officers or employees of McDermott who will, as a result of termination in connection with the spin-off, not be officers or employees of either McDermott or B&W immediately after the spin-off will, to the extent that vesting is accelerated or the restrictions lapse pursuant to our existing agreements with such persons, be converted into rights to receive (1) an equivalent number of unrestricted shares of McDermott common stock and (2) [ ] shares of B&W common stock for each such share of McDermott common stock, in accordance with the spin-off distribution.
- The McDermott performance share awards of officers or employees of McDermott who will remain officers or employees of McDermott and will not become officers or employees of B&W immediately after the spin-off will be converted into unvested rights to receive the value of deemed target performance in unrestricted shares of McDermott common stock, with the same vesting terms as the original awards.

- The McDermott performance share awards of persons who are or will be officers or employees of B&W immediately after the spin-off will be converted into unvested rights to receive the value of deemed target performance in unrestricted shares of B&W common stock, with the same vesting terms as the original awards.
- The McDermott performance share awards of officers or employees of McDermott who will, as a result of termination in connection with the spin-off, not be officers or employees of either McDermott or B&W immediately after the spin-off will, to the extent that vesting is accelerated pursuant to our existing agreements with such persons, be converted into rights to receive the value of deemed target performance in unrestricted shares of McDermott common stock and B&W common stock, in accordance with the spin-off distribution.

There may be a small number of employees who transfer between McDermott and B&W following the spin-off. If these employees hold outstanding stock options, shares of restricted stock, restricted stock units, deferred stock units or performance shares which are unvested on their transfer date, their stock options, shares of restricted stock, restricted stock units, deferred stock units or performance shares will be similarly adjusted or replaced effective as of the date of their transfer.

In the case of adjusting McDermott options or granting substitute B&W options, the conversion formula may result in fractional shares or fractional cents. Any fractional shares subject to adjusted McDermott options and substitute B&W options will be disregarded, and the number of shares subject to such options will be rounded down to the next lower whole number of shares. The exercise price for such options will be rounded up to the next higher whole cent. There are no stock appreciation rights currently outstanding under the McDermott incentive plans.

Spin-Off Conditions and Termination

We expect that the spin-off will be effective on [ ], 2010, provided that, among other things:

- the SEC has declared effective our registration statement on Form 10, of which this information statement is a part, under the Exchange Act, with no stop order in effect with respect to the Form 10, and this information statement shall have been mailed to McDermott's stockholders;
- the actions and filings necessary under securities and blue sky laws of the states of the United States and any comparable laws under any foreign jurisdictions have been taken and become effective;
- no order, injunction, decree or regulation issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the spin-off is in effect;
- our common stock has been approved for listing on the New York Stock Exchange, subject to official notice of issuance;
- the private letter ruling McDermott has requested from the IRS with respect to the tax treatment of the spin-off has been received and has not been revoked or modified by the IRS in any material respect, and McDermott has received an opinion from its tax counsel regarding the tax treatment of the spin-off as of the distribution date (see "—Material U.S. Federal Income Tax Consequences of the Spin-Off" for more information regarding the requested private letter ruling and opinion of tax counsel);
- each of the ancillary agreements related to the spin-off shall have been entered into before the spin-off and shall not have been materially breached by any party thereto;
- all material governmental approvals and material consents necessary to consummate the spin-off have been received and continue to be in full force and effect; and
- no other events or developments have occurred that, in the judgment of the board of directors of McDermott, in its sole and absolute discretion, would result in the spin-off having a material adverse effect on McDermott or its stockholders.

McDermott may waive one or more of these conditions in its sole and absolute discretion, and the determination by McDermott regarding the satisfaction of these conditions will be conclusive. The fulfillment of

these conditions will not create any obligation on McDermott's part to effect the distribution, and McDermott has reserved the right to amend, modify or abandon any and all terms of the distribution and the related transactions at any time prior to the distribution date.

Material U.S. Federal Income Tax Consequences of the Spin-Off

The following is a summary of material U.S. federal income tax consequences relating to the spin-off. This summary is based on the Code, related U.S. Treasury regulations, and interpretations of the Code and the U.S. Treasury regulations by the courts and the IRS, in effect as of the date of this information statement, and all of which are subject to change, possibly with retroactive effect. This summary does not discuss all the tax considerations that may be relevant to McDermott stockholders in light of their particular circumstances, nor does it address the consequences to McDermott stockholders subject to special treatment under the U.S. federal income tax laws (such as non-U.S. persons, insurance companies, dealers or brokers in securities or currencies, tax-exempt organizations, financial institutions, mutual funds, pass-through entities and investors in such entities, holders who hold their shares as a hedge or as part of a hedging, straddle, conversion, synthetic security, integrated investment or other risk-reduction transaction or who are subject to alternative minimum tax or holders who acquired their shares upon the exercise of employee stock options or otherwise as compensation). In addition, this summary does not address the U.S. federal income tax consequences to those McDermott stockholders who do not hold their McDermott common stock as a capital asset. Finally, this summary does not address any state, local or foreign tax consequences.

MCDERMOTT STOCKHOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE AND LOCAL AND FOREIGN TAX CONSEQUENCES OF THE SPIN-OFF TO THEM.

The spin-off is conditioned on the receipt and continued effectiveness of a private letter ruling from the IRS and McDermott's receipt of an opinion from Baker Botts L.L.P. (which opinion will rely, in part, on the receipt and continued effectiveness of the private letter ruling), in each case substantially to the effect that (1) the spin-off will qualify under Section 355 of the Code and certain transactions related to the spin-off will qualify under Sections 355 and/or 368 of the Code, and (2) the spin-off and certain related transactions will further qualify for tax-free treatment to McDermott and to us.

Assuming the spin-off and such related transactions meet the conditions described above:

- the spin-off and certain related transactions will not result in any U.S. taxable income, gain or loss to McDermott or to us, other than with respect to any intercompany items or excess loss accounts required to be taken into account under Treasury regulations relating to consolidated returns;
- no gain or loss will be recognized by (and no amount will be included in the taxable income of) McDermott stockholders on their receipt of shares of our common stock in the spin-off;
- the holding period of shares of our common stock received by each McDermott stockholder will include the holding period at the time of the spin-off for the McDermott common stock on which the spin-off is made;
- the tax basis of the McDermott common stock held by each McDermott stockholder immediately before the spin-off will be allocated between that McDermott common stock and our common stock received, including any fractional share of our stock deemed received in the spin-off, in proportion to the relative fair market value of each on the date of the spin-off; and
- a McDermott stockholder who receives cash for a fractional share of our common stock will generally recognize capital gain or loss measured by the difference between the amount of cash received and the basis of the fractional share interest in our common stock to which the stockholder would otherwise be entitled.

U.S. Treasury Regulations also generally provide that if a McDermott stockholder holds different blocks of McDermott common stock (generally shares of McDermott common stock purchased or acquired on different dates or at different prices), the aggregate basis for each block of McDermott common stock purchased or acquired on the same date and at the same price will be allocated, to the greatest extent possible, between the shares of our common stock received in the spin-off in respect of such block of McDermott common stock and such block of McDermott common stock, in proportion to their respective fair market values, and the holding period of the shares of our common stock received in the spin-off in respect of such block of McDermott common stock will include the holding period of such block of McDermott common stock. If a McDermott stockholder is not able to identify which particular shares of our common stock are received in the spin-off with respect to a particular block of McDermott common stock, for purposes of applying the rules described above, the stockholder may designate which shares of our common stock are received in the spin-off in respect of a particular block of McDermott common stock, provided that such designation is consistent with the terms of the spin-off. Holders of McDermott common stock are urged to consult their own tax advisors regarding the application of these rules to their particular circumstances.

Although a private letter ruling from the IRS generally is binding on the IRS, if the factual representations or assumptions made in the private letter ruling request are inaccurate or incomplete in any material respect, we will not be able to rely on the private letter ruling. Furthermore, the IRS will not rule on whether a distribution satisfies certain requirements necessary to qualify under Section 355 of the Code or to obtain tax-free treatment to McDermott and its stockholders under Section 355 of the Code. Rather, the private letter ruling is based on representations by McDermott that these requirements have been satisfied, and any inaccuracy in such representations could invalidate the private letter ruling. In addition to the continued effectiveness of the private letter ruling from the IRS, McDermott has made it a condition to the spin-off that McDermott obtain an opinion of Baker Botts L.L.P. substantially to the effect that (1) the spin-off will qualify under Section 355 of the Code and certain transactions related to the spin-off will qualify under Sections 355 and/or 368 of the Code, and (2) the spin-off and certain related transactions will further qualify for tax-free treatment to McDermott and to us. The opinion will address those matters upon which the IRS will not rule and will rely on the private letter ruling as to matters covered by the private letter ruling. In addition, the opinion will be based on, among other things, certain assumptions and representations made by McDermott and us, which if incorrect or inaccurate in any material respect would jeopardize the conclusions reached by such counsel in its opinion. The opinion will not be binding on the IRS or the courts and will be subject to other qualifications and limitations.

Notwithstanding receipt by McDermott of the private letter ruling and opinion of counsel, the IRS could assert that the spin-off and/or certain related transactions do not qualify for tax-free treatment for U.S. federal income tax purposes. If the IRS were successful in making such an assertion, we and our initial public stockholders could be subject to significant U.S. federal income tax liability. In general, (1) with respect to the spin-off, our initial public stockholders could be treated as if they had received a taxable distribution from McDermott in an amount equal to the fair market value of our common stock that was distributed to them and (2) with respect to certain related transactions, we would be treated as if we had sold part of our assets (which will be retained by McDermott) in a taxable sale for fair market value and McDermott could be treated as receiving such assets from us as a taxable dividend. For example, even if the spin-off were otherwise to qualify under Section 355 of the Code, certain related preparatory transactions may be taxable to us (but not to McDermott or our initial stockholders) under Section 355(e) of the Code, if the spin-off 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, stock representing a 50% or greater interest in McDermott or us. For this purpose, any acquisitions of McDermott common stock or of our common stock within the period beginning two years before the spin-off and ending two years after the spin-off are presumed to be part of such a plan, although we or McDermott may be able to rebut that presumption.

In connection with the spin-off, we and a subsidiary of McDermott will enter into a tax sharing agreement pursuant to which we will agree to be responsible for certain liabilities and obligations following the spin-off. Under the terms of the tax sharing agreement, in the event that certain transactions related to the spin-off were to fail to qualify for tax-free treatment, we would generally be responsible for all of the tax imposed on us or

McDermott and its subsidiaries resulting from such failure. However, if these related transactions were to fail to qualify for tax-free treatment because of actions or failures to act by McDermott or its subsidiaries, a subsidiary of McDermott would be responsible for all such tax. See "Relationship with McDermott After the Spin-Off—Agreements Between McDermott and Us—Tax Sharing Agreement."

Under U.S. Treasury regulations, each McDermott stockholder who, immediately before the distribution, owns at least 5% of the total outstanding common stock of McDermott must attach to such stockholder's U.S. federal income tax return for the year in which the spin-off occurs a statement setting forth certain information relating to the spin-off. In addition, all stockholders are required to retain permanent records relating to the amount, basis and fair market value of our stock which they receive and to make those records available to the IRS on request of the IRS.

THE FOREGOING IS A SUMMARY OF MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE SPIN-OFF UNDER CURRENT LAW AND IS FOR GENERAL INFORMATION ONLY. THE FOREGOING DOES NOT PURPORT TO ADDRESS ALL U.S. FEDERAL INCOME TAX CONSEQUENCES OR TAX CONSEQUENCES THAT MAY ARISE UNDER THE TAX LAWS OF OTHER JURISDICTIONS OR THAT MAY APPLY TO PARTICULAR CATEGORIES OF STOCKHOLDERS. EACH MCDERMOTT STOCKHOLDER SHOULD CONSULT ITS OWN TAX ADVISOR AS TO THE PARTICULAR TAX CONSEQUENCES OF THE SPIN-OFF TO SUCH STOCKHOLDER, INCLUDING THE APPLICATION OF U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS, AND THE EFFECT OF POSSIBLE CHANGES IN TAX LAWS THAT MAY AFFECT THE TAX CONSEQUENCES DESCRIBED ABOVE.

Reason for Furnishing this Information Statement

This information statement is being furnished solely to provide information to McDermott stockholders who will receive shares of B&W common stock in the spin-off. It is not to be construed as an inducement or encouragement to buy or sell any of our securities or any McDermott securities. We believe that the information contained in this information statement is accurate as of the date set forth on the front cover. Changes may occur after that date and neither McDermott nor we undertake any obligation to update the information, except to the extent applicable securities laws require us to do so.

CAPITALIZATION

The following table sets forth our capitalization (1) on a historical basis as of March 31, 2010, and (2) on a pro forma basis to reflect the spin-off. This table should be read in conjunction with "Selected Historical Combined Financial Information," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Unaudited Pro Forma Combined Financial Information," and our combined financial statements and corresponding notes included elsewhere in this information statement.

	March 31, 2010 (in thousands)	
	Historical	Pro Forma
Long-term debt (including current portion)	$ 7,257	$
Stockholders' equity		
Preferred stock, $0.01 par value; 75,000,000 shares authorized pro forma; no shares issued and outstanding pro forma	—	—
Common stock, $0.01 par value; 325,000,000 shares authorized pro forma; [ ] shares issued and outstanding pro forma	—	[ ](1)
Parent equity	153,639	
Total capitalization	$160,896	$

(1) Represents the expected distribution of approximately [ ] shares of our common stock to holders of McDermott common stock based on the number of shares of McDermott common stock outstanding on [ ], 2010.

DIVIDEND POLICY

We do not currently plan to pay a regular dividend on our common stock following the spin-off. The declaration of any future cash dividends and, if declared, the amount of any such dividends, will be subject to our financial condition, earnings, capital requirements, financial covenants and other contractual restrictions and to the discretion of our board of directors. The credit agreement relating to our revolving credit facility includes restrictions on our ability to pay dividends. Our board of directors may take into account such matters as general business conditions, industry practice, our financial condition and performance, our future prospects, our cash needs and capital investment plans, income tax consequences, applicable law and such other factors as our board of directors may deem relevant. For a discussion of the covenants contained in our credit agreement, please see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

SELECTED HISTORICAL COMBINED FINANCIAL DATA

The following table presents our selected historical combined financial data. We derived the historical combined statement of operations information for each of the years ended December 31, 2009, 2008 and 2007, and the balance sheet information as of December 31, 2009 and 2008, from our audited combined financial statements included in this information statement. We derived the historical condensed combined statement of operations information for the three months ended March 31, 2010 and 2009, and the balance sheet information as of March 31, 2010 and 2009, from our unaudited condensed combined financial statements included in this information statement. We derived the historical combined statement of operations information for the years ended December 31, 2006 and 2005, and the balance sheet information as of December 31, 2007, 2006 and 2005, from our unaudited combined financial statements not included in this information statement. The selected historical combined financial data reflects the effects of certain assets to be transferred to, and liabilities to be assumed by, McDermott in connection with the spin-off, and does not reflect the effects of certain liabilities to be assumed by, B&W in connection with the spin-off. See "Unaudited Pro Forma Combined Financial Data."

You should read the selected historical combined financial data in conjunction with our combined financial statements and the accompanying notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in this information statement. The financial information may not be indicative of our future performance and does not necessarily reflect what our financial position and results of operations would have been had we operated as an independent public company during the periods presented, including changes that will occur in our operations as a result of our spin-off from McDermott.

	Three Months Ended March 31,		Year Ended December 31,				
	2010	2009	2009	2008	2007	2006[1]	2005[1]
				(In thousands)			
Statement of Operations Information:							
Revenues	$ 662,388	$ 785,053	$2,854,632	$3,398,574	$3,199,944	$2,517,606	$ 601,042
Costs and expenses	637,661	700,090	2,640,162	3,005,883	2,907,958	2,348,569	560,223
Equity in income of investees	14,019	10,345	55,094	51,792	45,647	39,809	37,705
Operating income	38,746	95,308	269,564	444,483	337,633	208,846	78,524
Other income (expense)	(8,634)	(6,062)	(37,263)	(11,744)	(23,285)	7,990	(2,439)
Income before provision for income taxes	30,112	89,246	232,301	432,739	314,348	216,836	76,085
Provision for (benefit from) income taxes	13,256	35,710	84,381	108,885	99,018	84,826	(17,666)
Net income attributable to The Babcock & Wilcox Operations of McDermott International, Inc.	$ 16,843	$ 53,484	$ 147,764	$ 323,766	$ 215,250	$ 131,976	$ 93,751

	As of March 31,		As of December 31,				
	2010	2009	2009	2008	2007	2006[1]	2005[1]
				(In thousands)			
Balance Sheet Information:							
Working capital	$ (51,440)	$ (32,128)	$ 71,539	$ (90,040)	$ (192,874)	$ (297,286)	$ 429
Total assets	2,588,769	2,498,580	2,603,859	2,506,841	2,149,636	2,222,818	508,772
Notes payable and current maturities of long-term debt	4,993	4,161	6,432	9,021	6,599	257,492	4,250
Long-term debt	5,343	5,915	4,222	6,109	10,609	15,242	12,975
Other Data:							
Depreciation and amortization	$ 16,812	$ 16,263	$ 72,212	$ 45,985	$ 41,672	$ 32,484	$ 14,493
Capital expenditures	18,763	20,029	93,725	63,014	60,709	43,203	27,109
Backlog	4,751,972	4,918,507	4,740,060	5,358,740	5,064,226	3,494,477	1,772,258

(1) Results for the year ended December 31, 2006 include approximately ten months for the principal operating subsidiaries of our Power Generation Systems segment, which were included in our results effective February 22, 2006. We did not include the results of operations of these entities in our financial statements from February 22, 2000 through February 22, 2006 due to the Chapter 11 proceedings involving several of our subsidiaries. On February 22, 2000, Babcock & Wilcox Power Generation Group, Inc. (formerly known as The Babcock & Wilcox Company) ("B&W PGG") and certain of its subsidiaries (collectively, the "Debtors") filed a voluntary bankruptcy petition in the U.S. Bankruptcy Court for the Eastern District of New Orleans to reorganize under Chapter 11 of the U.S. Bankruptcy Code. The Debtors took this action as a means to determine and comprehensively resolve their asbestos liability as a result of asbestos-containing boilers and other products the Debtors sold, installed or serviced in prior decades. On February 22, 2000, the Debtors' operations became subject to the jurisdiction of the Bankruptcy Court. Because we lost control of the Debtors while their operations were subject to the jurisdiction of the Bankruptcy Court, consistent with the requirements of ASC 810-10-15-10 (a), (1) (ii), we deconsolidated the results of the Debtors in our financial statements on February 22, 2000 and presented our investment in the Debtors on the cost basis of accounting. Subsequent to February 22, 2000, we wrote this investment down to zero as impaired. On February 22, 2006, the Debtors emerged from bankruptcy. The results of the Debtors were reconsolidated into our financial statements effective February 22, 2006 and for all periods after such date. We accounted for this reconsolidation in a manner similar to the acquisition of the non-controlling interest in a subsidiary.

UNAUDITED PRO FORMA COMBINED FINANCIAL DATA

The following unaudited pro forma combined balance sheet as of March 31, 2010 and the unaudited pro forma combined statements of income for the year ended December 31, 2009 and the three months ended March 31, 2010 are based on a combined reporting entity comprised of the assets and liabilities used in managing and operating the Power Generation Systems and Government Operations segments of McDermott and two captive insurance companies, which will be contributed to B&W in connection with the spin-off. See "Selected Historical Combined Financial Information." This unaudited pro forma combined financial information should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the combined financial statements and the accompanying notes included in this information statement.

Our unaudited pro forma combined statements of income for the year ended December 31, 2009 and the three months ended March 31, 2010 include adjustments to give effect to:

- the deemed transfer by B&W to McDermott of certain assets that will not be held by B&W;
- the deemed assumption by B&W of certain liabilities that were previously liabilities of McDermott or other subsidiaries of McDermott; and
- the deemed assumption by McDermott or other subsidiaries of McDermott of certain liabilities that were previously liabilities of B&W;

in each case as if such transfers occurred on January 1, 2009. The unaudited pro forma combined balance sheet as of March 31, 2010 includes adjustments to give effect to these deemed transactions as if they had occurred on March 31, 2010. The unaudited pro forma combined statements of income and balance sheet also give effect to the issuance by us to McDermott, in connection with certain transactions relating to the spin-off, of [ ] shares of our common stock, and the distribution of such shares to the holders of McDermott common stock.

The unaudited pro forma combined financial information set forth below is based on available information and assumptions that we believe are factually supportable. The information has been prepared on a combined basis using historical results of operations and bases of assets and liabilities of The Babcock & Wilcox Operations of McDermott International, Inc. and includes intercompany allocations of expenses. The costs to operate our business as an independent public entity may exceed the historical allocations of expenses related to areas that include, but are not limited to, litigation and other legal matters, compliance with the Sarbanes-Oxley Act and other corporate governance matters, insurance and claims management and the related cost of insurance, as well as general overall purchasing power. These possible increased costs are not included in the unaudited pro forma combined financial information, as their impact on our results of operations cannot be reasonably estimated. The unaudited pro forma combined financial information also does not reflect any significant changes that may occur after the spin-off in our financing plans and cost structure, including expenditures related to our growth initiatives.

The unaudited pro forma financial information is not necessarily indicative of our future performance or what our results of operations and financial position would have been if we had operated as an independent public company during the periods presented or if the transactions reflected in the pro forma adjustments had actually occurred as of the dates assumed.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEETS
As of March 31, 2010

	The Babcock & Wilcox Operations of McDermott International, Inc.	Pro Forma Adjustments	The Babcock & Wilcox Operations of McDermott International, Inc. Pro Forma
		(In thousands)	
ASSETS			
Current Assets:			
Cash and cash equivalents	$ 401,124	$ (100,000)[a]	$ 301,124
Restricted cash and cash equivalents	17,821	—	17,821
Investments	14	—	14
Accounts receivable – trade, net	302,506	—	302,506
Accounts receivable – other	42,496	—	42,496
Contracts in progress	299,166	—	299,166
Inventories	95,009	—	95,009
Deferred income taxes	99,109	—	99,109
Other current assets	25,259	(488)[b]	24,771
Total Current Assets	1,282,504	(100,488)	1,182,016
Property, Plant and Equipment	953,715	(24,592)	929,123
Less accumulated depreciation	522,504	(5,172)	517,332
Net Property, Plant and Equipment	431,211	(19,420)[b]	411,791
Investments	70,909	(1,805)[b]	69,104
Goodwill	269,950	—	269,950
Deferred Income Taxes	265,048	(19,976)[b]	245,072
Investments in Unconsolidated Affiliates	77,965	—	77,965
Note Receivable from Affiliate	43,835	(43,835)[c]	—
Other Assets	147,347	—	147,347
TOTAL	$ 2,588,769	$ (185,524)	$ 2,403,245

See accompanying notes to unaudited pro forma condensed combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEETS

As of March 31, 2010

	The Babcock & Wilcox Operations of McDermott International, Inc.	Pro Forma Adjustments	The Babcock & Wilcox Operations of McDermott International, Inc. Pro Forma
		(In thousands)	
LIABILITIES AND PARENT EQUITY			
Current Liabilities:			
Notes payable and current maturities of long-term debt	$ 4,993	$ —	$ 4,993
Accounts payable	183,360	(7,394)[b]	175,966
Accounts payable to McDermott International, Inc.	142,967	(142,967)[c]	—
Accrued employee benefits	299,026	(86,610)[b]	212,416
Accrued liabilities—other	85,468	(10,984)[b]	74,484
Advance billings on contracts	494,579	—	494,579
Accrued warranty expense	119,531	—	119,531
Income taxes payable	4,020	—	4,020
Total Current Liabilities	1,333,944	(247,955)	1,085,989
Long-Term Debt	5,343	—	5,343
Accumulated Postretirement Benefit Obligation	106,329	—	106,329
Environmental Liabilities	48,523	—	48,523
Pension Liability	550,562	(28,806)[b]	521,756
Notes Payable to Affiliate	320,588	(320,588)[c]	—
Other Liabilities	69,841	27,041 [d]	96,882
Commitments and Contingencies			
Equity			
Total Parent Equity	153,639	(153,639)[c],[e]	—
Capital in excess of par value	—	538,423 [c],[e]	538,423
Parent Equity—The Babcock & Wilcox Operations of McDermott International, Inc.			
TOTAL	$2,588,769	$(185,524)	$2,403,245

See accompanying notes to unaudited pro forma condensed combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENTS OF INCOME

For the Three Months Ended March 31, 2010

	The Babcock & Wilcox Operations of McDermott International, Inc.	Pro Forma Adjustments		The Babcock & Wilcox Operations of McDermott International, Inc. Pro Forma
		(In thousands)		
Revenues	$ 662,388	$ —		$ 662,388
Costs and Expenses:				
Cost of operations	544,951	—		544,951
Selling, general and administrative expenses	92,723	(2,264)	(f)	90,459
(Gains) losses on asset disposals and impairments—net	(13)	—		(13)
Total Costs and Expenses	637,661	(2,264)		635,397
Equity in Income of Investees	14,019	—		14,019
Operating Income	38,746	2,264		41,010
Other Income (Expense):				
Interest income	449	(274)	(g)	175
Interest expense	(5,993)	5,774	(g)	(219)
Other expense—net	(3,090)	—		(3,090)
Total Other Expense	(8,634)	5,500		(3,134)
Income before Provision for Income Taxes	30,112	7,764		37,876
Provision for Income Taxes	13,256	7,072	(h)	20,328
Net Income	16,856	692		17,548
Less: Net Income attributable to Noncontrolling Interest	(13)	—		(13)
Net Income Attributable to The Babcock & Wilcox Operations of McDermott International, Inc.	$ 16,843	692		$ 17,535
Pro Forma Earnings per Share:				
Basic				$ —
Diluted				$ —
Weighted Average Shares used in Calculating Pro Forma Earnings per Share:				
Basic				—
Diluted				—

See accompanying notes to unaudited pro forma condensed combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

UNAUDITED PRO FORMA COMBINED STATEMENT OF INCOME

For the Year Ended December 31, 2009

	The Babcock & Wilcox Operations of McDermott International, Inc.	Pro Forma Adjustments (In thousands)	The Babcock & Wilcox Operations of McDermott International, Inc. Pro Forma
Revenues	$2,854,632	$ —	$2,854,632
Costs and Expenses:			
Cost of operations	2,235,377	—	2,235,377
Selling, general and administrative expenses	403,559	(9,531)[f]	394,028
Losses on asset disposals and impairments—net	1,226	—	1,226
Total Costs and Expenses	2,640,162	(9,531)	2,630,631
Equity in Income of Investees	55,094	—	55,094
Operating Income	269,564	9,531	279,095
Other Income (Expense):			
Interest income	3,439	(1,854)[g]	1,585
Interest expense	(24,590)	23,590[g]	(1,000)
Other expense—net	(16,112)	—	(16,112)
Total Other Expense	(37,263)	21,736	(15,527)
Income before Provision for Income Taxes	232,301	31,267	263,568
Provision for Income Taxes	84,381	14,938[h]	99,319
Net Income	147,920	16,329	164,249
Less: Net Income Attributable to Noncontrolling Interest	(156)	—	(156)
Net Income Attributable to The Babcock & Wilcox Operations of McDermott International, Inc.	$ 147,764	$ 16,329	$ 164,093
Pro Forma Earnings per Share:			
Basic			$ —
Diluted			$ —
Weighted Average Shares used in Calculating Pro Forma Earnings per Share:			
Basic			—
Diluted			—

See accompanying notes to unaudited pro forma financial statements.

NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS

Balance Sheet

(a) Reflects an estimated cash distribution by The Babcock & Wilcox Operations of McDermott International, Inc. to McDermott to maintain appropriate working capital and liquidity levels. The estimated cash distribution is based on a preliminary determination by the McDermott board of directors that resulted from its review of the McDermott consolidated cash position and the respective foreseeable working capital and liquidity requirements of B&W and McDermott following the spin-off. The amount will be finally determined by the McDermott board of directors, as a fixed amount, in connection with its final approval of the spin-off.

(b) Reflects asset and liabilities that will not be held by the Babcock & Wilcox Operations of McDermott International, Inc. after the spin-off, principally pension liabilities and property, plant and equipment that will be transferred to McDermott. The pension liabilities reflected in the pro forma adjustments are related to certain legacy employees of subsidiaries included in McDermott's offshore oil and gas construction segment. In order to match this obligation with the appropriate group, the subsidiary with these liabilities is being transferred to McDermott in connection with the spin-off.

(c) Reflects the extinguishment or settlement of receivable and payable amounts with certain McDermott subsidiaries. All of the settlements of these receivable and payable amounts will be in the form of the forgiveness of the amounts owed, with the exceptions being a cash payment totaling approximately $43 million that a Canadian subsidiary of McDermott will make to a subsidiary of ours and the transfer of a $278 million promissory note and $43 million in cash from a subsidiary of ours to a subsidiary of McDermott.

(d) Reflects non-current tax liabilities of McDermott to be assumed by The Babcock & Wilcox Operations of McDermott International, Inc. in connection with the spin-off.

(e) Reflects the expected distribution of approximately [ ] million shares of B&W common stock and the reclassification of McDermott's investment in our company to common stock in an amount equal to the aggregate par value of the shares of our common stock to be distributed in the spin-off, and the remainder to be capital in excess of par value.

Statements of Income

(f) Reflects the reduction of pension expense associated with pension plan assets and liabilities that will be transferred to a McDermott subsidiary as a result of the spin-off.

(g) Reflects the elimination of interest income and expense related to notes receivable and payable amounts with certain subsidiaries of McDermott that will be settled in connection with the spin-off.

(h) Reflects the income tax impacts of the adjustments described in (a) and (b) above and the balance sheet adjustments described above.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with "Selected Historical Combined Financial Information," "Unaudited Pro Forma Combined Financial Information" and the financial statements and accompanying notes appearing in this information statement. This discussion and analysis contains forward-looking statements that involve risks and uncertainties. Actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including those set forth under "Risk Factors" and elsewhere in this information statement. See "Cautionary Statement Concerning Forward-Looking Information." Unless the context requires otherwise or we specifically indicate otherwise, when used in this Management's Discussion and Analysis of Financial Condition and Results of Operations, the terms "we," "our," "ours" and "us" refer to The Babcock & Wilcox Operations of McDermott International, Inc. The historical financial information discussed below does reflect the effects of certain assets to be transferred to, and liabilities to be assumed by, McDermott in connection with the spin-off, and does not reflect the effects of certain liabilities to be assumed by B&W in connection with the spin-off. See "Unaudited Pro Forma Combined Financial Information."

General

In general, we operate in capital-intensive industries and rely on large contracts for a substantial amount of our revenues. We are currently exploring growth strategies across our segments through acquisitions to expand and complement our existing businesses. As we pursue these opportunities, we expect they would be funded by cash on hand, external financing (including debt), equity or some combination thereof.

Overview—Power Generation Systems

We expect the backlog of our Power Generation Systems segment of approximately $2.0 billion at March 31, 2010 to produce revenues of approximately $790 million in 2010, not including any change orders or new contracts that may be awarded during the year. Through this segment, we are actively bidding on and, in some cases, beginning preliminary work on projects that we expect will be awarded to us in 2010 subject to successful contract negotiations. These projects are not currently reflected in backlog. Our liquidity position for this segment remains strong, and we expect it to remain so throughout 2010.

Our Power Generation Systems segment's overall activity depends mainly on the capital expenditures of electric power generating companies and other steam-using industries. This segment's products and services are capital intensive. As such, customer demand is heavily affected by the variations in customers' business cycles and by the overall economies of the countries in which they operate.

The recent worldwide credit and economic environment, as well as uncertainty regarding environmental regulations, has adversely affected the utility industry. We have experienced and expect to continue to experience delays or deferrals of proposed projects. For example, for the year ended December 31, 2009, our Power Generation Systems segment experienced a decline in revenues compared to 2008 and an overall slowdown in project awards. In light of current macroeconomic conditions, revenues from our Power Generation Systems segment may continue to decline in 2010.

According to the International Energy Agency, consumption of electricity worldwide is expected to nearly double in the next 25 years. While we cannot predict what impact potential future legislation and regulations concerning CO_2 and other emissions will have on our results of operations, it is possible such legislation could favorably impact the environmental retrofit and service businesses of our Power Generation Systems segment.

On June 26, 2009 the U.S. House of Representatives passed the American Clean Energy and Security Act of 2009, H.R.2454, 111th Cong. 1st Sess. (commonly referred to as the "Waxman-Markey Bill"). This legislation

would require industry in the United States to reduce emissions of greenhouse gasses by the year 2050 by 83% from a baseline level of 2005. Other countries and certain states within the United States have also passed or are considering legislation to mitigate climate change by restricting the emissions of greenhouse gasses, while the EPA has initiated a rule-making process to reduce the emission of greenhouse gasses. It is unknown at this time whether or when the Waxman-Markey Bill or any similar legislation may become law. When using fossil fuels, our boiler products typically emit carbon dioxide. Were the Waxman-Markey Bill to become law, we believe that owners of power plants would respond first by reducing utilization rates and eventually by retiring fossil-fueled boilers. Future decisions to retire boilers would impact our business in a variety of ways, including the servicing and retrofitting of operating power plants. The need to replace retired generating capacity with cleaner technologies would also create business opportunities for us. To generate energy while minimizing the emission of greenhouse gasses, we are actively researching and developing a range of products, including:

- non-carbon technologies, such as nuclear power plants and solar receivers for concentrating solar power plants;
- low-carbon technologies that enable clean use of fossil fuels, such as oxy-fuel combustion and regenerable solvent absorption technologies to scrub carbon dioxide from exhaust gasses; and
- carbon-neutral technologies, such as biomass-fueled boilers and gasifiers, which use a renewable resource where the growing biomass re-absorbs the carbon dioxide emitted during energy production.

At this time, we cannot predict the timing or extent of additional limits on emissions of greenhouse gasses, nor their specific impacts on our business.

Overview—Government Operations

We expect the backlog of our Government Operations segment of approximately $2.8 billion at March 31, 2010 to produce revenues of approximately $730 million in 2010, not including any change orders or new contracts that may be awarded during the year. Our liquidity position for this segment remains strong, and we expect it to remain so throughout 2010.

The revenues of our Government Operations segment are largely a function of defense spending by the U.S. Government. As a supplier of major nuclear components for certain U.S. Government programs, we are a significant participant in the defense industry. With our specialized capabilities of full life-cycle management of special nuclear materials, facilities and technologies, our Government Operations segment is well-positioned to continue to participate in the continuing cleanup, operation and management of the nuclear sites and weapons complexes maintained by the DOE.

In December 2009, our subsidiary Nuclear Fuel Services, Inc., which we acquired in December 2008, implemented a suspension of some operations at its Erwin, Tennessee manufacturing facility while implementing organizational, facility and management changes to enhance safety controls and processes. We suspended the operations in consultation with the NRC following the occurrence of two separate incidents that we reported to the NRC in October and November 2009. The October 2009 incident involved the generation of excessive heat and a hazardous gas at a specialized cleaning station. The incident was caused by the processing of a small amount of uranium-aluminum material in nitric acid. This incident resulted in some damage to piping, but did not result in any injuries to personnel or offsite releases of chemical or radioactive material. The November 2009 incident involved a fire in a glovebox enclosure. The incident was caused by a reaction between fluorine gas in a cylinder of uranium and the fiberglass backing of the teflon lining of a vent hose attached to the cylinder within the glovebox enclosure. This incident resulted in damage to a hose and a faceplate within the glove box enclosure, but did not result in any injuries to personnel or offsite releases of chemical or radioactive material. Inspections conducted separately by the NRC, our existing nuclear liability underwriter and us revealed specific modifications necessary to improve Nuclear Fuel Services, Inc.’s overall safety performance. Although the NRC

did not issue any directive or order to us to suspend these operations, we believe the NRC likely would have done so had we not voluntarily suspended the operations. Although we were already in the process of implementing safety, cultural and procedural improvements at Nuclear Fuel Services, Inc., we have refined and accelerated those changes and have developed other specific enhancements in consultation with the NRC, as confirmed in the NRC's January 7, 2010 confirmatory action letter to Nuclear Fuel Services, Inc.

The suspended operations include production operations, the commercial development line and the highly enriched uranium down blending facility. These operations are in the process of being brought back on line through a phased restart, which we commenced in March 2010 following completion of a third-party review and NRC review of the modifications that were implemented. The production operations are now fully operational. We expect to bring the highly enriched uranium down-blending facility back on line, through a phased restart, beginning in May 2010, and we expect that the facility will be fully operational in June 2010. We expect to bring the commercial development line back on line by the end of January 2011. There can be no assurance that we will not have to suspend our operations in the future to implement additional changes to enhance our safety controls and processes in order to comply with applicable laws and regulations.

Critical Accounting Policies and Estimates

Our financial statements and accompanying notes are prepared in accordance with accounting principles generally accepted in the United States. Preparing financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses. These estimates and assumptions are affected by management's application of accounting policies. We believe the following are our most critical accounting policies that we apply in the preparation of our financial statements. These policies require our most difficult, subjective and complex judgments, often as a result of the need to make estimates of matters that are inherently uncertain.

Contracts and Revenue Recognition. We determine the appropriate accounting method for each of our long-term contracts before work on the project begins. We generally recognize contract revenues and related costs on a percentage-of-completion method for individual contracts or combinations of contracts under the guidelines of FASB Topic *Revenue Recognition.* The use of this method is based on our experience and history of being able to prepare reasonably dependable estimates of the cost to complete our projects. Under this method, we recognize estimated contract revenue and resulting income based on costs incurred to date as a percentage of total estimated costs. Certain costs may be excluded from the cost-to-cost method of measuring progress, such as significant costs for materials and major third-party subcontractors, if it appears that such exclusion would result in a more meaningful measurement of actual contract progress and resulting periodic allocation of income. Total estimated costs, and resulting contract income, are affected by changes in the expected cost of materials and labor, productivity, scheduling and other factors. Additionally, external factors such as weather, customer requirements and other factors outside of our control may affect the progress and estimated cost of a project's completion and, therefore, the timing of revenue and income recognition. We routinely review estimates related to our contracts, and revisions to profitability are reflected in the quarterly and annual earnings we report.

For contracts as to which we are unable to estimate the final profitability except to assure that no loss will ultimately be incurred, we recognize equal amounts of revenue and cost until the final results can be estimated more precisely. For these deferred profit recognition contracts, we recognize revenue and cost equally and only recognize gross margin when probable and reasonably estimable, which we generally determine to be when the contract is approximately 70% complete. We treat long-term construction contracts that contain such a level of risk and uncertainty that estimation of the final outcome is impractical except to assure that no loss will be incurred as deferred profit recognition contracts.

Fixed-price contracts are required to be accounted for under the completed-contract method if we are unable to reasonably forecast cost to complete at start-up. For example, if we have no experience in performing the type of work on a particular project and were unable to develop reasonably dependable estimates of total costs to complete, we would follow the completed-contract method of accounting for such projects. Our management's policy is not to enter into fixed-price contracts without an accurate estimate of cost to complete. However, it is

possible that in the time between contract execution and the start of work on a project, we could lose confidence in our ability to forecast cost to complete based on intervening events, including, but not limited to, experience on similar projects, civil unrest, strikes and volatility in our expected costs. In such a situation, we would use the completed-contract method of accounting for that project. We did not enter into any contracts that we accounted for under the completed contract method during 2009, 2008 or 2007.

For all contracts, if a current estimate of total contract cost indicates a loss on a contract, the projected loss is recognized in full when determined.

Although we continually strive to improve our ability to estimate our contract costs and profitability, adjustments to overall contract costs due to unforeseen events could be significant in future periods. We recognize claims for extra work or for changes in scope of work in contract revenues, to the extent of costs incurred, when we believe collection is probable and can be reasonably estimated. We recognize income from contract change orders or claims when formally agreed with the customer. We reflect any amounts not collected as an adjustment to earnings. We regularly assess the collectibility of contract revenues and receivables from customers.

Property, Plant and Equipment. We carry our property, plant and equipment at depreciated cost, reduced by provisions to recognize economic impairment when we determine impairment has occurred. Factors that impact our determination of impairment include forecasted utilization of equipment and estimates of cash flow from projects to be performed in future periods. Our estimates of cash flow may differ from actual cash flow due to, among other things, technological changes, economic conditions or changes in operating performance. Any changes in such factors may negatively affect our business segments and result in future asset impairments.

We depreciate our property, plant and equipment using the straight-line method, over estimated economic useful lives of eight to 40 years for buildings and two to 28 years for machinery and equipment. We expense the costs of maintenance, repairs and renewals that do not materially prolong the useful life of an asset as we incur them.

Investments in Affiliates. We use the equity method of accounting for affiliates in which our investment ownership ranges from 20% to 50%, unless significant economic or governance considerations indicate that we are unable to exert significant influence, in which case the cost method is used. The equity method is also used for affiliates in which our investment ownership is greater than 50% but we do not have a controlling interest. Currently, all of our significant investments in affiliates that are not included in our combined results are recorded using the equity method. Affiliates in which our investment ownership is less than 20% and where we are unable to exert significant influence are carried at cost.

Self-Insurance. We have wholly owned insurance subsidiaries that provide employer's liability, general and automotive liability and workers' compensation insurance and, from time to time, builder's risk insurance within certain limits to our companies. We may also have business reasons in the future to have these insurance subsidiaries accept other risks which we cannot or do not wish to transfer to outside insurance companies. When estimating our self insurance liabilities, we consider a number of factors, including historical claims experience and trend lines, projected growth patterns, inflation and exposure forecasts. The assumptions we make with respect to each of these factors represent our judgment as to the most probable cumulative impact of each factor on our future obligations. Our calculation of self insurance liabilities requires us to apply judgment to estimate the ultimate cost to settle reported claims and claims incurred but not yet reported as of the balance sheet date. We engage the services of an actuarial firm to assist us in the calculation of our liabilities for self insurance. While the actual outcome of insured claims could differ significantly from estimated amounts, these loss estimates and accruals recorded in our financial statements for claims have historically been reasonable in light of the actual amount of claims paid. Provisions for exposure to self insurance claims and the related payments of claims have historically not had a material adverse impact on our consolidated financial position, results of operations and cash flows, and we do not expect these provisions to have a material impact on our self-insurance programs in the future.

Pension Plans and Postretirement Benefits. We estimate income or expense related to our pension and postretirement benefit plans based on actuarial assumptions, including assumptions regarding discount rates and expected returns on plan assets. We determine our discount rate based on a review of published financial data and discussions with our actuary regarding rates of return on high-quality, fixed-income investments currently available and expected to be available during the period to maturity of our pension obligations. Based on historical data and discussions with our actuary, we determine our expected return on plan assets based on the expected long-term rate of return on our plan assets and the market-related value of our plan assets. Changes in these assumptions can result in significant changes in our estimated pension income or expense and our combined financial condition. We revise our assumptions on an annual basis based upon changes in current interest rates, return on plan assets and the underlying demographics of our workforce. These assumptions are reasonably likely to change in future periods and may have a material impact on future earnings. Effective December 31, 2009, we adopted the disclosure provisions of FASB Topic 715, Compensation—Retirement Benefits. In accordance with this provision, we have disclosed additional information about our assets set aside to fund our pension and postretirement benefit obligations. See Note 7 to our combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement for information on our pension and postretirement benefit plans.

Loss Contingencies. We estimate liabilities for loss contingencies when it is probable that a liability has been incurred and the amount of loss is reasonably estimable. We provide disclosure when there is a reasonable possibility that the ultimate loss will exceed the recorded provision or if such loss is not reasonably estimable. We are currently involved in some significant litigation, as discussed in Note 9 to our combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement. We have accrued our estimates of the probable losses associated with these matters. However, our losses are typically resolved over long periods of time and are often difficult to estimate due to the possibility of multiple actions by third parties. Therefore, it is possible future earnings could be affected by changes in our estimates related to these matters.

Goodwill. FASB Topic *Intangibles—Goodwill and Other*, requires us to perform periodic testing for impairment. It requires a two-step impairment test to identify potential goodwill impairment and measure the amount of a goodwill impairment loss. The first step of the test compares the fair value of a reporting unit with its carrying amount, including goodwill. If the carrying amount of a reporting unit exceeds its fair value, the second step of the goodwill impairment test is performed to measure the amount of the impairment loss, if any. The second step compares the implied fair value of the reporting unit’s goodwill with the carrying amount of that goodwill. Each year, we evaluate goodwill at each reporting unit to assess recoverability, and impairments, if any, are recognized in earnings. An impairment loss would be recognized in an amount equal to the excess of the carrying amount of the goodwill over the implied fair value of the goodwill. We determined that both the income and market valuation approaches provide inputs into the estimate of the fair value of our reporting units, which would be considered by market participants. Under the income valuation approach, we employed a discounted cash flow model to estimate the fair value of each reporting unit. This model requires the use of significant estimates and assumptions regarding future revenues, costs, margins, capital expenditures, changes in working capital, terminal year growth rate and cost of capital. Our cash flow models are based on our forecasted results for the applicable reporting units. Actual results could differ from our projections. Under the market valuation approach, we employed the guideline publicly traded company method, which indicates the fair value of the equity of each reporting unit by comparing it to publicly traded companies in similar lines of business. After identifying and selecting guideline companies, we analyzed their business and financial profiles for relative similarity. Factors such as size, growth, risk and profitability were analyzed and compared to each of our reporting units. We have completed our annual review of goodwill for each of our segments as of December 31, 2009, which indicated that we had no impairment of goodwill. The fair value of our reporting units was substantially in excess of carrying value at December 31, 2009.

Asset Retirement Obligations and Environmental Clean-up Costs. We accrue for future decommissioning of our nuclear facilities that will permit the release of these facilities to unrestricted use at the end of each facility's life, which is a requirement of our licenses from the NRC. In accordance with the FASB Topic *Asset*

Retirement and Environmental Obligations, we record the fair value of a liability for an asset retirement obligation in the period in which it is incurred. In estimating fair value, we use present values of cash flows expected to be incurred in settling our obligations. To the extent possible, we perform a marketplace assessment of the cost and timing of performing the retirement activities. We apply a credit-adjusted risk-free interest rate to our expected cash flows in our determination of fair value. When we initially record such a liability, we capitalize a cost by increasing the carrying amount of the related long-lived asset. Over time, the liability is accreted to its present value each period, and the capitalized cost is depreciated over the useful life of the related asset. Upon settlement of a liability, we will settle the obligation for its recorded amount or incur a gain or loss. This topic applies to environmental liabilities associated with assets that we currently operate and are obligated to remove from service. For environmental liabilities associated with assets that we no longer operate, we have accrued amounts based on the estimated costs of clean-up activities, net of the anticipated effect of any applicable cost-sharing arrangements. We adjust the estimated costs as further information develops or circumstances change. An exception to this accounting treatment relates to the work we perform for one facility for which the U.S. Government is obligated to pay all the decommissioning costs.

Deferred Taxes. We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. We believe that the deferred tax asset recorded as of December 31, 2009 is more likely than not realizable through carrybacks, future reversals of existing taxable temporary differences and future taxable income. If we were to subsequently determine that we would be able to realize deferred tax assets in the future in excess of our net recorded amount, an adjustment to deferred tax assets would increase earnings for the period in which such determination was made. We will continue to assess the adequacy of the valuation allowance on a quarterly basis. Any changes to our estimated valuation allowance could be material to our combined financial condition and results of operations. Effective January 1, 2007, we adopted the provision of FASB Topic *Income Taxes*.

Warranty. We account for warranty costs to satisfy contractual warranty requirements as an accrued estimated expense recognized in conjunction with the associated revenue on the related contracts for our Power Generation Systems and Government Operations segments. In addition, we make specific provisions where we expect the actual warranty costs to significantly exceed the accrued estimates. Factors that impact our estimate of warranty costs include prior history of warranty claims and our estimates of future costs of materials and labor. Our future warranty provisions may vary from what we have experienced in the past.

Stock-Based Compensation. We account for stock-based compensation in accordance with FASB Topic *Compensation—Stock Compensation*. Under the fair value recognition provisions of this statement, the cost of employee services received in exchange for an award of equity instruments is measured at the grant date based on the fair value of the award. Stock-based compensation expense is recognized on a straight-line basis over the requisite service periods of the awards, which is generally equivalent to the vesting term. We use a Black- Scholes model to determine the fair value of certain share-based awards, such as stock options. The use of a Black Scholes model requires highly subjective assumptions, such as assumptions about the volatility of our stock price and our expected dividend yield.

Business Combinations. Effective January 1, 2009, we became subject to the provisions of the FASB Topic *Business Combinations*. This topic broadens the fair value measurements and recognition of assets acquired, liabilities assumed and interests transferred as a result of business combinations. It also provides disclosure requirements to assist users of the financial statements in evaluating the nature and financial effects of business combinations.

For further discussion of recently adopted accounting standards, see Note 1 to our combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement.

Three Months Ended March 31, 2010 Compared to Three Months Ended March 31, 2009

The Babcock & Wilcox Operations of McDermott International, Inc. (Combined)

Revenues:

Combined revenues decreased approximately 16%, or $122.7 million, to $662.4 million in the three months ended March 31, 2010 compared to $785.1 million for the corresponding period in 2009 due to decreases in revenues from both of our business segments. Our Power Generation Systems segment experienced a 22% reduction in revenues largely attributable to reductions in our utility steam and system fabrication operations and fabrication repair and retrofit of existing facilities operations. Our Government Operations segment experienced a 1.5% reduction in revenues attributable primarily to lower volumes in the manufacture of components for a commercial uranium enrichment project and lower volumes in our commercial manufacturing operations.

Operating income including selling, general and administrative expenses, losses/gains on asset disposals and impairments-net, and equity in income of investees:

Combined operating income decreased $56.6 million to $38.7 million in the three months ended March 31, 2010 from $95.3 million for the corresponding period in 2009 due to reduced segment operating income in both of our segments. The operating income of our Power Generation Systems and Government Operations segments decreased $48.9 million and $9.8 million, respectively, in the three months ended March 31, 2010 compared to the corresponding period of 2009. Our equity in income of investees, which is included in operating income, increased by $3.7 million in 2010 compared to 2009, primarily attributable to improvements in our joint venture in China. We experienced an increase in our combined selling, general and administrative expenses totaling $3.7 million in the three months ended March 31, 2010 compared to the corresponding period of 2009 attributable primarily to a $1.7 million increase in selling and marketing expense in the 2010 period compared to the corresponding period of 2009.

Other income (expense):

Interest income decreased $0.8 million to $0.4 million in the three months ended March 31, 2010, primarily due to decreases in average cash equivalents and investments and prevailing interest rates.

Interest expense increased $0.7 million to $6.0 million in the three months ended March 31, 2010, primarily due to interest expense on a note payable to an affiliate.

Other expense – net increased by $1.1 million to $3.1 million in the three months ended March 31, 2010 primarily due to foreign currency exchange losses.

Provision for income taxes:

For the three months ended March 31, 2010 our provision for income taxes decreased $22.4 million to $13.3 million, while income before provision for income taxes decreased $59.1 million to $30.1 million. Our effective tax rate for the three months ended March 31, 2010 was approximately 44.02% as compared to 40.0% for the three months ended March 31, 2009. The rate increase was primarily attributable to a higher mix of U.S. earnings and losses in certain of our non-U.S. operations, which were benefited at lower rates.

Income before provision for income taxes, provision for income taxes and effective tax rates for our U.S. and non-U.S. jurisdictions were as shown below for the three months ended March 31:

	Income from Continuing Operations before Provision for Income Taxes		Provision for (Benefit from) Income Taxes		Effective Tax Rate	
	2010	2009	2010	2009	2010	2009
	(In thousands)		(In thousands)			
United States	$31,830	$75,572	$12,973	$30,830	40.76%	40.79%
Non-United States	(1,718)	13,674	283	4,880	(16.47)%	35.69%
Total	$30,112	$89,246	$13,256	$35,710	44.02%	40.00%

Power Generation Systems

Revenues decreased approximately 22%, or $118.9 million, to $409.7 million in the three months ended March 31, 2010, compared to $528.6 million for the corresponding period of 2009. This decrease was primarily attributable to a $61.6 million decrease in revenues from our utility steam and system fabrication operations and a $46.8 million decrease in revenues from our fabrication, repair and retrofit of existing facilities operations in the three months ended March 31, 2010 compared to the corresponding period of 2009. The main driver for these decreases in revenues was a significant decrease in orders in 2009 compared to 2008, and particularly in the last six months of 2009. These reductions in orders booked followed a Federal Appeals Court's overturning of the Clean Air Interstate Rule, the Clean Air Mercury Rule and the Industrial Boiler Rule on Maximum Achievable Control Technology. The overturning of these rules and regulations, along with the uncertainty concerning any new legislation or replacement rules or regulations, has caused many of our major customers, principally electric utilities, to delay making substantial capital expenditures for new plants, as well as upgrades to existing power plants. In addition, considerations surrounding greenhouse gas limits under consideration by the U.S. Congress and the EPA have delayed the construction of new coal-fired power plants in the United States. We also experienced lower revenues from our boiler auxiliary equipment operations ($15.5 million), our industrial boilers operations ($8.6 million), and our replacement parts operations ($8.4 million) in the three months ended March 31, 2010 compared to the corresponding period of 2009. These decreases were partially offset by increased revenues from our nuclear service operations ($16.6 million), nuclear steam generator operations ($4.2 million), and field service operations ($2.4 million).

Operating income decreased $48.9 million to $9.3 million in the three months ended March 31, 2010, compared to $58.2 million in the corresponding period of 2009. This decrease was primarily attributable to lower margins in our utility steam and system fabrication operations and our fabrication, repair and retrofit of existing facilities operations, primarily attributable to the effects of timing on profitable projects completed in the three months ended March 31, 2009 compared to the corresponding period of 2010 and to the decreases in revenues discussed above. We also experienced reductions in gross profit in our boiler auxiliary equipment and replacement parts operations totaling approximately $6.0 million in 2010 compared to the corresponding period of 2009, primarily attributable to the decreases in revenues discussed above. In addition, we experienced lower margins in our nuclear steam generator operations in the three months ended March 31, 2010, which included an additional provision for warranty obligations totaling approximately $3.7 million, compared to the corresponding period of 2009. We also experienced an increase in research and development expenses totaling approximately $7.6 million in the three months ended March 31, 2010 compared to the corresponding period of 2009, primarily attributable to research and development activities associated with our B&W mPower™ initiative. In addition, we experienced increases in our selling general and administrative expenses totaling $5.2 million in the three months ended March 31, 2010 compared to the corresponding period of 2009. These adverse impacts on segment operating income were partially offset by improvements in our industrial boilers and nuclear service operations.

In addition, equity in income of investees increased $2.9 million from $1.6 million in the three months ended March 31, 2009 to $4.5 million in the three months ended March 31, 2010, primarily attributable to our joint venture in China.

Government Operations

Revenues decreased approximately 1.5%, or $3.8 million, to $253.3 million in the three months ended March 31, 2010 compared to $257.1 million for the corresponding period of 2009, primarily attributable to lower volumes in the manufacture of components for a commercial uranium enrichment project ($20.1 million), and lower volumes in our commercial manufacturing operations ($9.2 million), substantially all of which was attributable to our Nuclear Fuel Services, Inc. subsidiary. These decreases were partially offset by increased volumes in the manufacture of nuclear components for certain U.S. Government programs and recovery work.

Operating income decreased $9.8 million to $36.0 million in the three months ended March 31, 2010, compared to $45.8 million for the corresponding period of 2009, primarily attributable to the shutdown at the Nuclear Fuel Services, Inc. facility. We suspended the operations in consultation with the NRC following the occurrence of two separate incidents that we reported to the NRC in October and November 2009. The October 2009 incident involved the generation of excessive heat and a hazardous gas at a specialized cleaning station. The incident was caused by the processing of a small amount of uranium-aluminum material in nitric acid. This incident resulted in some damage to piping, but did not result in any injuries to personnel or offsite releases of chemical or radioactive material. The November 2009 incident involved a fire in a glovebox enclosure. The incident was caused by a reaction between fluorine gas in a cylinder of uranium and the fiberglass backing of the teflon lining of a vent hose attached to the cylinder within the glovebox enclosure. This incident resulted in damage to a hose and a faceplate within the glove box enclosure, but did not result in any injuries to personnel or offsite releases of chemical or radioactive material. Inspections conducted separately by the NRC, our existing nuclear liability underwriter and us revealed specific modifications necessary to improve Nuclear Fuel Services, Inc.'s overall safety performance. The suspended operations include production operations, the commercial development line and the highly enriched uranium down-blending facility. These operations are in the process of being brought back on line through a phased restart, which we commenced in March 2010 following completion of a third-party review and NRC review of the modifications that were implemented. The production operations are now fully operational. We expect to bring the highly enriched uranium down-blending facility back on line, through a phased restart, beginning in May 2010, and we expect that the facility will be fully operational in June 2010. We expect to bring the commercial development line back on line by the end of January 2011. That line represented less than 0.5% of our combined revenues in 2009. The impact of the shutdown was approximately $9.0 million in the three months ended March 31, 2010. We also experienced lower contract productivity and lower volumes in the manufacture of components for a commercial uranium enrichment project in the three months ended March 31, 2010 compared to the corresponding period of 2009. In addition, equity in income of investees increased $0.8 million to $9.5 million in the three months ended March 31, 2010, compared to $8.7 million in the corresponding period of 2009, primarily attributable to higher fees earned at two of our government sites, partially offset by increased expenses associated with one of our joint ventures in Tennessee.

Corporate

Unallocated corporate expenses decreased $2.1 million to $6.5 million for the three months ended March 31, 2010, as compared to $8.6 million for the corresponding period of 2009, primarily attributable to reduced compensation expense due to reductions in corporate headcount totaling $2.7 million and lower legal expenses incurred in the three months ended March 31, 2010 compared to the corresponding period of 2009.

Year Ended December 31, 2009 Compared to Year Ended December 31, 2008

The Babcock & Wilcox Operations of McDermott International, Inc. (Combined)

Revenues:

Combined revenues decreased approximately 16%, or $544.0 million, to $2.9 billion in the year ended December 31, 2009, compared to $3.4 billion in the year ended December 31, 2008. Our Power Generation Systems segment revenues decreased approximately 28% in the year ended December 31, 2009, as compared to 2008, primarily attributable to lower revenues in our utility steam and system fabrication operations and fabrication, repair and retrofit of existing facilities operations. Our Government Operations segment revenues increased approximately 21% in the year ended December 31, 2009, compared to 2008, primarily attributable to the acquisition of Nuclear Fuel Services, Inc.

Operating income including selling, general and administrative expenses, losses/gains on asset disposals and impairments-net, and equity in income of investees:

Combined operating income decreased $174.9 million from $444.5 million in 2008 to $269.6 million in 2009. Our Power Generation Systems segment operating income decreased by $157.5 million in the year ended December 31, 2009, compared to the year ended December 31, 2008, primarily attributable to the decrease in revenues discussed above. Our Government Operations segment operating income increased by $4.3 million in the year ended December 31, 2009, as compared to 2008, primarily attributable to higher volumes of manufacturing activity. We also experienced increases in selling, general and administrative expenses, which are included in operating income, totaling approximately $66.0 million in the year ended December 31, 2009 compared to 2008, primarily attributable to a $14.4 million increase in selling and marketing expenses in 2009, and $36.3 million from our acquisition of Nuclear Fuel Services, Inc. Our equity in income of investees, which is included in operating income, increased $3.3 million to $55.1 million in the year ended December 31, 2009 primarily attributable to improved results from our Power Generation Systems segment's joint venture in China. We also realized a decrease in gains on asset disposals in the year ended 2009 compared to 2008 attributable to a gain we recognized in 2008 on the sale of our former Dumbarton, Scotland facility.

Other income (expense):

Interest income decreased $11.9 million to $3.4 million in the year ended December 31, 2009 compared to 2008, primarily due to decreases in average cash equivalents and investments and prevailing interest rates.

Interest expense increased $1.9 million in the year ended December 31, 2009 compared to 2008, primarily due to interest expense on a note payable to an affiliate, as discussed in Note 5 to our combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement.

Other expense—net increased $11.8 million to a loss of $16.1 million in the year ended December 31, 2009, primarily due to higher currency exchange losses in 2009.

Provision for income taxes:

For the year ended December 31, 2009, our provision for income taxes decreased $24.5 million to $84.4 million, while income before provision for income taxes decreased $200.4 million to $232.3 million. Our effective tax rate was approximately 36% for 2009, as compared to 25% for 2008. The increase in the effective rate was primarily attributable to non-recurring tax benefits which we recognized from the release of state valuation allowances and as a result of audit activity in 2008.

Income before provision for income taxes, provision for income taxes and effective tax rates for our U.S. and non-U.S. jurisdictions were as shown below:

	Income from Continuing Operations before Provision for Income Taxes		Provision for (Benefit from) Income Taxes		Effective Tax Rate	
	2009	2008	2009	2008	2009	2008
	(In thousands)		(In thousands)			
United States	$ 164,347	$ 351,398	$ 69,279	$ 89,904	42.15%	25.58%
Non-United States	67,954	81,341	15,102	18,981	22.22%	23.34%
Total	$ 232,301	$ 432,739	$ 84,381	$ 108,885	36.32%	25.16%

We are subject to U.S. federal income tax at a rate of 35% on our U.S. operations plus the applicable state income taxes on our profitable U.S. subsidiaries. Our non-U.S. earnings are subject to tax at various tax rates and under various tax regimes, including deemed profits tax regimes.

During the year ended December 31, 2009, we recorded a reduction in liabilities under FASB Topic *Income Taxes* of approximately $5.4 million, including estimated tax-related interest and penalties.

See Note 4 to our combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement for further information on taxes.

Power Generation Systems

Revenues decreased approximately 28%, or $724.4 million, to $1,824.5 million in the year ended December 31, 2009, compared to $2,548.9 million in 2008. This decrease was primarily attributable to a 43% (or $491.9 million) decrease we experienced in revenues from our utility steam and system fabrication operations and decreased revenues in our fabrication, repair and retrofit of existing facilities operations ($171.1 million) in 2009. The main driver for these decreases in revenues was a significant decrease in orders booked starting in the final six months of 2008. These reductions in orders booked followed a Federal Appeals Court's overturning of the Clean Air Interstate Rule, the Clean Air Mercury Rule and the Industrial Boiler Rule on Maximum Achievable Control Technology. The overturning of these rules and regulations, along with the uncertainty concerning any new legislation or replacement rules or regulations, has caused many of our major customers, principally electric utilities, to delay making substantial capital expenditures for new plants, as well as upgrades to existing power plants. In addition, considerations surrounding greenhouse gas limits under consideration by the U.S. Congress and the EPA have delayed the construction of new coal-fired power plants in the United States. We also experienced lower revenues in 2009 compared to 2008 in our replacement parts operations ($23.3 million), our industrial boilers operations ($16.9 million), our nuclear steam generator operations ($16.7 million) and our boiler auxiliary equipment operations ($13.8 million) due to reduced demand for electricity and lower capital expenditures by our customers. These decreases were partially offset by increased revenues from our operations and maintenance operations ($10.3 million) and nuclear service operations ($4.1 million).

Operating income decreased $157.5 million to $157.9 million in the year ended December 31, 2009, compared to $315.4 million in 2008, primarily attributable to lower volumes in our utility steam and system fabrication operations related to the decreases in revenues discussed above, and a bonus on a contract completed in 2008, for a total reduction of $65.4 million in gross profit. In addition, we experienced lower gross profits in our fabrication, repair and retrofit of existing facilities operations and in our replacement parts operations, which were also primarily attributable to the decreases in revenues discussed above. We also experienced lower margins and volume in our nuclear steam generator operations. The lower margins in our nuclear steam generator operations were attributable primarily to increased contract costs on the manufacture and delivery of two

replacement once through steam generators, and our lower volumes were attributable to the decrease in revenues discussed above. In addition, we incurred an increase in our pension plan expense totaling approximately $40.2 million in 2009 compared to 2008, primarily from the amortization of losses on our pension plan incurred in 2008. We also experienced an increase in selling, general and administrative expenses totaling approximately $19.1 million in 2009 compared to 2008, primarily attributable to an increase of approximately $11 million in selling and marketing expenses in 2009 compared to 2008. These decreases were partially offset by improved margins in our utility steam and system fabrication operations and our fabrication, repair and retrofit of existing facilities operations primarily attributable to contract cost improvements and the completion of projects in 2009, as well as higher volumes in our operations and maintenance operations attributable to the increase in revenues discussed above. Gains (losses) on asset disposals and impairments-net decreased $9.9 million in the year ended December 31, 2009, primarily attributable to the gain we recognized in 2008 on the sale of our former Dumbarton, Scotland facility. Equity in income of investees increased $3.6 million to $14.0 million for the year ended December 31, 2009 compared to $10.4 million in 2008, primarily attributable to our joint venture in China.

Government Operations

Revenues increased approximately 21%, or $181.0 million, to $1,032.0 million in the year ended December 31, 2009 compared to $851.0 million in 2008, primarily attributable to our acquisition of Nuclear Fuel Services, Inc. ($160.7 million) and additional volumes in the manufacture of nuclear components for certain U.S. Government programs and recovery work ($20.7 million). These improvements were partially offset by lower volumes in the manufacture of components for a commercial uranium enrichment project, engineering and laboratory services and lower revenues from our management and operating contracts at several government sites.

Operating income increased $4.3 million to $154.5 million in the year ended December 31, 2009 compared to $150.2 million in 2008, primarily attributable to additional volumes in the manufacture of nuclear components for certain U.S. Government programs and recovery work, and our acquisition of Nuclear Fuel Services, Inc., which contributed $3.3 million of segment operating income. These improvements were partially offset by increased pension expense of $39.5 million in 2009 compared to 2008 from the amortization of losses on our pension plan assets in 2008. In addition, we experienced lower volumes related to a commercial uranium enrichment project and lower revenues from our management and operating contracts at several government sites.

Corporate

Unallocated corporate expenses increased $21.7 million in the year ended December 31, 2009 to $42.8 million from $21.1 million in 2008, primarily attributable to increased pension plan expense of $16.3 million in 2009 compared to 2008 from the amortization of losses on pension plan assets experienced in 2008. We also experienced an increase in information technology expenses in the year ended December 31, 2009 compared to 2008.

Year Ended December 31, 2008 Compared to Year Ended December 31, 2007

The Babcock & Wilcox Operations of McDermott International, Inc. (Combined)

Revenues:

Combined revenues increased approximately 6%, or $198.6 million, to $3.4 billion in the year ended December 31, 2008, compared to $3.2 billion in the year ended December 31, 2007. Our Power Generation Systems segment revenues increased approximately 2% in the year ended December 31, 2008, as compared to 2007. Our Government Operations segment revenues increased approximately 23% in the year ended December 31, 2008, compared to 2007, primarily attributable to higher volumes in the manufacture of nuclear components for certain U.S. Government programs and for a commercial uranium enrichment project.

Operating income including selling, general and administrative expenses, losses/gains on asset disposals and impairments-net, and equity in income of investees:

Combined operating income increased $106.9 million from $337.6 million in the year ended December 31, 2007 to $444.5 million in 2008. Our Power Generation Systems segment operating income increased by $81.3 million in the year ended December 31, 2008, as compared to the year ended December 31, 2007, primarily attributable to favorable cost improvements on a significant number of its projects. Our Government Operations segment operating income increased by $27.3 million in the year ended December 31, 2008, as compared to the year ended December 31, 2007, primarily attributable to the higher volumes of manufacturing activity described above. We experienced an increase in losses (gains) on asset disposals and impairments-net, included in operating income, totaling net gains of $8.0 million in 2009 compared to 2008 primarily from a gain we recognized on the sale of our former Dumbarton, Scotland facility. Our equity in income of investees, which is included in operating income, increased by $6.2 million in 2009 compared to 2008 primarily attributable to improved results in our joint ventures in Idaho, Tennessee, and Louisiana, partially offset by lower results from our joint venture in China attributable to higher costs for materials. Our combined selling, general and administrative expenses increased $48.0 million in 2008 to $337.6 million compared to $289.6 million in 2007 primarily attributable to information technology expense, support services for our utility steam and system fabrication operations and fabrication, repair and retrofit of existing facilities operations and increased selling and marketing expenses.

Other income (expense):

Interest income decreased $9.9 million to $15.3 million in the year ended December 31, 2008, primarily due to a decrease in average cash equivalents and investments and prevailing interest rates.

Interest expense decreased $15.4 million to $22.7 million in the year ended December 31, 2008, primarily due to interest during the year ended December 31, 2007 on the B&W PGG term loan that was terminated in April 2007 and lower amortization and costs under our credit facilities.

Other expense—net decreased $6.1 million to $4.2 million in the year ended December 31, 2008, primarily due to a provision for bad debt expense recorded during 2007.

Provision for income taxes:

For the year ended December 31, 2008, our provision for income taxes increased $9.9 million to $108.9 million, while income before provision for income taxes increased $118.4 million to $432.7 million. Our effective tax rate was approximately 25% for the year ended December 31, 2008, as compared to 32% for the year ended December. 31, 2007. The decrease in the effective tax rate was primarily attributable to certain tax assets and benefits totaling approximately $61.8 million, which we recognized in 2008 from the release of state valuation allowances and as a result of audit activity.

Income before provision for income taxes, provision for income taxes and effective tax rates for our U.S. and non-U.S. jurisdictions were as shown below:

	Income from Continuing Operations before Provision for Income Taxes		Provision for Income Taxes		Effective Tax Rate	
	2008	2007	2008	2007	2008	2007
	(In thousands)		(In thousands)			
United States	$351,398	$256,319	$ 89,904	$84,314	25.58%	32.89%
Non-United States	81,341	58,029	18,981	14,704	23.34%	25.34%
Total	$432,739	$314,348	$108,885	$99,018	25.16%	31.50%

We are subject to U.S. federal income tax at a rate of 35% on our U.S. operations plus the applicable state income taxes on our profitable U.S. subsidiaries. Our non-U.S. earnings are subject to tax at various tax rates and under various tax regimes, including deemed profits tax regimes.

Power Generation Systems

Revenues increased approximately 2%, or $42.1 million, to $2,548.9 million in the year ended December 31, 2008, compared to $2,506.8 million in the year ended December 31, 2007. In 2008, we experienced a 23% increase in revenues from our fabrication, repair and retrofit of existing facilities operations (or $127.2 million), primarily resulting from increases in orders booked in 2007 and timing of scheduled activities on projects throughout 2008. In addition, we experienced increases in our nuclear service operations ($58.3 million), boiler auxiliary equipment operations ($22.3 million), industrial boilers operations ($17.2 million) and replacement parts operations ($12.9 million), primarily resulting from timing of scheduled activities on projects. These increases were partially offset by decreased revenues from our utility steam and system fabrication operations ($206.5 million), due primarily to the absence in 2008 of approximately $178 million in revenues recognized from our termination and settlement agreement executed with TXU Corp. (“TXU”) on the cancellation of five contracts to supply TXU supercritical, coal-fired boilers and selective catalytic reduction systems.

Operating income increased $81.3 million to $315.4 million in the year ended December 31, 2008, compared to $234.1 million in 2007, primarily attributable to improved margins in our utility steam and system fabrication operations and increased volume and margins in our fabrication, repair and retrofit of existing facilities and replacement parts operations. These increased margins were largely the result of favorable cost improvements on a significant number of our projects and a bonus award of approximately $13 million on a contract we completed in 2008. In addition, we experienced increased volumes in our nuclear service operations. We also experienced an approximately $11 million decrease in our pension plan expense in 2008 compared to 2007, attributable to an improvement in the performance of our pension plan assets in 2008. Partially offsetting these increases were lower volumes and margins in our replacement nuclear steam generator operations and lower margins in our nuclear service operations. We also experienced $21.0 million in higher selling, general and administrative expenses (net of pension expense), including higher stock-based compensation expense totaling $2.9 million, in the year ended December 31, 2008. Gains (losses) on asset disposals and impairments—net increased $9.6 million for the year ended December 31, 2008, primarily attributable to the gain we recognized in 2008 on the sale of our former Dumbarton, Scotland facility. Equity in income from investees decreased $3.9 million to $10.4 million for the year ended December 31, 2008, primarily attributable to cost increases for materials at our joint venture in China.

Government Operations

Revenues increased approximately 23%, or $157.0 million, to $851.0 million in the year ended December 31, 2008 compared to $694.0 million in the year ended December 31, 2007, primarily attributable to higher volumes in the manufacture of nuclear components for certain U.S. Government programs ($61.0 million), including increased contract procurement activities and additional volumes from Marine Mechanical Corporation, which we acquired in May 2007. In addition, we experienced higher volumes in the manufacture of nuclear components for a commercial uranium enrichment project ($79.5 million) and higher revenues in our management and operating (“M&O”) contracts.

Operating income increased $27.3 million to $150.2 million in the year ended December 31, 2008 compared to $122.9 million in 2007, primarily attributable to the higher volumes in the manufacture of nuclear components for certain U.S. Government programs discussed above. In addition, we experienced higher volumes related to the commercial uranium enrichment project referenced above. We also experienced an approximately $12.3 million decrease in our pension expense in 2008 compared to 2007, attributable to an improvement in the performance of our pension plan assets in 2008. These improvements were partially offset by the completion of a

subcontract at a DOE clean-up site in Ohio during 2007 and the completion of M&O contracts at certain government sites. We also experienced higher selling, general and administrative expenses totaling approximately $14.0 million in 2008 compared to 2007, primarily due to increased bid and proposal costs. Gains on asset disposals and impairments—net decreased by $1.6 million in the year ended December 31, 2008, attributable to the gain we recorded on the sale of our investment in a research and development venture during the year ended December 31, 2007. Equity in income from investees increased $10.1 million to $41.4 million in the year ended December 31, 2008 compared to $31.3 million in 2007, primarily attributable to increased profitability from our joint ventures in Idaho, Tennessee and Louisiana.

Corporate

Unallocated corporate expenses increased $1.7 million in the year ended December 31, 2008 to $21.1 million from $19.4 million in the year ended December 31, 2007, primarily attributable to increased departmental expenses and higher expenses associated with our development of a global human resources management system. These increases were partially offset by lower pension plan expense in the year ended December 31, 2008.

Effects of Inflation and Changing Prices

Our financial statements are prepared in accordance with generally accepted accounting principles in the United States, using historical U.S. dollar accounting (“historical cost”). Statements based on historical cost, however, do not adequately reflect the cumulative effect of increasing costs and changes in the purchasing power of the dollar, especially during times of significant and continued inflation.

In order to minimize the potential negative impact of inflation on our operations, we attempt to cover the increased cost of anticipated changes in labor, material and service costs, either through an estimate of those changes, which we reflect in the original price, or through price escalation clauses in our contracts.

Liquidity and Capital Resources

Our overall liquidity position, which we generally define as our unrestricted cash and investments plus amounts available for borrowings under our credit facility, continued to remain strong in 2009. Our liquidity position at December 31, 2009 increased by approximately $147 million to $820 million from December 31, 2008, mainly due to factors discussed below in connection with the changes in our cash flows from operating, investing and financing activities. We experienced an increase in cash generated from our operating activities in 2009 compared to 2008. The major components of our net cash provided by operating activities were improvements in our net contracts in progress and advance billings components of working capital, improvement in our accounts receivable position, and lower funding of our pension plans. In some years, significant liquidity has been provided by our advance billings on contracts in progress, as a result of payments received from customers. As our customer cash advances are used in project execution and are not replaced by advances on new projects, our liquidity position is reduced. We experienced this condition in the year ended December 31, 2008, when we realized a use of cash from net contracts in progress and advance billings totaling approximately $234 million.

Our overall liquidity position decreased by approximately $60 million to $760 million at March 31, 2010 compared to $820 million at December 31, 2009. This decrease was largely attributable to our cash used in operating and investing activities. We experienced an increased use of cash from our net contracts in progress and advance billings components of working capital and from our pension liability, accumulated postretirement benefit obligation and accrued employee benefits in the three months ended March 31, 2010. We also experienced an increased use of cash in investing activities for capital expenditures and an acquisition in the three months ended March 31, 2010.

2010 Credit Facility

On May 3, 2010, Babcock & Wilcox Investment Company ("BWICO"), one of our affiliates, entered into a credit agreement (the "Credit Agreement") with a syndicate of lenders and letter of credit issuers, and Bank of America, N.A., as administrative agent.

The Credit Agreement replaced the prior $400.0 million senior secured revolving credit facility of B&W PGG, and the prior $135.0 million senior unsecured revolving credit facility of our subsidiary BWX Technologies, Inc. ("BWXT"). All amounts outstanding under B&W PGG's and BWXT's previous senior revolving credit facilities have been repaid, and all letters of credit outstanding under those prior credit facilities are now deemed issued under the Credit Agreement. BWICO is the initial borrower under the Credit Agreement. Upon completion of the spin-off, B&W will become the borrower under the Credit Agreement and BWICO, as a subsidiary of B&W, will become a guarantor under the Credit Agreement.

The Credit Agreement provides for revolving credit borrowings and issuances of letters of credit in an aggregate outstanding amount of up to $700.0 million, and the credit facility is scheduled to mature on May 3, 2014. The proceeds of the Credit Agreement are available for working capital needs and other general corporate purposes. As of May 3, 2010, BWICO had no outstanding borrowings and approximately $255.3 million of outstanding letters of credit under the Credit Agreement, leaving BWICO with approximately $444.7 million available capacity for additional borrowings and letters of credit under the Credit Agreement.

The Credit Agreement includes procedures for additional financial institutions to become lenders, or for any existing lender to increase its commitment thereunder, subject to an aggregate maximum of $850.0 million for all revolving loan and letter of credit commitments under the Credit Agreement.

BWICO's obligations under the Credit Agreement are guaranteed by substantially all of BWICO's wholly owned domestic subsidiaries. Upon completion of the spin-off, substantially all of B&W's wholly owned domestic subsidiaries that are not already guarantors under the BWICO Credit Agreement will become guarantors. Obligations under the Credit Agreement are secured by first-priority liens on certain assets owned by BWICO and the guarantors (other than BWXT and its subsidiaries). Upon completion of the spin-off, B&W and its wholly owned domestic subsidiaries that become guarantors under the Credit Agreement will grant liens on certain assets owned by them. If the corporate rating of B&W and its subsidiaries from Moody's is Baa3 or better (with a stable outlook or better), the corporate family rating of B&W and its subsidiaries from S&P is BBB- or better (with a stable outlook or better), and certain other conditions are met, the liens securing obligations under the Credit Agreement will be released, subject to reinstatement upon the terms set forth in the Credit Agreement.

The Credit Agreement requires only interest payments on a quarterly basis until maturity. The borrower under the Credit Agreement may prepay all loans under the Credit Agreement at any time without premium or penalty (other than customary LIBOR breakage costs), subject to certain notice requirements.

Loans outstanding under the Credit Agreement bear interest at the borrower's option at either the Eurodollar rate plus a margin ranging from 2.50% to 3.50% per year or the base rate (the highest of the Federal Funds rate plus 0.50%, the 30-day Eurodollar rate plus 1.0%, or the administrative agent's prime rate) plus a margin ranging from 1.50% to 2.50% per year. The applicable margin for revolving loans varies depending on the credit ratings of the Credit Agreement. The borrower under the Credit Agreement is charged a commitment fee on the unused portions of the Credit Agreement, and that fee varies between 0.375% and 0.625% per year depending on the credit ratings of the Credit Agreement. Additionally, the borrower under the Credit Agreement is charged a letter of credit fee of between 2.50% and 3.50% per year with respect to the amount of each financial letter of credit issued under the Credit Agreement and a letter of credit fee of between 1.25% and 1.75% per year with respect to the amount of each performance letter of credit issued under the Credit Agreement, in each case depending on the credit ratings of the Credit Agreement. The borrower under the Credit Agreement also pays customary issuance fees and other fees and expenses in connection with the issuance of letters of credit under the Credit Agreement.

In connection with entering into the Credit Agreement, BWICO paid certain upfront fees to the lenders thereunder, and BWICO paid certain arrangement and other fees to the arrangers and agents of the Credit Agreement.

Based on the current credit ratings of the Credit Agreement, the applicable margin for Eurodollar-rate loans is 2.50%, the applicable margin for base-rate loans is 1.50%, the letter of credit fee for financial letters of credit is 2.50%, the letter of credit fee for performance letters of credit is 1.25%, and the commitment fee for unused portions of the Credit Agreement is 0.375%. The Credit Agreement does not have a floor for the base rate or the Eurodollar rate.

The Credit Agreement includes financial covenants that will be tested on a quarterly basis, based on the rolling four-quarter period that ends on the last day of each fiscal quarter, commencing with the fiscal quarter ending June 30, 2010. The maximum permitted leverage ratio (as defined in the Credit Agreement) is 2.50 to 1.00. The minimum consolidated interest coverage ratio (as defined in the Credit Agreement) is 4.00 to 1.00.

In addition, the Credit Agreement contains various covenants that, among other restrictions, limit BWICO's and its subsidiaries' (and after the spin-off, B&W's and its subsidiaries') ability to:

- incur or assume indebtedness;
- grant or assume liens;
- make acquisitions or engage in mergers;
- sell, transfer, assign or convey assets;
- make investments;
- repurchase equity and make dividends and certain other restricted payments;
- change the nature of its business;
- engage in transactions with affiliates;
- enter into certain burdensome agreements;
- enter into speculative hedging contracts;
- enter into sale and leaseback transactions;
- make capital expenditures; and
- prior to the completion of the spin-off, change certain terms of the spin-off described in the Credit Agreement.

The Credit Agreement generally includes customary events of default for a secured credit facility. If an event of default relating to bankruptcy or other insolvency events with respect to the borrower occurs under the Credit Agreement, all obligations under the Credit Agreement will immediately become due and payable. If any other event of default exists under the Credit Agreement, the lenders may accelerate the maturity of the obligations outstanding under the Credit Agreement and exercise other rights and remedies. In addition, if any event of default exists under the Credit Agreement, the lenders may commence foreclosure or other actions against the collateral under the Credit Agreement.

If any default occurs under the Credit Agreement, or if the borrower is unable to make any of the representations and warranties in the Credit Agreement, the borrower will be unable to borrow funds or have letters of credit issued under the Credit Agreement.

Power Generation Systems

Bank Guarantees (Foreign Operations)

Certain foreign subsidiaries of B&W PGG had credit arrangements with various commercial banks for the issuance of bank guarantees. The aggregate value of all such bank guarantees as of March 31, 2010 was $16.8 million.

Surety Bonds

MII, B&W PGG and another subsidiary of ours have jointly executed general agreements of indemnity in favor of various surety underwriters relating to surety bonds those underwriters issued in support of B&W PGG's contracting activity. As of March 31, 2010, bonds issued under such arrangements totaled approximately $112.9 million. Any claim successfully asserted against such surety by one or more of the bond obligees would likely be recoverable from MII, B&W PGG and our other subsidiary under such indemnity agreement (and we have agreed to indemnify MII from and against any such recovery from it). Due to events that affect the insurance and bonding and credit markets generally, bonding and letters of credit may be more difficult to obtain in the future or may only be available at significant additional cost. There can be no assurance that letters of credit or bonds will continue to be available to us on reasonable terms, particularly given our pro forma tangible net worth as of March 31, 2010.

Based on the liquidity position of our Power Generation Systems segment, we believe this segment has sufficient cash and letter of credit and borrowing capacity to fund its operating requirements for at least the next 12 months.

Warranty Claim (Power Generation Systems Segment)

One of our Canadian subsidiaries has received notice of a warranty claim on one of its projects on a contract executed in 1998. This situation relates to a condition referred to as "tube fretting," which results in tube wear as a result of relative movement of the tube at the point of contact with the tube support plates within a nuclear steam generator. Data collection and analysis can only be performed at specific time periods when the power plant is scheduled to be off-line for maintenance. We also received a notice from the customer during October 2008, and, during November 2008, we responded to the notice by disagreeing with the matters stated in the claim and disputing the claim. This project included a limited-term performance bond totaling approximately $140 million for which we entered into an indemnity arrangement with the surety underwriters. It is possible that our subsidiary may incur warranty costs in excess of amounts provided for as of March 31, 2010. It is also possible that a claim could be initiated by our subsidiary's customer against the surety underwriter should certain events occur. If such a claim were successful, the surety could seek to recover from our subsidiary the costs incurred in satisfying the customer claim. If the surety seeks recovery from our subsidiary, we believe that our subsidiary would have adequate liquidity to satisfy its obligations.

However, the ultimate resolution of this possible claim is uncertain, and an adverse outcome could have a material adverse impact on our combined financial condition, results of operations or cash flows.

Government Operations

Letters of Credit (Nuclear Fuel Services, Inc.)

At March 31, 2010, Nuclear Fuel Services, Inc., a subsidiary of BWXT, had $3.6 million in letters of credit issued by various commercial banks on its behalf. The obligations to the commercial banks issuing such letters of credit are secured by cash, short-term certificates of deposit and certain real and intangible assets.

Based on the liquidity position of our Government Operations segment, we believe this segment has sufficient cash and letter of credit and borrowing capacity to fund its operating requirements for at least the next 12 months.

Other

Pension Plan

We recorded a $36.9 million reduction in parent equity at December 31, 2009, compared to a reduction of $325.8 million in parent equity at December 31, 2008. The substantial reduction at December 31, 2008 was primarily attributable to the volatility of the stock market in 2008. While the performance of our pension assets improved in 2009, the reduction in the discount rate for our major domestic plans from 6.25% to 6.00% increased our pension plan obligations, resulting in a net reduction in equity at December 31, 2009. As of December 31, 2009, our defined benefit pension and post-retirement benefit plans were underfunded by approximately $869 million. See Note 7 to the combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement. A significant portion of those obligations is subject to cost recovery from the U.S. Government under contracts relating to operations that we have been involved in for many years. While we do not consider it likely, if those contracts with the U.S. Government were terminated, the amount and timing of our recovery for pension and other post-retirement benefit plans could be impacted. For a general discussion of our contracts with the U.S. Government, see “Business—Contracts.”

Cash, Cash Equivalents and Investments

At March 31, 2010, we had restricted cash and cash equivalents totaling $17.8 million, $9.7 million of which was held in restricted foreign accounts, $3.8 million of which was held as cash collateral for letters of credit, $4.0 million of which was held for future decommissioning of facilities and $0.3 million of which was held to meet reinsurance reserve requirements of our captive insurance companies. It is possible that a significant portion of restricted cash at March 31, 2010 will not be released within the next 12 months.

At March 31, 2010, we had investments with a fair value of $70.9 million. Our investment portfolio consists primarily of investments in government obligations and other highly liquid money market instruments.

March 31, 2010 Compared to December 31, 2009

In aggregate, our cash and cash equivalents, restricted cash and cash equivalents and investments decreased by $68.4 million to $489.9 million at March 31, 2010 from $558.3 million at December 31, 2009, primarily due to cash used in operating activities and purchases of property, plant and equipment.

Our working capital, excluding cash and cash equivalents and restricted cash and cash equivalents, decreased by $57.2 million to a negative $470.4 million at March 31, 2010 from a negative $413.2 million at December 31, 2009, primarily due to the increase in the net amount of contracts in progress and advance billings on contracts.

Three Months Ended March 31, 2010 Compared to Three Months Ended March 31, 2009

Our net cash used in operations was $45.3 million in the three months ended March 31, 2010, compared to cash provided by operations of $40.5 million for the three months ended March 31, 2009. This change was primarily attributable to a decrease in our net contracts in progress and advance billings on contracts, and our accounts payable position.

Our net cash used in investing activities increased by $25.8 million to $26.8 million in the three months ended March 31, 2010 from $1.0 million in the corresponding period of 2009. This increase in net cash used in investing activities was primarily attributable to acquisitions in the current period and a decrease in proceeds from the sale of available securities in the three months ended March 31, 2010 compared to the corresponding period of 2009.

Our net cash provided by financing activities increased by $6.5 million to $1.8 million in the three months ended March 31, 2010 from $4.7 million used in financing activities in the three months ended March 31, 2009.

This change was primarily attributable to payments on long-term debt made in the three months ended March 31, 2009 and higher excess tax benefits related to stock-based compensation in the three months ended March 31, 2010.

December 31, 2009 Compared to December 31, 2008

In aggregate, our cash and cash equivalents, restricted cash and cash equivalents and investments increased by approximately $152.5 million to $558.3 million at December 31, 2009 from $405.8 million at December 31, 2008, primarily due to (1) cash provided by operations related primarily to our improvements in accounts receivables and reduced funding requirements under our pension plans, and (2) proceeds from the sale of available for sale securities.

Our working capital, excluding cash and cash equivalents and restricted cash and cash equivalents, decreased by approximately $36.4 million to a negative $413.2 million at December 31, 2009 from a negative $376.8 million at December 31, 2008, primarily due to increases in accrued employee benefits.

Year Ended December 31, 2009 Compared to Year Ended December 31, 2008

Our net cash provided by operating activities was approximately $252.8 million in the year ended December 31, 2009, compared to approximately $60.1 million in the year ended December 31, 2008. This increase was primarily attributable to improvements in our accounts receivable position and reduced funding requirements under our pension plans in 2009 compared to 2008.

Our net cash used in investing activities decreased by approximately $237.0 million to approximately $67.6 million in the year ended December 31, 2009 from approximately $304.6 million in the year ended December 31, 2008. This decrease in net cash used in investing activities was primarily attributable to higher funding requirements for acquisitions of businesses in 2008 compared to 2009, and an increase in proceeds from the sale of available-for-sale securities in 2009.

Our net cash provided by (used in) financing activities changed by approximately $65.6 million to net cash used in financing activities of $5.6 million in the year ended December 31, 2009 from net cash provided by financing activities of $60.0 million in the year ended December 31, 2008, primarily due to an increase in borrowings in 2008 on a note payable to an affiliate (see Note 5 to our combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement).

Contractual Obligations

Our cash requirements as of December 31, 2009 under current contractual obligations are as follows:

	Total	Less than 1 Year	1-3 Years	3-5 Years	After 5 Years
			(In thousands)		
Long-term debt principal	$ 7,588	$3,366	$4,222	—	—
Operating leases	$14,821	$5,577	$6,916	$2,328	—

We have excluded notes payable to affiliates aggregating approximately $320.5 million from the table above as those notes will be extinguished or settled in connection with the spin-off. In addition, we have excluded $3.1 million of short-term line of credit borrowings made by one of our subsidiaries, as there is no stated contractual payment date. We have included this amount in notes payable and current maturities of long-term debt on our combined balance sheets. This facility is renewable annually and the interest rate associated with this line of credit was 5.3% per annum at December 31, 2009.

Our contingent commitments under letters of credit and bank guarantees currently outstanding expire as follows:

Total	Less than 1 Year	1-3 Years	3-5 Years	After 5 Years
		(In thousands)		
$377,004	$ 231,247	$ 131,439	$ 14,128	$ 190

We expect cash requirements totaling approximately $58 million for contributions to our pension plans and $15 million for contributions to our other postretirement benefit plans in 2010.

In accordance with the provisions of FASB Topic *Income Taxes*, we have recorded a $15.5 million liability as of December 31, 2009 for unrecognized tax benefits and the payment of related interest and penalties. Due to the uncertainties related to these tax matters, we are unable to make a reasonably reliable estimate as to when cash settlement with a taxing authority will occur. However, we do not anticipate making any cash payments on these liabilities over the next 12 months.

QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our exposure to market risk from changes in interest rates relates primarily to our cash equivalents and our investment portfolio, which primarily consists of investments in U.S. Government obligations and highly liquid money market instruments denominated in U.S. dollars. We are averse to principal loss and seek to ensure the safety and preservation of our invested funds by limiting default risk, market risk and reinvestment risk. All our investments in debt securities are classified as available-for-sale.

We have exposure to changes in interest rates applicable to borrowings under our revolving credit facility (see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources"). We have no material future earnings or cash flow exposures from changes in interest rates on our other long-term debt obligations, as substantially all of these obligations have fixed interest rates.

We have operations in foreign locations, and, as a result, our financial results could be affected by factors such as changes in foreign currency exchange rates or weak economic conditions in those foreign markets. In order to manage the risks associated with foreign currency exchange rate fluctuations, we attempt to hedge those risks with foreign currency derivative instruments. Historically, we have hedged those risks with foreign currency forward contracts. We have recently hedged some of those risks with foreign currency option contracts. We do not enter into speculative derivative positions.

Interest Rate Sensitivity

The following tables provide information about our financial instruments that are sensitive to changes in interest rates. The tables present principal cash flows and related weighted-average interest rates by expected maturity dates.

	Principal Amount by Expected Maturity (Dollars in thousands)							
At December 31, 2009:	Years Ending December 31,							Fair Value at
	2010	2011	2012	2013	2014	Thereafter	Total	December 31, 2009
Investments	$ 70,169	$ 2,877	—	—	—	$ 883	$ 73,929	$ 73,554
Average Interest Rate	0.52%	0.53%				2.22%		
Long-term Debt—Fixed Rate	$ 3,366	$ 4,222	—	—	—	—	$ 7,588	$ 7,588
Average Interest Rate	1.06%	0.75%						

At December 31, 2008:	Years Ending December 31,							Fair Value at
	2009	2010	2011	2012	2013	Thereafter	Total	December 31, 2008
Investments	$101,839	$15,324	$ 825	—	—	$ 1,162	$119,150	$ 119,084
Average Interest Rate	2.20%	2.72%	4.98%	—	—	2.78%		
Long-term Debt—Fixed Rate	$ 4,250	—	—	—	—	—	$ 4,250	$ 4,250
Average Interest Rate	6.80%							

Exchange Rate Sensitivity

The following table provides information about our foreign currency forward contracts and options outstanding at December 31, 2009 and presents such information in U.S. dollar equivalents. The table presents notional amounts and related weighted-average exchange rates by expected (contractual) maturity dates and constitutes a forward-looking statement. These notional amounts generally are used to calculate the contractual payments to be exchanged under the contract. The average contractual exchange rates are expressed using market convention, which is dependent on the currencies being bought and sold under the forward contract.

Forward Contracts to Purchase Foreign Currencies in U.S. Dollars (Dollars in thousands)

Foreign Currency	Year Ending December 31, 2010	Fair Value at December 31, 2009	Average Contractual Exchange Rate
Canadian Dollars	$ 62,324	$ (1,892)	1.0239
Pound Sterling (selling Euros)	$ 5,976	$ (53)	0.8861
Japanese Yen (selling Canadian Dollars)	$ 5,262	$ 758	101.8480
Pound Sterling (selling Canadian Dollars)	$ 1,181	$ (31)	1.7440
Thai Baht	$ 901	$ 9	33.7944
Euros	$ 328	$ (15)	1.3650

Foreign Currency	Year Ending December 31, 2011	Fair Value at December 31, 2009	Average Contractual Exchange Rate
Canadian Dollars	$ 34,612	$ (1,102)	1.0139
Japanese Yen (selling Canadian Dollars)	$ 5,354	$ 622	98.3035
Euros	$ 3,198	$ (63)	1.4633
Danish Krone	$ 1,252	$ (1)	5.2195

Foreign Currency Option Contracts to Purchase Foreign Currencies in U.S. Dollars (Dollars in thousands)

Foreign Currency	Year Ending December 31, 2010	Fair Value at December 31, 2009	Strike Rate
Canadian Dollars	$ 95,250	$ 4,366	1.0637
Japanese Yen	$ 12,930	$ 307	90.3500
Euros	$ 2,405	$ 74	1.4343

BUSINESS

Overview

B&W is currently a wholly owned subsidiary of McDermott. B&W is a successor to a business founded in 1867, which was acquired by McDermott in 1978. Following the spin-off, B&W will be an independent, publicly traded company. McDermott will not retain any ownership interest in B&W. B&W's assets and businesses primarily consist of those that McDermott reports as its Power Generation Systems and Government Operations segments in its financial statements. We participate in the ownership of a variety of entities with third parties, primarily through corporations, limited liability companies and partnerships, which we refer to as "joint ventures."

B&W is a leading technology innovator in power generation systems, a specialty manufacturer of nuclear components and a premier service provider in its segments, with an operating history of more than 140 years. We provide a variety of products and services to customers in the power and other steam-using industries, including electric utilities and other power generators, industrial customers in various other industries, and the U.S. Government. We operate in two business segments: Power Generation Systems and Government Operations. Through our Power Generation Systems segment, we design, engineer, manufacture, supply, construct and maintain power generation systems and environmental control systems, primarily for large utility and industrial customers, and we provide related aftermarket parts and services. Through our Government Operations segment, we manufacture nuclear components and provide various services to the U.S. Government, including uranium processing, environmental site restoration services, and management and operating services for various U.S. Government-owned facilities. These services are provided to the DOE, including the NNSA, the Office of Nuclear Energy, the Office of Science and the Office of Environmental Management.

Our Government Operations segment manages and operates nuclear facilities and associated plant infrastructure; manufactures components and assembles/dismantles nuclear devices; constructs large capital facilities; provides safeguards and security for inventory and assets; supports and conducts research and development for advanced energy technology; and manages the environmental programs for the DOE and the NNSA through joint ventures. We employ approximately 13,000 people worldwide, not including approximately 10,000 joint venture employees.

The main drivers for our businesses are:

- demand for electricity, paper and other end products of steam-generating facilities;
- fossil and nuclear plant life cycles and the frequency with which plants need to replace or upgrade components;
- requirements for environmental improvements, including those imposed by legislative and regulatory developments aimed at reducing emissions of mercury, nitrogen oxides, sulfur dioxide, particulate matter, carbon dioxide and other environmental pollutants from power plants;
- requirements for plant efficiency improvements and improvements in reliability;
- levels of funding for the dismantlement and life extension for nuclear/non-nuclear components, research and development of energy technologies, and environmental restoration services we provide to the DOE, other federal agencies and commercial clients; and
- levels of demand for other products and services to the U.S. Government.

For the year ended December 31, 2009, we generated revenues of approximately $2.9 billion and operating income of approximately $270 million. For the year ended December 31, 2008, we generated revenues of approximately $3.4 billion and operating income of approximately $444.5 million. For financial information about our business segments, see Notes 1 and 14 to our combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement, which presents revenue, operating income, depreciation and amortization expense and capital expenditures for the years ended December 31, 2009, 2008 and 2007 and identifiable assets and goodwill by business segment as of December 31, 2009 and 2008.

In February 2000, several of B&W's subsidiaries filed for voluntary Chapter 11 protection, due to mounting asbestos-related claims tied to asbestos-containing commercial and utility boilers and other products they sold, installed or serviced in prior decades. From the date of the filing of the Chapter 11 petition until their emergence from Chapter 11 in 2006, McDermott treated those subsidiaries as deconsolidated subsidiaries for financial reporting purposes. The final settlement with representatives of asbestos claimants in the Chapter 11 proceedings, which was effected in a plan of reorganization consummated as of February 22, 2006, involved McDermott's and B&W's contribution of rights under various insurance policies, cash and a promissory note, with an aggregate value of approximately $2 billion, to a settlement trust, the channeling of asbestos-related personal injury claims to that trust and McDermott's retention of the ownership of the B&W subsidiaries involved in the Chapter 11 proceedings.

Our Competitive Strengths

Leading Market Positions

We are a proven leader in the design, engineering, manufacture, supply, construction and maintenance of steam generating and environmental equipment for power providers in the United States and in other parts of the world. As of March 31, 2010, our power generation systems and equipment supplied more than 300,000 MW of installed capacity in more than 800 utilities in over 90 countries. This extensive experience with steam generating equipment has helped us establish a leading position in the replacement nuclear steam generator market in the United States and worldwide, including replacement of units originally manufactured by other suppliers. We manufacture nuclear and non-nuclear components; manage, operate and maintain large government-owned facilities; and deliver major capital construction and environmental projects for the DOE and NNSA. We have received a number of industry awards recognizing our leadership position, technical innovation and customer service, including the National Safety Council's Occupational Excellence Achievement Award (Y-12), the 2009 National Safety Council Industry Leader Award (Y-12), DOE/NNSA Pollution Prevention (P2) Award (Pantex and Y-12), Closing the Circle Awards (recognizes federal facilities and employees for innovative practices and programs that have improved environmental performance and conditions at federal sites), Malcolm Baldrige National Quality Award given by the President of the United States (DynMcDermott for management and operation of the Strategic Petroleum Reserve), and Occupational Hazards Magazine Award (Pantex named to the 2007 list of America's Safest Companies). For our Power Generation Systems operations, *Power Engineering* magazine named Wisconsin Public Service Co.'s new Weston 4 project the "Best Coal-Fired Project of the Year for 2008." The boiler and air quality control systems for this 530 MW supercritical unit were designed, supplied and erected by our Power Generation Systems segment.

Investments in Advanced Technologies

We have invested in advanced technologies, through both research and development and our knowledge-centered technical professionals, to meet the challenge of growing power generation demand for energy sources that are lower pollutant emitting sources, or sources that have lower carbon footprints, fitting broadly into the category of "clean energy." Our "clean energy" technologies under development include carbon capture systems for coal-fired power plants; technologies for the development of higher efficiency coal-utilization systems to reduce emissions; technology to enable a greater use of biomass fuels for power generation; nuclear energy; and solar power generation technology.

We have built a new research center, rehabilitated a 30 MW pilot plant for oxy-combustion technology testing and built a new pilot plant for the development of solvent-based carbon dioxide capture systems for retrofit applications to existing power plants. One carbon capture technology we are developing with a third party, oxy-combustion, has been advanced through laboratory and pilot plant testing. We have applied for funding from the DOE to move this technology into a scale-plant phase. We intend to begin extensive field tests on our solvent-based carbon dioxide capture systems late in 2010 or early in 2011. We have also established a bubbling fluidized bed combustion technology for use in converting biomass fuels to thermal energy in accordance with environmental performance criteria. B&W has installed an advanced solar receiver in California

at a client-owned, concentrating solar power testing site to further validate this new technology on a commercial scale. This solar thermal power plant technology uses small, flat mirrors that track the sun and reflect the sun's heat to B&W's receiver, which boils water to create steam. This steam powers a traditional turbine and generator to produce clean electricity.

We are currently pursuing the development of several nuclear technologies with programs that include the development of advanced nuclear fuel for high temperature gas-cooled reactors; the supply of reactor fuels for university and other research programs; the development of aqueous reactor technology to support the production of medical isotopes for use in nuclear medicine imaging tests; and the design and development of the B&W mPower™ reactor, a modular, scalable nuclear steam supply system.

Proven Track Record

We have served the global power industry for over 140 years. We have a rich history and a legacy of "industry firsts." We designed and installed the first utility boiler, and we developed the first supercritical boiler. We also have a history of developing new products to meet changing regulations and mandates. We designed and built the first limestone-based wet scrubber for sulfur dioxide control. In addition to our history of leadership in the fossil-fuel-fired boiler market, we have been involved in the field of nuclear power for more than 50 years, providing nuclear heat exchangers, nuclear plant services and more than 300 nuclear steam generators to customers around the world. We manufactured the reactor for the first nuclear ship, the NS *Savannah*. We have also been supplying nuclear power components to the U.S. Government since the 1955-launching of the U.S.S. *Nautilus*, the world's first nuclear-powered vessel.

High Quality Manufacturing Facilities

We operate a network of 13 major manufacturing facilities around the world. Our Government Operations segment's facilities are equipped with advanced, state-of-the-art equipment and capable of performing highly complex manufacturing operations. These facilities include the only two commercial facilities that have Category I licenses from the NRC, which enable us to own, store and process both high and low enriched uranium. We have performed work under the auspices of the International Atomic Energy Agency. Our Power Generation Systems segment has factories in North America, Europe and Asia equipped to provide products and services to power plants. Three of our manufacturing facilities are accredited with the American Society of Mechanical Engineers Nuclear Component Certification, or "ASME N-Stamp." Only a small number of North American suppliers of large, heavy walled nuclear components and vessels have this certification.

Demonstrated Success with Large Delivered and Erected Projects

We have demonstrated success in executing large, delivered and erected projects, both at new power plants and as retrofits at existing facilities. We specialize in heavy mechanical erection and maintenance of equipment for steam generation and environmental improvement. Since 2000, we have erected more than 50 major pieces of equipment at units with electric generating capacity exceeding 39,000 MW. For those customers who purchase our combined design-build offering, we utilize proven project execution processes and provide single-point accountability for our scope throughout the execution of the project. Leveraging our engineer-to-construct design experience early in the life of a project optimizes constructability, resulting in lower costs and improved certainty of schedule. Our successful experience with modular fabrication and assembly can increase safety, improve quality, reduce field labor costs and shorten project span time.

Diversified and Strong Client Base

We have a broad customer base, consisting of a wide range of utilities, independent power producers and businesses in various other industries around the world, as well as the U.S. Government, our largest customer. In 2009, in addition to the U.S. Government, other major customers included:

- Allegheny Energy, Inc.
- American Electric Power Company, Inc.
- Bruce Power, L.P.
- FirstEnergy Corp.
- Public Service Company of New Mexico
- United States Enrichment Corporation

In 2009, only two customers represented, individually, over five percent of our combined revenue.

Experienced Management Team

Our management team boasts a wealth of industry experience and a history of working together as a cohesive team. This substantial experience has allowed our management to develop the knowledge and skills necessary to manage highly complex manufacturing and project management operations.

Highly Qualified Employees

We have a large number of scientists, engineers, technicians and other highly skilled employees involved in all aspects of our business operations. A large percentage of our salaried employees have college degrees in technical areas. In our Government Operations segment, a substantial number of our employees have security clearances from the NRC, the DOE and/or the U.S. Department of Defense, and have developed the experience necessary to meet the challenges associated with handling and processing highly enriched nuclear material. We provide regular, ongoing training to our employees, and we believe that maintaining high skill levels is a source of pride for our employees.

Our Business Strategies

Pursue Growth Opportunities in the Conventional Power Generation Market

We intend to pursue growth opportunities in the fossil power generation market and to expand our operational presence in regions around the world where we expect to see continuing growth and increasing needs for service. We believe significant growth opportunities exist as a result of many factors, including:

- economic growth, particularly in emerging economies, where we expect demand for new power generation capacity to continue to rise as economic recovery continues;
- continued development of environmental regulation and concern, which we expect to continue to drive demand for cleaner power generation technologies, as well as environmental control systems and other devices that abate emissions from existing plants;
- increasing demand for refurbishment and maintenance of aging plants, which, in addition to the requirements of increasing environmental regulation, is being driven by the desire of power producers to reduce operating costs, enhance operating efficiency, improve reliability and extend the useful lives of their existing plants;
- the continuing effects of past deregulation and liberalization initiatives relating to electricity markets in the United States, which has led to increased competition, which, in turn, has driven demand for installation of generation equipment designed to increase efficiency and reduce costs, as well as to make plants more environmentally friendly; and
- the need for more complete solutions for owners of power facilities, including engineer-procure-construct commercial arrangements and operations and maintenance services.

Leverage our Experience and Knowledge in the Nuclear Power Market to Pursue Opportunities from Renewed Interest in Nuclear Technology

Since the 1950s, we have supplied the nuclear industry with more than 1,300 large heavy components worldwide. With ASME N-Stamp certified manufacturing operations in both the U.S. and Canada, we have the skills, knowledge base and infrastructure for engineering and fabricating pressure vessels, reactors, steam generators, heat exchangers and electro-mechanical devices. We intend to leverage our extensive experience in designing, engineering, manufacturing, constructing and servicing nuclear power equipment to pursue growth opportunities in the market for nuclear technology. Technical and safety improvements related to nuclear reactors have resulted in a renewed interest in nuclear technology as a substitute for fossil and other fuels. We believe this nuclear technology "renaissance" also stems from the recognition that nuclear power is likely to play an important role in establishing global energy security in the 21st century. Public opinion, in the United States and elsewhere, regarding the merits of nuclear energy production, has improved over the past decade. This improvement has been attributable to, among other things, advances in nuclear reactor design to improve operational safety and reliability.

Among other opportunities in the nuclear power industry, we are developing the B&W mPower™ reactor, a modular nuclear reactor designed to provide scalability to build plants ranging from 125 MW to 1,000 MW of electric generating capacity (in increments of 125 MW) for a four- to five-year operating cycle without refueling. We intend to seek NRC certification of the B&W mPower™ reactor in time to begin deploying this technology as early as 2020.

We are developing, in conjunction with a unit of Covidien PLC and the DOE, a homogenous aqueous phase reactor to supply medical isotopes for use in nuclear medicine imaging tests. The reactor uses low-enriched fuel to address the U.S. Government nuclear non-proliferation mandate associated with the current medical isotope supply chain. We are currently in the licensing phase with the NRC and the U.S. Food and Drug Administration and have received grant funding from the DOE to accelerate the project.

Continue to Serve the Nuclear Power Needs of the U.S. Government

For more than five decades, we have established a solid reputation as a trusted supplier to U.S. Government defense programs. In support of these programs, we intend to continue processing special nuclear materials and providing precision manufactured nuclear components.

Continue to Diversify our Business Portfolio into Clean Energy Technologies

We intend to continue to diversify our business portfolio into clean energy technologies by investing in research and development of clean energy technologies, including the advancement of those technologies we already have under development and the development of new technologies. Development of B&W's clean energy portfolio is focused on modular nuclear reactors, carbon capture from fossil combustion, biomass and energy-from-waste plants and concentrated solar plants. Commercialization to clean energy solutions involves active B&W initiatives ranging from continuing research, to field deployment to new commercial offerings in our backlog.

Continue Leveraging our Successes in Managing and Operating DOE Sites to Grow our Business within the DOE Complex and in Other Markets

Over the past six decades, the DOE has developed one of the largest government-owned operations in the United States, with responsibility for research, development, testing, operations and production of nuclear devices and a variety of nuclear-related research programs. We have been actively engaged in assisting the DOE in these activities, principally through various management and operations services as well as highly complicated decontamination and decommissioning activities at operational and former weapons production sites. We believe that our core competencies and our experience, expertise and longstanding relationships with customers, including

the NNSA, the Office of Nuclear Energy, the Office of Science and the Office of Environmental Management, position us to grow our business within the DOE complex. Additionally, although we have not been successful in recent years in our efforts to expand our management and operations activities outside the DOE complex, we believe this expertise should provide a platform to seek contracts from other U.S. and foreign government agencies to manage and operate similar facilities and production operations and to support specialized and classified component manufacturing, facility and infrastructure improvement and environmental restoration projects.

Maintain our Commitment to Safety

We are committed to promoting a safe workplace. We value the health and safety of each employee, and we seek to provide each of our employees with a workplace that is free of accidents and injuries. Through our Target Zero safety process, we are dedicated to preventing accidents and their associated costs by averting, eliminating or mitigating unsafe acts and conditions, and by responding properly to natural disasters and emergency situations. We are implementing a Human Performance Initiative to provide our employees with an additional set of tools and improvements designed to reduce human error and improve workplace safety. We believe that this initiative will promote behaviors throughout our organization that support safe and reliable operations. A safe work environment benefits our employees, our customers and our business partners and is a key element to our future success.

Drive Operational Excellence to Continually Support Profitable Growth

We use a continuous improvement process methodology in our operations designed to enhance productivity and increase customer satisfaction through industry-proven methodologies.

Selectively Pursue Acquisitions

Our management team has demonstrated its ability to identify complementary business acquisition opportunities, consummate acquisitions on favorable terms and integrate acquired businesses. We will continue to evaluate potential acquisitions, with the aim of increasing earnings while maintaining financial discipline.

Maintain Financial Flexibility

We intend to maintain financial flexibility through our access to various liquidity sources. As of the distribution date, we anticipate having access to liquidity from several sources, including our revolving credit facility with a borrowing and letter of credit capacity of up to $700 million.

Power Generation Systems

Our Power Generation Systems segment includes the business and operations of Babcock & Wilcox Power Generation Group, Inc. (“B&W PGG”) and Babcock & Wilcox Nuclear Energy, Inc. and their respective subsidiaries. Through this segment, we supply boilers fired with fossil fuels, such as coal, oil and natural gas, or renewable fuels such as biomass, municipal solid waste and concentrated solar energy. In addition, we supply commercial nuclear steam generators and components, environmental equipment and components, and related services to customers in different regions around the world. We design, engineer, manufacture, construct and service large utility and industrial power generation systems, including boilers used to generate steam in electric power plants, pulp and paper making, chemical and process applications and other industrial uses.

Through this segment, we have served the global power industry for over 140 years. We have a rich history and a legacy of “industry firsts.” These include:

- the introduction of the first commercial, supercritical pressure steam cycle unit—the universal pressure boiler (1957);
- the manufacture of the reactor for the world’s first commercial nuclear vessel, the NS *Savannah* (1961);

- the receipt of the first order for the design and supply of nuclear steam generators for a Canadian deuterium uranium, or CANDU, plant (1965);
- the installation of the first wet flue gas desulfurization system (1973);
- the introduction of the world's largest dry scrubbing system (1982);
- the design and construction of the world's largest waste-to-energy facility (1989);
- the erection of a universal pressure boiler and wet scrubber at the William H. Zimmer station, which was the first commercial nuclear plant to be converted to a coal-fired plant and the world's largest single-boiler emission control system (1991);
- the receipt of the first order in the industry for once-through-design replacement nuclear steam generators (1999);
- the completion of a 550 MW boiler replacement in world-record time—less than 22 months—and two large selective catalytic reduction systems for a major Northeastern United States utility (2001); and
- the operation of the first coal-fired 30 MWt oxy-combustion system, to concentrate carbon dioxide, as a step to abate emissions of greenhouse gases (2008).

The following table sets forth the location and principal use of this segment's operating facilities that we own or lease.

Location	Principal Use	Owned/Leased (Lease Expiration)
West Point, Mississippi	Manufacturing	Owned
Lancaster, Ohio	Manufacturing	Owned
Cambridge, Ontario, Canada	Manufacturing	Owned
Esbjerg, Denmark	Manufacturing	Owned
Jingshan, Hubei, China	Manufacturing	Owned
Guadalupe, Mexico	Manufacturing	Leased (through 2024)
Melville, Saskatchewan, Canada	Manufacturing	Owned
Barberton, Ohio	Manufacturing	Owned
Dumbarton, Scotland	Manufacturing	Owned

We have granted liens on our ownership interests in each of the facilities we own that are located in the United States, to secure our obligations to the lenders under the credit agreement relating to our revolving credit facility. We have also granted liens on the facility in Denmark to secure our obligations to the lenders under a separate credit agreement maintained by our subsidiary that operates that facility.

This segment also has administrative offices and a research and development facility in Barberton, Ohio, administrative offices in Lynchburg, Virginia (leased through 2011) and a warehouse/service center in Copley, Ohio. Our Power Generation Systems segment has access to the Government Operations segment's manufacturing facilities in Barberton, Ohio, Euclid, Ohio and Mount Vernon, Indiana for the manufacture of commercial nuclear components.

Through our manufacturing facilities, we specialize in the fabrication of products used in the power generation industry and various other industries and the provision of related services, including:

- heavy-pressure equipment for energy conversion, such as boilers fueled by coal, oil, bitumen, natural gas, solid municipal waste, biomass and other fuels;
- environmental control systems, including both wet and dry scrubbers for flue gas desulfurization, modules for selective catalytic reduction of the oxides of nitrogen, equipment to capture particulate matter, such as fabric-filter baghouses and wet and dry electrostatic precipitators, and similar devices;
- engineered-to-order services, products and systems for energy conversion worldwide and related auxiliary equipment, such as burners, pulverizers, soot blowers and ash handling systems;

- steam generators, heat exchangers, reactor vessel closure heads and electromechanical devices for commercial nuclear power plants; and
- power plant equipment and related heavy mechanical erection services.

We support operating plants with a wide variety of additional services, including the installation of new systems and replacement parts, engineering services, construction, maintenance and field technical services, such as condition assessments and inventory services to help customers respond quickly to plant interruptions. Our wide range of construction and installation services include erection of utility and industrial boiler plants, installations of cogeneration facilities and installations of pollution control equipment, such as selective catalytic reduction systems and flue gas desulfurization scrubbers. We also provide power through cogeneration, refuse-fueled power plants and other independent power-producing facilities and participate in this market as contractors for engineer-procure-construct services, as equipment suppliers, as operations and maintenance contractors and as an owner.

Although it has been over 30 years since a new nuclear power plant commenced construction in the United States, we expect to participate in commercial nuclear projects and related opportunities in the future. Among our opportunities in the nuclear power industry, we are developing the B&W mPower™ reactor, a small modular reactor designed with the flexibility to provide between 125 MW to 1,000 MW of electrical power generation (in increments of 125 MW), and the capability to operate for a four- to five-year operating cycle without refueling. We intend to seek NRC certification of the B&W mPower™ reactor in time to begin deploying this technology as early as 2020. We intend to build the nuclear reactor modules in our manufacturing facilities and transport them to customer sites for installation. The modular and scalable design of the B&W mPower™ reactor should allow us to match the generation needs of our customers with the proven performance of existing light water reactor technology. We believe the B&W mPower™ reactor will reduce risks associated with deploying nuclear power and become a flexible, cost-effective solution for increasing electricity needs.

Our Power Generation Systems segment’s overall activity depends mainly on the capital expenditures of electric power generating companies and other steam-using industries. Several factors influence these expenditures, including:

- prices for electricity, along with the cost of production and distribution;
- prices for coal and natural gas and other sources used to produce electricity;
- the demand for electricity, paper and other end products of steam-generating facilities;
- the availability of other sources of electricity, paper or other end products;
- requirements for environmental improvements;
- the impact of potential regional, state, national and/or global requirements to significantly limit or reduce greenhouse gas emissions in the future;
- levels of capacity utilization at operating power plants, paper mills and other steam-using facilities;
- requirements for maintenance and upkeep at operating power plants and paper mills to combat the accumulated effects of wear and tear;
- the ability of electric generating companies and other steam users to raise capital; and
- total costs of electricity production using boilers compared to total costs using gas turbines and other alternative forms of generation.

Our Power Generation Systems segment’s products and services are capital intensive. As such, customer demand is heavily affected by the variations in our customers’ business cycles and by the overall economies of the countries in which they operate.

Government Operations

Our Government Operations segment includes the business and operations of Babcock & Wilcox Nuclear Operations Group, Inc., Babcock & Wilcox Technical Services Group, Inc. and their respective subsidiaries. Through this segment, we manufacture nuclear components and provide various services to the U.S. Government, including uranium processing, environmental site restoration services, and management and operating services for various U.S. Government-owned facilities. These services are provided to the DOE, including the NNSA, the Office of Nuclear Energy, the Office of Science and the Office of Environmental Management.

We have over 50 years of experience in the ownership and operation of large nuclear development, production and reactor facilities. This segment's principal operations include:

- providing precision manufactured nuclear components for U.S. Government defense programs;
- managing and operating nuclear production facilities;
- managing and operating environmental management sites;
- managing spent nuclear fuel and transuranic waste for the DOE;
- providing critical skills and resources for DOE sites; and
- developing and deploying next generation technology in support of U.S. Government programs.

The following table sets forth the location and principal use of this segment's major properties that we own or lease.

Location	Principal Use	Owned/Leased (Lease Expiration)
Lynchburg, Virginia	Manufacturing	Owned
Barberton, Ohio	Manufacturing	Owned
Euclid, Ohio	Manufacturing	Owned / Leased(1)
Mount Vernon, Indiana	Manufacturing	Owned
Erwin, Tennessee	Manufacturing	Owned

(1) We acquired the Euclid facilities through a bond/lease transaction facilitated by the Cleveland Cuyahoga County Port Authority (the "Port"), whereby we acquired a ground parcel and the Port issued bonds, the proceeds of which were used to acquire, improve and equip the facilities, including the acquisition of a larger facility and a 40-year prepaid ground lease for a smaller facility. We are leasing the facilities from the Port with an expiration date of 2014, subject to certain extension options.

In addition, we lease (through 2011) administrative offices in Lynchburg, Virginia.

Through this segment's manufacturing facilities, we specialize in the design and manufacture of close-tolerance and high-quality equipment for nuclear applications. In addition, we are a leading manufacturer of critical nuclear components, fuels and assemblies for government and commercial uses. We have supplied nuclear components for DOE programs since the 1950s, and we are the largest domestic supplier of research reactor fuel elements for colleges, universities and national laboratories. We also convert or downblend high-enriched uranium into low-enriched fuel for use in commercial reactors to generate electricity. In addition, we have over 100 years of experience in supplying heavy fabrications for industrial use, including components for defense applications.

We work closely with the DOE supported non-proliferation program. Currently, this program is assisting in the development of a high-density, low-enriched uranium fuel required for high-enriched uranium test reactor conversions. We have also been a leader in the receipt, storage, characterization, dissolution, recovery and purification of a variety of uranium-bearing materials. All phases of uranium downblending and uranium recovery are provided at our Lynchburg, Virginia and Erwin, Tennessee sites.

We manage and operate complex, high-consequence nuclear and national security operations for the DOE and the NNSA, primarily through our joint ventures. In addition to these joint ventures, Babcock & Wilcox Technical Services Clinch River, LLC was awarded a contract from USEC, Inc. in 2007 to manufacture classified metal parts for the American Centrifuge Program.

We have an experienced staff of design and manufacturing engineers capable of performing full scope, prototype design work coupled with manufacturing integration. The design, engineering and other capabilities of our Government Operations segment include:

- steam separation equipment design and development;
- thermal-hydraulic design of reactor plant components;
- structural component design for precision manufacturing;
- materials expertise in high-strength, low-alloy steels and nickel-based materials;
- material procurement of tubing, forgings and weld wire; and
- metallographic and chemical analysis.

Our Government Operations segment's operations are generally capital intensive on the manufacturing side. The demand for nuclear components by the U.S. Government determines a substantial portion of this segment's backlog. We expect that orders for nuclear components will continue to be a significant part of backlog for the foreseeable future; however, such orders are subject to defense department budget constraints.

Acquisitions

The following is a brief description of some of our recent acquisitions:

Marine Mechanical Corporation. In May 2007, our Government Operations segment completed its acquisition of Marine Mechanical Corporation, which designs, manufactures and supplies electro-mechanical equipment used by the U.S. Government. This business complements our other government-related nuclear activities.

The Intech Group of Companies. On July 15, 2008, our Power Generation Systems segment completed its acquisition of the Intech group of companies ("Intech"). Intech consists of Intech, Inc., Ivey-Cooper Services, L.L.C. and Intech International Inc. Intech, Inc. provides nuclear inspection and maintenance services, primarily for the U.S. market. Ivey-Cooper Services, L.L.C. provides non-destructive inspection services to fossil-fueled power plants, as well as chemical, pulp and paper, and heavy fabrication facilities. Intech International Inc. provides non-destructive testing, field engineering and repair and specialized tooling services, primarily for the Canadian nuclear power generation industry.

Delta Power Services, LLC. In August 2008, our Power Generation Systems segment completed its acquisition of Delta Power Services LLC, an operation and maintenance services provider for the U.S. power generation industry. This business complements our current role in the fossil fuel and biomass markets. It also helps us to further diversify into the natural gas-fired power generation market.

Nuclear Fuel Services, Inc. On December 31, 2008, our Government Operations segment completed its acquisition of Nuclear Fuel Services, Inc., a provider of specialty nuclear fuels and related services. This business enhances our position as a leading provider of nuclear manufacturing and services for government and commercial markets.

Instrumentacion y Mantenimiento de Calderas, S.A. In September 2009, our Power Generation Systems segment acquired certain assets of Instrumentacion y Mantenimiento de Calderas, S.A. This acquisition provides us with additional manufacturing capabilities in support of our domestic services and regional industrial boiler manufacturing businesses.

Götaverken Miljö AB. In January 2010, our Power Generation Systems segment completed its acquisition of Götaverken Miljö AB, a flue gas cleaning and energy recovery company based in Gothenburg, Sweden. This business complements our B&W Vølund subsidiary, which is one of the world's leading suppliers of equipment and technologies designed to convert municipal solid waste and biomass into thermal energy.

GE Energy Businesses. On April 2, 2010, we acquired the electrostatic precipitator aftermarket and emissions monitoring business units of GE Energy, a division of General Electric Company, including its electrostatic precipitator replacement parts and mechanical components product lines, performance-enhancing hardware, controls and software, remote diagnostics equipment and emissions monitoring products and services. These products and services are used by a wide variety of power generation and industrial customers to monitor and control particulates and other emissions from power plants, factories and other facilities. These business units maintain offices in the United States in Kansas City, Missouri, Folkston, Georgia, Newport News, Virginia and Hatfield, Pennsylvania, as well as locations in Germany, India, Russia and China.

We continue to evaluate accelerated growth opportunities achievable through acquisition or consolidation, in addition to pursuing internal growth strategies.

Contracts

We execute our contracts through a variety of methods, including fixed-price, cost-plus and cost-reimbursable or some combination of those methods. Contracts are usually awarded through a competitive bid process, primarily based on price. However, other factors that customers may consider include plant or equipment availability, technical capabilities of equipment and personnel, efficiency, safety record and reputation.

Fixed-price contracts are for a fixed amount to cover all costs and any profit element for a defined scope of work. Fixed-price contracts entail more risk to us because they require us to predetermine both the quantities of work to be performed and the costs associated with executing the work.

We have contracts that extend beyond one year. Most of our long-term contracts have provisions for progress payments. We attempt to cover anticipated increases in labor, material and service costs of our long-term contracts either through an estimate of such charges, which is reflected in the original price, or through risk-sharing mechanisms, such as escalation or price adjustments for items such as labor and commodity prices.

We generally recognize our contract revenues and related costs on a percentage-of-completion basis. Accordingly, we review contract price and cost estimates periodically as the work progresses and reflect adjustments in profit proportionate to the percentage of completion in the period when we revise those estimates. To the extent that these adjustments result in a reduction or an elimination of previously reported profits with respect to a project, we would recognize a charge against current earnings, which could be material.

Many of our contracts with the U.S. Government are subject to annual funding determinations. In addition, contracts between the U.S. Government and its prime contractors usually contain standard provisions for termination at the convenience of the U.S. Government or the prime contractor. The contracts for the management and operation of U.S. Government facilities are awarded through a complex and protracted procurement process. These contracts are generally structured as five-year contracts with five-year renewal options, which are exercisable by the customer, or include provisions whereby the contract duration can be extended as a result of superior performance. These are cost-reimbursement contracts with a U.S. Government credit line with little corporate-funded working capital required. These contracts include a fee primarily based on performance, which is evaluated annually. As a U.S. Government contractor, we are subject to federal regulations under which our right to receive future awards of new federal contracts would be unilaterally suspended or barred if we were convicted of a crime or indicted based on allegations of a violation of specific federal statutes. In addition, some of our contracts with the U.S. Government require us to provide advance

notice in connection with any contemplated sale or shut down of the relevant facility. In each of those situations, the U.S. Government has an exclusive right to negotiate a mutually acceptable purchase of the facility.

Our arrangements with customers frequently require us to provide letters of credit, bid and performance bonds or guarantees to secure bids or performance under contracts. While these letters of credit, bonds and guarantees may involve significant dollar amounts, historically, there have been no material payments to our customers under these arrangements.

In the event of a contract deferral or cancellation, we generally would be entitled to recover costs incurred, settlement expenses and profit on work completed prior to deferral or termination. Significant or numerous cancellations could adversely affect our business, financial condition, results of operations and cash flows.

Backlog

Backlog represents the dollar amount of revenue we expect to recognize in the future from contracts awarded and in progress. Not all of our expected revenue from a contract award is recorded in backlog for a variety of reasons, including projects awarded and completed within the same fiscal quarter.

Backlog is not a measure defined by generally accepted accounting principles, and our methodology for determining backlog may not be comparable to the methodology used by other companies in determining their backlog amounts. Backlog may not be indicative of future operating results, and projects in our backlog may be cancelled, modified or otherwise altered by customers.

We generally include expected revenue of contracts in our backlog when we receive written confirmation from our customers. We generally do not include expected revenue of contracts related to our joint ventures in our backlog.

Our backlog at March 31, 2010 and December 31, 2009 was as follows:

	March 31, 2010		December 31, 2009	
	(Dollars in millions)			
Power Generation Systems	$1,969	41%	$1,974	42%
Government Operations	2,783	59%	2,766	58%
Total Backlog	$4,752	100%	$4,740	100%

Of the March 31, 2010 backlog, we expect to recognize revenues as follows:

	2010	2011	Thereafter
	(In millions)		
Power Generation Systems	$ 790	$ 540	$ 639
Government Operations	730	770	1,283
Total Backlog	$1,520	$1,310	$ 1,922

As of March 31, 2010, our backlog with the U.S. Government, primarily attributable to our Government Operations segment, was $2.8 billion (of which $35 million had not yet been funded), or approximately 59% of our total combined backlog. We do not include the value of our management and operating contracts in backlog.

During the year ended December 31, 2009, the U.S. Government awarded new orders of approximately $0.8 billion to us, primarily in our Government Operations segment. New awards from the U.S. Government are typically received by our Government Operations segment during the fourth quarter of each year.

We believe the current worldwide credit and economic environment and short-term uncertainty regarding environmental regulations has affected our customers in the electric utility industry more than our other customers. While we have not experienced significant delays on existing projects in our Power Generation Systems' backlog, we have experienced increasing delays in expected bookings on new planned projects.

Competition

The competitive environments in which each segment operates are described below:

Power Generation Systems. With more than 140 years of experience, we are in a strong position to provide some of the most advanced steam generating equipment, emissions control equipment and services. Having supplied worldwide capacity of more than 300,000 megawatts and some of the world's largest and most efficient steam generating systems, we have the experience and technical capability to reliably convert a wide range of fuels to steam. Our strong, installed base in North America yields competitive advantages in after-market services, although this share of the market is pressured by lower level suppliers. Through this segment, we compete with a number of domestic and foreign-based companies specializing in steam-generating systems technology, equipment and services, including Alstom S.A., Doosan Babcock, Babcock Power, Inc., Foster Wheeler Ltd., Mitsubishi Heavy Industries and Hitachi, Ltd.; a variety of engineering and construction companies with respect to the installation of steam-generating systems; a number of additional companies in the markets for environmental control equipment and related specialized industrial equipment and in the independent power-producing business; and other suppliers of replacement parts, repair and alteration services and other services required to retrofit and maintain existing steam systems.

Government Operations. We have specialized capabilities that have allowed us to be a valued supplier of nuclear components for the U.S. Government since the 1950s. Also, through this segment, we are engaged in a highly competitive business through our management and operation of U.S. Government facilities. Many of our government contracts are bid as a joint venture, with one or more companies, in which we may have a minority position. The performance of the prime or lead contractor can impact our reputation and our future competitive position with respect to that particular project and customer. Competitors in the delivery of goods and services to the U.S. Government and the operation of U.S. Government facilities include Bechtel National, Inc., URS Corporation, CH2M Hill, Inc., Fluor Corporation, Lockheed Martin Corporation, Jacobs Engineering Group, Inc., EnergySolutions, Inc. and Northrop Grumman Corporation.

Joint Ventures

We participate in the ownership of a variety of entities with third parties, primarily through corporations, limited liability companies and partnerships, which we refer to as "joint ventures." Our Government Operations segment manages and operates nuclear facilities and associated plant infrastructure, manufactures components and assembles/dismantles nuclear devices, constructs large capital facilities, provides safeguards and security for inventory and assets, supports and conducts research and development for advanced energy technology, and manages environmental programs for the DOE and the NNSA through joint ventures. We generally account for our investments in joint ventures under the equity method of accounting. Our significant joint ventures are described below.

Power Generation Systems

- **Ebensburg Power Company & Ebensburg Investors Limited Partnership.** Through these entities, which were formed by subsidiaries within our Power Generation Systems segment and ESI Energy, Inc. in 1992, we own an interest in and operate a combined solid waste and cogeneration facility located in Cambria County near Ebensburg, Pennsylvania. This facility uses bituminous waste coal for its primary fuel and sells generated electricity to a utility and steam to a hospital.

- **Halley & Mellowes Pty. Ltd.** Diamond Power International, Inc., one of our wholly owned subsidiaries, owns an interest in this Australian company, which was formed in 1984. Halley & Mellowes Pty. Ltd. sells soot blowers, boiler cleaning equipment, valves and material handling equipment, all of which are complementary to Diamond Power's product lines.
- **Babcock & Wilcox Beijing Company, Ltd.** We own equal interests in this entity with Beijing Jingcheng Machinery Electric Holding Company, Ltd. Babcock & Wilcox Beijing Company, Ltd. was formed in 1986 and is located in Beijing, China. Its main activities are the design, manufacturing, production and sale of various power plant and industrial boilers. It operates the largest heavy drum shop in northern China. This entity expands our markets internationally and provides additional capacity to our Power Generation Systems segment's boiler business.
- **Agreement for Indian Joint Venture with Thermax Ltd.** In March 2010, one of our subsidiaries and Thermax Ltd., a boiler manufacturer based in India, entered into an agreement to form a joint venture to build subcritical and highly efficient supercritical boilers and pulverizers for the Indian utility boiler market. We intend to license to the joint venture our technology for subcritical boilers 300 MW and larger, highly efficient supercritical boilers and coal pulverizers. The joint venture is also expected to construct a new 3,000 MW pressure parts facility in India. We expect the joint venture to be formed in the second quarter of 2010, subject to the satisfaction of certain customary closing conditions.

Government Operations

- **Pantex Plant.** Through Babcock & Wilcox Technical Services Pantex, L.L.C., a limited liability company we formed with Honeywell International Inc. and Bechtel National, Inc., we manage and operate the Pantex Plant for the DOE. The Pantex Plant is located on a 16,000-acre NNSA site near Amarillo, Texas. Key operations at this facility include evaluating, retrofitting and repairing nuclear devices; dismantling and sanitizing nuclear devices; developing, testing and fabricating high-explosive components; and handling and storing plutonium pits.
- **Y-12 National Security Complex.** Through Babcock & Wilcox Technical Services Y-12, L.L.C., a limited liability company we formed with Bechtel National, Inc. and in which we own a majority interest, we manage and operate the Y-12 Complex for the DOE. The Y-12 Complex is located on an 811-acre NNSA site in Oak Ridge, Tennessee. Operations at the site focus on the production, refurbishment and dismantlement of nuclear devices, storage of nuclear material and the prevention of the proliferation of weapons of mass destruction.
- **Strategic Petroleum Reserve.** Since 1993, this facility has been managed and operated by DynMcDermott Petroleum Operations Company, an entity we co-own with DynCorp International, International-Matex Tank and Terminals and Jacobs Engineering Group, Inc. The Strategic Petroleum Reserve stores an emergency supply of crude oil stored at four sites in huge underground salt caverns along the Texas and Louisiana Gulf Coast.
- **Los Alamos National Laboratory.** Since 2006, the Los Alamos National Security, LLC, a limited liability company formed in 2005 with the University of California, Bechtel National, URS Corporation and B&W Technical Services Group, Inc., has managed and operated the Los Alamos National Laboratory, a premier national security research institution, delivering scientific and engineering solutions for the nation's most crucial and complex problems. Located in New Mexico, the Los Alamos National Laboratory is the foremost site for the U.S. Government's ongoing research and development on the measures necessary for certifying the safety and reliability of nuclear devices without the use of nuclear testing.
- **Lawrence Livermore National Laboratory.** Lawrence Livermore National Security, LLC, a limited liability company formed in 2006 with the University of California, Bechtel National, URS Corporation and B&W Technical Services Group, Inc., manages and operates Lawrence Livermore

National Laboratory located in Livermore, California. The laboratory serves as a national resource in science and engineering, focused on national security, energy, the environment and bioscience, with special responsibility for nuclear devices.

- **Savannah River Liquid Waste Disposition Program.** In July 2009 Savannah River Remediation, a limited liability company formed by URS Corporation, Bechtel National, CH2M Hill Constructors, Inc., and B&W Technical Services Group, Inc., became the liquid waste contractor for the DOE's Savannah River Site located in Aiken, South Carolina. The objective of the Liquid Waste contract is to achieve closure of the SRS liquid waste tanks in compliance with the Federal Facilities Agreement, utilizing the Defense Waste Processing Facility and Saltstone Facility.
- **Nevada Test Site.** In 2006, National Security Technologies, LLC ("NSTec"), a limited liability company formed by Northrop Grumman Corporation, AECOM, CH2M Hill, and Nuclear Fuel Services, Inc. (one of our wholly owned subsidiaries), began management and operation at the Nevada Test Site and its related facilities and laboratories for the DOE. Located in Las Vegas, Nevada, NSTec works on projects for other federal agencies such as the Defense Threat Reduction Agency, NASA, the NRC, and the U.S. Air Force, Army, and Navy. Missions include defense experimentation and stockpile stewardship, homeland security and defense applications, and environmental management.
- **Isotek Systems.** Isotek Systems, LLC, is a limited liability company formed by EnergySolutions, Inc., Nuclear Fuel Services, Inc. and Burns and Roe Enterprises, Inc. Isotek received a contract in 2003 from the DOE to down blend enriched uranium-233 and extract isotopes that show great promise in the treatment of deadly cancers at the Oak Ridge National Laboratory in Oak Ridge, Tennessee. This contract is part of an initiative to clean up Cold War legacy sites.

Foreign Operations

Our Government Operations segment generates substantially all of its revenues from customers within the United States. Our Power Generations Systems segment revenues, net of intersegment revenues, and income derived from operations located outside of the United States, as well as the approximate percentages of our total combined revenues and total combined segment income, respectively, for each of the last three years were as follows (dollars in thousands):

	Revenues		Segment Income	
	Amount	Percent of Total Combined	Amount	Percent of Total Combined
Year ended December 31, 2009	$483,408	17%	$72,311	23%
Year ended December 31, 2008	$526,080	15%	$72,197	15%
Year ended December 31, 2007	$411,459	13%	$49,122	14%

For additional information on the geographic distribution of our revenues, see Note 14 to our combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement.

Customers

We provide our products and services to a diverse customer base, including utilities and other power producers, businesses in various process industries, such as pulp and paper mills, petrochemical plants, oil refineries and steel mills, and the U.S. Government. Our five largest customers, as a percentage of our total combined revenues, during the years ended December 31, 2009 and 2008 were as follows:

Year Ended December 31, 2009:	
U.S. Government	33%
American Electric Power Company, Inc.	6%
FirstEnergy Corp.	3%
Bruce Power, L.P.	3%
United States Enrichment Corporation	2%
Year Ended December 31, 2008:	
U.S. Government	22%
American Electric Power Company, Inc.	7%
First Energy Corp.	4%
Allegheny Energy, Inc.	3%
Public Service Company of New Mexico	3%

The U.S. Government is the primary customer of our Government Operations segment, comprising 92% and 89% of segment revenues for the years ended December 31, 2009 and 2008, respectively.

Our non-U.S. Government customers that account for a significant portion of revenues in one year may represent an immaterial portion of revenues in subsequent years.

Raw Materials and Suppliers

Our operations use raw materials, such as carbon and alloy steels in various forms and components and accessories for assembly, which are available from numerous sources. We generally purchase these raw materials and components as needed for individual contracts. Our Power Generation Systems segment does not depend on a single source of supply for any significant raw materials. Our Government Operations segment relies on several single-source suppliers for materials used in its products. We believe these suppliers are viable, and we and the U.S. Government expend significant effort to maintain the supplier base for our Government Operations segment.

Although shortages of some raw materials have existed from time to time, no serious shortage exists at the present time.

Employees

At March 31, 2010, we employed approximately 13,000 persons worldwide, not including approximately 10,000 joint venture employees. Approximately 4,700 of our employees were members of labor unions at March 31, 2010. Many of our operations are subject to union contracts, which we customarily renew periodically. We consider our relationships with our employees to be satisfactory.

Patents and Technology Licenses

We currently hold a large number of U.S. and foreign patents and have numerous patent applications pending. We have acquired patents and technology licenses and granted technology licenses to others when we have considered it advantageous for us to do so. Although in the aggregate our patents and technology licenses are important to us, we do not regard any single patent or technology license or group of related patents or technology licenses as critical or essential to our business as a whole. In general, we depend on our technological capabilities and the application of know-how, rather than patents and technology licenses, in the conduct of our various businesses.

Research and Development Activities

We conduct our principal research and development activities at our research and development facility in Barberton, Ohio and at our various manufacturing plants and engineering and design offices. Our Barberton facility is a world-class institution for the advancement and development of energy conversion and combustion systems, environmental emissions control processes, materials selection and manufacturing technologies for the power generation industry. Our research and development activities are related to the development and improvement of new and existing products and equipment, as well as conceptual and engineering evaluation for translation into practical applications. We charge to cost of operations the costs of research and development unrelated to specific contracts as incurred. Substantially all of these costs are in our Power Generation Systems segment and include costs related to the development of carbon capture and sequestration technology and our modular and scalable nuclear reactor business, B&W mPower™. Our research and development activities cost approximately $53.2 million, $38.5 million and $34.8 million in the years ended December 31, 2009, 2008 and 2007, respectively. We expect to continue significant spending on research and development projects, as we continue development of our carbon capture and sequestration technology and the B&W mPower™ reactor technology and other commercial nuclear projects. Contractual arrangements for customer-sponsored research and development can vary on a case-by-case basis and include contracts, cooperative agreements and grants. Of our total research and development expenses, our customers paid for approximately $28.1 million, $20.8 million and $18.3 million in the years ended December 31, 2009, 2008 and 2007, respectively.

Hazard Risks and Insurance

Our operations present risks of injury to or death of people, loss of or damage to property, and damage to the environment. We have created loss control systems to assist us in the identification and treatment of the hazard risks presented by our operations, and we endeavor to make sure these systems are effective.

As loss control measures will not always be successful, we seek to establish various means of funding losses and liability related to incidents or occurrences. We primarily seek to do this through contractual protections, including waivers of consequential damages, indemnities, caps on liability, liquidated damage provisions, and access to the insurance of other parties. We also procure insurance, operate our own “captive” insurance company, and/or establish funded or unfunded reserves. However, none of these methods will ensure that all risks have been adequately addressed.

Depending on competitive conditions, the nature of the work, industry custom and other factors, we may not be successful in obtaining adequate contractual protection from our customers and other parties against losses and liabilities arising out of or related to the performance of our work. The scope of the protection may be limited, may be subject to conditions and may not be supported by adequate insurance or other means of financing. In addition, we sometimes have difficulty enforcing our contractual rights with others following a material loss.

Similarly, insurance for certain potential loses or liabilities may not be available or may only be available at a cost or on terms we consider not to be economical. Insurers frequently react to market losses by ceasing to write or severely limiting coverage for certain exposures. Risks that we have frequently found difficult to cost-effectively insure against include, but are not limited to, business interruption, property losses from wind, flood and earthquake events, nuclear hazards, war and confiscation or seizure of property in some areas of the world, pollution liability, liabilities related to occupational health exposures (including asbestos), liability related to our executives participating in the management of certain outside entities, professional liability/errors and omissions coverage, the failure or unavailability of our information systems, and liability related to risk of loss of our work in progress and customer-owned materials in our care, custody and control. In cases where we place insurance, we are subject to the credit worthiness of the relevant insurer(s), the available limits of the coverage, our retention under the relevant policy, exclusions in the policy and gaps in coverage.

Our operations in designing, engineering, manufacturing, constructing and servicing nuclear power equipment and components for our commercial nuclear utility customers subject us to various risks, including,

without limitation, damage to our customers' property and third-party claims for personal injury, death and property damage. To protect against liability for damage to a customer's property, we endeavor to obtain waivers of liability and subrogation from the customer and its insurer and are usually named as an additional insured under the utility customer's nuclear property policy. We also attempt to cap our overall liability in our contracts. To protect against liability from claims brought by third parties, we are insured under the utility customer's nuclear liability policies and have the benefit of the indemnity and limitation of any applicable liability provision of the Price-Anderson Act. The Price-Anderson Act limits the public liability of manufacturers and operators of licensed nuclear facilities and other parties who may be liable in respect of, and indemnifies them against, all claims in excess of a certain amount. This amount is determined by the sum of commercially available liability insurance plus certain retrospective premium assessments payable by operators of commercial nuclear reactors. For those sites where we provide environmental remediation services, we seek the same protection from our customers as we do for our other nuclear activities. The Price-Anderson Act, as amended, includes a sunset provision and requires renewal each time that it expires. Contracts that were entered into during a period of time that Price-Anderson was in full force and effect continue to receive the benefit of the Price-Anderson Act's nuclear indemnity. The Price-Anderson Act is set to expire on December 31, 2025. We also provide nuclear fabrication and other services to the nuclear power industry in Canada. Canada's Nuclear Liability Act generally conforms to international conventions and is conceptually similar to the Price-Anderson Act in the United States. Accordingly, indemnification protections and the possibility of exclusions under Canada's Nuclear Liability Act are similar to those under the Price-Anderson Act in the United States.

Although we currently do not own or operate any nuclear reactors, we have some coverage under commercially available nuclear liability and property insurance for our facilities that are currently licensed to possess special nuclear materials. Substantially all of our Government Operations segment contracts involving nuclear materials are covered by and subject to the nuclear indemnity provisions of either the Price-Anderson Act or Public Law 85-804. However, to the extent the value of the nuclear materials in our care, custody or control exceeds the commercially available limits of our insurance, we potentially have underinsured risk of loss for such nuclear material.

Our Government Operations segment participates in the management and operation of various U.S. Government facilities. This participation is customarily accomplished through the participation in joint ventures with other contractors for any given facility. These activities involve, among other things, handling nuclear devices and their components from the aging stockpile of the U.S. Government. Insurable liabilities arising from these sites are rarely protected by our corporate insurance program. Instead, we rely on government contractual agreements, insurance purchased specifically for a site and certain specialized self-insurance programs funded by the U.S. Government. The U.S. Government has historically fulfilled its contractual agreement to reimburse its contractors for covered claims, and we expect it to continue this process during our participation in the administration of these facilities. However, in most of these situations in which the U.S. Government is contractually obligated to pay, the payment obligation is subject to the availability of authorized government funds. The reimbursement obligation of the U.S. Government is also conditional, and provisions of the relevant contract or applicable law may preclude reimbursement.

Our wholly owned "captive" insurance subsidiary provides workers' compensation, employer's liability, commercial general liability and automotive liability insurance to support our operations. We may also have business reasons in the future to have our insurance subsidiary accept other risks which we cannot or do not wish to transfer to outside insurance companies. These risks may be considerable in any given year or cumulatively. Our insurance subsidiary has not provided significant amounts of insurance to unrelated parties. Claims as a result of our operations could adversely impact the ability of our insurance subsidiary to respond to all claims presented.

Additionally, upon the February 22, 2006 effectiveness of the settlement relating to the Chapter 11 proceedings involving several of our subsidiaries, most of our subsidiaries contributed substantial insurance rights to the asbestos personal injury trust, including rights to (1) certain pre-1979 primary and excess insurance

coverages and (2) certain of our 1979-1986 excess insurance coverage. These insurance rights provided coverage for, among other things, asbestos and other personal injury claims, subject to the terms and conditions of the policies. The contribution of these insurance rights was made in exchange for the agreement on the part of the representatives of the asbestos claimants, including the representative of future claimants, to the entry of a permanent injunction, pursuant to Section 524(g) of the U.S. Bankruptcy Code, to channel to the asbestos trust all asbestos-related claims against our subsidiaries and former subsidiaries arising out of, resulting from or attributable to their operations, and the implementation of related releases and indemnification provisions protecting those subsidiaries and their affiliates from future liability for such claims. Although we are not aware of any significant, unresolved claims against our subsidiaries and former subsidiaries that are not subject to the channeling injunction and that relate to the periods during which such excess insurance coverage related, with the contribution of these insurance rights to the asbestos personal injury trust, it is possible that we could have underinsured or uninsured exposure for non-derivative asbestos claims or other personal injury or other claims that would have been insured under these coverages had the insurance rights not been contributed to the asbestos personal injury trust.

Governmental Regulations and Environmental Matters

General

Many aspects of our operations and properties are affected by political developments and are subject to both domestic and foreign governmental regulations, including those relating to:

- constructing and equipping electric power and other industrial facilities;
- possessing and processing special nuclear materials;
- workplace health and safety;
- currency conversions and repatriation;
- taxation of foreign earnings and earnings of expatriate personnel; and
- protecting the environment.

We are required by various governmental and quasi-governmental agencies to obtain certain permits, licenses and certificates with respect to our operations. The kinds of permits, licenses and certificates required in our operations depend upon a number of factors.

We cannot determine the extent to which new legislation, new regulations or changes in existing laws or regulations may affect our future operations.

Environmental

Our operations and properties are subject to a wide variety of increasingly complex and stringent foreign, federal, state and local environmental laws and regulations, including those governing discharges into the air and water, the handling and disposal of solid and hazardous wastes, the remediation of soil and groundwater contaminated by hazardous substances and the health and safety of employees. Sanctions for noncompliance may include revocation of permits, corrective action orders, administrative or civil penalties and criminal prosecution. Some environmental laws provide for strict, joint and several liability for remediation of spills and other releases of hazardous substances, as well as damage to natural resources. In addition, companies may be subject to claims alleging personal injury or property damage as a result of alleged exposure to hazardous substances. Such laws and regulations may also expose us to liability for the conduct of or conditions caused by others or for our acts that were in compliance with all applicable laws at the time such acts were performed.

These laws and regulations include the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), the Clean Air Act, the Clean Water Act, the Resource

Conservation and Recovery Act and similar laws that provide for responses to, and liability for, releases of hazardous substances into the environment. These laws and regulations also include similar foreign, state or local counterparts to these federal laws, which regulate air emissions, water discharges, hazardous substances and waste and require public disclosure related to the use of various hazardous substances. Our operations are also governed by laws and regulations relating to workplace safety and worker health, primarily, in the United States, the Occupational Safety and Health Act and regulations promulgated thereunder.

We are currently in the process of investigating and remediating some of our operating sites. We have recorded a total reserve for these sites of $50.3 million. The sites include our manufacturing facilities at Lynchburg, Virginia ($11.6 million reserve, primarily relating to the decommissioning at a nuclear analytical laboratory) and Erwin, Tennessee ($37.8 million reserve for decontamination and decommissioning of legacy operations conducted prior to our acquisition of Nuclear Fuel Services, Inc.). Additional sites include our research center at Alliance, Ohio ($0.3 million reserve), as well as discontinued operations at Canmore Mine, Alberta, Canada ($0.4 million reserve), Kiski Valley, Pennsylvania ($0.1 million reserve) and Maxey Flats, Kentucky ($0.1 million reserve). Each of these sites either used or possessed hazardous materials in a manner that required remediation. Although we have recorded reserves in connection with certain of these matters, due to the uncertainties associated with environmental remediation, we cannot assure you that the actual costs resulting from these remediation matters will not exceed the recorded reserves.

Our compliance with U.S. federal, state and local environmental control and protection regulations resulted in pretax charges of approximately $11.1 million in the year ended December 31, 2009. In addition, compliance with existing environmental regulations necessitated capital expenditures of $0.7 million in the year ended December 31, 2009. We expect to spend another $5.5 million on such capital expenditures over the next five years. We cannot predict all of the environmental requirements or circumstances that will exist in the future but anticipate that environmental control and protection standards will become increasingly stringent and costly. Based on our experience to date, we do not currently anticipate any material adverse effect on our business or financial condition as a result of future compliance with existing environmental laws and regulations. However, future events, such as changes in existing laws and regulations or their interpretation, more vigorous enforcement policies of regulatory agencies or stricter or different interpretations of existing laws and regulations, may require additional expenditures by us, which may be material. Accordingly, we can provide no assurance that we will not incur significant environmental compliance costs in the future.

We have been identified as a potentially responsible party at various cleanup sites under CERCLA. CERCLA and other environmental laws can impose liability for the entire cost of cleanup on any of the potentially responsible parties, regardless of fault or the lawfulness of the original conduct. Generally, however, where there are multiple responsible parties, a final allocation of costs is made based on the amount and type of wastes disposed of by each party and the number of financially viable parties, although this may not be the case with respect to any particular site. We have not been determined to be a major contributor of wastes to any of these sites. On the basis of our relative contribution of waste to each site, we expect our share of the ultimate liability for the various sites will not have a material adverse effect on our financial condition, results of operations or cash flows in any given year.

Environmental remediation projects have been and continue to be undertaken at certain of our current and former plant sites. During the fiscal year ended March 31, 1995, one of our subsidiaries decided to close its nuclear manufacturing facilities in Parks Township, Armstrong County, Pennsylvania (the “Parks Facilities”) and proceeded to decommission the facilities in accordance with its then-existing license from the NRC. The facilities were subsequently transferred to another subsidiary of ours in the fiscal year ended March 31, 1998, and, during the fiscal year ended March 31, 1999, that subsidiary reached an agreement with the NRC on a plan that provided for the completion of facilities dismantlement and soil restoration by 2001 and license termination in 2003. An application to terminate the NRC license for the Parks Township facility was filed, and the NRC terminated the license in 2004 and released the facility for unrestricted use. For a discussion of certain civil litigation we are involved in concerning the Parks Facilities, see “—Legal Proceedings—“PADEP Notice.”

We perform significant amounts of work for the U.S. Government under both prime contracts and subcontracts and operate certain facilities that are licensed to possess and process special nuclear materials. As a result of these activities, we are subject to continuing reviews by governmental agencies, including the EPA and the NRC.

The NRC's decommissioning regulations require our Government Operations segment to provide financial assurance that it will be able to pay the expected cost of decommissioning each of its facilities at the end of its service life. We will continue to provide financial assurance aggregating $33.7 million during the year ending December 31, 2010 with existing letters of credit for the ultimate decommissioning of all of these licensed facilities, except two. These two facilities, which represent the largest portion of our eventual decommissioning costs, have provisions in their government contracts pursuant to which substantially all of our decommissioning costs and financial assurance obligations are covered by the DOE, including the costs to complete the decommissioning projects underway at the Erwin facility.

The demand for power generation products and services can be influenced by state and federal governmental legislation setting requirements for utilities related to operations, emissions and environmental impacts. The legislative process is unpredictable and includes a platform that continuously seeks to increase the restrictions on power producers. Potential legislation limiting emissions from power plants, including carbon dioxide, could affect our markets and the demand for our products and services in our Power Generation Systems segment.

At December 31, 2009 and 2008, we had total environmental reserves, including provisions for the facilities discussed above, of $50.3 million and $38.0 million, respectively. Of our total environmental reserves at December 31, 2009 and 2008, $2.5 million and $5.0 million, respectively, were included in current liabilities. Inherent in the estimates of those reserves and recoveries are our expectations regarding the levels of contamination, decommissioning costs and recoverability from other parties, which may vary significantly as decommissioning activities progress. Accordingly, changes in estimates could result in material adjustments to our operating results, and the ultimate loss may differ materially from the amounts we have provided for in our combined financial statements.

Legal Proceedings

PADEP Notice

The Department of Environmental Protection of the Commonwealth of Pennsylvania ("PADEP") advised us in March 1994 that it would seek monetary sanctions and remedial and monitoring relief related to the Parks Facilities. The relief sought is related to potential groundwater contamination resulting from previous operations at the facilities. These facilities are currently owned by a subsidiary in our Government Operations segment. PADEP has advised us that it does not intend to assess any monetary sanctions, provided our Government Operations segment continues its remediation program for the Parks Facilities. Whether additional nonradiation contamination remediation will be required at the Parks Facility remains unclear. Results from sampling completed by our Government Operations segment have indicated that such remediation may not be necessary. Our Government Operations segment continues to evaluate closure of the groundwater issues pursuant to applicable Pennsylvania law.

McMunn Litigation and Casella Litigation

On January 29, 2010, Michelle McMunn, Cara D. Steele and Yvonne Sue Robinson filed suit against B&W PGG, Babcock & Wilcox Technical Services Group, Inc., formerly known as B&W Nuclear Environmental Services, Inc. (together with B&W PGG, the "B&W Parties") and Atlantic Richfield Company ("ARCO") in the United States District Court for the Western District of Pennsylvania (the "McMunn Litigation"). The plaintiffs in the McMunn Litigation allege, among other things, that they suffered personal injuries and property damage as

a result of alleged radioactive and non-radioactive releases relating to the operation, remediation and/or decommissioning of two former nuclear fuel processing facilities located in Apollo and Parks Township, Pennsylvania. Those facilities previously were owned by Nuclear Materials and Equipment Company, a former subsidiary of ARCO ("NUMEC") which was acquired by B&W PGG. The plaintiffs in the McMunn Litigation seek compensatory and punitive damages.

At the time of ARCO's sale of NUMEC to B&W PGG, B&W PGG received an indemnity and hold harmless agreement from ARCO from claims or liabilities arising as a result of pre-closing NUMEC or ARCO actions.

On March 19, 2010, Jessi Ann Casella, William E. Uhing and Kenneth B. Cyphert filed suit against the B&W Parties and ARCO in the United States District Court for the Western District of Pennsylvania (the "Casella Litigation"). Additionally, on May 13, 2010, Michael P. Huth, Margaret Fundrella, Valerie A. Frick, Janice Minick, the Estate of Robert D. Steel, Toni Taylor and the Estate of Samuel M. Gianetto filed suit against the B&W Parties and ARCO in the United States District Court for the Western District of Pennsylvania (the "Huth Litigation"). The plaintiffs in the Casella Litigation and the Huth Litigation allege, among other things, that they suffered personal injuries and property damage as a result of alleged radioactive and non-radioactive releases relating to the operation, remediation and/or decommissioning of the same two former nuclear fuel processing facilities located in Apollo and Parks Township, Pennsylvania involved in the McMunn Litigation.

We intend to vigorously defend these matters, and believe that in the event of liability, if any, the claims alleged in the McMunn Litigation, the Casella Litigation and the Huth Litigation will be resolved within the limits of coverage of our insurance policies and/or the ARCO indemnity.

B&W PGG settled approximately 245 personal injury and wrongful death claims, as well as approximately 125 property damage claims, alleging injury and damage as a result of alleged releases relating to these two facilities. The aggregate settlement amount for these claims was $52.5 million, which was paid during 2009, all of which had been previously accrued. In connection with that settlement, the B&W Parties are pursuing recovery in the matter of The Babcock & Wilcox Company et al. v. American Nuclear Insurers et al. (the "ANI Litigation") from their insurer, American Nuclear Insurers and Mutual Atomic Energy Liability Underwriters, of the amounts paid in settlement of that prior action. The ANI Litigation is pending before the Court of Common Pleas of Allegheny County, Pennsylvania. No trial date has been set in the matter.

Iroquois Falls Litigation

An action entitled Iroquois Falls Power Corp. v. Jacobs Canada Inc., et al., was filed in the Superior Court of Justice, in Ontario, Canada, on June 1, 2005. Iroquois Falls Power Corp. ("Iroquois") seeks damages of approximately $14 million (Canadian) as a result of an alleged breach by one of our former subsidiaries in connection with the supply and installation of heat recovery steam generators. McDermott Incorporated, an indirect, wholly owned subsidiary of McDermott, or MI, provided a guarantee to certain obligations of the former subsidiary. MI and two bonding companies with whom McDermott entered into an indemnity arrangement were also named as defendants. In March 2007, the Superior Court granted summary judgment in favor of all defendants and dismissed all claims of Iroquois, which appealed the ruling. Subsequently, the Court of Appeals for Ontario upheld the summary judgment, but sent the case back to the Superior Court of Justice to allow Iroquois an opportunity to amend its complaint to assert new claims. The Superior Court of Justice, however, denied Iroquois' request to amend its complaint and assert new claims against the defendants based on a breach of contractual warranty. Iroquois appealed the Superior Court's decision and, in June 2009, the Court of Appeals for Ontario reversed the decision and sent the case back to the Superior Court for Iroquois to file an amended complaint on those new claims. In January 2010, our notice to appeal the Court of Appeals' decision was dismissed by the Supreme Court.

Chapter 11 Proceedings

In February 2000, several of B&W's subsidiaries filed for voluntary Chapter 11 protection, due to mounting asbestos-related claims tied to asbestos-containing commercial and utility boilers and other products they sold, installed or serviced in prior decades. From the date of the filing of the Chapter 11 petition until their emergence from Chapter 11 in 2006, McDermott treated those subsidiaries as deconsolidated subsidiaries for financial reporting purposes. The final settlement with representatives of asbestos claimants in the Chapter 11 proceedings, which was effected in a plan of reorganization consummated as of February 22, 2006, involved McDermott's and B&W's contribution of rights under various insurance policies, cash and a promissory note, with an aggregate value of approximately $2 billion, to a settlement trust, the channeling of asbestos-related personal injury claims to that trust and McDermott's retention of the ownership of the B&W subsidiaries involved in the Chapter 11 proceedings.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

In connection with the spin-off, we intend to enter into several agreements with McDermott to define our ongoing relationship with McDermott after the spin-off. These agreements will, among other things, allocate responsibility for obligations arising before and after the distribution date, including, among others, obligations relating to our employees, various transition services and taxes. For more information about those agreements and our historical relationship with McDermott, see "Relationship with McDermott After the Spin-Off."

Ms. Salomone served as the President and Chief Executive Officer of Marine Mechanical Corporation ("MMC") before we acquired MMC in 2007. Prior to our acquisition, the shares of Class A common stock of MMC were owned by an employee stock ownership trust (the "ESOP"), and Ms. Salomone was a participant in the ESOP. In addition, among other former MMC employees, Ms. Salomone owned shares of Class B common stock of MMC and certain options to purchase shares of Class B common stock of MMC. In connection with the acquisition, we deposited a portion of the acquisition price for the Class A shares, the Class B shares and the options in an escrow account, as a means of providing a fund for resolution of any post-closing claims under the indemnification provisions of the acquisition agreement. As of March 31, 2010, the balance of the escrow account was approximately $5.6 million. Under the terms of the escrow arrangement, and subject to certain exceptions, any remaining balance in the escrow account as of May 2011 is scheduled to be released to the ESOP participants and former holders of the Class B shares and the options, including Ms. Salomone, after such date. Ms. Salomone has an approximate 5.2% interest in the funds in the escrow account based on her participation interest in the ESOP and her former ownership of Class B shares and options.

Related Person Transactions Policies and Procedures

We expect that our board will adopt a policy, which will be made available on our website, that will require all employees (including our Named Executive Officers) who have, or whose immediate family members have, any direct or indirect financial or other participation in any business that competes with, supplies goods or services to, or is a customer of ours, to disclose to us and receive written approval from our Corporate Ethics and Compliance department prior to transacting such business. We refer to any such transaction as a related person transaction.

Our employees are expected to make reasoned and impartial decisions in the workplace. As a result, approval of certain business will be denied if we believe that the employee's interest in such business could influence decisions relative to our business, or have the potential to adversely affect our business or the objective performance of the employee's work.

Our Corporate Ethics and Compliance department implements our Code of Business Conduct and related policies and the Governance Committee of our Board is responsible for overseeing our Ethics and Compliance Program, including compliance with our Code of Business Conduct. Our Code of Business Conduct provides that all employees (including Named Executive Officers) must ensure that business decisions they make and actions they take on behalf of our company are not influenced by personal considerations or personal relationships and will require appropriate disclosures of potential conflicts of interest.

Additionally, our Governance Committee is responsible for reviewing the professional occupations and associations of our Board members and reviews transactions between B&W and other companies with which our Board members are affiliated.

RELATIONSHIP WITH MCDERMOTT AFTER THE SPIN-OFF

Historical Relationship with McDermott

We are currently a wholly owned subsidiary of McDermott. As a result of this historic parent-subsidiary relationship, in the ordinary course of our business, we and our subsidiaries have received various services provided by McDermott and some of its other subsidiaries, including accounting, treasury, tax, legal, risk management, public affairs, human resources, procurement, information technology and other services. Our historical financial statements include allocations by McDermott of a portion of its overhead costs related to those services. These cost allocations have been determined on a basis that we and McDermott consider to be reasonable reflections of the use of those services.

McDermott's Distribution of Our Stock

McDermott will be our sole stockholder until completion of the spin-off. In the spin-off, McDermott is distributing its entire equity interest in us to its stockholders in a transaction that is intended to be tax free to McDermott and its U.S. stockholders. The spin-off will be subject to a number of conditions, some of which are more fully described above under "The Spin-Off—Spin-Off Conditions and Termination."

Agreements Between McDermott and Us

In the discussion that follows, we have described the material provisions of agreements we intend to enter into with McDermott. The description of those agreements is not complete and is qualified by reference to the terms of the agreements, the forms of which have been filed as exhibits to the registration statement on Form 10 of which this information statement is a part. We encourage you to read the full text of those agreements. Those agreements were developed under the oversight of the Restructuring Committee of the McDermott board of directors, which was formed to oversee an orderly and appropriate separation of our company from McDermott. Because the terms of our separation from McDermott and these agreements are being entered into in the context of a related-party transaction, these terms may not be comparable to terms that would be obtained in a transaction between unaffiliated parties.

Master Separation Agreement

The master separation agreement between McDermott and us governs the separation of our businesses from McDermott, the subsequent distribution of our shares to McDermott stockholders and other matters related to McDermott's relationship with us.

The Separation. To effect the separation, McDermott will effect a series of transactions which will cause us to succeed to the assets of our business as described in this information statement (which assets may include stock or other equity interests of McDermott subsidiaries). We will also succeed to, and have agreed to perform and fulfill, the liabilities described below. In particular, the master separation agreement generally provides that, upon completion of the separation:

- we will directly or indirectly hold:
  - all of the assets owned by McDermott or any of its subsidiaries which are reflected on our most recent pro forma combined balance sheet set forth in this information statement, or subsequently-acquired or created assets that would have been reflected on a later-dated balance sheet, and
  - all other assets held by us, McDermott, or any of our respective subsidiaries used primarily in or that primarily relate to our business on or prior to the date of the spin-off, subject to certain exceptions;
- we will be subject to:
  - all outstanding liabilities reflected on our most recent pro forma, as adjusted combined balance sheet set forth in this information statement, or subsequently-incurred or accrued liabilities that would have been reflected on a later-dated balance sheet,

- liabilities to the extent relating to, arising out of or resulting from our post-spin-off operations, or any assets owned by us or our subsidiaries as of or after the spin-off, and
- liabilities we have assumed under the master separation agreement and other ancillary agreements.

The master separation agreement provides that capital stock, assets or liabilities that cannot legally be transferred or assumed prior to the spin-off will be transferred or assumed as soon as practicable following receipt of all necessary consents of third parties and regulatory approvals. In any such case, the master separation agreement provides that the party retaining such capital stock, assets or liabilities will hold the capital stock or assets in trust for the use and benefit of, or retain the liabilities for the account of, the party entitled to the capital stock, assets or liabilities (at the expense of that party), until the transfer or assumption can be completed. The party retaining the capital stock, assets or liabilities will also take any action reasonably requested by the other party in order to place the other party in the same position as would have existed if the transfer or assumption had been completed. Based on the third-party consents and approvals we have already received, we do not anticipate that these provisions will be relied on for any material items.

Except as set forth in the master separation agreement, no party is making any representation or warranty as to the companies, capital stock, assets or liabilities transferred or assumed as a part of the separation and any assets that may be transferred will be transferred on an “as is, where is” basis. As a result, we and McDermott each have agreed to bear the economic and legal risks that any conveyances of capital stock or assets are insufficient to vest good and marketable title to such capital stock or assets, as the case may be, in the party who should have title under the master separation agreement. The master separation agreement also provides that the spin-off is subject to the conditions described under “The Spin-Off—Spin-Off Conditions and Termination.”

Surety Instruments and Guarantees. The master separation agreement requires that we and McDermott use our commercially reasonable efforts to terminate (or have us or one of our subsidiaries substituted for McDermott, or McDermott or one of its subsidiaries substituted for us, as applicable, under) all existing guarantees by one party of obligations relating to the business of the other party, including financial, performance and other guarantee obligations. We also have agreed with McDermott that we will use our commercially reasonable efforts to have us or one of our subsidiaries substituted for McDermott under letters of credit or other surety instruments issued by third parties for the account of McDermott or any of its subsidiaries but on behalf of our business. In the event we are unable to be substituted under existing surety instruments or issue replacement surety instruments, we will otherwise reach agreement with McDermott prior to the spin-off to satisfy any requirements for surety instruments and will indemnify McDermott for the value of the applicable instruments.

Insurance. The master separation agreement provides that, to the extent permitted by the terms of the applicable policy, we and our directors, officers and employees will continue to have (as successors-in-interest) all rights we and they had immediately prior to the spin-off, with respect to events that occurred prior to the spin-off, as a subsidiary, affiliate, division, director, officer or employee of McDermott under any McDermott insurance policy with a third-party carrier. McDermott will have no liability if any insurance policy is terminated, is not renewed or extended, or is insufficient or unavailable.

Intellectual Property. In connection with the separation, we will generally assign to McDermott all intellectual property rights to the extent not exclusively used in our business, and McDermott will grant us a perpetual, nonexclusive, royalty-free license in all such intellectual property. We will retain all rights in our trademarks, and in intellectual property exclusively used in our business and other specified intellectual property.

Access to Information. Subject to applicable confidentiality provisions and other restrictions, we and McDermott will each give each other any information in our possession that the requesting party reasonably needs (1) to comply with requirements imposed on the requesting party by a governmental authority, (2) for use in any proceeding to satisfy audit, accounting, insurance claims, regulatory, litigation or other similar requirements, (3) to comply with its obligations under the master separation agreement and other ancillary agreements or (4) for any other significant business need as mutually determined in good faith by the parties.

Indemnification and Release. In general, under the master separation agreement, we have agreed to indemnify McDermott and its representatives and affiliates against certain liabilities from third-party claims to the extent relating to, arising out of or resulting from:

- our failure to discharge any of our liabilities or any of our agreements;
- the operation of our business, whether before or after the spin-off; and
- any untrue statement or alleged untrue statement of a material fact or material omission or alleged material omission in the registration statement of which this information statement is a part, other than certain information relating to McDermott.

We have also agreed to indemnify McDermott and its representatives and affiliates against 50% of the amount of liabilities from any third-party claims asserted after the distribution date to the extent relating to certain discontinued operations conducted prior to the distribution date that are not directly attributable or related to either McDermott's offshore oil and gas construction business or our business.

In general, under the master separation agreement, McDermott has agreed to indemnify us and our representatives and affiliates against certain liabilities from third-party claims to the extent relating to, arising out of or resulting from:

- the failure of McDermott to discharge any liability of McDermott or any McDermott agreement that is not transferred to us;
- the operation of McDermott's business (other than our business), whether before or after the spin-off; and
- any untrue statement or alleged untrue statement of a material fact or material omission or alleged material omission in the registration statement of which this information statement is part, only for certain information relating to McDermott.

McDermott has also agreed to indemnify us and our representatives and affiliates against 50% of the amount of liabilities from any third-party claims asserted after the distribution date to the extent relating to certain discontinued operations conducted prior to the distribution date that are not directly attributable or related to either McDermott's offshore oil and gas construction business or our business.

Under the master separation agreement, we generally release McDermott and its affiliates, agents, successors and assigns, and McDermott generally releases us and our affiliates, agents, successors and assigns, from any liabilities between us or our subsidiaries on the one hand, and McDermott or its subsidiaries on the other hand, arising from acts or events occurring on or before the spin-off, including acts or events occurring in connection with the separation or distribution. This release will include the release of a net intercompany payable in an approximate amount of $200 million as of December 31, 2009 currently owed to B&W by certain subsidiaries of ours that will be transferred to McDermott in connection with the spin-off. One of our subsidiaries also owes approximately $320 million under a promissory note to another subsidiary of McDermott (and, as a result of certain pre-spin restructuring transactions, including the transfer of that subsidiary to McDermott, our consolidated group will be effectively relieved of any continuing obligations relating to that promissory note). The general release does not apply to obligations under the master separation agreement or any ancillary agreement or to specified ongoing contractual arrangements.

Termination. The master separation agreement provides that it may be terminated at any time before the spin-off by McDermott in its sole discretion.

Tax Sharing Agreement

Before the distribution date, we and a subsidiary of McDermott (the "McDermott Party") will enter into a tax sharing agreement that will govern the respective rights, responsibilities and obligations of McDermott and its subsidiaries, and us with respect to taxes and tax benefits, the filing of tax returns, the control of audits and other tax matters. References in this summary description of the tax sharing agreement to the terms "tax" or "taxes" mean taxes as well as any interest, penalties, additions to tax or additional amounts in respect of such taxes.

The results of U.S. operations of McDermott and/or certain of its subsidiaries are currently reflected in our consolidated return for U.S. federal income tax purposes and/or certain consolidated, combined and unitary returns for state, local and foreign tax purposes. However, for periods (or portions thereof) beginning after the transaction in which McDermott and its subsidiaries are separated from us (the "Separation Transaction"), McDermott and its subsidiaries generally will not join with us in the filing of any federal, state, local or foreign consolidated, combined or unitary tax returns.

Under the tax sharing agreement, for any tax period (or portion thereof), we will generally be responsible for paying all U.S. federal, state, local and foreign income taxes that are imposed on us and our subsidiaries, and the McDermott Party will be responsible for paying all U.S. federal, state, local and foreign income taxes that are imposed on McDermott and its subsidiaries. However, for tax periods (or portions thereof) ending on or prior to the date of the Separation Transaction, we will also be responsible for paying all U.S. federal, state, local and foreign income taxes relating to an intercompany borrowing by one of our affiliates.

We and the McDermott Party generally will not be required to reimburse one another for the use by one party or its affiliates of tax benefits attributable to the other party or its affiliates. However, we will have an obligation to reimburse the McDermott Party, and the McDermott Party will have an obligation to reimburse us, for:

- tax benefits arising as a result of an audit or other required adjustment occurring after the date of the Separation Transaction that are attributable to one party or its affiliates and used by the other party or its affiliates during tax periods (or portions thereof) ending on or prior to the date of the Separation Transaction; and
- tax benefits arising after the date of the Separation Transaction that are attributable to one party or its affiliates and that are carried back under applicable tax law and used by the other party or its affiliates during tax periods (or portions thereof) ending on or prior to the date of the Separation Transaction.

Notwithstanding the tax sharing agreement, under U.S. Treasury Regulations, each member of a U.S. consolidated group is severally liable for the U.S. federal income tax liability of each other member of such consolidated group. Accordingly, with respect to periods in which certain subsidiaries of McDermott have been included in our U.S. consolidated group, we and our subsidiaries could be liable to the U.S. Government for any U.S. federal income tax liability incurred, but not discharged, by those McDermott subsidiaries. However, if any such liability were imposed, we would generally be entitled to be indemnified by the McDermott Party for tax liabilities attributable to it under the tax sharing agreement.

We will be responsible for preparing and filing all consolidated, combined and unitary tax returns that include us or our subsidiaries and McDermott or its subsidiaries (regardless of when the tax period ends), or that include solely us or our subsidiaries, and the McDermott Party will be responsible for preparing and filing all consolidated, combined and unitary tax returns that include solely McDermott or its subsidiaries. The party that files a tax return will have the authority to respond to and appear in all tax proceedings, including tax audits, involving any taxes or any deemed adjustment to taxes reported on such tax return, except with respect to (1) those portions of such return that relate exclusively to the other party and (2) certain specified issues over which we will have exclusive audit control. The tax sharing agreement further provides for cooperation between

us and the McDermott Party with respect to tax matters, the exchange of information and the retention of records that may affect the tax liabilities of the parties to the agreement.

To the extent permitted by applicable tax law, we and the McDermott Party will treat any payments made under the tax sharing agreement as a capital contribution or distribution (as applicable) immediately prior to the Separation Transaction, and accordingly, as not includible in the taxable income of the recipient.

In the event that the Separation Transaction and/or certain related transactions were to fail to qualify for tax-free treatment, we would generally be responsible for all of the tax imposed on us or McDermott and its subsidiaries resulting from such failure. However, if such failure resulted from actions or failures to act by McDermott or its subsidiaries, the McDermott Party would be responsible for such tax.

THIS SUMMARY IS QUALIFIED BY REFERENCE TO THE FULL TEXT OF THE TAX SHARING AGREEMENT, A FORM OF WHICH HAS BEEN FILED AS AN EXHIBIT TO THE REGISTRATION STATEMENT ON FORM 10 OF WHICH THIS INFORMATION STATEMENT IS A PART.

Employee Matters Agreement

On or before the distribution date, we and McDermott will enter into an employee matters agreement, which will provide that each of McDermott and B&W will have responsibility for its own employees and compensation plans. The agreement will contain provisions concerning benefit protection for McDermott employees, treatment of holders of McDermott stock options, restricted stock, restricted stock units, deferred stock units and performance shares, and cooperation between us and McDermott in the sharing of employee information and maintenance of confidentiality. The terms described below are based on our current expectations but are subject to approval by the compensation committee of McDermott's board of directors or by McDermott's board of directors.

Treatment of Retirement, Health and Welfare Plans. In general, our employees currently participate in various retirement, health and welfare, and other employee benefit plans. Following the spin-off, we anticipate that our employees will generally continue to participate in the same plans or will participate in similar plans and arrangements that we will establish and maintain. Pursuant to the employee matters agreement, effective as of the distribution date, we and McDermott will each retain responsibility for our respective employees and compensation plans.

In several locations outside the United States, it likely will not be feasible to establish retirement or welfare plans due to the small number of employees at those locations. In those situations, we will establish alternative compensation or benefit programs to comply with our obligations to affected employees.

Treatment of Stock-Based Awards. The employee matters agreement will also provide for the adjustments and replacement awards to be made with respect to options to purchase shares of McDermott common stock, McDermott shares of restricted stock, restricted stock units, deferred stock units and performance shares, as described under "The Spin-Off—Treatment of Stock-Based Awards."

Entitlement to Tax Deductions. We will be entitled to claim all tax deductions for compensation arising after the spin-off from the exercise of substitute B&W options, the vesting of B&W restricted stock, restricted stock unit, deferred stock unit and performance share awards held by current or former employees of ours, and McDermott will not claim any such deduction. McDermott will be entitled to claim all tax deductions for compensation arising after the spin-off from the exercise of adjusted McDermott options or substitute B&W options, the vesting of McDermott restricted stock, restricted stock unit, deferred stock unit and performance share awards or B&W restricted stock, restricted stock unit, deferred stock unit and performance share awards held by current or former McDermott employees, and we will not claim any such deduction.

Transition Services Agreements

On or before the distribution date, we and McDermott will enter into transition services agreements under which we and McDermott will provide and/or make available various administrative services and assets to each other, for specified periods beginning on the distribution date. The services McDermott will provide us will include:

- administrative services;
- accounting services;
- procurement services;
- information technology services;
- legal services;
- tax services; and
- treasury services.

The services we will provide to McDermott will include:

- accounting services;
- human resources services;
- information technology services;
- legal services;
- tax services; and
- treasury services.

In consideration for such services, we and McDermott will each pay fees to the other for the services provided, and those fees will generally be in amounts intended to allow the party providing services to recover all of its direct and indirect costs incurred in providing those services.

The personnel performing services under the transition services agreements will be employees and/or independent contractors of the party providing the service and will not be under the direction or control of the party to whom the service is being provided.

The transition services agreements will also contain customary mutual indemnification provisions.

Any extension or renewal of services under any transition services agreement beyond the period specified with respect to such service will be subject to the mutual agreement of McDermott and us.

MANAGEMENT

Directors and Executive Officers

Under Delaware law, the business and affairs of B&W will be managed under the direction of its board of directors. The B&W certificate of incorporation and bylaws provide that the number of directors may be fixed by the board from time to time. As of the distribution date, the board of directors of B&W is expected to consist of the individuals listed below (with their ages as of June 30, 2010). The present principal occupation or employment and five-year employment history of each individual (other than Mr. Bethards, our President and Chief Executive Officer, whose employment history follows the list of our executive officers below) follows the list below. Each of the individuals listed below is a citizen of the United States.

Name	Age
Brandon C. Bethards	62
John A. Fees.	52
Robert W. Goldman	68
Stephen G. Hanks	60
Oliver D. Kingsley, Jr.	67
D. Brad McWilliams	68
Richard W. Mies	66

Mr. Fees has been Chief Executive Officer of McDermott since October 2008. He joined McDermott in 1979 and served as President and Chief Executive Officer of B&W from January 2007 to October 2008; President and Chief Operating Officer of BWX Technologies, Inc., a subsidiary of B&W, from September 2002 to January 2007; and President, General Manager of BWXT Services, Inc., a subsidiary of BWX Technologies, Inc., from September 1997 to November 2002. His earlier positions at subsidiaries of B&W include Vice President and General Manager. Mr. Fees has been a director of McDermott since October 2008.

Since October 2002, Mr. Goldman has served as an independent financial consultant. Previously, Mr. Goldman worked for Conoco Inc., an international, integrated energy company and predecessor to ConocoPhillips, from 1988 to 2002, most recently as Senior Vice President, Finance and Chief Financial Officer from 1998 to 2002. He formerly served as the Vice President, Finance of the World Petroleum Council from 2002 to 2008. He has also served as a director of El Paso Corporation since 2003, Parker Drilling Company since 2005 and Tesoro Corporation since 2004. Mr. Goldman has been a director of McDermott since November 2005.

From November 2007 until his retirement in January 2008, Mr. Hanks was President of the Washington Division of URS Corporation, an engineering, construction and technical services company, and he also served as a member of URS Corporation’s Board of Directors during that time. Previously, from June 2001 to November 2007 he was President and CEO of Washington Group International, Inc., an integrated engineering, construction and management services company which was acquired by URS Corporation in 2007, and also served on its Board of Directors. Mr. Hanks has also served as a director of Lincoln Electric Holdings, Inc. since 2006. Mr. Hanks has been a director of McDermott since May 2009.

Until his retirement in November 2004, Mr. Kingsley served as President and Chief Operating Officer of Exelon Corporation, an integrated utility company, from May 2003, Senior Executive Vice President from February 2002 and President and Chief Nuclear Officer from October 2000. Mr. Kingsley also served as President and Chief Executive Officer of Exelon’s subsidiary, Exelon Generation, from February 2000 to November 2004 and as President and Chief Nuclear Officer of Unicom Corporation, an integrated electric utility company, from November 1997 to October 2000. Mr. Kingsley has also served as a director of FPL Group, Inc. since 2007 and is the Associate Dean for Special Projects at the Sam Ginn College of Engineering, Auburn University. Mr. Kingsley has been a director of McDermott since November 2004.

From April 1995 until his retirement in April 2003, Mr. McWilliams was Senior Vice President and Chief Financial Officer of Cooper Industries Ltd., a worldwide manufacturer of electrical products, tools and hardware. He was Vice President of Cooper Industries from 1982 until April 1995. Mr. McWilliams previously served as a director of Kronos Incorporated from 1993 to 2005. Mr. McWilliams has been a director of McDermott since July 2003.

Admiral Mies is a Retired Admiral, United States Navy. He served in the U.S. Navy for 35 years, including most recently as Commander in Chief of the U.S. Strategic Command for the U.S. Air Force and U.S. Navy strategic nuclear forces from 1998 until his retirement from the Navy in 2002. Following his retirement from the Navy until 2007, he served as Senior Vice President of Science Applications International Corporation, a provider of scientific and engineering applications for national security, energy, environment, critical infrastructure and health. Since 2007, he has been Chief Executive Officer and President of The Mies Group, Ltd. (a consulting firm). He has also served as a director of Exelon Corporation since 2009 and Mutual of Omaha Insurance Company since 2002. Mr. Mies has been a director of McDermott since August 2008.

We expect that Messrs. Hanks and McWilliams will continue to serve on the board of directors of McDermott after the completion of the spin-off, while the other persons named above are expected to resign from the McDermott board of directors upon completion of the spin-off.

The individuals listed below (with their ages as of June 30, 2010) are expected to be executive officers of B&W as of the distribution date. The business address of each of the individuals listed below is c/o The Babcock & Wilcox Company, The Harris Building, 13024 Ballantyne Corporate Place, Suite 700, Charlotte, North Carolina 28277. Each of the individuals listed below is a citizen of the United States.

Name	Age	Position
Vangel Athanas	54	Vice President of Human Resources
Brandon C. Bethards	62	President and Chief Executive Officer
David S. Black	48	Chief Accounting Officer
James D. Canafax	39	Senior Vice President, General Counsel and Corporate Secretary
S. Robert Cochran	57	President of Babcock & Wilcox Technical Services Group, Inc.
Richard L. Killion	62	President and Chief Operating Officer of Babcock & Wilcox Power Generation Group, Inc.
Christofer M. Mowry	48	President of Babcock & Wilcox Nuclear Energy, Inc.
Winfred D. Nash	66	President of Babcock & Wilcox Nuclear Operations Group, Inc.
Mary P. Salomone	50	Chief Operating Officer
Michael S. Taff	48	Senior Vice President and Chief Financial Officer

Vangel Athanas has served as our Vice President of Human Resources since joining B&W in August 2008. Prior to joining B&W, Mr. Athanas served with Computer Sciences Corporation, an information technology outsourcing and services provider, from 1995 until August 2008, including his most recent position as the Vice President Human Resources of World Sourcing Services from April 2007 to August 2008. Mr. Athanas previously served as the Director Human Resources, Global Transformation Solutions of Computer Sciences Corporation from April 2004 to April 2007. Prior to that, Mr. Athanas was employed by the Electric Boat Division of General Dynamics from 1979 to 1995 in increasingly responsible human resources roles.

Brandon C. Bethards has served as our President and Chief Executive Officer since November 2008, having previously served as Interim Chief Executive Officer since September 2008. He joined Babcock & Wilcox Power Generation Group, Inc. (“B&W PGG”) in the early 1970s and served most recently as President of B&W PPG from January 2007 to October 2008 and Senior Vice President and General Manager of B&W PPG’s Fossil Power Division from February 2001 to January 2007. His earlier positions with B&W PPG included Vice President of Business Development, General Manager, District Engineer and Field Service Engineer.

David S. Black will serve as our Chief Accounting Officer upon the effectiveness of the spin-off. Mr. Black has served as our Vice President and Controller since January 2007 and Vice President and Controller of BWXT from September 2003 to January 2007. He joined BWXT in 1991 as General Accounting Manager for the Nuclear Environmental Services Division. Other positions he held with B&W include Financial Services Manager for the ASD Service Center Division, Controller for B&W Federal Services, Inc., and Controller for BWXT Services, Inc.

James D. Canafax will serve as our Senior Vice President, General Counsel and Corporate Secretary upon the effectiveness of the spin-off. Mr. Canafax has been an Assistant General Counsel of McDermott since January 2007. Mr. Canafax joined McDermott in July 2001 as Counsel and Contracts Manager for J. Ray McDermott, Inc. In July 2004, he was named Senior Counsel, Legal Manager and Assistant Secretary for J. Ray McDermott, Inc. and served in this position through December 2006. Prior to joining J. Ray McDermott, Inc., he was with Jones, Walker, Waechter, Poitevent, Carrère & Denègre L.L.P.

S. Robert Cochran has served as President of Babcock & Wilcox Technical Services Group, Inc. since July 2006. He joined our company as Senior Vice President of Strategic Development for BWXT, in which position he served from June 2005 through July 2006. Prior to joining B&W, Mr. Cochran served as Senior Vice President of Tyco Infrastructure and President of Kaiser Group International, Inc.

Richard L. Killion was named President and Chief Operating Officer of B&W PGG in November 2008. He previously served as Interim President of B&W PGG since September 2008. He joined B&W in 1970 and previously served as Vice President and General Manager of B&W PGG's Fossil Power Division, where he served from May 2007 to September 2008, Vice President of B&W's Fossil Steam Generating Systems from June 2006 to May 2007 and Director of Global Joint Ventures from May 2002 to June 2006. His earlier positions with B&W PGG include General Manager of Babcock & Wilcox Beijing Company Ltd.

Christofer M. Mowry has served as President of Babcock & Wilcox Nuclear Energy, Inc. since April 2010. From June 2009 until April 2010 he served as President of Babcock & Wilcox Modular Nuclear Energy, LLC, which is now a subsidiary of Babcock & Wilcox Nuclear Energy, Inc. He joined B&W in August 2008, serving as Senior Vice President and Chief Business Development Officer until June 2009. Prior to joining B&W, Mr. Mowry served as President and Chief Operating Officer of Welding Services, Inc., an energy services company located in Atlanta, Georgia, from January 2005 through June 2008. Previously, he held various global management positions with GE Energy from June 1995 until January 2005, after spending 11 years with the utility PECO Energy.

Winfred D. Nash has served as President of Babcock & Wilcox Nuclear Operations Group, Inc. ("B&W NOG") since November 2007. He joined B&W in the late 1960s and previously served as President of our Nuclear Operations Division from September 2006 to November 2007 and as Vice President and General Manager of BWXT from March 2001 to September 2006. His earlier positions within our Nuclear Government Operations group included a major leadership role with Operations, Quality Control and Program Management.

Mary P. Salomone has served as our Chief Operating Officer since January 2010. Most recently she served as Manager of Business Development for B&W NOG from January 2009 until January 2010. She also served as Manager of Strategic Acquisitions for B&W NOG from January 2008 to January 2009. From 1998 through December 2007, Ms. Salomone served as an officer of Marine Mechanical Corporation, which was acquired by us in May 2007, including as President and Chief Executive Officer from 2001 through December 2007. Ms. Salomone previously served with two of B&W's operating divisions, Nuclear Equipment Division and Fossil Power Division, from 1982 until 1998, in a variety of positions. These positions included Manager of Navy Contracts, Project Manager and Manager of Quality Assurance Engineering.

Michael S. Taff will serve as our Senior Vice President and Chief Financial Officer upon the effectiveness of the spin-off. Mr. Taff has served as Senior Vice President and Chief Financial Officer of McDermott since April 2007. He joined McDermott in June 2005 as its Vice President and Chief Accounting Officer. Prior to joining McDermott, Mr. Taff served as Vice President and Chief Financial Officer of HMT Inc., an engineering

and construction company, from June 2004 to June 2005 and as Vice President and Corporate Controller of Philip Services Corporation, a provider of industrial, environmental, transportation and container services, from September 1994 to May 2004.

Board of Directors

As of the distribution date, we expect that our board of directors will consist of 7 directors. The New York Stock Exchange requires that a majority of our board of directors qualify as "independent" according to the rules and regulations of the SEC and the New York Stock Exchange. We intend to comply with those requirements.

Upon completion of the spin-off, our directors will be divided into three classes serving staggered three-year terms. Class I directors will have an initial term expiring in 2011, Class II directors will have an initial term expiring in 2012 and Class III directors will have an initial term expiring in 2013. Class I will be comprised of Messrs. [ ] and [ ], Class II will be comprised of Messrs. [ ] and [ ], and Class III will be comprised of Messrs. [ ] and [ ].

At each annual meeting of stockholders, directors will be elected to succeed the class of directors whose terms have expired. This classification of our board of directors could have the effect of increasing the length of time necessary to change the composition of a majority of the board of directors. Following this classification of the board, in general, at least two annual meetings of stockholders will be necessary for stockholders to effect a change in a majority of the members of the board of directors.

Committees of Our Board of Directors

Upon completion of the spin-off, the committees of our board of directors are expected to consist of an Audit Committee, a Governance Committee, a Compensation Committee and an Environmental, Health and Safety Committee.

Each of the board committees will be comprised entirely of independent nonmanagement directors. Our board of directors will adopt a written charter for each committee, which will be posted on our website prior to the distribution date. The expected members of the committees are identified in the following table.

	Board Committee			
Director	Audit	Compensation	Governance	Environmental, Health and Safety
John A. Fees				ü
Robert W. Goldman	ü	ü	ü	ü
Stephen G. Hanks	ü	ü	ü	ü
Oliver D. Kingsley, Jr.	ü	ü	ü	ü
D. Brad McWilliams	ü	ü	ü	ü
Richard W. Mies	ü	ü	ü	ü

We expect that Mr. Goldman will be the chairman of the Audit Committee; Mr. Kingsley will be the chairman of the Compensation Committee; Mr. McWilliams will be the chairman of the Governance Committee; and Admiral Mies will be the chairman of the Environmental, Health and Safety Committee.

Audit Committee. The Audit Committee's role will be financial oversight. Our management will be responsible for preparing financial statements, and our independent registered public accounting firm will be responsible for auditing those financial statements. The Audit Committee will not be providing any expert or special assurance as to our financial statements or any professional certification as to the independent registered public accounting firm's work.

The Audit Committee will be directly responsible for the appointment, compensation, retention and oversight of our independent registered public accounting firm. The committee, among other things, will also

review and discuss our audited financial statements with management and the independent registered public accounting firm.

Our board has determined that Messrs. [ ], [ ] and [ ] each qualify as an "audit committee financial expert" within the definition established by the SEC.

Compensation Committee. The Compensation Committee will have overall responsibility for our officer compensation plans, policies and programs and will have the authority to engage and terminate any compensation consultant or other advisors to assist the committee in the discharge of its responsibilities. Please see the "Executive Compensation—Compensation Discussion and Analysis" for information about our executive officer compensation.

Governance Committee. The Governance Committee, in addition to other matters, will recommend to our board of directors: (1) the qualifications, term limits and nomination and election procedures relating to our directors; (2) nominees for election to our board of directors; and (3) compensation of nonmanagement directors.

The Governance Committee has determined that a candidate for election to our board of directors must meet specific minimum qualifications. The Governance Committee considers each candidate's:

- record of integrity and ethics in his/her personal and professional life;
- record of professional accomplishment in his/her field;
- preparedness to represent the best interests of our stockholders;
- personal, financial or professional interest in any competitor of ours; and
- preparedness to participate fully in board activities, including active membership on at least one board committee and attendance at, and active participation in, meetings of the board and the committee(s) of which he or she is a member, and lack of other personal or professional commitments that would, in the Governance Committee's sole judgment, interfere with or limit his or her ability to do so.

In addition, the Governance Committee also considers it desirable that candidates possess the following qualities or skills:

- each candidate should contribute positively to the collaborative culture among board members; and
- each candidate should possess professional and personal experiences and expertise relevant to our businesses and industries.

While B&W does not have a specific policy addressing board diversity, the board recognizes the benefits of a diversified board and believes that any search for potential director candidates should consider diversity as to gender, ethnic background and personal and professional experiences.

The Governance Committee will solicit ideas for possible candidates from a number of sources—including members of the board, our senior level executives and individuals personally known to the members of the board.

Any stockholder may nominate one or more persons for election as one of our directors at an annual meeting of stockholders if the stockholder complies with the notice, information and consent provisions contained in our bylaws.

The Governance Committee will consider candidates identified through the processes described above and will evaluate each of them, including incumbents, based on the same criteria. The Governance Committee will also take into account the contributions of incumbent directors as board members and the benefits to us arising from their experience on the board. Although the Governance Committee will consider candidates identified by stockholders, the Governance Committee has sole discretion whether to recommend those candidates to the board.

Each expected B&W director brings a strong and unique background and set of skills to the Board, giving the Board as a whole competence and experience in a wide variety of areas. The following experiences and qualifications were considered in concluding each individual would be an appropriate member of the board of directors of B&W:

Mr. Bethards has been affiliated with B&W for 36 years, having started with the predecessor to Babcock & Wilcox Power Generation Group, Inc. in the early 1970s. He has held a number of management positions within the B&W organization, including most recently as President and Chief Executive Officer. His tenure with the company, experience in the power industry and in depth knowledge of the operations and culture of B&W make him highly qualified to serve our stockholders.

Mr. Fees' service as Chief Executive Officer of McDermott and member of McDermott's board of directors makes him well qualified to serve as Chairman of the Board of B&W. Prior to becoming McDermott's Chief Executive Officer in 2008, Mr. Fees led a distinguished career at B&W for nearly 30 years. During his time with B&W, Mr. Fees held numerous management positions within B&W's Government Operations segment, including President and Chief Operating Officer, and served as B&W's President and Chief Executive Officer. Mr. Fees' experiences provide him with extensive knowledge of B&W's businesses and strong leadership skills. Mr. Fees also currently serves on the Board of Directors of the Nuclear Energy Institute.

Mr. Goldman has an extensive background in corporate finance. While serving as Chief Financial Officer of Conoco, Inc., Mr. Goldman played vital roles in the initial public offering and split-off of Conoco, Inc. from DuPont and the subsequent merger of Conoco and Phillips Petroleum. Mr. Goldman chairs the finance committee of El Paso Corporation and the governance committee of Tesoro Corporation while serving on the audit committees of both companies and the compensation committee of Parker Drilling Company. He is a member of the Executive Committee of the Board of Trustees of Kenyon College and chairs its Budget, Finance and Audit Committee. He also chaired McDermott's Finance Committee and served as a member of its Audit Committee. This experience will benefit him as the expected Chairman of B&W's Audit Committee and as a member of the Audit Committee.

Mr. Hanks served as Chief Executive Officer and a member of the board of Washington Group International for eight years. That company was acquired by URS Corporation, a publicly traded engineering, construction and technical services firm and one of the companies in our Custom Peer Group. He has extensive financial experience, having served as Chief Financial Officer of Morrison Knudsen Corporation, and he currently serves on the audit committee of Lincoln Electric Holdings, Inc.

Mr. Kingsley brings vast knowledge of the nuclear power generation business to the board of B&W. He serves on the board of FPL, Inc., a provider of electricity related services, and previously served as President and Chief Operating Officer of Exelon Corporation, an integrated utility company and a customer and supplier to one of our principal operating subsidiaries. He previously served as President of the World Association of Nuclear Operators. Throughout his career, Mr. Kingsley has had direct operating and oversight responsibility for major U.S. nuclear power plants. He is a member of the National Academy of Engineering, and has received numerous awards given in the United States for nuclear excellence and achievement. His experience in the field of nuclear power operations, maintenance and engineering is valuable to us as a strategic resource for our B&W operations. He currently serves on the nuclear and audit committees of FPL, Inc.

Mr. McWilliams has an extensive background in public accounting, and is a Certified Public Accountant and licensed attorney. He served as Chief Financial Officer of Cooper Industries for nine years and in other financial and legal functions for over 22 years. In addition, he served for 12 years as chairman of the audit committee of another public company.

Admiral Mies' distinguished career as a nuclear submariner in the U.S. Navy and as a former Senior Vice President of Science Applications International Corporation has provided him with extensive experience in

nuclear operations, executive leadership and U.S. Government procurement activities. He served as the Senior Operations Commander of the U.S. Submarine Force and as the Commander in Chief of U.S. Strategic Command. He brings to the Board an extensive understanding of the U.S. Government, the single largest customer of B&W. He serves on the boards of Exelon Corporation and Mutual of Omaha and has extensive audit and governance committee experience.

Our Governance Committee will have primary oversight responsibility for our compliance and ethics program, excluding certain oversight responsibilities assigned to the Audit Committee. In conjunction with the Compensation Committee, the Governance Committee will oversee the annual evaluation of our Chief Executive Officer.

Director Compensation

Our nonemployee directors will receive compensation for their service on the board. We expect the cash compensation for our nonemployee directors will consist of the following:

- an annual retainer of $45,000 (prorated for partial terms); and
- a fee of $2,500 for each board meeting personally attended, $1,750 for each committee meeting personally attended and $1,000 for each board and committee meeting attended by telephone.

We expect the chairs of board committees, the Non-Executive Chairman and the Lead Director will receive additional annual retainers as follows (pro-rated for partial terms):

- the chair of the Audit Committee: $20,000;
- the chair of the Compensation Committee: $15,000;
- the chair of the Governance Committee: $10,000;
- the chair of the Environmental, Health and Safety Committee: $15,000;
- the Non-Executive Chairman: $175,000; and
- the Lead Director: $10,000.

In addition, we also expect our nonemployee directors will receive annual stock-based awards with a value of $110,000, subject to future adjustments as the Governance Committee and our board of directors may approve. In addition, Mr. Fees will receive a grant of stock-based awards with a value of $110,000 following the completion of the spin-off.

Our nonemployee directors will also be reimbursed for any expenses associated with attending board or committee meetings.

Executive Compensation

Our executive compensation program is described in “Executive Compensation—Compensation Discussion and Analysis.”

Compensation Policies and Practices and Risk

The McDermott Compensation Committee has concluded that risks arising from McDermott’s compensation policies and practices for McDermott employees (including our employees) are not reasonably

likely to have a materially adverse effect on McDermott. In reaching this conclusion, the McDermott Compensation Committee considered the policies and practices in the following paragraph.

The McDermott Compensation Committee regularly reviews the design of significant compensation programs with the assistance of its compensation consultant. We believe these compensation programs motivate and retain our employees while allowing for appropriate levels of business risk through the following features:

- *Reasonable Compensation Programs*—Using the elements of total direct compensation, the McDermott Compensation Committee seeks to provide compensation opportunities for employees targeted at or near the median compensation of comparable positions in the market. As a result, we believe the total direct compensation of employees provides a reasonable and appropriate mix of cash and equity, annual and longer-term incentives, and performance metrics.
- *Emphasize Long-Term Incentive Over Annual Incentive Compensation*—Long-term incentive compensation typically makes up a larger percentage of a participating employee's target total direct compensation than annual incentive compensation. Incentive compensation helps drive performance and align the interests of employees with those of shareholders. However, tying a significant portion of an employee's total direct compensation to long-term incentives (which typically vest over a period of three or more years) also helps to promote longer-term perspectives regarding company performance.
- *Long-Term Incentive Compensation Subject to Forfeiture*—The McDermott Compensation Committee may terminate any outstanding stock award if the recipient (1) is convicted of a misdemeanor involving fraud, dishonesty or moral turpitude or a felony, or (2) engages in conduct that adversely affects or may reasonably be expected to adversely affect McDermott's business reputation or economic interests.
- *Linear and Capped Incentive Compensation Payouts*—The McDermott Compensation Committee establishes financial performance goals which are used to plot a linear payout formula for annual and long-term incentive compensation, eliminating payout "cliffs" between the established performance goals. The maximum payout for both the annual and long-term incentive compensation is capped at 200% percent of target.
- *Use of Multiple and Appropriate Performance Metrics*—Utilizing diversified performance measures helps prevent compensation opportunities from being overly weighted toward the performance result of a single measure. In general, McDermott's incentive programs are historically based on a mix of financial and individual goals. Additionally, McDermott's primary financial performance metric has been a mix of consolidated and segment operating income. Compared to other financial metrics, operating income is a measure of the profitability of McDermott's business, which helps drive accountability at McDermott's operating segments, thereby reducing risks related to incentive compensation by putting the focus on quality of revenues not quantity.
- *Stock Ownership Guidelines*—McDermott's executive officers and directors are subject to share ownership guidelines, which also helps promote longer-term perspectives and align the interests of McDermott's executive officers and directors with those of McDermott's shareholders.

We expect that the B&W Compensation Committee will establish similar policies and practices.

Compensation Committee Interlocks and Insider Participation

None of our executive officers have served as members of a compensation committee (or if no committee performs that function, the board of directors) of any other entity that has an executive officer serving as a member of our board of directors.

Security Ownership of Executive Officers and Directors

We are currently wholly owned by McDermott. Immediately following the spin-off, McDermott will not own any shares of our common stock. None of our officers or directors own any shares of our common stock, but

those who own unrestricted shares of McDermott common stock will be treated the same as any other holder of McDermott common stock in any distribution by McDermott and, accordingly, will receive shares of our common stock in the spin-off. As described under "—Treatment of Stock-Based Awards," our executive officers and directors will receive stock options, shares of restricted stock, restricted stock units and deferred stock units in respect of our common stock following the closing of the spin-off.

The following table sets forth the McDermott common stock, stock options, shares of restricted stock, restricted stock units and deferred stock units held by director nominees and our executive officers, as of [ ], and the number of shares of our common stock that will be held by our director nominees and our executive officers immediately upon completion of the spin-off, assuming there are no changes in each person's holdings of McDermott securities since [ ] and based on our estimates as of [ ] assuming the distribution of one share of our common stock for every [ ] shares of McDermott common stock, with no fractional shares:

Name	Shares of McDermott Common Stock Owned[1]	McDermott Stock Options[2]	McDermott Restricted Stock, Restricted Stock Units and Deferred Stock Units[3]	Shares of B&W Common Stock[4]
John A. Fees				
Robert W. Goldman				
Stephen G. Hanks				
Oliver D. Kingsley, Jr.				
D. Brad McWilliams				
Richard W. Mies				
Brandon C. Bethards				
Michael S. Taff				
Richard L. Killion				
Christofer M. Mowry				
Winfred D. Nash				
All directors and executive officers ([ ] individuals)				

(1) Each director and executive officer holds less than 1% of McDermott's outstanding common stock.
(2) Reflects shares of McDermott common stock that can be acquired within 60 days upon the exercise of stock options.
(3) Reflects shares of restricted stock. Also includes shares underlying restricted stock units and deferred stock units that can be acquired within 60 days.
(4) The number of B&W shares listed in the table reflects the issuance of B&W stock in the spin-off in respect of McDermott shares of restricted stock, restricted stock units and deferred stock units, in each case as described in "—Treatment of Stock-Based Awards." The numbers include: shares of common stock; shares of common stock that can be acquired within 60 days upon the exercise of stock options; shares of restricted stock; and shares underlying restricted stock units and deferred stock units that can be acquired within 60 days.

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

The following Compensation Discussion and Analysis, or CD&A, provides information relevant to understanding the 2009 compensation of our executive officers identified in the Summary Compensation Table below under the caption "Compensation of Executive Officers," whom we refer to as our Named Executives. The following discussion also contains statements regarding future individual and company performance targets and goals. These targets and goals are disclosed in the limited context of our compensation programs and should not be understood to be statements of management's expectations or estimates of results or other guidance. We caution investors not to apply these statements to other contexts.

Summary

The Babcock & Wilcox Company is currently a wholly owned subsidiary of McDermott, which will, following the spin-off, own the subsidiaries that currently conduct the operations of McDermott's Power Generation Systems and Government Operations segments. For purposes of this CD&A, unless the context otherwise indicates or requires, we use "B&W" to refer to McDermott's Power Generation Systems and Government Operations segments, collectively. Our executive compensation program has been designed by the Compensation Committee of McDermott's Board of Directors ("McDermott's Compensation Committee"). Historically, including during 2009, McDermott's senior management, in consultation with our senior management, has supported McDermott's Compensation Committee in administering the compensation matters related to our Named Executives. Following the spin-off, our executive compensation program will be administered by the Compensation Committee of our Board of Directors (the "B&W Compensation Committee"). The responsibilities of the B&W Compensation Committee are described in "Management—Committees of Our Board of Directors" above.

For purposes of this CD&A, we refer to the following persons as our Named Executives:

- Brandon C. Bethards, President and Chief Executive Officer, B&W
- Michael S. Taff, Senior Vice President and Chief Financial Officer, McDermott and B&W
- Richard L. Killion, President and Chief Operating Officer, Babcock & Wilcox Power Generation Group, Inc.
- Christofer M. Mowry, President, B&W Nuclear Energy, Inc.
- Winfred D. Nash, President, Babcock & Wilcox Nuclear Operations Group, Inc.

Prior to the spin-off, all of our Named Executives except for Mr. Taff have been employees of B&W. Mr. Taff is an employee of McDermott Incorporated, a wholly owned subsidiary of McDermott, and serves as the Senior Vice President and Chief Financial Officer of both McDermott and B&W. In connection with the spin-off, he is expected to become an employee of B&W and continue as its Senior Vice President and Chief Financial Officer. Since this CD&A focuses primarily on B&W's compensation programs and decisions affecting 2009 compensation of our Named Executives, compensation information for Mr. Taff relates to his role as an officer of McDermott.

Overview of Compensation Programs and Objectives

Philosophy and Objectives. Our compensation programs are based on McDermott's belief that the ability to attract, retain and motivate qualified employees to develop, expand and execute sound business opportunities throughout McDermott and its subsidiaries, including B&W, is essential to its success. To that end, McDermott's Compensation Committee, with the assistance of its compensation consultant, designs and administers compensation programs with the participation of McDermott's and our management that generally seek to provide compensation that:

- incentivizes and rewards short- and long-term performance, continuity of service and individual contributions; and
- promotes retention of well-qualified executives, while aligning the interests of our executives with those of McDermott's shareholders.

For 2009, McDermott's Compensation Committee targeted reasonable and competitive compensation for our Named Executives, with a significant portion of that compensation being performance-based. Specifically, for our Named Executives:

- 2009 target total direct compensation was within 10%-15% of the median compensation of officers in comparable positions in the market applicable to them;
- 60% of target long-term incentive compensation for 2009 was performance-based; and
- performance-based compensation accounted for over 50% of 2009 target total direct compensation.

The performance-based compensation that paid out in 2009 also reflected the commitment of McDermott's Compensation Committee to pay for performance. B&W's cumulative operating income of over $1.1 billion for the three-year period ended December 31, 2009 represents the largest amount of operating income in any three-year period since B&W was acquired by McDermott in 1978. As a result, our Named Executives earned payments at the maximum level under performance shares granted in 2006, which vested in 2009. Our Named Executives were also eligible to earn near the maximum annual incentive compensation payout based on McDermott's consolidated and combined Power Generation Systems and Government Operations segments, as applicable, operating income for 2009. As designed by McDermott's Compensation Committee, individual performance helped differentiate among the Named Executives' annual incentive compensation payouts for 2009.

Compensation Consultant. In designing its executive compensation program, McDermott's Compensation Committee engaged an outside compensation consultant, Hewitt Associates, LLC, or Hewitt. Hewitt has served as the consultant to McDermott's Compensation Committee on executive and director compensation since October 2007. During 2009, Hewitt advised McDermott's Compensation Committee on all principal elements of McDermott's compensation programs and attended meetings of McDermott's Compensation Committee and participated in executive sessions without members of McDermott's management present. In 2009, Hewitt provided advice and analysis on the design, structure and level of executive and director compensation. It also provided McDermott's Governance Committee and its Board advice and analysis regarding nonmanagement director compensation. In connection with Hewitt's services to McDermott's Compensation Committee, in 2009 Hewitt sought and received input from McDermott's executive management on various matters and worked with McDermott's executive management to formalize proposals for McDermott's Compensation Committee. In 2009, Hewitt did not perform any other services for McDermott or us, other than assisting McDermott's management in preparing the performance graph included in McDermott's annual report on Form 10-K. Hewitt had been providing that service to McDermott's management for several years prior to serving as McDermott's Compensation Committee's consultant, and the fees for that service amounted to less than $2,000 in 2009. Following the spin-off, we expect that our senior management will continue to support the administration of the compensation programs on behalf of B&W's Compensation Committee in a manner and scope similar to that which has been provided by McDermott's management.

On February 1, 2010, Hewitt spun-off its executive compensation business into a separate company known as Meridian Compensation Partners LLC. Since the spin-off, Meridian, rather than Hewitt, has been advising McDermott's Compensation Committee with respect to the matters described above.

Elements. With the objectives outlined above in mind, McDermott's Compensation Committee approves annual compensation for Named Executives principally consisting of the following three elements:

- annual base salary;
- annual incentives; and
- long-term incentives.

Collectively, we refer to these elements as the "total direct compensation" of a Named Executive.

Annual base salary provides a fixed level of compensation that helps attract and retain highly qualified executives. Annual incentive and long-term incentive compensation are the principal performance-based components of a Named Executive's compensation. The annual incentive element is cash-based compensation generally designed to incentivize a Named Executive to achieve performance goals relative to the then-current fiscal year. Historically, long-term incentives have generally been in the form of McDermott equity-based awards and were designed to retain and closely align the interests of Named Executives with McDermott's shareholders. Similar to annual incentive compensation, performance-based long-term incentive compensation is designed to promote the achievement of performance goals, only over a longer period—typically of three or more years.

As we discuss in more detail below, McDermott's Compensation Committee also administers several plans as part of our post-employment compensation arrangements designed to reward long-term service and performance.

Target Total Direct Compensation. McDermott's Compensation Committee seeks to provide reasonable and competitive compensation. As a result, it targets the elements of total direct compensation for our Named Executives generally within 10%-15% of the median compensation of our market for comparable positions. Throughout this CD&A, we refer to compensation that is within 10%-15% of market median as "market range" compensation.

McDermott's Compensation Committee may set elements of total direct compensation above or below the market range to account for a Named Executive's performance and experience, and other factors or situations that are not typically captured by looking at standard market data and practices that McDermott's Compensation Committee deems relevant to the appropriateness and/or competitiveness of a Named Executive's compensation.

When making decisions regarding individual compensation elements, McDermott's Compensation Committee also considers the effect on the Named Executive's target total direct compensation and target total cash-based compensation (annual base salary and annual incentives), as applicable. The goal of McDermott's Compensation Committee is to establish target compensation for each element it considers appropriate to support the compensation objectives that, when combined, create a target total direct compensation award for each Named Executive that is reasonable and competitive.

Defining Market Range Compensation—Benchmarking. To identify median compensation for each element of total direct compensation, McDermott's Compensation Committee relies on "benchmarking"—reviewing the compensation of our Named Executives relative to the compensation paid to similarly situated executives at companies we consider our peers. As a result, the annual base salary, target annual incentive compensation and target long-term incentive compensation as a whole for each of the Named Executives is benchmarked. However, the specific performance metrics and performance levels used within elements of annual and long-term incentive compensation are designed for the principal purpose of supporting our strategic and financial goals and/or driving the creation of shareholder value, and, as a result, are not generally benchmarked.

At the request of McDermott's Compensation Committee, Hewitt conducted a market compensation analysis and provided advice regarding the median compensation of the three elements of total direct compensation for McDermott's officers, including the Named Executives. Using 2008 survey data from its proprietary compensation database (adjusted approximately 2.9% upwards by Hewitt for the purpose of bringing the market data current), Hewitt collected information from companies generally reflecting the size, scope and complexity of the business and executive talent at McDermott and B&W. To account for the size of our operations relative to peer companies, Hewitt used regression analysis to adjust the market information on peer companies based on revenue. To account for the diversity of geography and industry among McDermott's operations, Hewitt analyzed information from two principal peer groups, the Corporate Group and the Babcock & Wilcox Group. In this CD&A references to "market" or "our market" are references to the compensation of companies within the Corporate Group or Babcock & Wilcox Group, as applicable.

Babcock & Wilcox Group. With assistance from McDermott's management, Hewitt compiled this group as the primary benchmark for McDermott's executives at its Power Generation Systems and Government Operations segments, including Messrs. Bethards, Killion, Mowry and Nash. The group consisted of 31 engineering, construction and/or governments operations companies that are representative of our Power Generation Systems and Government Operations segments. The component companies within this group included:

Ameron International Corporation
Chicago Bridge & Iron Company N.V.
Cooper Industries Plc
Curtiss-Wright Corporation
Dover Corporation
Eaton Corporation
ESCO Technologies Inc.
Flowserve Corporation
Foster Wheeler AG
General Dynamics Corporation
Granite Construction, Inc.
Honeywell International, Inc.
Hubbell, Inc.
Illinois Tool Works Inc.
Ingersoll-Rand Co. Ltd.
ITT Corporation
Joy Global, Inc.
Lockheed Martin Corporation
Martin Marietta Materials, Inc.
Northrop Grumman Corporation
Raytheon Company
Rockwell Collins, Inc.
The Shaw Group Inc.
Terex Corporation
Textron, Inc.
Thomas & Betts Corporation
USG Corporation
Valmont Industries, Inc.
Vulcan Materials Company
Walter Industries Inc.
Washington Group International Inc.

Corporate Group. With assistance from our management, Hewitt compiled this group as the primary benchmark for McDermott's executives at its corporate segment, including Mr. Taff. The group consisted of the companies comprising the Babcock & Wilcox Group in addition to 13 additional companies with operations in engineering, construction, and/or energy that constitute a mixture of companies that are representative of McDermott's three operating segments: Offshore Oil & Gas Construction, Power Generation Systems and Government Operations. The component companies of this group included:

Alliant Techsystems Inc.
Ameron International Corporation
Anadarko Petroleum Corporation
Baker Hughes, Inc.
BJ Services Company
Cameron International, Inc.
Chesapeake Energy Corporation.
Chicago Bridge & Iron Company N.V.
Cooper Industries Plc
Curtiss-Wright Corporation
Devon Energy Corporation
Dover Corporation
Eaton Corporation
El Paso Corporation
ESCO Technologies Inc.
Flowserve Corporation
FMC Technologies, Inc.
Foster Wheeler AG
General Dynamics Corporation
Granite Construction Incorporated
Halliburton Company
Honeywell International, Inc.
Hubbell Inc.
Illinois Tool Works Inc.
Ingersoll-Rand Plc
ITT Corporation
Joy Global Inc.
KBR, Inc.
Lockheed Martin Corporation
Martin Marietta Materials, Inc.
Noble Corporation
Northrop Grumman Corporation
Pioneer Natural Resources Company
Raytheon Company
Rockwell Collins, Inc.
The Shaw Group Inc.
The Williams Companies, Inc.
Terex Corporation
Textron Inc.
Thomas & Betts Corporation
USG Corporation
Valmont Industries, Inc.
Vulcan Materials Company
Walter Industries, Inc.

In addition to these peer groups, Hewitt supplemented the market data with other publicly available compensation information related to companies in a peer group identified by McDermott's management and Hewitt in October 2007, which we refer to as the "Custom Peer Group." The Custom Peer Group consists of nine engineering and construction companies and is the same group McDermott uses in the performance graph included in its annual report on Form 10-K. The Custom Peer Group is comprised of the following companies: Cal Dive International, Inc.; Chicago Bridge & Iron Company N.V.; Fluor Corporation; Foster Wheeler AG; Jacobs Engineering Group Inc.; KBR, Inc.; Oceaneering International, Inc.; The Shaw Group Inc.; and URS Corporation. Of the Custom Peer Group companies, Chicago Bridge & Iron Company N.V., Foster Wheeler AG and The Shaw Group Inc. are also companies within the Corporate Group and Babcock & Wilcox Group, while KBR, Inc. is also a member of the Corporate Group. Compensation information for Custom Peer Group companies was based on information reported by those companies in publicly available Securities and Exchange Commission filings. The information available was largely limited to the five highest paid positions at the company and generally based on 2007 compensation. As a result, in 2009, the Custom Peer Group was not weighted in the calculation to determine median compensation, except to the extent any of its component companies was also a component company in the Babcock & Wilcox Group or the Corporate Group. Accordingly, McDermott's Compensation Committee relied on the Corporate Group and the Babcock & Wilcox Group, as applicable, to determine the market range of 2009 compensation for our Named Executives, and the Custom Peer Group had no effect on the market range of compensation.

Total Direct Compensation

2009 Overview. The 2009 target total direct compensation for each of our Named Executives was within the market range of target total direct compensation. The chart below shows the 2009 target total direct compensation by element for each Named Executive. Because some compensation elements are performance-based, Named Executives are capable of earning compensation above or below the market range for similarly situated executives in our market.

2009 Target Total Direct Compensation Summary

Named Executive	Annual Base Salary	Annual Incentive* (% of Salary)	Long-Term Incentive* (% of Salary)	Total Direct Compensation* (% of Market**)
B.C. Bethards	$ 526,200	70%	286%	98%
M.S. Taff	$ 505,000	70%	348%	102%
R. L. Killion	$ 330,000	55%	168%	99%
C.M. Mowry	$ 355,000	45%	100%	108%
W.D. Nash	$ 348,000	50%	144%	111%

* When making decisions as to the elements of a Named Executive's total direct compensation, McDermott's Compensation Committee considers the dollar value of annual incentive and long-term incentive compensation, but typically awards these elements as percentages of annual base salary. This is primarily because McDermott's market generally targets these elements on a percentage-of-salary basis. See "—Long-Term Incentive Compensation—Analysis of 2009 Equity Grants" below for a discussion of how equity grants are valued.

** Market = Median target annual incentive compensation based on the benchmark applicable to the executive. 100% represents median compensation.

While McDermott's Compensation Committee does not set a specific target allocation among the elements of total direct compensation, it believes that a significant portion of a Named Executive's total direct compensation should be performance-based. On average, performance-based compensation accounted for approximately 51% of a Named Executive's 2009 target total direct compensation and 60% of his long-term incentive compensation.

Annual Base Salary

2009 Base Salaries. In January 2009, McDermott's Compensation Committee was provided with (1) the recommendation of McDermott's Chief Executive Officer as to 2009 base salaries for Messrs. Bethards and Taff,

(2) the recommendation of Mr. Bethards, made in consultation with McDermott's Chief Executive Officer, as to the 2009 base salaries for Messrs. Killion, Mowry and Nash, and (3) Hewitt's analysis of market compensation (as adjusted by Hewitt to January 2009). Hewitt's market analysis compared the recommended base salary and the target total direct compensation of each officer (assuming 2009 salary recommendations were approved) to the median compensation of the applicable market.

The 2009 base salaries for our Named Executives were as follows:

Named Executive	2009 Annual Base Salary	Percent of Market[1]
B.C. Bethards	$ 526,200	100%
M.S. Taff	$ 505,000	88%
R.L. Killion	$ 330,000	95%
C.M. Mowry	$ 355,000	108%
W.D. Nash	$ 348,000	110%

(1) Market = Median annual base salary based on the benchmark applicable to the executive. 100% represents median compensation.

McDermott's Compensation Committee sought to, and we expect B&W's Compensation Committee will continue to, position each Named Executive in the market range (+/- 10-15%) of median base salaries indicated by market data. In addition to market data, in response to the slowdown in global economic conditions that began in 2008, McDermott's Compensation Committee sought to limit increases in 2009 base salaries for its officers, including our Named Executives, to an average increase of 3-4%, with limited exceptions based on individual circumstances, in line with the median increase among companies in our market. Mr. Bethards' base salary did not change because he received a substantial increase in October 2008 in connection with his promotion and McDermott's Compensation Committee believed his salary was appropriate relative to the market. Mr. Taff, whose base salary was substantially below market in 2008, received an above-average increase in base salary to bring his base salary within the market range for his position. Messrs. Killion and Nash each received a slightly higher than average increase in base salary to reflect, in Mr. Killion's case, internal pay equity among officers, and, in Mr. Nash's case, the increased scope of operations for which he was responsible as a result of B&W's acquisition of Nuclear Fuel Services, Inc. in December 2008.

Annual Incentive Compensation

2009 Overview and Target Compensation. McDermott's Compensation Committee administers the annual incentive compensation program under its Executive Incentive Compensation Plan, which we refer to as the EICP.

The EICP is a cash incentive plan designed to motivate and reward officers and key employees of McDermott and its subsidiaries, including our Named Executives, for their contributions to business goals and other factors that McDermott believes drive its earnings and/or creates shareholder value.

The 2009 target EICP compensation for our Named Executives was as follows:

Named Executive	Target EICP (% of annual base salary)	Percent of Market[1]
B.C. Bethards	70%	86%
M.S. Taff	70%	89%
R.L. Killion	55%	92%
C.M. Mowry	45%	105%
W.D. Nash	50%	94%

(1) Market = Median target annual incentive compensation based on the benchmark applicable to the executive. 100% represents median compensation.

McDermott's Compensation Committee set 2009 target EICP compensation for our Named Executives at the same percentage of base salary as it established for 2008 target EICP compensation, with the exception of

Messrs. Taff and Nash. The 2008 target EICP percentage for those two executives was below or at the limit of the 2009 market range of competitive compensation. As a result, Mr. Taff's 2009 target EICP compensation was increased from 55% of his annual base salary to bring him within the 2009 market range and was set at a level commensurate with other McDermott executive officers. Similarly, Mr. Nash's 2009 target EICP compensation was increased from 45% of his annual base salary to more closely align his 2009 EICP target with market-median annual incentive compensation. Additionally, for Mr. Nash, consideration was also given to the increased scope of operations for which he was responsible as a result of B&W's acquisition of Nuclear Fuel Services, Inc. in December 2008.

2009 EICP Performance Goals. EICP compensation consists of a financial performance component and an individual performance component. The 2009 target EICP was split between these two components as follows:

- 70% of target EICP was attributable to financial performance; and
- 30% of target EICP was attributable to individual performance.

Financial performance is the largest factor in determining EICP compensation because McDermott's Compensation Committee generally considers it to be more objective and to more directly influence the creation of shareholder value, as compared to individual performance. McDermott's Compensation Committee, however, recognizes that individual performance can serve an important role in helping promote the achievement of strategic, non-financial goals. To reward significant individual contributions, McDermott's Compensation Committee increased the representation of the individual component from 15% to 30% of target EICP for 2009, as compared to 2008. However, to maintain the emphasis on financial performance, financial results determined the amount eligible to be paid under EICP compensation (irrespective of the level of individual performance attained). For example, if target financial performance was attained, then a Named Executive would be eligible to receive up to a target payout under the financial component and individual component. No EICP compensation would be earned (including for individual performance) unless the threshold level of financial performance was attained and the maximum EICP compensation a Named Executive could earn in 2009 was 200% of target EICP.

2009 Financial Goals. The 2009 financial goals consisted of operating income levels related to McDermott and/or B&W operations relevant to each Named Executive. In some instances a Named Executive may have operating income goals for more than one operation, in which case the financial goals were weighted toward the operations over which the Named Executive had primary responsibility. McDermott's Compensation Committee considers operating income an appropriate financial measure to use for compensation purposes, because it is the primary driver of net income, which McDermott's Compensation Committee expects to drive McDermott's stock price. In comparison to net income, however, operating income is more directly influenced by the revenues generated and costs incurred as a result of management action and is more readily attributable to McDermott's operating segments.

Within the financial performance component, McDermott's Compensation Committee historically established three levels of operating income goals. These levels would determine the threshold, target and maximum amounts that would be paid under the financial component of the EICP, with target level being based on management's internal projections of operating income and threshold and maximum levels set as a percentage of the target level. McDermott's Compensation Committee designs incentive plans to drive target level performance and does not believe that compensation should be earned for performance substantially below that level. As a result, no EICP compensation would be earned (including for individual performance) unless a threshold level of financial performance was attained. McDermott's Compensation Committee believes that Named Executives should be rewarded for superior financial performance. It therefore establishes a maximum level performance goal to incentivize higher performance, but caps the payout to maximize returns to shareholders for performance above the maximum payout level and reduce risk related to incentive compensation.

The performance range between the threshold level and the maximum level was relatively narrow prior to 2009. For instance, in 2008, the operating income goals ranged between 75% of target operating income at the

threshold payout level and 108% of target operating income at the maximum payout level. With operating income goals set within a range of 33% determining a payout range of 200%, relatively small changes in performance results produced large variations in EICP payouts.

For 2009, McDermott's Compensation Committee sought to increase the performance range between threshold and maximum level goals, making the maximum payment more difficult relative to target and reducing the minimum performance required to be attained before any EICP compensation would be earned. In addition, McDermott's Compensation Committee established a range for target level performance comprised of three separate operating income goals. The intended effect of these changes was to reduce the significance of the impact of minor variations in financial results, thereby reducing the risk related to the EICP.

McDermott's Compensation Committee considered a number of performance goals recommended by management, including threshold level goals as low as 50% of target operating income and maximum level goals as high as 150% of target operating income. With the advice of Hewitt, McDermott's Compensation Committee set the threshold level operating income goal at 70% of target and the maximum level operating income goal at 120% of target. The operating income goals at the target level ranged from 95% of the target goal to 105% of the target goal.

As a result, a Named Executive would have been eligible to earn the following amounts under the 2009 EICP based on attaining the following levels of operating income:

- 25% of target EICP compensation at threshold level operating income;
- 92.5% of target EICP compensation at target (min) level operating income;
- 100% of target EICP compensation at target level operating income;
- 107.5% of target EICP compensation at target (max) level operating income; and
- 200% of target EICP compensation at maximum level operating income.

For other levels of operating income between threshold and maximum, the percentage paid would have been determined by linear interpolation using the two neighboring pre-established performance levels and percentage payout. No payment would have been earned under the EICP for 2009 if operating income results had been below the threshold level.

In 2009, the B&W operating units produced operating income of approximately $312.4 million, which exceeded the target level performance goal but not the maximum level. B&W's 2009 operating income included expense relating to the mPower™ modular nuclear reactor initiative. Relative to annual/incentive compensation, the mPower™ initiative is longer-term in nature. To avoid adversely impacting a Named Executive's EICP compensation for strategic investments, the performance was adjusted to exclude approximately $13 million of the mPower™ expenses. As a result, for purposes of calculating 2009 EICP payments, B&W's operating income was approximately $325.7 million, which exceeded the target level performance goal but not the maximum level.

2009 Individual Goals. Individual goals established for each Named Executive were tailored to the individual's position and focused on supporting strategic initiatives and achieving common goals. McDermott's Chief Executive Officer established the individual goals for Messrs. Bethards and Taff, while the remaining Named Executives proposed their respective individual goals which were approved by Mr. Bethards in consultation with McDermott's Chief Executive Officer. The Named Executives' individual goals and target weightings are set forth in the tables below.

2009 Annual Incentive Compensation. The following is a description of the performance goals and the evaluation relating to each Named Executive's 2009 annual incentive compensation:

Brandon C. Bethards

- *Financial Goals*. McDermott's Compensation Committee believed that as an executive officer of McDermott during 2009, a portion of Mr. Bethards' annual incentive compensation should be based on McDermott's consolidated financial results. However, as Chief Executive Officer of B&W, he was directly responsible for the operations of McDermott's Power Generation Systems and Government Operations segments. As a result, 50% of his 2009 target EICP was based on the operating income from those two segments and 20% was based on McDermott's consolidated operating income. The financial goals and payout percentage for 2009 are outlined in the table below.

Performance Measures ($ in millions)	Target EICP %	Threshold 25%	92.5%	Target 100%	107.5%	Maximum 200%	2009 Result	Payout Percentage
Operating Income (B&W)	50%	$ 191.7	$260.2	$273.9	$287.6	$ 328.7	$325.7	195%
Operating Income (McDermott[1])	20%	$ 241.9	$328.2	$345.5	$362.8	$ 414.6	$546.5	200%

(1) Consolidated operating income levels equal the sum of McDermott's segment operating income less unallocated corporate operating expenses.

- *Individual Goals.* The individual goals and target weighting for Mr. Bethards were as follows:
  - achieve specific levels of health, safety and environmental performance averages relating to three metrics at our Power Generation Systems and Government Operations segments (10%);
  - successfully manage the completion of the initial phase of a strategic global financial implementation project as it relates to B&W entities (10%); and
  - achieve successful integration of a specified acquisition as defined by the integration plan milestones (10%).
- *Evaluation of 2009 Performance and Payment of 2009 EICP Compensation.* For purposes of evaluating B&W financial performance for 2009, B&W's operating income results for 2009 excluded approximately $13 million of expense related to B&W's mPower™ initiative. Mr. Bethards earned a 195% payout on the financial component related to B&W operating income and a 200% payout on the financial component related to McDermott operating income, or a weighted blended payout percentage of 196%. Based on these financial results, he was eligible to receive 2009 annual incentive compensation up to 196% of his 2009 target compensation, depending on individual performance. Mr. Bethards met or exceeded his individual goals, except with respect to two goals which in each case were only partially achieved, resulting in the achievement of 21.67% of the 30% target EICP attributable to individual performance. As a result, Mr. Bethards earned 180% of his 2009 target EICP compensation, or $663,012.

Michael S. Taff

- *Financial Goals.* The financial performance component of Mr. Taff's 2009 annual incentive compensation was based entirely on McDermott's consolidated operating income. The financial goals and payout percentage for 2009 are outlined in the table below.

Performance Measure ($ in millions)	Target EICP %	Threshold 25%	92.5%	Target 100%	107.5%	Maximum 200%	2009 Actual	Payout Percentage
Operating Income (McDermott[1])	70%	$ 241.9	$328.2	$345.5	$362.8	$ 414.6	$546.5	200%

(1) Consolidated operating income levels equal the sum of McDermott's segment operating income less unallocated corporate operating expenses.

- *Individual Goals.* The individual goals and target weighting for Mr. Taff were as follows:
  - achieve specific levels of consolidated health, safety and environmental performance averages relating to three metrics at McDermott (10%);
  - develop and implement a plan to address the BWXT credit facility, which was scheduled to mature in 2010 (10%); and
  - develop a strategic multi-year plan regarding information technology (10%).
- *Evaluation of 2009 Performance and Payment of 2009 EICP Compensation.* Mr. Taff earned a 200% payout on the financial component related to consolidated McDermott operating income and, depending on his individual performance, was eligible to receive 2009 annual incentive compensation up to 200% of his 2009 target compensation. Mr. Taff met or exceeded all of his individual goals. As a result, he earned 200% of his 2009 target EICP compensation, or $707,000.

Richard L. Killion

- *Financial Goals.* Mr. Killion is President and Chief Operating Officer of Babcock & Wilcox Power Generation Group, Inc. ("B&W PGG"), our principal subsidiary under which our Power Generation Systems segment is organized. As an executive officer of B&W, a portion of Mr. Killion's annual incentive compensation was based on B&W's consolidated financial results. However, as President of B&W PGG, he is directly responsible for the operations of B&W's Power Generation Systems segment and, as a result, 40% of his 2009 target EICP was based on that segment's operating income and 30% was based on B&W's combined operating income. The financial goals and payout percentage for 2009 are outlined in the table below.

Performance Measures ($ in millions)	Target EICP %	Threshold 25%	92.5%	Target 100%	107.5%	Maximum 200%	2009 Result	Payout Percentage
Operating Income (B&W PGG)	40%	$ 113.9	$143.0	$150.5	$158.0	$ 176.4	$183.3	200%
Operating Income (B&W)	30%	$ 191.7	$260.2	$273.9	$287.6	$ 328.7	$325.7	195%

- *Individual Goals.* The individual goals and target weighting for Mr. Killion were as follows:
  - achieve specific levels of health, safety and environmental performance averages relating to three metrics at our Power Generation Systems segment (10%);
  - successfully complete the design and implementation plan for enterprise accounting and purchasing software at B&W PGG (10%); and
  - complete two acquisitions for B&W PGG (10%).

- *Evaluation of 2009 Performance and Payment of 2009 EICP Compensation.* For purposes of evaluating B&W financial performance for 2009, B&W's operating income results for 2009 excluded approximately $13 million of expense related to B&W's mPower™ initiative. Mr. Killion earned a 200% payout on the financial component related to B&W PGG operating income and a 195% payout on the financial component related to B&W's combined operating income, or a weighted blended payout percentage of 198%. Based on these financial results, he was eligible to receive 2009 annual incentive compensation up to 198% of his 2009 target compensation, depending on individual performance. Mr. Killion met or exceeded his individual goals, except with respect to one goal which was only partially achieved, resulting in the achievement of 26.67% of the 30% target EICP attributable to individual performance. As a result, Mr. Killion earned 191.3% of his 2009 target EICP compensation, or $347,210.

Christofer M. Mowry

- *Financial Goals.* At the time financial and individual performance goals were set for 2009, Mr. Mowry served as Senior Vice President, Business Development for B&W. As a result, his financial performance component of 2009 EICP consisted entirely of B&W's combined operating income. The financial goals and payout percentage for 2009 are outlined in the table below.

Performance Measures ($ in millions)	Target EICP %	Threshold 25%	92.5%	Target 100%	107.5%	Maximum 200%	2009 Result	Payout Percentage
Operating Income (B&W)	70%	$ 191.7	$260.2	$273.9	$287.6	$ 328.7	$325.7	195%

- *Individual Goals.* The individual goals and target weighting for Mr. Mowry were as follows:
  - achieve specific levels of health, safety and environmental performance averages relating to three metrics at our Power Generation Systems and Government Operations segments (10%);
  - operate B&W's business development department within approved budget (5%);
  - successfully implement process for B&W's strategic plan (5%); and
  - provide business development leadership to strategic initiatives (10%).
- *Evaluation of 2009 Performance and Payment of 2009 EICP Compensation.* For purposes of evaluating B&W financial performance for 2009, B&W's operating income results for 2009 excluded approximately $13 million of expense related to B&W's mPower™ initiative. Mr. Mowry earned a 195% payout on the financial component related to B&W combined operating income and, depending on individual performance, was eligible to receive 2009 annual incentive compensation up to 195% of his 2009 target compensation. Mr. Mowry met or exceeded his individual goals, except with respect to one goal which was only partially achieved, resulting in the achievement of 26.67% of the 30% target EICP attributable to individual performance. As a result, Mr. Mowry earned 188.5% of his 2009 target EICP compensation, or $301,129.

Winfred D. Nash

- *Financial Goals.* Mr. Nash is President of Babcock & Wilcox Nuclear Operations Group, Inc. ("B&W NOG"), one of the principal subsidiaries under which our Government Operations segment is organized. As an executive officer of B&W, a portion of Mr. Nash's annual incentive compensation was based on B&W's combined financial results. However, as President of B&W NOG, he is directly responsible for B&W NOG's operations and, as a result, 40% of his 2009 target EICP was based on B&W NOG's operating income and 30% on B&W's combined operating income. The financial goals and payout percentage for 2009 are outlined in the table below.

Performance Measures ($ in millions)	Target EICP %	Threshold 25%	92.5%	Target 100%	107.5%	Maximum 200%	2009 Result	Payout Percentage
Operating Income (B&W NOG)	40%	$ 94.4	$118.6	$124.8	$131.0	$ 143.6	$145.5	200%
Operating Income (B&W)	30%	$ 191.7	$260.2	$273.9	$287.6	$ 328.7	$325.7	195%

- *Individual Goals.* The individual goals and target weighting for Mr. Nash were as follows:
  - achieve specific levels of health, safety and environmental performance averages relating to three metrics at B&W NOG (10%);
  - successfully develop a financial modeling tool for acquisition analysis (10%); and
  - achieve successful integration of a specified acquisition as defined by the integration plan milestones (10%).
- *Evaluation of 2009 Performance and Payment of 2009 EICP Compensation.* For purposes of evaluating B&W financial performance for 2009, B&W's operating income results for 2009 excluded approximately $13 million of expense related to B&W's mPower™ initiative. Mr. Nash earned a 200% payout on the financial component related to B&W NOG operating income and a 195% payout on the financial component related to B&W's combined operating income, or a weighted blended payout percentage of 198%. Based on these financial results, he was eligible to receive 2009 annual incentive compensation up to 198% of his 2009 target compensation, depending on individual performance. Mr. Nash met or exceeded his individual goals, except with respect to two goals which were only partially achieved, resulting in the achievement of 15% of the 30% target EICP attributable to individual performance. As a result, Mr. Nash earned 168.2% of his 2009 target EICP compensation, or $292,668.

Long-Term Incentive Compensation

McDermott's Compensation Committee believes that the interests of its shareholders are best served when a significant percentage of compensation is comprised of equity and other long-term incentives that appreciate in value contingent upon increases in the value of McDermott's common stock and other performance measures that reflect improvements in McDermott's business fundamentals. Therefore, long-term incentive compensation represents the single largest element of our Named Executives' total direct compensation.

Analysis of 2009 Equity Grants

Mix of 2009 Equity. In 2006 and 2007, the long-term incentive compensation of our officers, including the Named Executives, consisted entirely of performance shares. These performance shares generally provided for vesting three years from the date of grant in an amount between 0% and 150% of the number of shares granted, depending on the level of cumulative consolidated operating income achieved during the vesting period. In 2008, McDermott's Compensation Committee, with the advice of Hewitt, incorporated time-vested restricted stock into long-term incentive compensation, to promote retention. However, performance shares still constituted 75% of our Named Executives' long-term incentive compensation for 2008. As a result, at the time the Compensation Committee considered 2009 long-term incentive compensation, performance shares dominated the outstanding long-term incentive compensation of Named Executives.

In addition, Hewitt's 2009 market analysis of long-term incentive compensation indicated that many companies were reexamining their long-term incentive mix. Specifically, Hewitt noted that more companies were using stock options for rewarding performance based on absolute stock price improvement, restricted stock for retention and performance-based stock to encourage a focus on financial or operational drivers.

As a result, John A. Fees, Chief Executive Officer of McDermott, recommended changing the mix and allocation of equity award types used in connection with 2009 long-term incentive compensation. With the advice of Hewitt and to maintain the competitiveness of each Named Executive's compensation, McDermott's Compensation Committee approved the use of a mix of performance shares, restricted stock units and stock options in 2009 for officers, including our Named Executives. To drive performance, McDermott's Compensation Committee determined to issue at least a majority of long-term incentive compensation in the form of performance-based compensation. For 2009, the performance-based long-term compensation consisted of performance shares and stock options. McDermott's Compensation Committee allocated 2009 target long-term incentive compensation as follows:

- 20% performance shares;
- 40% stock options; and
- 40% restricted stock units.

Similar to prior years, the 2009 performance shares generally vest three years from the date of grant. However, McDermott's Compensation Committee made two principal changes in the 2009 performance shares. First, to be consistent with annual incentive compensation, the 2009 performance shares vest in an amount between 0% and 200% of the target shares granted. Second, McDermott's Compensation Committee added the concept of relative shareholder return as a performance condition, in addition to McDermott's consolidated operating income. McDermott's Compensation Committee continues to believe that operating income is an appropriate financial metric for use in both annual and long-term incentive compensation because of its potential to drive stock price and accountability at operating segments; however, in 2008 McDermott witnessed a disconnect in performance results. With approximately $570 million of operating income, McDermott produced its second highest level of operating income in at least a decade, although the price of its stock declined. To tie performance shares more directly with shareholder return, McDermott's Compensation Committee designed the 2009 performance shares to vest (1) one-half based on the level of McDermott's cumulative operating income attained over the three-year period ending December 31, 2011 and (2) one-half based on the total shareholder return of our stock relative to the Custom Peer Group over the same period.

On the recommendation of McDermott's management and with the advice of Hewitt, the McDermott Compensation Committee set cumulative operating income for the target and maximum vesting levels at amounts that represent 6% and 10% annual growth from the target operating income goal for McDermott used in connection with 2009 annual incentive compensation. Consistent with annual incentive compensation, no performance shares will vest based on operating income if the performance results are below 70% of the target three-year cumulative operating income goal. In addition, the performance shares that vest based on shareholder return will vest as follows:

- 25% will vest if McDermott's total shareholder return is at the 25th percentile (threshold level) relative to the total shareholder return of the Custom Peer Group;
- 100% will vest if McDermott's total shareholder return is at the 50th percentile (target level) relative to the total shareholder return of the Custom Peer Group; and
- 200% will vest if McDermott's total shareholder return is at the 100th percentile (maximum level) relative to the total shareholder return of the Custom Peer Group.

The percentage that would vest between threshold, target and maximum levels is interpolated based on those performance levels. However, regardless of percentile, 200% would vest if McDermott's total shareholder return

for the three-year period ranks either first or second relative to the total shareholder return of the Custom Peer Group over the same period. No performance shares would vest based on shareholder return if McDermott's total shareholder return relative to the Custom Peer Group falls below the 25% threshold performance level.

For more information regarding the 2009 performance shares, restricted stock units and stock options, see the Grants of Plan-Based Awards table under "Compensation of Executive Officers" below and disclosures under "Compensation of Executive Officers—Estimated Future Payouts Under Equity Incentive Plan Awards." For information regarding how McDermott's outstanding equity-base compensation awards will be treated in connection with the spin-off, see "The Spin-Off—Treatment of Stock-Based Awards" above.

Value of 2009 Long-Term Incentive Compensation. The 2009 target long-term incentive compensation for our Named Executives was as follows:

Named Executive	Target LTI (% of annual base salary)	Percent of Market[1]
B.C. Bethards	286%	100%
M.S. Taff	348%	125%
R.L. Killion	168%	106%
C.M. Mowry	100%	108%
W.D. Nash	144%	116%

(1) Market = Median target long-term incentives based on the benchmark applicable to the executive.

As a result of market conditions in 2008, the value of Named Executives' outstanding long-term incentive compensation dropped considerably. In February 2009, the expected value of the long-term incentive compensation granted between 2006 and 2008 was approximately 35% of the target grant date value. For certain officers, including one Named Executive (Mr. Taff), the expected value of their outstanding long-term incentive compensation was even lower due to the particular mix of their respective equity following recent promotions within McDermott. McDermott's Compensation Committee was concerned that long-term incentive compensation would not effectively promote its intended purpose at values substantially below target. McDermott's Compensation Committee therefore increased the target 2009 long-term incentive compensation of Mr. Taff by 9% over the amount initially recommended to be granted in 2009. As a result, Mr. Taff's target 2009 long-term incentive compensation exceeded the market range; however, his total direct compensation was within the market range.

Sizing Long-Term Incentive Compensation. McDermott's Compensation Committee generally determines the size of equity-based grants as a percentage of a Named Executive's annual base salary, rather than granting a targeted number of shares. The number of performance shares, restricted stock units and stock options granted can be expressed through the following formula:

value of target long-term incentive($)/FMV($).

The dollar value of the target equity award for each Named Executive was derived by multiplying the Named Executive's target percentage by his 2009 base salary. The fair market value of one performance share, restricted stock unit and stock option was determined by Hewitt near the time of grant and generally reflected a discount from the market price of McDermott's common stock as a result of the vesting conditions and restrictions on transfer. Hewitt used a Black Scholes model to value stock options. For the long-term incentive compensation granted in February 2009, the fair market value of McDermott's common stock as of the date the grants were calculated (based on the closing price of McDermott's common stock on the New York Stock Exchange) was $13.21, compared to the discounted value of $10.52 for one performance share, $12.177 for one restricted stock unit and $8.581 for an option to acquire one share of McDermott common stock. Because the long-term incentive compensation grants vest over three years, the number of shares calculated were rounded down to the nearest multiple of three. To illustrate, consider the 28,611 performance shares granted to our Chief

Executive Officer in 2009. The dollar value of Mr. Bethards' target 2009 long-term incentive compensation was $1,504,932 ($526,200 base salary multiplied by 286% target long-term incentive). Performance shares accounted for 20% of his target long-term incentive compensation granted in 2009, or $300,986. At a fair market value of $10.52/share, 20% of Mr. Bethards' target long-term compensation grant amounted to 28,611 performance shares.

Timing of Equity Grants

To avoid timing equity grants ahead of the release of material nonpublic information, McDermott's Compensation Committee generally approves stock option and other equity awards effective as of the first day of the next open trading window following the meeting at which the grants are approved, which is generally the third day following the filing of McDermott's annual report on Form 10-K or quarterly report on Form 10-Q with the Securities and Exchange Commission. This practice was followed for all long-term incentive compensation grants to Named Executives in 2009.

Perquisites

Perquisites are not factored into the determination of the total direct compensation of our Named Executives, because they are typically provided to Named Executives on an exception basis.

McDermott owns a fractional interest in two aircraft through an aircraft management company, which McDermott uses for business purposes and makes available to our Named Executives for limited personal use. When McDermott permits the personal use of aircraft by a Named Executive, McDermott has a choice regarding the amount of income tax imputed to the Named Executive for that use. Under current Internal Revenue Service rules, McDermott may impute to the Named Executive the actual cost incurred by McDermott for the flight or an amount based on Standard Industry Fare Level ("SIFL") rates set by the U.S. Department of Transportation. Imputing income based on SIFL rates usually results in less income tax liability to the Named Executive but higher income taxes to McDermott due to limitations on deducting aircraft expenses that exceed the income imputed to employees. To minimize McDermott's cost of permitting the personal use of the aircraft, McDermott imputes income for personal use of aircraft to our Named Executives in an amount that results in the least amount of tax burden for McDermott.

As required by applicable Securities and Exchange Commission rules, McDermott calculates compensation in respect of personal use of corporate aircraft based on its "incremental cost." McDermott computes incremental cost for personal use of aircraft based on the actual cost incurred by McDermott for the flight, including:

- the cost of fuel;
- a usage charge equal to the hourly rate charged by McDermott's flight operator multiplied by the flight time;
- "dead head" costs, if applicable, of flying aircraft without passengers to and from locations; and
- the dollar amount of increased income taxes McDermott incurs as a result of disallowed deductions under IRS rules.

Since the aircraft are used primarily for business travel, incremental costs generally exclude fixed costs such as the purchase price of our interests in the aircraft, aircraft management fees, depreciation, maintenance and insurance. McDermott's cost for flights, whether business or personal, is not affected by the number of passengers. As a result, McDermott does not assign any amount, other than the amount of any disallowed deduction, when computing incremental costs for the presence of guests accompanying a Named Executive on such flights. While McDermott does not generally incur any additional cost, this travel may result in imputed income to the Named Executive and disallowed deductions on McDermott's income taxes. McDermott will reimburse the Named Executive for the travel expenses of a guest accompanying a Named Executive, including

the provision of a gross-up for any imputed income, when the presence of that guest is related to the underlying business purpose of the trip. McDermott also provides our Named Executives with a tax gross-up for income incurred in connection with a relocation with McDermott or one of its affiliated companies.

Post-Employment Compensation

Retirement Plans

Overview. McDermott provides retirement benefits through a combination of qualified defined benefit pension plans, which we refer to as the "Retirement Plans," and a qualified defined contribution 401(k) Plan, which we refer to as the "Thrift Plan," for most of our U.S. employees, including our Named Executives. McDermott maintains four Retirement Plans, including the following three which are relevant to our Named Executives:

- the Commercial Operations Retirement Plan for the benefit of the U.S. employees of McDermott's Power Generation Systems segment;
- the Government Operations Retirement Plan for the benefit of the employees of McDermott's Government Operations segment; and
- the McDermott Retirement Plan for the benefit of the employees of MI.

We sponsor the Commercial Operations Retirement Plan through B&W PGG. McDermott sponsors the Government Operations and McDermott Retirement Plans through MI. In connection with the spin-off, we will assume the Government Operations Retirement Plan and certain assets and liabilities of the McDermott Retirement Plan.

In addition to the broad-based qualified plans described above, McDermott maintains unfunded, nonqualified excess retirement plans, which we refer to as the "Excess Plans." The Excess Plans cover a small group of highly compensated employees, including some of our Named Executives (Messrs. Bethards, Killion and Nash), whose ultimate benefits under the applicable Retirement Plan are reduced by Internal Revenue Code limits on the amount of benefits which may be provided under qualified plans, and on the amount of compensation which may be taken into account in computing benefits under qualified plans. Benefits under the excess plans are paid from McDermott's general assets. We sponsor the Commercial Operations Excess Plan through B&W PGG and the Government Operations Excess Plan through our subsidiary, Babcock & Wilcox Investment Company. McDermott sponsors the McDermott Excess Plan through MI. In connection with the spin-off, we will assume certain liabilities of the McDermott Excess Plan. See the "Pension Benefits" table under "Compensation of Executive Officers" below for more information regarding the Retirement Plans.

Recent Changes to Retirement Plans. Over the past several years, McDermott has reassessed its retirement plans due to the volatility, cost and complexity associated with defined benefit plans and evolving employee preferences. As a result, McDermott has taken steps to shift away from traditional defined benefit plans and toward a defined contribution approach. In 2006, McDermott closed the McDermott Commercial Operations and Government Operations Retirement Plans to new salaried participants and froze benefit accruals for existing salaried participants with less than five years of credited service as of March 31, 2006, subject to specific annual cost-of-living increases. In lieu of future defined benefit plan accruals under those plans, McDermott further amended the Thrift Plan to provide an automatic cash contribution to the Thrift Plan accounts of affected employees and new hires in an amount between 3% and 8% of the employee's base pay, plus overtime pay, expatriate pay and commissions, based on their length of service. Messrs. Mowry and Taff were affected by these changes. Neither Mr. Mowry nor Mr. Taff participate in a Retirement Plan or an Excess Plan because neither executive met the eligibility requirements at the time that the plan applicable to the executive was closed to new participants. In 2007, McDermott offered salaried participants in the McDermott Commercial Operations and Government Operations Retirement Plans with between five and 10 years of credited service as of January 1, 2007 the one-time irrevocable choice between (1) continuing to accrue future benefits under the Retirement Plan

or (2) freezing their Retirement Plan accrued benefit as of March 31, 2007, subject to annual cost-of-living increases, and receiving an automatic service-based cash contribution to their Thrift Plan account instead. No Named Executives were affected by the changes in 2007.

Supplemental Plans. In 2005, as part of McDermott's determination to move away from defined benefit plans, McDermott's management recommended that McDermott's Board of Directors and McDermott's Compensation Committee terminate its then-existing nonqualified, defined benefit supplemental executive retirement plan. In its place, McDermott's Board of Directors and Compensation Committee established a new supplemental executive retirement plan, which we refer to as the "SERP," to help maintain the competitiveness of its post-employment compensation as compared to the market. The SERP is an unfunded, nonqualified defined contribution plan that provides participants with benefits based on the participant's notional account balance at the time of retirement or termination. Employees must generally be an officer of McDermott or one of its subsidiaries for two to three years before being eligible to participate in the SERP. As a result, Messrs. Bethards, Taff and Nash are participants in the SERP, but Messrs. Killion and Mowry are not.

Annually, McDermott credits a participant's notional account with an amount equal to 5% of the participant's prior-year base salary and annual bonus paid in the prior year. McDermott's Compensation Committee has designated deemed mutual fund investments to serve as indices for the purpose of determining notional investment gains and losses to each participant's account. Each participant allocates the annual notional contribution among the various deemed investments. SERP benefits are based on the participant's vested notional account balance at the time of retirement or termination. In order to take advantage of grandfathering provisions in Internal Revenue Code Section 457A, in 2009, the Compensation Committee amended the SERP to vest each participant's account as of December 31, 2008. Of the Named Executives with a SERP account balance as of the end of 2008, only Mr. Taff's account was not fully vested. At the time of the amendment, Mr. Taff was 80% vested in his SERP balance. See the Nonqualified Deferred Compensation table under "Compensation of Executive Officers" below for more information regarding the SERP and McDermott's contributions to our Named Executives' SERP accounts. In connection with the spin-off, we expect our Board or Directors will adopt a nonqualified supplemental executive retirement plan substantially similar to McDermott's SERP.

Employment and Severance Arrangements

Employment and Separation Agreements. Except for change-in-control agreements and retention agreements, we do not currently have any employment or severance agreements with any of our Named Executives.

Change-in-Control Agreements. McDermott believed that providing change-in-control agreements to key executives protects shareholders' interests by helping to assure management continuity and focus through and beyond a change in control. Accordingly, McDermott's Compensation Committee has offered change-in-control agreements to its senior management since 2005. Two of our Named Executives, Messrs. Bethards and Taff, have change-in-control agreements with McDermott. These agreements generally provide a cash severance payment of two times the sum of the Named Executive's annual base salary and target EICP, a cash payment equal to two years of medical benefits and an additional tax gross-up in the event of any excise tax liability. Additionally, McDermott's change-in-control agreements contain what is commonly referred to as a "double trigger," that is, they provide benefits only upon an involuntary termination or constructive termination of the executive officer within one year following a change in control. See the "Potential Payments Upon Termination or Change in Control" tables under "Compensation of Executive Officers" below and the accompanying disclosures for more information regarding the change-in-control agreements with our Named Executives, as well as other plans and arrangements that have different trigger mechanisms that relate to a change in control.

In connection with the spin-off, the change-in-control agreements between McDermott and Messrs. Bethards and Taff will terminate immediately following the distribution date.

Retention Agreements. In connection with McDermott's announcement to spin off B&W as an independent, publicly traded company, McDermott entered into retention agreements with 17 key members of its management, including Messrs. Bethards and Taff, to retain key employees and executives through the completion of the separation of B&W from McDermott.

Generally, the retention agreements provide either a retention or severance payment to the Named Executives in connection with the spin-off. The retention agreements generally provide a retention payment in the form of a restricted stock grant made near the time of the spin-off, that would vest one year following the separation, equal to 100% of the sum of the Named Executive's annual base salary plus target annual incentive compensation. That amount represented one-half of the severance payment that otherwise would be provided under each Named Executive's retention agreement in the event of a qualifying termination. With respect to Mr. Taff, one-third of his retention payment will be payable in cash on the effective date of the separation, in recognition of his agreement to serve as the Chief Financial Officer of B&W following the spin-off.

Although the spin-off would not constitute a change in control for purposes of the Change-in-Control Agreements discussed above or other McDermott compensation plans, McDermott's Compensation Committee determined that the need to maintain continuity of management and personnel that exists under a change in control scenario equally exists in connection with the planned spin-off of B&W. As a result, the retention agreements provide for severance payments that would generally be the same as the severance payments that would be made in connection with a qualifying termination on or following a change in control (other than tax gross-ups). Accordingly, the retention agreements provide for a cash severance payment of two times the sum of the Named Executive's annual base salary and target EICP, prorated target annual incentive compensation and a cash payment equal to two years of medical benefits as well as the full vesting of outstanding long-term incentive grants and SERP balance. The only payment provided for under the retention agreement not otherwise payable in a change in control is the potential early vesting of the Named Executive's Thrift Plan account. Under the terms of the Thrift Plan, unvested balances would become vested in the event a participant is involuntarily terminated in connection with a reduction in force. Because involuntary terminations for reasons other than cause in connection with the proposed separation generally would be considered to be associated with a reduction in force, McDermott's Compensation Committee determined to add the vesting of Thrift Plan accounts to the severance benefits to avoid any ambiguity on that point. The Thrift Plan normally vests after three years of service. All of our Named Executives who are party to a retention agreement are fully vested in their Thrift Plan accounts.

We will assume McDermott's obligations under the retention agreements with our Named Executives as of the distribution date, and those retention agreements will terminate one year following the spin-off, among other reasons.

See the "Potential Payments Upon Termination or Change in Control" tables under "Compensation of Executive Officers—Retention Agreements" below and the accompanying disclosures for more information regarding the retention agreements with our Named Executives.

Compensation of Executive Officers

The following table summarizes the prior three years' compensation of our Chief Executive Officer, our Chief Financial Officer and our three highest paid executive officers who did not serve as our CEO and CFO during 2009. We refer to these persons as our Named Executives. All of the information included in these tables reflects compensation earned by the individuals for service with McDermott. All references in the following tables to stock relate to awards of stock granted by McDermott. Such amounts do not necessarily reflect the compensation such persons will receive following the spin-off, which could be higher or lower, because historical compensation was determined by McDermott and future compensation levels will be determined based on the compensation policies, programs and procedures to be established by our compensation committee.

Summary Compensation Table

Name and Principal Position	Year	Salary	Bonus[1]	Stock Awards[2]	Option Awards[3]	Non-Equity Incentive Plan Compensation[4]	Change in Pension Value and Nonqualified Deferred Compensation Earnings[5]	All Other Compensation[6]	Total
B.C. Bethards	2009	$ 526,200	$ 0	$ 840,544	$ 473,450	$ 663,012	$ 305,160	$ 65,693	$ 2,874,059
President & Chief Executive Officer	2008	$ 438,675	$ 10,000	$ 1,207,512	$ 0	$ 509,298	$ 158,014	$ 54,831	$ 2,378,330
	2007	$ 390,000	$ 0	$ 999,148	$ 0	$ 460,278	$ 186,071	$ 43,249	$ 2,078,746
M.S. Taff	2009	$ 505,000	$ 0	$ 980,544	$ 552,314	$ 707,000	N/A	$ 59,315	$ 2,804,173
Senior Vice President & Chief Financial Officer	2008	$ 440,000	$ 110,000	$ 1,671,638	$ 0	$ 141,207	N/A	$ 45,757	$ 2,408,602
	2007	$ 374,999	$ 0	$ 742,610	$ 0	$ 387,563	N/A	$ 34,211	$ 1,539,383
R.L. Killion	2009	$ 330,000	$ 0	$ 309,627	$ 174,413	$ 347,210	$ 305,071	$ 7,546	$ 1,473,867
President & Chief Operating Officer, B&W Power Generation Group	2008	$ 272,850	$ 0	$ 551,098	$ 0	$ 256,350	$ 182,469	$ 6,957	$ 1,269,724
	2007	$ 219,600	$ 0	$ 337,550	$ 0	$ 168,790	$ 151,738	$ 6,594	$ 884,272
C.M. Mowry[7]	2009	$ 355,000	$ 0	$ 198,286	$ 111,686	$ 301,129	N/A	$ 12,921	$ 979,022
President, B&W Nuclear Energy, Inc.	2008	$ 137,880	$ 0	$ 400,649	$ 0	$ 156,161	N/A	$ 4,759	$ 699,499
	2007	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
W.D. Nash	2009	$ 348,000	$ 0	$ 279,320	$ 157,324	$ 292,668	$ 76,599	$ 37,872	$ 1,191,783
President, B&W Nuclear Operations Group	2008	$ 330,800	$ 0	$ 673,920	$ 0	$ 292,808	$ 6,272	$ 33,271	$ 1,337,071
	2007	$ 315,000	$ 0	$ 465,819	$ 0	$ 276,413	$ 28,297	$ 30,546	$ 1,116,075

(1) See "Bonus" below for a discussion of the amounts included in this column.
(2) See "Stock Awards" below for a discussion of the amounts included in this column.
(3) See "Option Awards" below for a discussion of the amounts included in this column.
(4) See "Non-Equity Incentive Plan Compensation" below for a discussion of the amounts included in this column.
(5) See "Change in Pension Value and Nonqualified Deferred Compensation Earnings" below for a discussion of the amounts included in this column.
(6) See "All Other Compensation" below for a discussion of the amounts included in this column.
(7) No compensation information is provided for Mr. Mowry for 2007 because he joined our company in August 2008. The information for 2008 reflects his compensation from August 2008 through December 2008.

Bonus. The amounts reported in the "Bonus" column are attributable to discretionary bonus awards.

Stock Awards. The amounts reported in the "Stock Awards" column represent the aggregate grant date fair value of stock awards granted in the applicable year and computed in accordance with Financial Accounting Standards Board Accounting Standards Codification ("FASB ASC") Topic 718. Under FASB ASC Topic 718, the fair value of the stock awards is determined on the date of grant and is not remeasured. Grant date fair values were determined using the closing price of McDermott's common stock on the date of grant for restricted stock, restricted stock units and performance shares. The grant date fair value of performance shares included in the stock awards is based on target-

level performance, which McDermott determined was the probable outcome of performance conditions at the time of grant. Assuming the maximum performance levels were probable, the aggregate grant date fair values of the stock awards would be as follows:

Grant Date Fair Value Assuming Maximum Performance

Name	Year	Grant Date Fair Value Assuming Maximum Performance Level
B.C. Bethards	2009	$ 1,148,685
	2008	$ 1,580,801
	2007	$ 1,498,722
M.S. Taff	2009	$ 1,339,993
	2008	$ 2,326,078
	2007	$ 1,113,915
R.L. Killion	2009	$ 423,132
	2008	$ 728,002
	2007	$ 506,325
C.M. Mowry	2009	$ 270,984
	2008	$ 400,649
	2007	N/A
W.D. Nash	2009	$ 381,710
	2008	$ 937,697
	2007	$ 698,729

See the “Grants of Plan-Based Awards” table for more information regarding the stock awards McDermott granted in 2009.

Option Awards. The amounts reported in the “Option Awards” column represent the aggregate grant date fair value of all option awards granted in the applicable year computed in accordance with FASB ASC Topic 718. Under FASB ASC Topic 718, the fair value of stock options is determined on the date of grant using an option-pricing model and is not remeasured. McDermott used a Black-Scholes option-pricing model for measuring the fair value of stock options. The determination of the fair value of an award on the date of grant using an option-pricing model requires various assumptions, such as the expected life of the award and stock price volatility. For a discussion of the valuation assumptions, please see the information set forth under the heading “Stock Options” in Note 8, “Stock Plans,” to our combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement.

See the “Grants of Plan-Based Awards” table for more information regarding the option awards McDermott granted in 2009.

Non-Equity Incentive Plan Compensation. The amounts reported in the “Non-Equity Incentive Plan Compensation” column are attributable to the McDermott annual incentive awards earned in fiscal years 2007, 2008 and 2009, but paid in 2008, 2009 and 2010, respectively. See the “Grants of Plan-Based Awards” table for more information regarding the annual incentive awards earned in 2009.

Change in Pension Value and Nonqualified Deferred Compensation Earnings. The amounts reported in the “Change in Pension Value and Nonqualified Deferred Compensation Earnings” column represent the changes in actuarial present values of the accumulated benefits under McDermott’s defined benefit plans, determined by comparing the prior completed fiscal year-end amount to the covered fiscal year-end amount.

All Other Compensation. The amounts reported for 2009 in the "All Other Compensation" column are attributable to the following:

All Other Compensation

	SERP Contribution	Thrift Match	Service-Based Thrift Contribution	Tax Gross-Ups	Perquisites
B.C. Bethards	$ 44,948	$ 4,906	—	$ 1,144	$ 14,695
M.S. Taff	$ 41,378	$ 7,358	$ 7,358	$ 3,221	—
R.L. Killion	—	$ 7,311	—	$ 235	—
C.M. Mowry	—	$ 4,903	$ 7,354	$ 664	—
W.D. Nash	$ 30,361	$ 6,641	—	$ 870	—

SERP. See the "Nonqualified Deferred Compensation" table for more information regarding the McDermott SERP contributions made in 2009.

Thrift Match and Service-Based Thrift Contribution. We refer to McDermott's defined contribution plan as the Thrift Plan. For information regarding the Thrift Plan matching contributions and service-based Thrift Plan contributions, see "Compensation Discussion and Analysis—Post-Employment Compensation—Retirement Plans" above.

Tax Gross-Ups. The tax gross-ups reported for 2009 under "All Other Compensation" are attributable to the following:

- Mr. Bethards: Mr. Bethards received tax gross-ups associated with income imputed to him as a result of his spouse accompanying him on business travel and as a result of a gift received at a management meeting.
- Mr. Taff: Mr. Taff received tax gross-ups associated with income imputed to him as a result of his spouse accompanying him on business travel.
- Mr. Killion: Mr. Killion received a tax gross-up associated with income imputed to him as a result of a gift received at a management meeting.
- Mr. Mowry: Mr. Mowry received tax gross-ups associated with income imputed to him as a result of his spouse accompanying him on business travel and as a result of a gift received at a management meeting.
- Mr. Nash: Mr. Nash received tax gross-ups associated with income imputed to him as a result of his spouse accompanying him on business travel and as a result of a gift received at a management meeting and a Christmas gift basket.

Perquisites. Perquisites and other personal benefits received by a Named Executive are not included if their aggregate value does not exceed $10,000. For Mr. Bethards, the values of the perquisites and other personal benefits reported for 2009 are as follows:

- Mr. Bethards: $12,474 is attributable to the costs of providing him relocation assistance in connection with his move from Ohio to Virginia following his appointment as Chief Executive Officer of B&W. The remainder is attributable to the cost of club dues and the cost of promotional merchandise in connection with a board of directors meeting.

Grants of Plan-Based Awards

The following Grants of Plan-Based Awards table provides additional information about stock awards and equity and non-equity incentive plan awards granted by McDermott to our Named Executives during the year ended December 31, 2009.

Name	Grant Date	Committee Action Date	Estimated Possible Payouts Under Non-Equity Incentive Plan Awards[1] Threshold	Target	Maximum	Estimated Future Payouts Under Equity Incentive Plan Awards[2] Threshold (#)	Target (#)	Maximum (#)	All Other Stock Awards: Number of Shares of Stock or Units[3]	All Other Option Awards: Number of Securities Underlying Options[4]	Exercise or Base Price of Option Awards	Grant Date Fair Value of Stock and Option Awards[5]
B.C. Bethards	02/26/09	02/26/09	$ 64,460	$368,340	$ 736,680							—
	03/05/09	02/26/09				7,152	28,611	57,222	—	—	—	$ 308,140
	03/05/09	02/26/09				—	—	—	49,434	—	—	$ 532,404
	03/05/09	02/26/09				—	—	—	—	70,149	$ 10.93	$ 473,450
M.S. Taff	02/26/09	02/26/09	$ 61,863	$353,500	$ 707,000							—
	03/05/09	02/26/09				8,343	33,375	66,750	—	—	—	$ 359,449
	03/05/09	02/26/09				—	—	—	57,669	—	—	$ 621,095
	03/05/09	02/26/09				—	—	—	—	81,834	$ 10.93	$ 552,314
R.L. Killion	02/26/09	02/26/09	$ 31,763	$181,500	$ 363,000							—
	03/05/09	02/26/09				2,634	10,539	21,078	—	—	—	$ 113,505
	03/05/09	02/26/09				—	—	—	18,210	—	—	$ 196,122
	03/05/09	02/26/09				—	—	—	—	25,842	$ 10.93	$ 174,413
C.M. Mowry	02/26/09	02/26/09	$ 27,956	$159,750	$ 319,500							—
	03/05/09	02/26/09				1,687	6,750	13,500	—	—	—	$ 72,698
	03/05/09	02/26/09				—	—	—	11,661	—	—	$ 125,589
	03/05/09	02/26/09				—	—	—	—	16,548	$ 10.93	$ 111,686
W.D. Nash	02/26/09	02/26/09	$ 30,450	$174,000	$ 348,000							
	03/05/09	02/26/09				2,376	9,507	19,014	—	—	—	$ 102,390
	03/05/09	02/26/09				—	—	—	16,428	—	—	$ 176,930
	03/05/09	02/26/09				—	—	—	—	23,310	$ 10.93	$ 157,324

(1) See “Estimated Possible Payouts Under Non-Equity Incentive Plan Awards” below for a discussion of the amounts included in this column.
(2) See “Estimated Future Payouts Under Equity Incentive Plan Awards” below for a discussion of the amounts included in this column.
(3) See “All Other Stock Awards” below for a discussion of the amounts included in this column.
(4) See “All Other Option Awards” below for a discussion of the amounts included in this column.
(5) See “Grant Date Fair Value of Stock and Option Awards” below for a discussion of the amounts included in this column.

Estimated Possible Payouts Under Non-Equity Incentive Plan Awards

McDermott’s compensation committee administers the Executive Incentive Compensation Plan, an annual cash incentive program, which we refer to as the EICP. The payment amount, if any, of an EICP award is determined based on: (1) the attainment of short-term financial goals; (2) the attainment of short-term individual goals; and (3) the exercise of the McDermott compensation committee’s discretionary authority. Each year, McDermott’s compensation committee establishes financial goals. McDermott’s Chief Executive Officer established the individual goals for our Named Executives.

The financial goals contain threshold, target and maximum performance levels which, if achieved, result in payments of 25%, 100% and 200% of the financial component, respectively. If the threshold financial goal is not achieved, no amount is paid on an EICP award under the financial component. For purposes of evaluating McDermott’s performance under the financial performance component, McDermott’s compensation committee may adjust McDermott’s results prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) for unusual, nonrecurring or other items in the McDermott compensation committee’s discretion. Payment is made on an EICP award under the individual component based on the attainment of the Named Executive’s individual goals as determined and evaluated by McDermott’s Chief Executive Officer. In addition, the McDermott compensation committee may decrease an EICP award in its discretion. The maximum EICP award a Named Executive can earn is 200% of his target EICP award.

The amounts shown reflect grants of 2009 EICP awards made by McDermott. The McDermott compensation committee established target EICP awards expressed as a percentage of the Named Executive’s 2009 base salary. The amount shown in

the "target" column represents the value of the target EICP award determined by multiplying the target percentage established for each Named Executive by the Named Executive's 2009 base salary. For 2009, the target percentage of base salary for each Named Executive was as follows: 70% for Mr. Bethards, 70% for Mr. Taff, 55% for Mr. Killion, 45% for Mr. Mowry and 50% for Mr. Nash. The amount shown in the "maximum" column represents the maximum amount payable under the EICP, which is 200% of the target amount shown. The amount shown in the "threshold" column represents the amount payable under the EICP assuming the threshold level of the financial goals, but no individual goal, is attained and the McDermott compensation committee did not exercise any discretion over the EICP award. The financial goal represents 70% of the target EICP award. Attaining only the threshold level, or 25%, of the financial goal results in an EICP payment of 17.50% of the target EICP award. See "Compensation Discussion and Analysis—Annual Incentive Compensation" above for more information about the 2009 EICP awards and performance goals.

In connection with the spin-off, we expect our Board of Directors will adopt an annual incentive compensation plan substantially similar to McDermott's EICP. Assuming that is the case, for the 2010 EICP compensation of each current officer of B&W who will be an officer of B&W immediately following the spin-off, including Messrs. Bethards, Killion, Mowry and Nash, the officer's 2010 EICP compensation would be attributable to individual and financial performance. The financial performance would be based on pre-established levels of operating income related to B&W operations relevant to the officer. For the 2010 EICP compensation of each of the McDermott officers who are not current officers of B&W but who will be officers of B&W immediately following the spin-off, including Mr. Taff, the officer's 2010 EICP compensation would be divided based on the officer's service with McDermott prior to the effective date of the spin-off and the officer's service with B&W following the effective date of the spin-off. In respect of an officer's service with McDermott during 2010, the officer would earn the target amount of his or her 2010 EICP compensation for the annual base salary earned through the distribution date. In respect of the officer's service with B&W during 2010, the officer would earn additional 2010 EICP compensation based on his or her annual base salary earned following the distribution date through the end of 2010 attributable to individual and financial performance. Similar to current B&W officers, the financial performance with respect to these officers would also be based on pre-established levels of operating income related to B&W operations relevant to the officer.

Estimated Future Payouts Under Equity Incentive Plan Awards

The amounts shown reflect grants of performance shares under McDermott's 2001 D&O Plan made by McDermott. Each grant represents a right to receive one share of McDermott common stock for each vested performance share. The amount of performance shares that vest, if any, is scheduled to be determined on the third anniversary of the date of grant based (1) one-half on McDermott's cumulative operating income between January 1, 2009 and December 31, 2011, and (2) one-half on McDermott's total shareholder return relative to its custom peer group during the same period. For purposes of evaluating McDermott's cumulative operating income, McDermott's compensation committee may adjust McDermott's results prepared in accordance with GAAP for unusual, non-recurring or other items in the McDermott compensation committee's discretion. The amounts shown in the "target" column represent the number of performance shares granted, which will vest if both the target level of cumulative operating income is attained and McDermott's total shareholder return ranks in the 50th percentile relative to McDermott's custom peer group. The amounts shown in the "maximum" column represent the number of performance shares that will vest, which is 200% of the amount granted, if both the maximum level of cumulative operating income is attained and McDermott's total shareholder return ranks first or second in total shareholder return relative to McDermott's custom peer group. The amounts shown in the "threshold" column represent the number of performance shares that will vest, which is 25% of the amount granted, if both the minimum level of cumulative operating income is attained and McDermott's total shareholder return ranks in the 25th percentile relative to McDermott's custom peer group. No amount of performance shares will vest if the cumulative operating income achieved is less than the minimum performance level and McDermott's total shareholder return ranks in less than the 25th percentile relative to McDermott's custom peer group. See "The Spin-Off—Treatment of Stock-Based Awards" for a description of how the McDermott performance shares will be treated in connection with the spin-off.

All Other Stock Awards

The amounts shown reflect grants of restricted stock units made by McDermott under McDermott's 2001 D&O Plan. Each restricted stock unit represents the right to receive one share of McDermott common stock and generally is scheduled to vest in one-third increments on the first, second and third anniversaries of the date of grant. Upon vesting, the restricted stock units are converted into shares of McDermott common stock. See "The Spin-Off—Treatment of Stock-Based Awards" for a description of how the McDermott restricted stock units will be treated in connection with the spin-off.

All Other Option Awards

The amounts shown reflect grants of stock options made by McDermott under McDermott's 2001 D&O Plan. Each grant represents the right to purchase at the exercise price shares of McDermott common stock over a period of seven years. The stock options are generally scheduled to vest and become exercisable in one-third increments on the first, second and third anniversaries of the date of grant. See "The Spin-Off—Treatment of Stock-Based Awards" for a description of how the options to purchase McDermott stock will be treated in connection with the spin-off.

Grant Date Fair Value of Stock and Option Awards

The amounts included in the "Grant Date Fair Value of Stock and Option Awards" column represent the full grant date fair values of the equity awards computed in accordance with FASB ASC Topic 718. Under FASB ASC Topic 718, the fair value of equity awards is determined on the date of grant and is not remeasured. Grant date fair values are determined using the closing price of McDermott's common stock on the date of grant for restricted stock, restricted stock units and performance shares, and an option-pricing model for stock options. McDermott used a Black-Scholes option-pricing model for measuring the fair value of stock options granted. The determination of the fair value of an award on the date of grant using an option-pricing model requires various assumptions, such as the expected life of the award and stock price volatility. For more information regarding the compensation expense related to the awards, and a discussion of valuation assumptions utilized in option pricing, see the information set forth under the heading "Stock Options" in Note 8, "Stock Plans," to our combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement.

Outstanding Equity Awards at Fiscal Year-End

The following Outstanding Equity Awards at Fiscal Year-End table summarizes the equity awards McDermott has made to our Named Executives which were outstanding as of December 31, 2009.

		Option Awards[1]					Stock Awards[2]			
Name	Grant Date	Number of Securities Underlying Unexercised Options Exercisable	Number of Securities Underlying Unexercised Options Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options	Option Exercise Price	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested	Market Value of Shares or Units of Stock That Have Not Vested[3]	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested[3]
B.C. Bethards										
Stock Options	03/05/09	—	70,149	—	$10.9300	03/05/16				
Performance Shares	05/10/07						44,400	$ 1,066,044	—	—
Restricted Stock	03/03/08						2,620	$ 62,906	—	—
Performance Shares	03/03/08						—	—	3,545	$ 85,115
Restricted Stock	11/10/08						17,333	$ 416,165	—	—
RSU	03/05/09						49,434	$ 1,186,910	—	—
Performance Shares	03/05/09								57,222	$ 1,373,900
M.S. Taff										
Stock Options	06/08/05	23,000	—		$ 7.1933	06/08/15				
Stock Options	03/05/09	—	81,834	—	$10.9300	03/05/16				
DSU	06/08/05						4,500	$ 108,045		
Performance Shares	05/10/07						33,000	$ 792,330		
Restricted Stock	03/03/08						4,593	$ 110,278		
Performance Shares	03/03/08						—	—	6,215	$ 149,222
RSU	03/05/09						57,669	$ 1,384,633	—	—
Performance Shares	03/05/09								66,750	$ 1,602,668
R.L. Killion										
Stock Options	03/20/00	320	—	—	$ 3.1354	03/20/10				
Stock Options	03/05/09	—	25,842	—	$10.9300	03/05/16				
Performance Shares	05/10/07						15,000	$ 360,150		
Restricted Stock	03/03/08						1,240	$ 29,772		
Performance Shares	03/03/08						—	—	1,680	$ 40,337
Restricted Stock	11/10/08						6,780	$ 162,788	—	—
Restricted Stock	03/03/08						18,210	$ 437,222	—	—
Performance Shares	03/05/09								21,078	$ 506,083
C.M. Mowry										
Stock Options	03/05/09	—	16,548	—	$10.9300	03/05/16				
Restricted Stock	08/14/08						7,513	$ 180,387		
RSU	03/05/09						11,661	$ 279,981		
Performance Shares	03/05/09								13,500	$ 324,135
W.D. Nash										
Stock Options	03/05/09	—	23,310	—	$10.9300	03/05/16				
DSU	05/12/05						2,634	$ 63,242		
Performance Shares	05/10/07						20,700	$ 497,007		
Restricted Stock	03/03/08						1,853	$ 44,491	—	—
Performance Shares	03/03/08						—	—	2,505	$ 60,145
RSU	03/05/09						16,428	$ 394,436	—	—
Performance Shares	03/05/09								19,014	$ 456,526

(1) See “Option Awards” below for a discussion of the amounts reported in this column including the vesting dates of unexercisable option awards.
(2) See “Stock Awards” below for a discussion of the amounts reported in this column including the vesting dates of outstanding stock awards.
(3) Market values in these columns are based on the closing price of McDermott’s common stock as of December 31, 2009 ($24.01), as reported on the New York Stock Exchange.

Option Awards. Information presented in the "Option Awards" columns relates to options to purchase shares of McDermott common stock held by our Named Executives as of December 31, 2009. All unexercisable options generally vest in three equal installments on the first, second and third anniversaries of the grant date, as follows:

Grant Date	One-third of grant vests on:
03/05/09	March 5, 2010, 2011 and 2012

See "The Spin-Off—Treatment of Stock-Based Awards" for a description of how the options to purchase McDermott stock will be treated in connection with the spin-off.

Stock Awards. Information presented in the Stock Awards columns relates to awards of restricted stock, restricted stock units, deferred stock units and performance shares made by McDermott and held by our Named Executives as of December 31, 2009. The awards reported in the "Equity Incentive Plan Awards" columns consist entirely of stock awards subject to performance-based conditions as of December 31, 2009. The awards reported in the "Number of Shares or Units of Stock that have not Vested" column reflect stock awards subject to service-based vesting, including performance shares whose performance conditions have been satisfied as of December 31, 2009.

Restricted Stock Awards. Shares of restricted stock are generally scheduled to vest in one-third increments on the first, second and third anniversaries of the grant date. The vesting schedule of the restricted stock outstanding as of December 31, 2009 is as follows:

Grant Date	One-third of grant vests on:
03/03/08	March 3, 2010 and 2011
08/14/08	August 14, 2010 and 2011
11/10/08	November 10, 2010 and 2011

See "The Spin-Off—Treatment of Stock-Based Awards" for a description of how shares of McDermott restricted stock will be treated in connection with the spin-off.

Restricted Stock Units. Restricted stock units represent the right to receive one share of McDermott common stock for each vested restricted stock unit. Restricted stock units outstanding as of December 31, 2009 are generally scheduled to vest in one-third increments on the first, second and third anniversaries of the grant date, as follows:

Grant Date	One-third of grant vests on:
03/05/09	March 5, 2010, 2011 and 2012

See "The Spin-Off—Treatment of Stock-Based Awards" for a description of how the McDermott restricted stock units will be treated in connection with the spin-off.

Deferred Stock Units. Deferred stock units are settled in cash in an amount equal to the number of vested units multiplied by the average of the highest and lowest price of McDermott's common stock on the date of vesting. Deferred stock units are generally scheduled to vest in five equal installments on each anniversary of the date of grant. The vesting schedule of the deferred stock units outstanding as of December 31, 2009 is as follows:

Grant Date	One-fifth of grant vests on:
05/12/05	May 12, 2010
06/08/05	June 8, 2010
08/09/05	August 9, 2010

See “The Spin-Off—Treatment of Stock-Based Awards” for a description of how McDermott deferred stock units will be treated in connection with the spin-off.

Performance Shares. Performance shares represent the right to receive one share of McDermott common stock for each performance share that vests. The number of performance shares that vest depends on the attainment of specified performance goals. The number and value of performance shares reported is based on achieving threshold performance levels, unless the previous year’s performance level exceeds threshold, in which case the number and value of performance shares reported is based on attaining the next higher performance level. The number and value of the 2007 performance shares reported are based on attaining the maximum performance level, or 150% of the performance shares granted. The number and value of the 2008 performance shares reported are based on attaining the threshold performance level, or 25% of the performance shares granted. The number and value of the 2009 performance shares reported are based on attaining the maximum performance level, or 200% of the performance shares granted. See the “Grants of Plan-Based Awards” table for more information about performance shares. Performance shares are generally scheduled to vest on the third anniversary of the date of grant, as follows:

Grant Date	Vests per attainment of performance levels on:
05/10/07	May 10, 2010
03/03/08	March 3, 2011
03/05/09	March 5, 2012

See “The Spin-Off—Treatment of Stock-Based Awards” for a description of how the McDermott performance shares will be treated in connection with the spin-off.

Option Exercises and Stock Vested

The following Option Exercises and Stock Vested table provides additional information about the value realized by our Named Executives on exercises of McDermott option awards and vesting of McDermott stock awards during the year ended December 31, 2009.

	Option Awards		Stock Awards	
Name	Shares Acquired on Exercise (#)	Value Realized on Exercise	Shares Acquired on Vesting (#)	Value Realized on Vesting
B.C. Bethards	0	N/A	32,477	$631,050.07
M.S. Taff	0	N/A	31,547	$567,563.97
R.L. Killion	1,000	$ 19,774.70	8,105	$162,762.85
C.M. Mowry	0	N/A	3,757	$ 88,327.07
W.D. Nash	0	N/A	41,061	$825,452.24

Option Awards. Each stock option exercise reported in the Option Exercises and Stock Vested table was effected as a simultaneous exercise and sale. The value realized on exercise was calculated based on the difference between the exercise prices of the stock options and the prices at which the shares were sold.

Stock Awards. For each Named Executive, the number of shares acquired on vesting reported in the Option Exercises and Stock Vested table represents the aggregate number of shares that vested during 2009 in connection with awards of McDermott performance shares, restricted stock, restricted stock units and/or deferred stock units. The awards of deferred stock units reflected in this table are payable entirely in cash. As a result, no shares of McDermott stock were actually acquired upon the vesting of these deferred stock units. See the "Outstanding Equity Awards at Fiscal Year End" table for more information on the settlement of deferred stock unit awards. The following table sets forth the amount of McDermott shares attributable to McDermott performance shares, restricted stock, restricted stock units and deferred stock units, for each Named Executive:

	Performance Shares		Restricted Stock		Deferred Stock Units	
Name	Number of Shares Acquired on Vesting	Value Realized on Vesting	Number of Shares Acquired on Vesting	Value Realized on Vesting	Number of Shares Acquired on Vesting	Value Realized on Vesting
B.C. Bethards	22,500	$ 407,025	9,977	$ 224,025	0	N/A
M.S. Taff	24,750	$ 447,728	2,297	$ 22,614	4,500	$ 97,223
R.L. Killion	4,095	$ 74,079	4,010	$ 88,684	0	N/A
C.M. Mowry	0	N/A	3,757	$ 88,327	0	N/A
W.D. Nash	37,500	$ 765,938	927	$ 9,126	2,634	$ 50,388

The number of McDermott shares acquired in connection with the vesting of McDermott performance shares, restricted stock awards and restricted stock units includes 11,160, 7,298, 2,630, 1,219 and 12,938 shares withheld by McDermott at the election of Messrs. Bethards, Taff, Killion, Mowry and Nash, respectively, to satisfy the minimum statutory withholding tax due upon vesting.

Pension Benefits

The following Pension Benefits table shows the present value of accumulated benefits payable to each of our Named Executives under McDermott's qualified and nonqualified pension plans.

Name	Plan Name	Number of Years Credited Service	Present Value of Accumulated Benefit	Payments During 2009
B.C. Bethards	B&W Governmental Operations Qualified Retirement Plan	36.000	$ 1,148,331	$ 0
	B&W Governmental Operations Excess Plan	36.000	$ 1,307,901	$ 0
M.S. Taff	N/A	N/A	N/A	N/A
	N/A	N/A	N/A	N/A
R.L. Killion	B&W Commercial Operations Qualified Retirement Plan	39.583	$ 1,278,742	$ 0
	B&W Commercial Operations Excess Plan	39.583	$ 318,609	$ 0
C.M. Mowry	N/A	N/A	N/A	N/A
	N/A	N/A	N/A	N/A
W.D. Nash	B&W Governmental Operations Qualified Retirement Plan	40.333	$ 1,195,345	$ 0
	B&W Governmental Operations Excess Plan	40.333	$ 941,030	$ 0

Overview of Qualified Plans. McDermott maintains retirement plans that are funded by trusts and cover certain eligible regular full-time employees of McDermott and its subsidiaries, described below in the section entitled "Participation and Eligibility," except certain nonresident alien employees who are not citizens of a European Community country or who do not earn income in the United States, Canada or the United Kingdom.

- Mr. Bethards and Mr. Nash participate in the Retirement Plan for Employees of Babcock & Wilcox Government Operations (the "B&W Government Operations Qualified Retirement Plan") for the benefit of the eligible employees of The Babcock & Wilcox Company and our Governmental Operations segment;
- Mr. Killion participates in the Retirement Plan for Employees of Babcock & Wilcox Commercial Operations (the "B&W Commercial Operations Qualified Retirement Plan") for the benefit of eligible employees of Babcock & Wilcox Power Generation Group, Babcock & Wilcox Nuclear Generation Group and our Power Generation Systems segment; and
- Due to their respective employment dates, Messrs. Taff and Mowry do not participate in our defined benefit plans. For more information on our retirement plans, see "Compensation Discussion and Analysis—Post-Employment Compensation—Retirement Plans."

We sponsor the Commercial Operations Retirement Plan through B&W PGG. McDermott sponsors the Government Operations and McDermott Retirement Plans through MI. In connection with the spin-off, we will assume the Government Operations Retirement Plan and certain assets and liabilities of the McDermott Retirement Plan.

Participation and Eligibility. Generally, employees over the age of 21 years, who were hired before April 1, 2005, are eligible to participate in the B&W Governmental Operations Qualified Retirement Plan or the B&W Commercial Operations Qualified Retirement Plan.

- For participants with less than five years of service as of March 31, 2006—Benefit accruals were frozen as of that date. Affected employees now receive annual service-based company cash contributions to their Thrift Plan account.
- For participants with more than five but less than ten years of service as of January 1, 2007—If a participant made an election to do so, benefit accruals were frozen as of March 31, 2007, with the electing participants now receiving annual service-based company cash contributions to their Thrift Plan accounts.

- Frozen accrued benefits of affected employees under these plans will increase annually in line with increases in the Consumer Price Index, up to a maximum of 8% and a minimum of 1%, for each year the employee remains employed. For further discussion on the service-based company cash contributions under the Thrift Plan, see "Compensation Discussion and Analysis—Post-Employment Compensation—Retirement Plans."

Benefits. Benefits under these plans are calculated under one of two formulas:

(1) For participating employees originally hired by McDermott's Power Generation Systems or Government Operations segment ("Tenured Employees") before April 1, 1998—benefits are based on years of credited service and final average cash compensation (including bonuses and commissions); and

(2) For participating employees hired before April 1, 1998 who are not Tenured Employees, and for participating employees hired on or after April 1, 1998—benefits are based on years of credited service, final average cash compensation (excluding bonuses and commissions) and anticipated social security benefits. Final average cash compensation is based on each employee's average annual earnings during the 60 successive months out of the 120 successive months before retirement in which such earnings were highest.

The present value of accumulated benefits reflected in the "Pension Benefits" table above is based on a 6.00% discount rate and the 1994 Group Annuity Mortality Table projected to 2005.

Retirement and Early Retirement. Under each of these plans, normal retirement is age 65. The normal form of payment is a single-life annuity or a 50% joint and survivor annuity, depending on the employee's marital status when payments are scheduled to begin. Early retirement eligibility and benefits under these plans depend on the employee's date of hire. Messrs. Bethards, Killion and Nash are each currently eligible for early retirement.

For Tenured Employees hired before April 1, 1998 (which includes Messrs. Bethards, Killion and Nash):

- an employee is eligible for early retirement if the employee has completed at least 15 years of credited service and attained the age of 50; and
- early retirement benefits are based on the same formula as normal retirement, but the pension benefit is unreduced if the sum of the employee's age and years of service equals 75 or greater at the date benefits commence; otherwise the pension benefit is reduced 4% for each "point" less than 75.

For employees hired on or after April 1, 1998:

- an employee is eligible for early retirement after completing at least 15 years of credited service and attaining the age of 55; and
- early retirement benefits are based on the same formula as normal retirement, but the pension benefit is generally reduced 0.4% for each month that benefits commence before age 62.

Overview of Nonqualified Plans. To the extent benefits payable under these qualified plans are limited by Section 415(b) or 401(a)(17) of the Internal Revenue Code, pension benefits will be paid directly by McDermott's applicable subsidiaries under the terms of unfunded excess benefit plans (the "Excess Plans") maintained by them. Effective January 1, 2006, the Excess Plans were amended to limit the annual bonus payments taken into account in calculating the Tenured Employees' Excess Plan benefits to the lesser of the actual bonus paid or 25% of the prior year's base salary.

- Messrs. Bethards and Nash participate in the Restoration of Retirement Income Plan for Certain Participants in the Retirement Plan for Employees of Babcock & Wilcox Governmental Operations; and

- Mr. Killion participates in the Restoration of Retirement Income Plan for Certain Participants in the Retirement Plan for Employees of Babcock & Wilcox Commercial Operations.

We sponsor the Commercial Operations Excess Plan through B&W PGG and the Government Operations Excess Plan through our subsidiary, Babcock & Wilcox Investment Company. McDermott sponsors the McDermott Excess Plan through MI. In connection with the spin-off, we will assume certain liabilities of the McDermott Excess Plan.

Nonqualified Deferred Compensation

The following Nonqualified Deferred Compensation table summarizes our Named Executives' compensation under McDermott's nonqualified supplemental retirement plan. The compensation shown in this table is entirely attributable to the McDermott International, Inc. New Supplemental Employee Retirement Plan, or SERP, established January 1, 2005.

Name	Executive Contributions in 2009	Registrant Contributions in 2009	Aggregate Earnings in 2009	Aggregate Withdrawals/ Distributions	Aggregate Balance at 12/31/09
B.C. Bethards	$ 0	$ 44,948.00	$ 51,718.71	$ 0	$ 446,531.52
M.S. Taff	$ 0	$ 41,378.00	$ 34,000.95	$ 0	$ 139,978.13
R.L. Killion(1)	N/A	N/A	N/A	N/A	N/A
C.M. Mowry(1)	N/A	N/A	N/A	N/A	N/A
W.D. Nash	$ 0	$ 30,361.00	$ 89,855.65	$ 0	$ 291,636.80

(1) No information is provided for Messrs. Killion or Mowry because neither is a participant in the SERP.

McDermott's SERP is an unfunded, defined contribution retirement plan for officers of McDermott and its operating segments selected to participate by McDermott's compensation committee. Benefits under the SERP are based on the participating officer's vested percentage in his notional account balance at the time of retirement or termination. An officer generally vests in his SERP account 20% each year, subject to accelerated vesting for death, disability and termination without cause or termination within 24 months following a change in control.

In connection with the spin-off, we expect our Board of Directors will adopt a nonqualified supplemental executive retirement plan substantially similar to McDermott's SERP.

Executive Contributions in 2009. Employee contributions are not permitted under McDermott's SERP.

Employer Contributions in 2009. McDermott makes annual contributions to participating employees' notional accounts equal to a percentage of the employee's prior-year compensation. Under the terms of the SERP, the contribution percentage does not need to be the same for each participant. Additionally, McDermott's compensation committee may make a discretionary contribution to a participant's account at any time.

For 2009, McDermott's contributions equaled 5% of the Named Executives' base salaries and annual incentive compensation awards paid in 2008. No discretionary contributions were made in 2009. All of McDermott's 2009 contributions are included in the Summary Compensation Table above as "All Other Compensation."

Aggregate Earnings in 2009. The amount reported in this table as earnings represents hypothetical accrued gains during 2009 on each Named Executive's account. The accounts are "participant-directed" in that each participating officer personally directs the investment of contributions made on his behalf. As a result, any accrued gains or losses are attributable to the performance of the Named Executive's notional mutual fund investments.

No amount of the earnings shown is reported as compensation in the Summary Compensation Table.

Aggregate Balance at 12/31/09. The balance of a participating officer's account consists of contributions made by McDermott and hypothetical accrued gains or losses. The balances shown represent the accumulated account values (including gains and losses) for each Named Executive as of December 31, 2009.

The balances shown include contributions from previous years which have been reported as compensation to the Named Executives in the Summary Compensation Table for those years—to the extent a Named Executive was included in the Summary Compensation Table during those years. The amounts and years reported are as follows:

Named Executive	Year	Amount Reported
B.C. Bethards	2008	$ 31,042.00
	2007	N/A
M.S. Taff	2008	$ 31,125.00
	2007	$ 20,705.85

In May 2009, McDermott's compensation committee amended the SERP to vest SERP balances unvested on December 31, 2008 (including future gains and losses thereon). Amounts allocated on or after January 1, 2009 vest pursuant to the participant's vested percentage based upon years of service. Accordingly, as of January 1, 2010, each Named Executive who participates in the SERP is 100% vested in his SERP balance shown, except Mr. Taff. Mr. Taff, who did not begin participating in McDermott's SERP until 2006, is 92.19% vested in his SERP balance shown (100% vested in amounts allocated to his SERP account as of December 31, 2008 and 80% vested in amounts allocated to his SERP account during 2009).

Potential Payments Upon Termination or Change in Control

The following tables show potential payments to our Named Executives under existing contracts, agreements, plans or arrangements, whether written or unwritten, for various scenarios under which a payment would be due (assuming each is applicable) involving a change in control or termination of employment of each of our Named Executives, assuming a December 31, 2009 termination date and, where applicable, using the closing price of McDermott's common stock of $24.01 (as reported on the New York Stock Exchange) as of December 31, 2009. These tables do not reflect amounts that would be payable to the Named Executives pursuant to benefits or awards that are already vested.

The amounts reported in the below tables for McDermott stock options, restricted stock, restricted stock units, deferred stock units and performance shares represent the value of unvested and accelerated shares or units, as applicable, calculated by:

- for stock options: multiplying the number of accelerated options by the difference between the exercise price and $24.01 (the closing price of McDermott's common stock on December 31, 2009, as reported on the New York Stock Exchange);
- for restricted stock, restricted stock units and performance shares: multiplying the number of accelerated shares or units by $24.01 (the closing price of McDermott's common stock on December 31, 2009, as reported on the New York Stock Exchange); and
- for deferred stock units (which represent a right to receive a cash payment equal to the product of the number of vested units and the average of the highest and lowest sales price of McDermott's common stock on the vesting date): multiplying the number of accelerated units by $24.17 (the average of the highest and lowest price of McDermott's common stock on December 31, 2009, as reported on the New York Stock Exchange).

Estimated Value of Benefits to Be Received Upon Involuntary Termination Without Cause

The following table shows the estimated value of payments and other benefits due the Named Executives assuming their involuntary termination without cause as of December 31, 2009.

	B.C. Bethards	M.S. Taff	R.L. Killion	C.M. Mowry	W.D. Nash
Severance Payments	$ 1,789,080.00	$ 1,717,000.00	$ 88,846.15	$ 10,240.38	$ 93,692.31
EICP	$ 368,340.00	$ 353,500.00	—	—	—
Supplemental Executive Retirement Plan (SERP)	—	$ 10,934.53	N/A	N/A	—
Benefits	$ 21,738.24	$ 35,837.50	—	—	—
Thrift Plan	—	—	—	—	—
Stock Options (unvested and accelerated)	$ 917,548.92	$ 1,070,388.72	—	—	—
Restricted Stock (unvested and accelerated)	$ 479,071.53	$ 110,277.93	—	—	—
Restricted Stock Units (unvested and accelerated)	$ 1,186,910.34	$ 1,384,632.69	—	—	—
Deferred Stock Units (unvested and accelerated)	—	—	—	—	—
Performance Shares (unvested and accelerated)	$ 1,027,411.91	$ 1,398,222.35	—	—	—
Tax Gross-Up	—	—	—	—	—
Total	$ 5,790,100.94	$ 6,080,793.72	$ 88,846.15	$ 10,240.38	$ 93,692.31

Severance Payment. With the exception of Messrs. Bethards and Taff, the amounts reported represent payments under the Severance Plan for Employees of McDermott Incorporated and Participating Subsidiary and Affiliated Companies assuming the Named Executives' involuntary termination without cause. Through this severance plan, full-time employees of McDermott and participating subsidiaries are entitled to receive a severance benefit in the event their employment is terminated because of the elimination of a previously required position or previously required service, or due to the consolidation of departments, abandonment of plants or offices, or technological change or declining business activities, where such termination is intended to be permanent. The amount of severance benefit is determined based on the length of service and the employee's base salary. In general, an eligible employee is entitled to a severance benefit of one half week of base salary for each year of service, subject to a maximum of 14 weeks of pay. For more information on the amounts paid to Messrs. Bethards and Taff, see "Retention Agreements" below.

SERP. The amount reported represents Mr. Taff's SERP balance as of December 31, 2009 that would become vested on an involuntary termination not for cause. As discussed under "Compensation Discussion & Analysis—Post-Employment Compensation—Retirement Plans—Supplemental Plans," Mr. Taff was 100% vested in amounts allocated to his account as of December 31, 2008, and was 80% vested in amounts allocated to his account during 2009. Messrs. Bethards and Nash were 100% vested in their SERP balance. Messrs. Killion and Mowry do not participate in the SERP. Under the SERP, termination for "cause" means:

- the overt and willful disobedience of orders or directives issued to a person who participates in the SERP (a "Participant") that are within the scope of his duties, or any other willful and continued failure of a Participant to perform substantially his duties with McDermott (occasioned by reason other than physical or mental illness or disability) after a written demand for substantial performance is delivered to the Participant by McDermott's compensation committee or the Chief Executive Officer of McDermott which specifically identifies the manner in which McDermott's compensation committee or the Chief Executive Officer of McDermott believes that the Participant has not substantially performed his or her duties, after which the Participant will have 30 days to defend or remedy such failure to substantially perform his or her duties;
- the willful engaging by the Participant in illegal conduct or gross misconduct which is materially and demonstrably injurious to McDermott; or
- the conviction of the Participant with no further possibility of appeal, or plea of *nolo contendere* by the Participant to, any felony or crime of falsehood.

For more information on the amount reported for Mr. Taff, see "Retention Agreements" below.

Retention Agreements

The amounts reported for Messrs. Bethards and Taff assume the Named Executive was terminated on December 31, 2009 in connection with our separation from McDermott. In contemplation of the spin-off, on December 10, 2009, McDermott entered into retention agreements with certain key members of our management, including Messrs. Bethards and Taff (the "Retention Agreements"). The Retention Agreements provide either a retention or severance payment to these employees in connection with the disposition of all or substantially all of the stock or assets of B&W or J. Ray McDermott, S.A. (whether by a spin-off, sale or otherwise), which are referred to as a "restructuring transaction" in the Retention Agreements. In the event the applicable employee is terminated prior to the first anniversary of the effective date of the restructuring transaction, either (1) by the employer company for any reason other than cause or disability or (2) by the employee for good reason, the employer company is required to pay the Named Executive a cash severance payment, an EICP payment, 200% of the annual cost of coverage for medical, dental and vision benefits, and an amount equal to the unvested portion of the Named Executive's Thrift Plan account. The Named Executive will also receive accelerated vesting with respect to his outstanding equity awards.

Under the Retention Agreements, "cause" is defined as:

- the willful and continued failure of the employee to perform substantially the employee's duties (occasioned by reason other than physical or mental illness or disability of the employee) after a written demand for substantial performance is delivered to the employee by the compensation committee of the employer or the Chief Executive Officer of the employer which specifically identifies the manner in which the compensation committee or the Chief Executive Officer believes that employee has not substantially performed his or her duties, after which the employee will have 30 days to defend or remedy such failure to substantially perform his or her duties;
- the willful engaging by employee in illegal conduct or gross misconduct which is materially and demonstrably injurious to the employer; or
- the conviction of the employee with no further possibility of appeal, or plea of *nolo contendere* by the employee to, any felony or crime of falsehood.

Severance Payment. The severance payment that may be made to each Named Executive in connection with his termination of employment following a restructuring transaction is a cash payment equal to 200% of the sum of his annual base salary prior to termination and his EICP target award applicable to the year in which the termination occurs. Severance payments under a restructuring transaction are in lieu of any payment under any severance policy generally applicable to the salaried employees of McDermott. For a hypothetical termination as of December 31, 2009, the severance payment would have been calculated based on the following base salary and target EICP awards:

- Mr. Bethards: $526,200 base salary and $368,340 target EICP (70% of his base salary); and
- Mr. Taff: $505,000 base salary and $353,500 target EICP (70% of his base salary).

EICP Payment. The EICP is an annual cash-based performance incentive plan under which payments are made in the year following the year in which performance is measured. For example, 2009 EICP awards are paid in 2010 for performance achieved in 2009. As a result, depending on the timing of the termination relative to the payment of an EICP award, a Named Executive could receive up to two EICP payments in connection with termination resulting from a restructuring transaction, as follows:

- If an EICP award for the year prior to termination is paid to other EICP participants after the date of the Named Executive's termination, the Named Executive would be entitled to a cash payment equal to the product of the Named Executive's EICP target percentage and the Named Executive's annual base salary for the applicable period. No such payment would have been due a named Executive on a December 31, 2009 termination, because the 2008 EICP awards had already been paid prior to the Named Executive's termination date.
- The Named Executive would be entitled to a prorated EICP payment based upon the Named Executive's target award for the year in which the termination occurs and the number of days in which the executive was employed with McDermott during that year. Based on a hypothetical December 31, 2009 termination, each Named Executive would have been entitled to an EICP payment equal to 100% of his 2009 target EICP. Mr. Bethards' 2009 target EICP was $368,340 and Mr. Taff's 2009 target EICP was $353,500.

SERP. The Retention Agreements provide for full vesting in a Named Executive's SERP account balance upon termination under a restructuring transaction. The amount reported represents Mr. Taff's SERP balance as of December 31, 2009 that would become vested upon his termination under a restructuring transaction. Mr. Bethards was 100% vested in his SERP balance as of December 31, 2009.

Benefits. The amounts reported represent two times the full annual cost of coverage for medical, dental and vision benefits provided to the Named Executive and the Named Executive's covered dependents for the year ended December 31, 2009.

Equity Awards. The amounts reported for McDermott stock options, restricted stock, restricted stock units and performance shares represent the value of unvested and accelerated stock options, shares or units, as applicable, for the 2008 and 2009 grants of such awards. The amounts reported for the 2008 and 2009 performance share grants represent the value of such grants calculated as to the initial grant of the shares.

Estimated Value of Benefits to Be Received Upon Normal Retirement

The following table shows the estimated value of payments and other benefits due the Named Executives assuming their retirement as of December 31, 2009. This table does not reflect amounts that would be payable to the Named Executives pursuant to benefits or awards that are already vested (for example, pension benefits). See the "Pension Benefits" table above for more information on pension benefits.

	B.C. Bethards	M.S. Taff	R.L. Killion	C.M. Mowry	W.D. Nash
Severance Payments	—	—	—	—	—
EICP	—	—	—	—	—
Supplemental Executive Retirement Plan (SERP)	—	—	N/A	N/A	—
Stock Options (unvested and accelerated)	—	—	—	—	—
Restricted Stock (unvested and accelerated)	$119,767.88	—	$ 48,140.05	—	$ 11,122.63
Restricted Stock Units (unvested and accelerated)	—	—	—	—	—
Deferred Stock Units (unvested and accelerated)	—	—	—	—	$ 63,663.78
Performance Shares (unvested and accelerated)	$467,700.39	—	$173,294.58	—	$245,060.47
Tax Gross-Up	—	—	—	—	—
Total	$587,468.27	$ 0.00	$221,434.63	$ 0.00	$319,846.88

SERP. Under the terms of the SERP, participants are eligible for retirement upon attaining age 65. Mr. Nash is eligible for retirement under the terms of the SERP, but was 100% vested as of December 31, 2009.

Equity Awards. Generally, the terms of McDermott stock and option award grants define retirement as a voluntary termination of employment after attaining age 60 and completing 10 years of service with McDermott. Under this definition, the Named Executives eligible for retirement as of a December 31, 2009 were Messrs. Bethards, Killion and Nash. The outstanding grants of restricted stock and restricted stock units and the unvested grants of stock options provide for accelerated vesting of a percentage of the Named Executive's outstanding shares and units if his retirement date is on or after the first anniversary of the grant date, and a greater percentage of accelerated vesting if his retirement date is on or after the second anniversary of the grant date. The outstanding grants of deferred stock units vest 100% upon termination due to normal retirement under a funded or unfunded retirement plan of McDermott or any subsidiary. Mr. Nash is eligible for accelerated vesting of deferred stock units.

Estimated Value of Benefits to Be Received Upon Termination Due to Death or Disability

The following table shows the value of payments and other benefits due the Named Executives assuming their death or disability as of December 31, 2009.

	B.C. Bethards	M.S. Taff	R.L. Killion	C.M. Mowry	W.D. Nash
Severance Payments	—	—	—	—	—
EICP	—	—	—	—	—
Supplemental Executive Retirement Plan (SERP)	—	$ 10,934.53	N/A	N/A	—
Stock Options (unvested and accelerated)	$ 917,548.92	$ 1,070,388.72	$ 338,013.36	$ 216,447.84	$ 304,894.80
Restricted Stock (unvested and accelerated)	$ 479,071.53	$ 110,277.93	$ 192,560.20	$ 180,387.13	$ 44,490.53
Restricted Stock Units (unvested and accelerated)	$ 1,186,910.34	$ 1,384,632.69	$ 437,222.10	$ 279,980.61	$ 394,436.28
Deferred Stock Units (unvested and accelerated)	—	$ 108,765.00	—	—	$ 63,663.78
Performance Shares (unvested and accelerated)	$ 1,738,107.91	$ 1,926,442.35	$ 654,488.59	$ 162,067.50	$ 800,181.27
Tax Gross-Up	—	—	—	—	—
Total	$ 4,321,638.70	$ 4,611,441.22	$ 1,622,284.25	$ 838,883.08	$ 1,607,666.66

SERP. The amount reported represents Mr. Taff's SERP balance as of December 31, 2009 that would become vested on death or disability. Mr. Bethards and Mr. Nash were 100% vested in their SERP balance as of December 31, 2009. Messrs. Killion and Mowry do not participate in the SERP.

Equity Awards. Under the terms of the McDermott awards outstanding for each Named Executive as of December 31, 2009, all unvested stock awards become vested and all unvested option awards become vested and exercisable on death or disability.

Estimated Value of Benefits to Be Received Upon Change in Control

The following table shows the estimated value of payments and other benefits due the Named Executives assuming a change in control and termination as of December 31, 2009.

	B.C. Bethards	M.S. Taff	R.L. Killion	C.M. Mowry	W.D. Nash
Severance Payments	$ 1,789,080.00	$ 1,717,000.00	—	—	—
EICP	$ 368,340.00	$ 353,500.00	—	—	—
Supplemental Executive Retirement Plan (SERP)	—	$ 10,934.53	N/A	N/A	—
Benefits	$ 21,738.24	$ 35,837.50	—	—	—
Stock Options (unvested and accelerated)	$ 917,548.92	$ 1,070,388.72	$ 338,013.36	$ 216,447.84	$ 304,894.80
Restricted Stock (unvested and accelerated)	$ 479,071.53	$ 110,277.93	$ 192,560.20	$ 180,387.13	$ 44,490.53
Restricted Stock Units (unvested and accelerated)	$ 1,186,910.34	$ 1,384,632.69	$ 437,222.10	$ 279,980.61	$ 394,436.28
Deferred Stock Units (unvested and accelerated)	—	$ 108,765.00	—	—	$ 63,663.78
Performance Shares (unvested and accelerated)	$ 2,780,406.02	$ 2,991,886.10	$ 1,027,579.98	$ 324,135.00	$ 1,194,113.34
Tax Gross-Up	$ 2,164,376.03	$ 2,002,180.42	—	—	—
Total	$ 9,707,471.08	$ 9,785,402.89	$ 1,995,375.64	$ 1,000,950.58	$ 2,001,598.73

McDermott has change-in-control agreements with various officers, including Messrs. Bethards and Taff. Generally, under these agreements, if a Named Executive is terminated within one year following a change in control either (1) by McDermott for any reason other than cause or death or disability; or (2) by the Named Executive for good reason, McDermott is required to pay the Named Executive a cash severance payment, an EICP payment and, if applicable, a tax gross-up payment. In addition to these payments, the Named Executive would be entitled to various accrued benefits earned through the date of termination, such as earned but unpaid salary, earned but unused vacation and reimbursements.

Under these agreements, a “change in control” occurs if:

- a person (other than a McDermott employee benefit plan or a corporation owned by McDermott stockholders in substantially the same proportion as their ownership of McDermott voting shares) becomes the beneficial owner of 30% or more of the combined voting power of McDermott’s then outstanding voting stock;
- during any period of two consecutive years, individuals who at the beginning of such period constitute McDermott’s Board of Directors, and any new director whose election or nomination by McDermott’s Board was approved by at least two-thirds of the directors of McDermott’s Board then still in office who either were directors at the beginning of the period or whose election or nomination was previously approved, cease to constitute a majority of McDermott’s Board;
- McDermott’s stockholders approve: (1) a merger or consolidation of McDermott with another company, other than a merger or consolidation which would result in McDermott’s voting securities outstanding immediately prior thereto continuing to represent at least 50% of the voting stock of McDermott or such surviving entity outstanding immediately after such merger or consolidation; (2) a plan of complete liquidation of McDermott; or (3) an agreement for the sale or disposition by McDermott of all or substantially all of McDermott’s assets; or
- any other set of circumstances is deemed by McDermott’s Board in its sole discretion to constitute a change in control.

Severance Payment. The severance payment made to each Named Executive in connection with a change in control is a cash payment equal to 200% of the sum of his annual base salary prior to termination and his EICP target award applicable to the year in which the termination occurs. For a hypothetical termination as of December 31, 2009, the severance payment following a change-in-control event would have been calculated the same as a termination under a restructuring transaction. For more information, see "Retention Agreements" above.

EICP Payment. The amounts reported represent the EICP payments made to the Named Executives in connection with a change in control. The amount paid is calculated the same as a termination under a restructuring transaction. For more information, see "Retention Agreements" above.

SERP. The amount reported represents Mr. Taff's SERP balance as of December 31, 2009 that would become vested in connection with a termination of employment following a change in control. Mr. Taff was 100% vested in amounts allocated to his account as of December 31, 2008 and was 80% vested in amounts allocated to his account during 2009. The amount shown would be due to Mr. Taff if he was terminated without cause within one year after a change in control. Messrs. Bethards and Nash are 100% vested in their SERP balance. Messrs. Killion and Mowry do not participate in the SERP. Under the SERP, a "change in control" occurs under the same circumstances described above with respect to McDermott's change in control agreements.

Benefits. The amounts reported represent two times the full annual cost of coverage for medical, dental and vision benefits provided to the Named Executive and the Named Executive's covered dependents for the year ended December 31, 2009.

Tax Gross-Up. If any payment is subject to the excise tax imposed by section 4999 of the Internal Revenue Code of 1986, as amended, McDermott would reimburse the affected Named Executive for all excise taxes imposed under section 4999 and any income and excise taxes that are payable as a result of such reimbursement. The calculation of the section 4999 gross-up amount in the above table is based upon a section 4999 excise tax rate of 20%, a 35% federal income tax rate, a 1.45% Medicare tax rate and a state income tax rate of 7.75% for Mr. Bethards.

Equity Awards. Under the terms of the McDermott awards outstanding, all unvested restricted stock, restricted stock units and deferred stock units would become vested on a change in control, regardless of whether there is a subsequent termination of employment. All unvested stock options would become vested and exercisable on a change in control, regardless of whether there is a subsequent termination of employment. Performance shares are subject to accelerated vesting on a change in control, regardless of whether there is a subsequent termination of employment. Under McDermott's 2001 D&O Plan, a "change in control" occurs under the same circumstances described above with respect to McDermott's change-in-control agreements.

New Compensation Plans

2010 Long-Term Incentive Plan of The Babcock & Wilcox Company

We intend to adopt the 2010 Long-Term Incentive Plan of The Babcock & Wilcox Company (the "2010 LTIP"), which is expected to be approved by McDermott as our sole shareholder before the spin-off. The following is a general description of the 2010 LTIP.

Administration. The 2010 LTIP will be administered by the Compensation Committee of our Board of Directors. The Compensation Committee will select the participants and determine the type or types of awards and the number of shares, units or options to be granted to each participant under the 2010 LTIP. All or part of an award may be subject to conditions established by the Compensation Committee, which may include continued

service with our company, achievement of specific business objectives, increases in specified indices, attainment of specified growth rates or other measures of performance. The Compensation Committee will have full and final authority to implement the 2010 LTIP and may, from time to time, adopt rules and regulations in order to carry out the terms of the 2010 LTIP. As permitted by law, the Compensation Committee may delegate its duties under the 2010 LTIP to our chief executive officer and other senior officers.

Eligibility. Members of the Board of Directors and employees of our company and its subsidiaries (including former employees of subsidiaries and their respective subsidiaries), as well as consultants, will be eligible to participate in the 2010 LTIP. The Compensation Committee will select the participants for the 2010 LTIP. Any participant may receive more than one award under the 2010 LTIP.

Shares Available for Issuance through the 2010 LTIP. 10,000,000 shares have been approved for issuance under the 2010 LTIP, including shares to be issued in connection with the spin-off.

The 2010 LTIP provides for a number of forms of stock-based compensation, as further described below. The 2010 LTIP also permits the reuse or reissuance under the 2010 LTIP of shares of common stock underlying canceled, expired, terminated or forfeited awards granted under the 2010 LTIP. The Compensation Committee shall make appropriate adjustments in the number and kind of shares that may be issued, the number and kind of shares subject to outstanding awards, the exercise or other applicable price and other value determinations applicable to outstanding awards under the 2010 LTIP to reflect any amendment to the 2010 LTIP, stock split, stock dividend, recapitalization, merger, consolidation, reorganization, combination or exchange of shares or other similar event.

Types of Awards Under the 2010 LTIP. The Compensation Committee may award to participants incentive and nonqualified stock options, restricted stock, restricted stock units, performance shares and performance units. The forms of awards are described in greater detail below.

Stock Options. The Compensation Committee will have discretion to award incentive stock options and nonqualified stock options. A stock option is a right to purchase a specified number of shares of common stock at a specified exercise price. An incentive stock option is intended to qualify as such under Section 422 of the Code. Under the 2010 LTIP, no participant may be granted options during any fiscal year that are exercisable for more than 1,200,000 shares of our common stock. The exercise price of an option may not be less than the fair market value of a share of our common stock on the date of grant. Subject to the specific terms of the 2010 LTIP, the Compensation Committee will have discretion to determine the number of shares, the exercise price, the terms and conditions of exercise and such additional limitations on and terms of option grants as it deems appropriate.

Options granted to participants under the 2010 LTIP will expire at such times as the Compensation Committee determines at the time of the grant, but no option will be exercisable later than seven years after the date of grant. Each option award agreement will set forth the extent to which the participant will have the right to exercise the option following termination of the participant's employment. The termination provisions will be determined within the discretion of the Compensation Committee, need not be uniform among all participants and may reflect distinctions based on reasons for termination of employment.

Upon the exercise of an option granted under the 2010 LTIP, the exercise price is payable in full to us (1) in cash; (2) if permitted, by tendering shares of our common stock having a fair market value at the time of exercise equal to the total option price; (3) if permitted, by a combination of (1) and (2); or (4) by any other method approved by the Compensation Committee in its sole discretion.

Restricted Stock. The Compensation Committee also is authorized to award restricted shares of common stock under the 2010 LTIP on such terms and conditions as it shall establish. Although recipients will own and have the right to vote restricted shares from the date of grant, they will not have the right to sell or otherwise transfer the shares during the applicable period of restriction or until earlier satisfaction of other conditions

imposed by the Compensation Committee in its sole discretion. The award agreement will specify the periods of restriction, any restrictions based on achievement of specific performance objectives, restrictions under applicable federal or state securities laws and such other terms it deems appropriate. Unless the Compensation Committee otherwise determines, participants will receive dividends on their shares of restricted stock. The Compensation Committee in its discretion may apply any restrictions to the dividends that it deems appropriate.

Each award agreement for restricted stock will set forth the extent to which the participant will have the right to retain unvested shares of restricted stock following termination of the participant's employment. These provisions will be determined in the sole discretion of the Compensation Committee, need not be uniform among all participants and may reflect distinctions based on reasons for termination of employment.

Restricted Stock Units. An award of a restricted stock unit constitutes an agreement by us to deliver shares of our common stock or to pay an amount equal to the fair market value of a share of our common stock for each restricted stock unit to a participant in the future. Restricted stock units may be granted by the Compensation Committee on such terms and conditions as it may establish. The restricted stock unit award agreement will specify the vesting period or periods, any specific performance objectives and such other conditions as may apply to the award. During the applicable vesting period, participants will have no voting rights with respect to the shares of common stock underlying a restricted stock unit grant. However, participants shall, unless the Compensation Committee otherwise determines, receive dividend equivalents on the shares underlying their restricted stock unit grant in the form of cash or additional restricted stock units if a dividend is paid with respect to shares of our common stock.

Each award agreement for restricted stock units will set forth the extent to which the participant will have the right to retain unvested restricted stock units following termination of employment. These provisions will be determined in the sole discretion of the Compensation Committee, need not be uniform among all participants and may reflect distinctions based on reasons for termination of employment.

No more than 1,200,000 shares of common stock may be granted in the form of awards of restricted stock and restricted stock units to any participant in any fiscal year.

Performance Units and Performance Shares. Performance units and performance shares are forms of performance awards that are subject to the attainment of one or more pre-established performance goals during a designated performance period. Performance units and performance shares may be granted by the Compensation Committee at any time in such amounts and on such terms as the Compensation Committee determines. Each performance unit will have an initial value that is established by the Compensation Committee at the time of grant.

Each performance unit and performance share will have an initial value equal to the fair market value of a share of our common stock on the date of grant. The Compensation Committee in its discretion will determine the applicable performance period and will establish performance goals for any given performance period. When the performance period expires, the holder of performance units or performance shares will be entitled to receive a payout on the performance units or performance shares earned over the performance period based on the extent to which the performance goals have been achieved.

Participants holding performance units or performance shares are not entitled to receive dividend units for dividends declared with respect to shares of our common stock underlying such awards. Payment of performance units and performance shares may be made in cash or in shares of common stock that have an aggregate fair market value equal to the earned performance units or performance shares on the last day of the applicable performance period. Each award agreement will set forth the extent to which the participant will have the right to receive a payout of these performance units or performance shares following termination of the participant's employment. The termination provisions will be determined in the sole discretion of the Compensation Committee, need not be uniform among all participants and may reflect distinctions based on reasons for termination of employment.

No more than 1,200,000 shares of common stock may be granted in the form of awards of performance shares to any participant in any fiscal year. No more than $6,000,000 may be paid in cash to any participant with respect to performance units granted in any fiscal year, as valued on the date of each grant.

Performance Measures. The Compensation Committee may grant awards under the 2010 LTIP to eligible employees subject to the attainment of specified performance measures. The number of performance-based awards granted to an employee in any year will be determined by the Compensation Committee in its sole discretion, subject to the limitations set forth in the 2010 LTIP. The value of each performance-based award will be determined based on the achievement of pre-established, objective performance goals during each performance period. The duration of a performance period is set by the Compensation Committee. A new performance period may begin every year, or at more frequent or less frequent intervals, as determined by the Compensation Committee.

The Compensation Committee will establish the objective performance goals applicable to the valuation of performance-based awards granted in each performance period, the performance measures that will be used to determine the achievement of those performance goals and any formulas or methods to be used to determine the value of the performance-based awards.

Performance measures will be defined by the Compensation Committee on a consolidated, segment, group or division basis and/or in comparison to one or more peer groups or indices. Performance measures selected by the Compensation Committee will be based on one or more of the following: cash flow; cash flow return on capital; cash flow return on assets; cash flow return on equity; net income; return on capital; return on assets; return on equity; share price; earnings per share; earnings before interest and taxes; earnings before interest, taxes, depreciation and amortization; total and relative shareholder return; operating income; return on net assets; gross or operating margins; safety and economic value added. Following the end of a performance period, the Compensation Committee will determine the value of the performance-based awards granted for the period based on its determination of the degree of attainment of the pre-established objective performance goals. The Compensation Committee will also have discretion to reduce (and, if intended to qualify as performance-based compensation under Section 162(m) of the Code, not to increase) the value of a performance-based award to “Covered Employees,” as defined in Section 162(m) of the Code.

Deferrals. The Compensation Committee will have the discretion to provide for the deferral of an award or to permit participants to elect to defer payment of some or all types of awards in a manner consistent with the requirements of Section 409A of the Code.

Change in Control. The treatment of outstanding awards upon the occurrence of a change in control (as defined in the 2010 LTIP) will be determined in the sole discretion of the Compensation Committee and will be described in the applicable award agreements and need not be uniform among all awards granted under the 2010 LTIP.

Amendments. The 2010 LTIP may be modified, altered, suspended or terminated by the Board of Directors at any time and for any purpose that the Board of Directors deems appropriate, but no amendment to the 2010 LTIP shall adversely affect any outstanding awards without the affected participant’s consent, and stockholder approval may be required by applicable law, regulation or stock exchange requirements.

Transferability. Except as otherwise specified in a participant’s award agreement, no award granted pursuant to, and no right to payment under, the 2010 LTIP will be assignable or transferable by a 2010 LTIP participant except by will or by the laws of descent and distribution or pursuant to a qualified domestic relations order, and any right granted under the 2010 LTIP will be exercisable during a participant’s lifetime only by the participant or by the participant’s guardian or legal representative.

Duration of the 2010 LTIP. The 2010 LTIP will remain in effect until all options and rights granted thereunder have been satisfied or terminated pursuant to the terms of the 2010 LTIP and all performance periods for performance-based awards granted thereunder have been completed. However, in no event will any award be granted under the 2010 LTIP on or after [ ], 2020.

The foregoing description of the 2010 LTIP does not purport to be complete and is qualified by reference to the 2010 LTIP.

The Babcock & Wilcox Company Executive Compensation Plan

We intend to adopt The Babcock & Wilcox Company Executive Incentive Compensation Plan (the "B&W EICP") before the spin-off. The following is a general description of the B&W EICP.

The B&W EICP will be a cash incentive plan administered by the Compensation Committee of our Board of Directors. Except as prohibited by law, the Compensation Committee may generally delegate its duties under the B&W EICP to our chief executive officer and other executive officers.

All of our full-time salaried employees will be eligible to participate in the B&W EICP. Our Chief Executive Officer will automatically participate. Actual participation in the EICP by other employees will be based upon recommendations by our Chief Executive Officer, subject to approval by the Compensation Committee.

The Compensation Committee will establish, for each plan year, performance goals and award opportunities, in writing, which correspond to various levels of achievement of the preestablished performance goals based upon any combination of corporate, segment, group, divisional or individual goals. The award opportunity for any participant who is included in the group of "covered employees" (as defined in Section 162(m) of the Code) will be based on the following performance criteria:

- the award to be paid upon meeting preestablished targeted performance results;
- the potential final award in relation to the various levels of achievement of the preestablished performance goals; and
- company, segment, group or division performance in relation to the preestablished performance goals.

Performance measures that may be used to determine award opportunities for Named Executive Officers are generally limited to cash flow, cash flow return on capital, cash flow return on equity, net income, operating income, return on capital, return on assets, return on equity and economic value added (each as defined in the B&W EICP) and other measures consistent with deductibility under Code Section 162(m). Once established, performance goals normally cannot be changed during the plan year. However, the Compensation Committee may adjust performance goals to account for changes in accounting principles, unusual, nonrecurring events and extraordinary items, to the extent not inconsistent with Code Section 162(m). The Compensation Committee shall have the authority to reduce or eliminate final awards, based upon any criteria it deems appropriate. In addition, the Compensation Committee may use such other performance measures, including subjective measures, and make adjustments to performance goals during the plan year, if the Compensation Committee determines that it is advisable for an award not to qualify for the performance-based exception from the deductibility limitations of Code Section 162(m).

Following the end of each plan year, awards will be computed for each plan participant. Final individual awards may vary above or below the target award, based on the level of achievement of the preestablished performance goal. The B&W EICP will place a limit of $3,000,000 on payouts to any one plan participant in any given plan year for tax deductibility reasons but grant authority to the Compensation Committee to exceed those limits in its discretion. The Board of Directors may amend the B&W EICP from time to time.

The foregoing description of the B&W EICP does not purport to be complete and is qualified by reference to the B&W EICP.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Before the spin-off, all of the outstanding shares of our common stock are and will be owned beneficially and of record by McDermott. The following table sets forth information with respect to the expected beneficial ownership of our common stock immediately following completion of the spin-off by:

- each stockholder who is expected following the spin-off to beneficially own more than 5% of our common stock;
- each executive officer named in the Summary Compensation Table;
- each of our directors; and
- all of our executive officers and directors as a group.

We have based the percentage of class amounts set forth below on each indicated person's beneficial ownership of McDermott common stock as of [ ], 2010, unless we indicate some other basis for the share amounts, and based on the distribution of one share of our common stock for every [ ] shares of McDermott common stock outstanding. To the extent our directors and executive officers own shares of McDermott common stock at the time of the spin-off, they will participate in the distribution of shares of common stock in the spin-off on the same terms as other holders of McDermott common stock. Following the spin-off, we will have an aggregate of approximately [ ] million shares of common stock outstanding, based on approximately [ ] million shares of McDermott common stock outstanding on [ ], 2010. The number of shares beneficially owned by each stockholder, director or officer is determined according to the rules of the SEC and the information is not necessarily indicative of beneficial ownership for any other purpose. The mailing address for each of the directors and executive officers is c/o The Babcock & Wilcox Company, The Harris Building, 13024 Ballantyne Corporate Place, Suite 700, Charlotte, North Carolina 28277.

	Shares of Common Stock to be Beneficially Owned	
Name of Beneficial Owner	Number	Percent
T. Rowe Price Associates, Inc.		12.44%(1)
PRIMECAP Management Company		5.68%(2)
BlackRock Inc.		5.17%(3)
John A. Fees		
Robert W. Goldman		
Stephen G. Hanks		
Oliver D. Kingsley, Jr.		
D. Brad McWilliams		
Richard W. Mies		
Brandon C. Bethards		
Michael S. Taff		
Richard L. Killion		
Christofer M. Mowry		
Winfred D. Nash		
All executive officers and directors as a group ([ ] persons)		

(1) As reported on Schedule 13G/A with respect to ownership of McDermott common stock filed with the SEC on February 12, 2010. The Schedule 13G/A reports beneficial ownership of 28,706,971 shares of McDermott's common stock, sole voting power over 7,314,005 shares and sole dispositive power over 28,706,971 shares.

(2) As reported on Schedule 13G/A with respect to ownership of McDermott common stock filed with the SEC on February 11, 2010. The Schedule 13G/A reports beneficial ownership of 13,114,160 shares of McDermott's common stock and sole voting power over 7,472,760 shares and sole dispositive power over 13,114,160 shares.

(3) As reported on Schedule 13G with respect to ownership of McDermott common stock filed with the SEC on January 29, 2010. The Schedule 13G reports beneficial ownership of 11,944,038 shares of McDermott's common stock and sole voting power and sole dispositive power over 11,944,038 shares.

DESCRIPTION OF CAPITAL STOCK

Introduction

In the discussion that follows, we have summarized selected provisions of our certificate of incorporation and bylaws relating to our capital stock. This summary is not complete. This discussion is subject to the relevant provisions of Delaware law and is qualified in its entirety by reference to our restated certificate of incorporation and our amended and restated bylaws. You should read the provisions of our restated certificate of incorporation and our amended and restated bylaws as currently in effect for provisions that may be important to you. We have filed copies of those documents with the SEC, and they are incorporated by reference as exhibits to the registration statement on Form 10 of which this information statement forms a part. See "Where You Can Find More Information."

Authorized Capital Stock

Our authorized capital stock consists of:

- 325,000,000 shares of common stock; and
- 75,000,000 shares of preferred stock, issuable in series.

Each authorized share of common stock has a par value of $0.01. The authorized shares of preferred stock have a par value of $0.01 per share. Immediately following the spin-off, we expect that approximately [ ] shares of our common stock will be outstanding, based on the distribution of one share of our common stock for every [ ] shares of McDermott common stock outstanding and the anticipated number of shares of McDermott common stock outstanding as of the record date. The actual number of shares of our common stock to be distributed in the spin-off will be determined based on the actual number of shares of McDermott common stock outstanding as of the record date. Immediately following the spin-off, no shares of our preferred stock will be issued and outstanding.

Common Stock

Each share of our common stock entitles its holder to one vote in the election of each director and on all other matters voted on generally by our stockholders, other than any matter that (1) solely relates to the terms of any outstanding series of preferred stock or the number of shares of that series and (2) does not affect the number of authorized shares of preferred stock or the powers, privileges and rights pertaining to the common stock. No share of our common stock affords any cumulative voting rights. This means that the holders of a majority of the voting power of the shares voting for the election of directors can elect all directors to be elected if they choose to do so. Our board of directors may grant holders of preferred stock, in the resolutions creating the series of preferred stock, the right to vote on the election of directors or any questions affecting our company.

Holders of our common stock will be entitled to dividends in such amounts and at such times as our board of directors in its discretion may declare out of funds legally available for the payment of dividends. We currently intend to retain our entire available discretionary cash flow to finance the growth, development and expansion of our business and do not anticipate paying any cash dividends on the common stock in the foreseeable future. Any future dividends will be paid at the discretion of our board of directors after taking into account various factors, including:

- general business conditions;
- industry practice;
- our financial condition and performance;
- our future prospects;
- our cash needs and capital investment plans;

- our obligations to holders of any preferred stock we may issue;
- income tax consequences; and
- the restrictions Delaware and other applicable laws and our credit arrangements then impose.

In addition, the credit agreement relating to our revolving credit facility restricts our ability to pay cash dividends.

If we liquidate or dissolve our business, the holders of our common stock will share ratably in all our assets that are available for distribution to our stockholders after our creditors are paid in full and the holders of all series of our outstanding preferred stock, if any, receive their liquidation preferences in full.

Our common stock has no preemptive rights and is not convertible or redeemable or entitled to the benefits of any sinking or repurchase fund. All shares of common stock to be distributed in connection with the spin-off will be fully paid and nonassessable.

We intend to have our shares of common stock listed on the New York Stock Exchange under the symbol “BWC.”

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

Preferred Stock

At the direction of our board of directors, without any action by the holders of our common stock, we may issue one or more series of preferred stock from time to time. Our board of directors can determine the number of shares of each series of preferred stock, the designation, powers, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions applicable to any of those rights, including dividend rights, voting rights, conversion or exchange rights, terms of redemption and liquidation preferences, of each series.

Undesignated preferred stock may enable our board of directors to render more difficult or to discourage an attempt to obtain control of our company by means of a tender offer, proxy contest, merger or otherwise, and thereby to protect the continuity of our management. The issuance of shares of preferred stock may adversely affect the rights of our common stockholders. For example, any preferred stock issued may rank prior to the common stock as to dividend rights, liquidation preference or both, may have full or limited voting rights and may be convertible into shares of common stock. As a result, the issuance of shares of preferred stock, or the issuance of rights to purchase shares of preferred stock, may discourage an unsolicited acquisition proposal or bids for our common stock or may otherwise adversely affect the market price of our common stock or any existing preferred stock.

Limitation on Directors’ Liability

Delaware law authorizes Delaware corporations to limit or eliminate the personal liability of their directors to them and their stockholders for monetary damages for breach of a director’s fiduciary duty of care. The duty of care requires that, when acting on behalf of the corporation, directors must exercise an informed business judgment based on all material information reasonably available to them. Absent the limitations Delaware law authorizes, directors of Delaware corporations are accountable to those corporations and their stockholders for monetary damages for conduct constituting gross negligence in the exercise of their duty of care. Delaware law enables Delaware corporations to limit available relief to equitable remedies such as injunction or rescission. Our certificate of incorporation limits the liability of our directors to us and our stockholders to the fullest extent Delaware law permits. Specifically, no director will be personally liable for monetary damages for any breach of the director’s fiduciary duty as a director, except for liability:

- for any breach of the director’s duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

- for unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; and
- for any transaction from which the director derived an improper personal benefit.

This provision could have the effect of reducing the likelihood of derivative litigation against our directors and may discourage or deter our stockholders or management from bringing a lawsuit against our directors for breach of their duty of care, even though such an action, if successful, might otherwise have benefited us and our stockholders. Our bylaws provide indemnification to our officers and directors and other specified persons with respect to their conduct in various capacities. See "Indemnification of Directors and Officers."

Statutory Business Combination Provision

As a Delaware corporation, we are subject to Section 203 of the Delaware General Corporation Law. In general, Section 203 prevents an "interested stockholder," which is defined generally as a person owning 15% or more of a Delaware corporation's outstanding voting stock or any affiliate or associate of that person, from engaging in a broad range of "business combinations" with the corporation for three years following the date that person became an interested stockholder unless:

- before that person became an interested stockholder, the board of directors of the corporation approved the transaction in which that person became an interested stockholder or approved the business combination;
- on completion of the transaction that resulted in that person's becoming an interested stockholder, that person owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, other than stock held by (1) directors who are also officers of the corporation or (2) any employee stock plan that does not provide employees with the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- following the transaction in which that person became an interested stockholder, both the board of directors of the corporation and the holders of at least two-thirds of the outstanding voting stock of the corporation not owned by that person approve the business combination.

Under Section 203, the restrictions described above also do not apply to specific business combinations proposed by an interested stockholder following the announcement or notification of designated extraordinary transactions involving the corporation and a person who had not been an interested stockholder during the previous three years or who became an interested stockholder with the approval of a majority of the corporation's directors, if a majority of the directors who were directors prior to any person's becoming an interested stockholder during the previous three years, or were recommended for election or elected to succeed those directors by a majority of those directors, approve or do not oppose that extraordinary transaction.

Anti-Takeover Effects of Provisions of our Certificate of Incorporation and Bylaws

Some of the provisions of our certificate of incorporation and bylaws discussed below may have the effect, either alone or in combination with Section 203 of the Delaware General Corporation Law, of making more difficult or discouraging a tender offer, proxy contest, merger or other takeover attempt that our board of directors opposes but that a stockholder might consider to be in its best interest.

Our certificate of incorporation provides that our stockholders may act only at an annual or special meeting of stockholders and may not act by written consent. Our bylaws provide that only a majority of our board of directors (or, in limited circumstances, the chairman of our board of directors) may call a special meeting of our board of directors or our stockholders.

Our certificate of incorporation provides for a classified board of directors. Except for directors that our preferred stockholders may elect, our board of directors is divided into three classes, with the directors of each class as nearly equal in number as possible. At each annual meeting of our stockholders, the term of a different class of our directors will expire. As a result, we contemplate that our stockholders will elect approximately one-third of our board of directors each year. Our board of directors believes that a classified board structure facilitates continuity and stability of leadership and policy by helping ensure that, at any given time, a majority of our directors will have prior experience as directors of our company and will be familiar with its business and operations. This will, in the view of our board of directors, permit more effective long-term planning and help create long-term value for our stockholders. Board classification could, however, prevent a party who acquires control of a majority of our outstanding voting stock from obtaining control of our board of directors until the second annual stockholders' meeting following the date that party obtains that control. This system of electing and removing directors may discourage a third party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of the directors.

Our certificate of incorporation provides that the number of directors will be fixed exclusively by, and may be increased or decreased exclusively by, our board of directors from time to time, but will not be less than three. Our certificate of incorporation provides that directors may be removed only with cause or upon a board determination (as such terms are defined in our certificate of incorporation) and, in either case, by a vote of at least 80% of the voting power of our outstanding voting stock. A vacancy on our board of directors may be filled by a vote of a majority of the directors in office, and a director appointed to fill a vacancy serves for the remainder of the term of the class of directors in which the vacancy occurred. These provisions will prevent our stockholders from removing incumbent directors without cause and filling the resulting vacancies with their own nominees.

Our bylaws contain advance notice and other procedural requirements that apply to stockholder nominations of persons for election to our board of directors at any annual or special meeting of stockholders and to stockholder proposals that stockholders take any other action at any annual meeting. In the case of any annual meeting, a stockholder proposing to nominate a person for election to our board of directors or proposing that any other action be taken must give our corporate secretary written notice of the proposal not less than 90 days and not more than 120 days before the anniversary of the date of the immediately preceding annual meeting of stockholders. These stockholder proposal deadlines are subject to exceptions if the pending annual meeting date is more than 30 days prior to or more than 30 days after the anniversary of the immediately preceding annual meeting. If the chairman of our board of directors or a majority of our board of directors calls a special meeting of stockholders for the election of directors, a stockholder proposing to nominate a person for that election must give our corporate secretary written notice of the proposal not earlier than 120 days prior to that special meeting and not later than the last to occur of (1) 90 days prior to that special meeting or (2) the 10th day following the day we publicly disclose the date of the special meeting. Our bylaws prescribe specific information that any such stockholder notice must contain. These advance notice provisions may have the effect of precluding a contest for the election of our directors or the consideration of stockholder proposals if the proper procedures are not followed, and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of directors or to approve its own proposal, without regard to whether consideration of those nominees or proposals might be harmful or beneficial to us and our stockholders.

Our certificate of incorporation provides that our stockholders may adopt, amend and repeal our bylaws at any regular or special meeting of stockholders by a vote of at least 80% of the voting power of our outstanding voting stock, provided the notice of intention to adopt, amend or repeal the bylaws has been included in the notice of that meeting. Our certificate of incorporation also confers on our board of directors the power to adopt, amend or repeal our bylaws with the affirmative vote of a majority of the directors then in office.

As discussed above under "—Preferred Stock," our certificate of incorporation authorizes our board of directors, without the approval of our stockholders, to provide for the issuance of all or any shares of our

preferred stock in one or more series and to determine the designation, powers, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions applicable to any of those rights, including dividend rights, voting rights, conversion or exchange rights, terms of redemption and liquidation preferences, of each series. The issuance of shares of our preferred stock or rights to purchase shares of our preferred stock could discourage an unsolicited acquisition proposal. In addition, under some circumstances, the issuance of preferred stock could adversely affect the voting power of our common stockholders.

In addition to the purposes described above, these provisions of our certificate of incorporation and bylaws are also intended to increase the bargaining leverage of our board of directors, on behalf of our stockholders, in any future negotiations concerning a potential change of control of our company. Our board of directors has observed that certain tactics that bidders employ in making unsolicited bids for control of a corporation, including hostile tender offers and proxy contests, have become relatively common in modern takeover practice. Our board of directors considers those tactics to be highly disruptive to a corporation and often contrary to the overall best interests of its stockholders. In particular, bidders may use these tactics in conjunction with an attempt to acquire a corporation at an unfairly low price. In some cases, a bidder will make an offer for less than all the outstanding capital stock of the target company, potentially leaving stockholders with the alternatives of partially liquidating their investment at a time that may be disadvantageous to them or retaining an investment in the target company under substantially different management with objectives that may not be the same as the new controlling stockholder. The concentration of control in our company that could result from such an offer could deprive our remaining stockholders of the benefits of listing on the New York Stock Exchange and public reporting under the Exchange Act.

While our board of directors does not intend to foreclose or discourage reasonable merger or acquisition proposals, it believes that value for our stockholders can be enhanced by encouraging would-be acquirers to forego hostile or coercive tender offers and negotiate with the Board terms that are fair to all stockholders. Our board of directors believes that the provisions described above will (1) discourage disruptive tactics and takeover attempts at unfair prices or on terms that do not provide all stockholders with the opportunity to sell their stock at a fair price and (2) encourage third parties who may seek to acquire control of our company to initiate such an acquisition through negotiations directly with our board of directors. Our Board also believes these provisions will help give it the time necessary to evaluate unsolicited offers, as well as appropriate alternatives, in a manner that assures fair treatment of our stockholders. Our board of directors recognizes that a takeover might in some circumstances be beneficial to some or all of our stockholders, but, nevertheless, believes that the benefits of seeking to protect its ability to negotiate with the proponent of an unfriendly or unsolicited proposal to take over or restructure our company outweigh the disadvantages of discouraging those proposals.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses including attorneys' fees, judgments, fines and amounts paid in settlement in connection with various actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation, such as a derivative action), if they acted in good faith and in a manner they 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 they had no reasonable cause to believe their conduct was unlawful. A similar standard is applicable in the case of any actions by or in the right of the corporation, except that indemnification only extends to expenses, including attorneys' fees, incurred in connection with the defense or settlement of such actions, and the statute requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. The statute provides that it is not exclusive of other indemnification that may be granted by a corporation's certificate of incorporation, bylaws, agreement, a vote of stockholders or disinterested directors or otherwise.

Our certificate of incorporation provides that we will indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person or a person for whom such person is the legal representative, is or was a director or officer of us or, while a director or officer of us, is or was serving at our request as a director, officer, employee or agent of another corporation or of a partnership, joint venture, limited liability company, trust or other enterprise, including service with respect to employee benefit plans, against all liability and losses suffered and expenses (including attorneys' fees) incurred by such person in connection with such action, suit or proceeding. Our certificate of incorporation also provides that we will pay the expenses incurred by a director or officer in defending any such proceeding in advance of its final disposition, subject to such person providing us with specified undertakings. Notwithstanding the foregoing, our certificate of incorporation provides that we shall be required to indemnify or make advances to a person in connection with a proceeding (or part thereof) initiated by such person only if the proceeding (or part thereof) was authorized by our board of directors. These rights are not exclusive of any other right that any person may have or may acquire under any statute, provision of our certificate of incorporation, bylaws, agreement, vote of stockholders or disinterested directors or otherwise. No amendment, modification or repeal of those provisions will in any way adversely affect any right or protection under those provisions of any person in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

Our certificate of incorporation also permits us to secure and maintain insurance on behalf of any of our directors, officers, employees or agents and each person who is, or was, serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise for any liability asserted against and incurred by such person in any such capacity. We intend to obtain directors' and officers' liability insurance providing coverage to our directors and officers.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The combined financial statements and financial statement schedules of The Babcock & Wilcox Operations of McDermott International, Inc. as of December 31, 2009 and 2008 and for the three years ended December 31, 2009 included in this information statement have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein, which report expresses an unqualified opinion on the financial statements and financial statement schedules and includes an explanatory paragraph referring to the basis of presentation of the combined financial statements.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form 10 under the Exchange Act relating to the common stock being distributed in the spin-off. This information statement forms a part of that registration statement but does not contain all of the information set forth in the registration statement and the exhibits and schedules to the registration statement. For further information relating to us and the shares of our common stock, reference is made to the registration statement, including its exhibits and schedules. Statements made in this information statement relating to any contract or other document are not necessarily complete and you should refer to the exhibits attached to the registration statement for copies of the actual contract or document. You may review a copy of the registration statement, including its exhibits and schedules, at the SEC's Public Reference Room, located at 100 F Street, NE, Washington, D.C. 20549 or on the SEC's Web site at *http://www.sec.gov.* You may obtain a copy of the registration statement from the SEC's Public Reference Room upon payment of prescribed fees. Please call the SEC at (800) SEC-0330 for further information on the operation of the Public Reference Room.

As a result of the spin-off, we will become subject to the information and reporting requirements of the Exchange Act and, in accordance with the Exchange Act, we will file periodic reports, proxy statements and other information with the SEC. Those periodic reports, proxy statements and other information will be available for inspection and copying at the SEC's Public Reference Room and the SEC's Web site at *http://www.sec.gov.*

We intend to furnish holders of our common stock with annual reports containing combined financial statements prepared in accordance with U.S. generally accepted accounting principles and audited and reported on, with an opinion expressed, by an independent registered public accounting firm.

We plan to make available free of charge on our Web site, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports as soon as reasonably practicable after we electronically file or furnish such materials to the SEC. All of these documents will be made available free of charge on our Web site, *www.babcock.com.* The information on our Web site is not, and shall not be deemed to be, a part of this information statement or incorporated into any other filings we make with the SEC.

No person is authorized to give any information or to make any representations with respect to the matters described in this information statement other than those contained in this information statement or in the documents incorporated by reference in this information statement and, if given or made, such information or representation must not be relied upon as having been authorized by us or McDermott. Neither the delivery of this information statement nor consummation of the spin-off shall, under any circumstances, create any implication that there has been no change in our affairs or those of McDermott since the date of this information statement, or that the information in this information statement is correct as of any time after its date.

INDEX TO FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors of McDermott International, Inc.:

We have audited the accompanying combined balance sheets of The Babcock & Wilcox Operations of McDermott International, Inc. (the "Company") as of December 31, 2009 and 2008, and the related combined statements of income, comprehensive income (loss), parent equity (deficit), and cash flows for each of the three years in the period ended December 31, 2009. Our audits also included the financial statement schedules listed in the index at Item 15. These financial statements and financial statement schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedules based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such combined financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2009 and 2008, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2009, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedules, when considered in relation to the basic combined financial statements taken as a whole, present fairly in all material respects the information set forth therein.

As discussed in Note 1 to the combined financial statements, the accompanying combined financial statements have been prepared from the separate records maintained by the Company and may not necessarily be indicative of the conditions that would have existed or the results of operations if the Company had been operated as an unaffiliated entity. Portions of certain expenses include allocations of corporate items applicable to McDermott International, Inc. as a whole.

/S/ DELOITTE & TOUCHE LLP

Houston, Texas
March 12, 2010

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

COMBINED BALANCE SHEETS

	December 31, 2009	December 31, 2008
	(In thousands)	
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 469,468	$ 279,646
Restricted cash and cash equivalents (Note 1)	15,305	7,116
Investments (Note 11)	14	50,642
Accounts receivable—trade, net	319,861	395,025
Accounts receivable—other	39,289	39,153
Contracts in progress	245,998	210,719
Inventories (Note 1)	98,644	125,560
Deferred income taxes (Note 4)	96,680	95,045
Other current assets	21,456	19,928
Total Current Assets	1,306,715	1,222,834
Property, Plant and Equipment	945,298	840,727
Less accumulated depreciation	515,237	469,902
Net Property, Plant and Equipment	430,061	370,825
Investments (Note 11)	73,540	68,442
Goodwill (Note 1)	262,866	263,152
Deferred Income Taxes (Note 4)	270,002	306,369
Investments in Affiliates (Note 3)	68,327	61,627
Note Receivable from Affiliate (Note 5)	42,573	36,619
Other Assets	149,775	176,973
TOTAL	$ 2,603,859	$ 2,506,841

See accompanying notes to combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

COMBINED BALANCE SHEETS

	December 31, 2009	December 31, 2008
	(In thousands)	
LIABILITIES AND PARENT EQUITY (DEFICIT)		
Current Liabilities:		
Notes payable and current maturities of long-term debt	$ 6,432	$ 9,021
Accounts payable	178,350	261,507
Accounts payable to McDermott International, Inc. (Note 5)	112,053	60,831
Accrued employee benefits	198,195	174,538
Accrued liabilities—other	74,700	116,203
Advance billings on contracts	537,448	559,150
Accrued warranty expense	115,055	119,722
Income taxes payable	12,943	11,902
Total Current Liabilities	1,235,176	1,312,874
Long-Term Debt (Note 6)	4,222	6,109
Accumulated Postretirement Benefit Obligation (Note 7)	105,484	107,468
Environmental Liabilities (Note 9)	47,795	32,944
Pension Liability (Note 7)	699,117	665,871
Notes Payable to Affiliate (Note 5)	320,568	318,200
Other Liabilities	70,791	132,923
Commitments and Contingencies (Note 9)		
Total Parent Equity (Deficit)	120,706	(69,548)
TOTAL	$ 2,603,859	$ 2,506,841

See accompanying notes to combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

COMBINED STATEMENTS OF INCOME

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
Revenues	$2,854,632	$3,398,574	$3,199,944
Costs and Expenses:			
Cost of operations	2,235,377	2,677,935	2,620,013
Selling, general and administrative expenses	403,559	337,551	289,551
Losses (gains) on asset disposals and impairments—net	1,226	(9,603)	(1,606)
Total Costs and Expenses	2,640,162	3,005,883	2,907,958
Equity in Income of Investees	55,094	51,792	45,647
Operating Income	269,564	444,483	337,633
Other Income (Expense):			
Interest income	3,439	15,286	25,220
Interest expense	(24,590)	(22,740)	(38,094)
Other expense—net	(16,112)	(4,290)	(10,411)
Total Other Expense	(37,263)	(11,744)	(23,285)
Income before Provision for Income Taxes	232,301	432,739	314,348
Provision for Income Taxes (Note 4)	84,381	108,885	99,018
Net Income	147,920	323,854	215,330
Less: Net Income attributable to Noncontrolling Interest	(156)	(88)	(80)
Net Income Attributable to The Babcock & Wilcox Operations of McDermott International, Inc.	$ 147,764	$ 323,766	$ 215,250

See accompanying notes to combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.
COMBINED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
Net Income	$147,920	$ 323,854	$215,330
Other Comprehensive Income (Loss):			
Currency translation adjustments:			
Foreign currency translation adjustments	22,103	(24,717)	13,471
Unrealized gains on derivative financial instruments:			
Unrealized gains (losses) on derivative financial instruments	8,134	(14,702)	2,872
Reclassification adjustment for (gains) losses included in net income	(1,551)	752	(2,243)
Unrecognized gains on benefit obligations:			
Unrecognized gains (losses) arising during the period	(36,872)	(325,846)	29,627
Amortization of losses included in net income	54,962	21,217	31,798
Amortization of losses included in retained earnings	—	—	704
Unrealized gains on investments:			
Unrealized gains (losses) arising during the period	(339)	82	24
Reclassification adjustment for gains (losses) included in net income	30	(147)	(23)
Other Comprehensive Income (Loss)	46,467	(343,361)	76,230
Total Comprehensive Income (Loss)	194,387	(19,507)	291,560
Comprehensive Income attributable to Noncontrolling Interest	(199)	(80)	(80)
Comprehensive Income (Loss) Attributable to The Babcock & Wilcox Operations of McDermott International, Inc.	$194,188	$ (19,587)	$291,480

See accompanying notes to combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

COMBINED STATEMENTS OF PARENT EQUITY (DEFICIT)

(In thousands)

	Accumulated Other Comprehensive (Loss)	Parent Equity	Non-Controlling Interest	Total Parent Equity (Deficit)
Balance December 31, 2006	$ (325,875)	$ 49,752	$ 316	$ (275,807)
Net income	—	215,250	80	215,330
Adoption of FASB Topic 740 (Note 5)	—	(13,015)	—	(13,015)
Adoption of FASB Topic 715 (Note 7)	704	(1,687)	—	(983)
Adoption of FASB Topic 360	—	96	—	96
Amortization of benefit plan costs	31,798	—	—	31,798
Unrealized gain on benefit obligations	29,627	—	—	29,627
Unrealized loss on investments	1	—	—	1
Foreign currency translation adjustments	13,471	—	—	13,471
Unrealized gain on derivatives	629	—	—	629
Stock-based compensation charges	—	(32,471)	—	(32,471)
Distributions to noncontrolling interests	—	—	(65)	(65)
Balance December 31, 2007	$ (249,645)	$217,925	$ 331	(31,389)
Net income	—	323,766	88	323,854
Amortization of benefit plan costs	21,217	—	—	21,217
Unrecognized losses on benefit obligations	(325,846)	—	—	(325,846)
Unrealized gain on investments	(65)	—	—	(65)
Foreign currency translation adjustments	(24,709)	—	(8)	(24,717)
Unrealized loss on derivatives	(13,950)	—	—	(13,950)
Stock-based compensation charges	—	(18,601)	—	(18,601)
Distributions to noncontrolling interests	—	—	(51)	(51)
Balance December 31, 2008	$ (592,998)	$523,090	$ 360	(69,548)
Net income	—	147,764	156	147,920
Amortization of benefit plan costs	54,962	—	—	54,962
Unrecognized losses on benefit obligations	(36,872)	—	—	(36,872)
Unrealized gain on investments	(309)	—	—	(309)
Foreign currency translation adjustments	22,060	—	43	22,103
Unrealized loss on derivatives	6,583	—	—	6,583
Stock-based compensation charges	—	(4,077)	—	(4,077)
Distributions to noncontrolling interests	—	—	(56)	(56)
Balance December 31, 2009	$ (546,574)	$666,777	$ 503	$ 120,706

See accompanying notes to the combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

COMBINED STATEMENTS OF CASH FLOWS

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	$147,920	$ 323,854	$ 215,330
Non-cash items included in net income:			
Depreciation and amortization	72,712	45,985	41,672
Income of investees, net of dividends	(4,450)	(2,117)	(3,142)
Losses (gains) on asset disposals and impairments—net	1,226	(9,603)	(1,606)
Provision for deferred taxes	29,535	23,730	11,881
Excess tax benefits from FAS 123(R) stock-based compensation	1,813	(13,381)	(22,228)
Amortization of pension and postretirement costs	86,637	33,735	47,370
Other, net	(6,586)	(527)	(3,524)
Changes in assets and liabilities, net of effects from acquisition and divestitures:			
Accounts receivable	71,316	(12,901)	67,249
Accounts payable and other	(40,555)	(4,076)	(15,934)
Income tax receivable	11,619	43,024	254,329
Inventories	29,262	(21,760)	(14,315)
Net contracts in progress and advance billings	(63,879)	(234,648)	118,460
Income taxes	10,740	25,808	(6,894)
Accrued and other current liabilities	(52,556)	22,503	(14,763)
Pension liability, accumulated postretirement benefit obligation and accrued employee benefits	(378)	(154,743)	(70,844)
Other, net	(41,553)	(4,795)	77
NET CASH PROVIDED BY OPERATING ACTIVITIES	252,823	60,088	603,118
CASH FLOWS FROM INVESTING ACTIVITIES:			
(Increase) decrease in restricted cash and cash equivalents	(8,189)	(2,000)	3,111
Purchases of property, plant and equipment	(93,725)	(63,014)	(60,709)
Acquisition of businesses, net of cash acquired	(8,497)	(190,878)	(71,499)
(Increase) decrease in available-for-sale securities	45,230	(59,200)	(26,406)
Increase in note receivable from affiliate	—	—	(42,378)
Proceeds from asset disposals	245	9,978	3,033
Investments in affiliates	(2,700)	—	—
Other	1	551	(35)
NET CASH USED IN INVESTING ACTIVITIES	(67,635)	(304,563)	(194,883)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Payment of short-term borrowings and long-term debt	(6,155)	(4,768)	(254,746)
Increase (decrease) in note payable to affiliate	2,368	49,950	(86,800)
Debt issuance costs	—	—	(2,123)
Increase in short-term borrowing	—	1,460	—
Excess tax benefits from FAS 123(R) stock-based compensation	(1,813)	13,381	22,228
Other	—	(1)	—
NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES	(5,600)	60,022	(321,441)
EFFECTS OF EXCHANGE RATE CHANGES ON CASH	10,234	(9,867)	5,316
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	189,822	(194,320)	92,110
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	279,646	473,966	381,856
CASH AND CASH EQUIVALENTS AT END OF PERIOD	$469,468	$ 279,646	$ 473,966
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:			
Cash paid (received) during the period for:			
Interest (net of amount capitalized)	$ 24,728	$ 27,520	$ 43,973
Income taxes (net of refunds)	$ (29,663)	$ 12,256	$(242,828)

See accompanying notes to the combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS

NOTE 1—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company, Basis of Presentation and Principles of Combination

The Babcock & Wilcox Operations of McDermott International, Inc. (the "Company") represent a combined reporting entity comprised of the assets and liabilities used in managing and operating the Power Generation Systems and Government Operations segments of McDermott International, Inc. ("MII") in addition to two captive insurance companies which will be contributed to The Babcock & Wilcox Company in conjunction with the planned spin-off. On December 7, 2009, MII announced a plan to separate MII into two independent, publicly traded companies that will be effected through a spin-off transaction that is intended to be tax-free to MII.

The accompanying combined financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. All intercompany balances and transactions have been eliminated in the combined financial statements. We use the equity method to account for investments in entities that we do not control, but over which we have significant influence. We generally refer to these entities as "joint ventures." Income from investees net of dividends received reported on our combined statement of cash flows is different from equity in income of investees reported on our combined statement of income due to the timing of cash dividends received from our equity method investees. We record our share of proportionate income from our investees on a monthly basis based on the net income of our investees. Cash dividends are declared by these investees periodically and will usually not match our equity in income from investees in any given period. We present the notes to our combined financial statements on the basis of continuing operations, unless otherwise stated.

The combined results of operations, financial position and cash flows reflected in the accompanying combined financial statements may not be indicative of the future performance of the combined businesses and do not necessarily reflect what its combined results of operations, financial position and cash flows would have been had the combined businesses operated as an independent public company during the periods presented, including changes in its operations and capitalization as a result of the separation and distribution from MII.

Certain corporate and general and administrative expenses, including those related to executive management, tax, accounting, legal and treasury services, and certain employee benefits, have been allocated based on a level of effort calculation. Level of effort is a methodology requiring employees to estimate time spent for each business segment on the various functions described above. We prepare budgets for the various departments and allocate costs from corporate to the appropriate segment based on the time factor calculated and departmental costs. Management believes such allocations are reasonable. However, the associated expenses reflected in the accompanying combined statements of income may not be indicative of the actual expenses that would have been incurred had the combined businesses been operating as an independent public company for the periods presented. Following the separation and distribution from MII, B&W will perform these functions using internal resources or purchased services, certain of which may be provided by MII during a transitional period pursuant to a transition services agreement. Refer to Note 5—Related Party Transactions for a detailed description of transactions with other affiliates of MII.

In presenting the combined financial statements, management makes estimates and assumptions that affect the amounts reported and related disclosures. Estimates, by their nature, are based on judgment and available information. Accordingly, actual results could differ from those estimates.

As used in these footnote disclosures, the following terms have the meanings set forth below:

- MII (or McDermott) means McDermott International, Inc., a Panamanian corporation;
- BHI means Babcock & Wilcox Holdings, Inc., a Delaware corporation;

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

- MI means McDermott Incorporated, a Delaware corporation and a subsidiary of BHI, and its consolidated subsidiaries;
- BWICO means Babcock & Wilcox Investment Company, a Delaware corporation and a subsidiary of MI, and its consolidated subsidiaries;
- BWXT means BWX Technologies, Inc., a Delaware corporation and a subsidiary of BWICO, and its consolidated subsidiaries;
- B&W PGG means Babcock & Wilcox Power Generation Group, Inc., a Delaware corporation and a subsidiary of BWICO, and its consolidated subsidiaries; and
- JRM means J. Ray McDermott, S.A., a Panamanian corporation and a subsidiary of MII, and its consolidated subsidiaries.

Unless the context otherwise indicates, “we,” “us” and “our” mean The Babcock & Wilcox Operations of McDermott International, Inc.

We operate in two business segments: Power Generation Systems; and Government Operations.

Our Power Generation Systems segment includes the business and operations of Babcock & Wilcox Power Generation Group, Inc. (“B&W PGG”) and Babcock & Wilcox Nuclear Energy, Inc. and their respective subsidiaries. Through this segment, we supply boilers fired with fossil fuels, such as coal, oil and natural gas, or renewable fuels such as biomass, municipal solid waste and concentrated solar energy. In addition, we supply commercial nuclear steam generators and components, environmental equipment and components, and related services to customers in different regions around the world. We design, engineer, manufacture, supply, construct and service large utility and industrial power generation systems, including boilers used to generate steam in electric power plants, pulp and paper making, chemical and process applications and other industrial uses.

Our Government Operations segment includes the business and operations of Babcock & Wilcox Nuclear Operations Group, Inc., Babcock & Wilcox Technical Services Group, Inc. and their respective subsidiaries. Through this segment, we manufacture nuclear components and provide various services to the U.S. Government, including uranium processing, environmental site restoration services, and management and operating services for various U.S. Government-owned facilities. These services are provided to the DOE, including the NNSA, the Office of Nuclear Energy, the Office of Science and the Office of Environmental Management.

Use of Estimates

We use estimates and assumptions to prepare our financial statements in conformity with GAAP. These estimates and assumptions affect the amounts we report in our financial statements and accompanying notes. Our actual results could differ from these estimates. Variances could result in a material effect on our financial condition and results of operations in future periods.

Investments

Our investments, primarily government obligations and other highly liquid money market instruments, are classified as available-for-sale and are carried at fair value, with the unrealized gains and losses, net of tax, reported as a component of accumulated other comprehensive loss. We classify investments available for current operations in the balance sheet as current assets, while we classify investments held for long-term purposes as noncurrent assets. We adjust the amortized cost of debt securities for amortization of premiums and accretion of discounts to maturity. That amortization is included in interest income. We include realized gains and losses on

our investments in other income (expense). The cost of securities sold is based on the specific identification method. We include interest on securities in interest income.

Foreign Currency Translation

We translate assets and liabilities of our foreign operations, other than operations in highly inflationary economies, into U.S. dollars at current exchange rates, and we translate income statement items at average exchange rates for the periods presented. We record adjustments resulting from the translation of foreign currency financial statements as a component of other comprehensive loss. We report foreign currency transaction gains and losses in income. We have included in other income (expense) transaction losses of $(5.4) million, $(0.5) million and $(1.3) million for the years ended December 31, 2009, 2008 and 2007, respectively.

Contracts and Revenue Recognition

We generally recognize contract revenues and related costs on a percentage-of-completion method for individual contracts or combinations of contracts based on work performed, man hours, or a cost-to-cost method, as applicable to the product or activity involved. Under this method, we recognize estimated contract revenue and resulting income based on costs incurred to date as a percentage of total estimated costs. Certain costs may be excluded from the cost-to-cost method of measuring progress, such as significant costs for materials and major third-party subcontractors, if it appears that such exclusion would result in a more meaningful measurement of actual contract progress and resulting periodic allocation of income. We include revenues and related costs so recorded, plus accumulated contract costs that exceed amounts invoiced to customers under the terms of the contracts, in contracts in progress. We include in advance billings on contracts billings that exceed accumulated contract costs and revenues and costs recognized under the percentage-of-completion method. Most long-term contracts contain provisions for progress payments. We expect to invoice customers for all unbilled revenues. We review contract price and cost estimates periodically as the work progresses and reflect adjustments proportionate to the percentage-of-completion in income in the period when those estimates are revised. For all contracts, if a current estimate of total contract costs indicates a loss on a contract, the projected loss is recognized in full when determined.

For contracts as to which we are unable to estimate the final profitability except to assure that no loss will ultimately be incurred, we recognize equal amounts of revenue and cost until the final results can be estimated more precisely. For these deferred profit recognition contracts, we recognize revenue and cost equally and only recognize gross margin when probable and reasonably estimable, which we generally determine to be when the contract is approximately 70% complete. We treat long-term construction contracts that contain such a level of risk and uncertainty that estimation of the final outcome is impractical, except to assure that no loss will be incurred, as deferred profit recognition contracts.

Our policy is to account for fixed-price contracts under the completed-contract method if we believe that we are unable to reasonably forecast cost to complete at start-up. Under the completed-contract method, income is recognized only when a contract is completed or substantially complete.

Variations from estimated contract performance could result in material adjustments to operating results for any fiscal quarter or year. We include claims for extra work or changes in scope of work to the extent of costs incurred in contract revenues when we believe collection is probable.

We are usually entitled to financial settlements relative to the individual circumstances of deferrals or cancellations of long-term contracts. We do not recognize those settlements or claims for additional compensation until we reach final settlements with our customers. In June 2006, B&W PGG was awarded separate contracts to supply eight supercritical, coal-fired boilers and selective catalytic reduction (“SCR”) systems as part of TXU

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NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Corp.'s ("TXU") solid-fuel power generation program in Texas. TXU subsequently suspended activity on five of the eight boilers and SCR systems. The five suspended contracts were formally cancelled by execution of a termination and settlement agreement dated April 13, 2007. During the year ended December 31, 2007, B&W PGG received cash payments totaling $124 million from TXU, which completed the $243 million termination settlement obligation from TXU. See Note 6 regarding the performance guarantee provided by MII.

The following amounts represent retainages on contracts:

	December 31,	
	2009	2008
	(In thousands)	
Retainages expected to be collected within one year	$ 94,561	$ 96,686
Retainages expected to be collected after one year	16,919	31,007
Total Retainages	$ 111,480	$ 127,693

We have included in accounts receivable—trade retainages expected to be collected in 2010. Retainages expected to be collected after one year are included in other assets. Of the long-term retainages at December 31, 2009, we anticipate collecting $15.5 million in 2011, $1.2 million in 2012 and $0.2 million in 2013.

Comprehensive Loss

The components of accumulated other comprehensive loss included in parent equity (deficit) is as follows:

	December 31,	
	2009	2008
	(In thousands)	
Net unrealized loss on investments	$ (375)	$ (66)
Currency translation adjustments	31,728	9,668
Net unrealized loss on derivative financial instruments	(5,758)	(12,341)
Unrecognized losses on benefit obligations	(572,169)	(590,259)
Accumulated Other Comprehensive Loss	$(546,574)	$(592,998)

Warranty Expense

We accrue estimated expense to satisfy contractual warranty requirements when we recognize the associated revenue on the related contracts. In addition, we make specific provisions where we expect the actual warranty costs to significantly exceed the accrued estimates. Such specific provisions could have a material effect on our combined financial condition, results of operations and cash flows.

The following summarizes the changes in the carrying amount of accrued warranty:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
Balance at beginning of period	$119,722	$100,650	$ 72,261
Additions and adjustments	13,475	27,031	40,472
Charges	(18,142)	(7,959)	(12,083)
Balance at end of period	$115,055	$119,722	$100,650

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Asset Retirement Obligations and Environmental Clean-up Costs

We accrue for future decommissioning of our nuclear facilities that will permit the release of these facilities to unrestricted use at the end of each facility's life, which is a requirement of our licenses from the U.S. Nuclear Regulatory Commission (the "NRC"). In accordance with the FASB Topic *Asset Retirement and Environmental Obligations*, we record the fair value of a liability for an asset retirement obligation in the period in which it is incurred. When we initially record such a liability, we capitalize a cost by increasing the carrying amount of the related long-lived asset. Over time, the liability, which is included in environmental liabilities on our combined balance sheets, is accreted to its present value each period, and the capitalized cost is depreciated over the useful life of the related asset. Upon settlement of a liability, we will settle the obligation for its recorded amount or incur a gain or loss. This topic applies to environmental liabilities associated with assets that we currently operate and are obligated to remove from service. For environmental liabilities associated with assets that we no longer operate, we have accrued amounts based on the estimated costs of clean-up activities for which we are responsible, net of any cost-sharing arrangements. We adjust the estimated costs as further information develops or circumstances change. An exception to this accounting treatment relates to the work we perform at facilities for which the U.S. Government is obligated to pay all of the decommissioning costs.

Substantially all of our asset retirement obligations relate to the remediation of our nuclear analytical laboratory and the Nuclear Fuel Services, Inc. facilities. The following table reflects our asset retirement obligations:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
Balance at beginning of period	$25,647	$ 9,328	$8,395
Acquisition of Nuclear Fuel Services, Inc. (Note 2)	1,627	15,281	—
Additions	300	—	—
Accretion	1,917	1,038	933
Balance at end of period	$29,491	$25,647	$9,328

Research and Development

Research and development activities are related to development and improvement of new and existing products and equipment and conceptual as well as engineering evaluation for translation into practical applications. We charge to cost of operations the costs of research and development unrelated to specific contracts as incurred. Research and development activities totaled $78.3 million, $56.2 million and $51.3 million in the years ended December 31, 2009, 2008 and 2007, respectively, which include $25.1 million, $17.7 million and $16.5 million, respectively, related to amounts paid for by our customers. Substantially all of these costs are in our Power Generation Systems segment and include costs related to the development of carbon capture and sequestration technologies and our modular and scalable reactor, B&W mPower™. The net expenses recognized in the years ended December 31, 2009, 2008 and 2007 totaled approximately $53.2 million, $38.5 million and $34.8 million, respectively.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Inventories

We carry our inventories at the lower of cost or market. We determine cost principally on the first-in, first out basis, except for certain materials inventories of our Power Generation Systems segment, for which we use the last-in, first-out ("LIFO") method. We determined the cost of approximately 17% of our total inventories using the LIFO method at December 31, 2009 and 2008, respectively, and our total LIFO reserve at December 31, 2009 and 2008 was approximately $6.6 million and $7.0 million, respectively. Inventories are summarized below:

	December 31,	
	2009	2008
	(In thousands)	
Raw Materials and Supplies	$ 71,207	$ 92,770
Work in Progress	6,381	12,157
Finished Goods	21,056	20,633
Total Inventories	$ 98,644	$ 125,560

Property, Plant and Equipment

We carry our property, plant and equipment at depreciated cost, less any impairment provisions.

We depreciate our property, plant and equipment using the straight-line method over estimated economic useful lives of eight to 40 years for buildings and two to 28 years for machinery and equipment. Our depreciation expense was $62.6 million, $41.3 million and $38.8 million for the years ended December 31, 2009, 2008 and 2007, respectively.

We expense costs of maintenance, repairs and renewals that do not materially prolong the useful life of an asset as we incur them.

Goodwill

The following summarizes the changes in the carrying amount of goodwill (in thousands):

	Power Generation Systems	Government Operations	Total
Balance at December 31, 2007	$ 77,079	$ 51,931	$129,010
Acquisition of Nuclear Fuel Services, Inc. (Note 2)	—	123,542	123,542
Acquisition of the Intech group of companies (Note 2)	8,151	—	8,151
Acquisition of Delta Power Services, LLC (Note 2)	3,683	—	3,683
Currency translation adjustments	(1,234)	—	(1,234)
Balance at December 31, 2008	$ 87,679	$ 175,473	$263,152
Adjustments related to the acquisition of Nuclear Fuel Services, Inc. (Note 2)	—	(8,066)	(8,066)
B&W de Monterrey asset acquisition (Note 2)	7,442	—	7,442
Currency translation adjustments	338	—	338
Balance at December 31, 2009	$ 95,459	$ 167,407	$262,866

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Other Intangible Assets

We report our other intangible assets in other assets. We amortize those intangible assets which have definite lives to operating expense, using the straight-line method.

Other assets include the following other intangible assets:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
Amortized intangible assets:			
Gross cost:			
Customer relationships	30,950	31,150	19,790
Acquired backlog	18,720	17,280	9,540
Trade name	10,680	3,820	1,770
Unpatented technology	5,600	5,600	—
Patented technology	4,440	4,060	—
All other	8,585	10,983	7,737
Total	78,975	72,893	38,837
Accumulated amortization:			
Customer relationships	(3,726)	(1,985)	(660)
Acquired backlog	(7,746)	(3,407)	(1,363)
Trade name	(2,371)	(683)	(236)
Unpatented technology	(837)	(277)	—
Patented technology	(888)	—	—
All other	(5,163)	(4,459)	(3,994)
Total	(20,731)	(10,811)	(6,253)
Net amortized intangible assets	$ 58,244	$ 62,082	$32,584
Unamortized intangible assets:			
NRC category 1 license	$ 43,830	$ 42,370	$ —
Trademarks and trade names	1,305	7,395	1,305
Total	$ 45,135	$ 49,765	$ 1,305

The following summarizes the changes in the carrying amount of other intangible assets:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
Balance at beginning of period	$ 111,847	$ 33,889	$ 5,605
Business acquisitions (Note 2)	—	82,630	31,100
Amortization expense	(9,975)	(4,672)	(2,816)
Other	1,507	—	—
Balance at end of period	$ 103,379	$ 111,847	$ 33,889

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

The estimated amortization expense for the next five fiscal years is as follows (in thousands):

Year Ending December 31,	Amount
2010	$9,906
2011	$9,736
2012	$7,364
2013	$4,951
2014	$3,863

Other Non-Current Assets

We have included deferred debt issuance costs in other assets. We amortize deferred debt issuance cost as interest expense over the life of the related debt. Following are the changes in the carrying amount of these assets:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
Balance at beginning of period	$ 4,169	$ 6,440	$10,819
Additions	—	—	2,123
Interest expense—debt issuance costs	(2,271)	(2,271)	(6,502)
Balance at end of period	$ 1,898	$ 4,169	$ 6,440

Capitalization of Interest Cost

We capitalize interest in accordance with the FASB Topic *Interest*. We incurred total interest of $27.4 million, $24.7 million and $38.6 million in the years ended December 31, 2009, 2008 and 2007, respectively, of which we capitalized $2.8 million, $1.9 million and $0.5 million in the years ended December 31, 2009, 2008 and 2007, respectively.

Cash and Cash Equivalents

Our cash equivalents are highly liquid investments, with maturities of three months or less when we purchase them, which we do not hold as part of our investment portfolio.

We record current cash and cash equivalents as restricted when we are unable to freely use such cash and cash equivalents for our general operating purposes.

At December 31, 2009, we had restricted cash and cash equivalents totaling $15.3 million, $7.4 million of which was held in restricted foreign accounts, $3.5 million of which was held as cash collateral for letters of credit, $4.0 million of which was held for future decommissioning of facilities, and $0.4 million of which was held to meet reinsurance reserve requirements of our captive insurance companies. It is possible that a portion of restricted cash at December 31, 2009 will not be released within the next 12 months.

Derivative Financial Instruments

Our worldwide operations give rise to exposure to market risks from changes in foreign exchange rates. We use derivative financial instruments to reduce the impact of changes in foreign exchange rates on our operating results. We use these instruments primarily to hedge our exposure associated with revenues or costs on our long-

term contracts that are denominated in currencies other than our operating entities' functional currencies. We do not hold or issue financial instruments for trading or other speculative purposes.

We enter into derivative financial instruments primarily as hedges of certain firm purchase and sale commitments denominated in foreign currencies. We record these contracts at fair value on our combined balance sheets. Depending on the hedge designation at the inception of the contract, the related gains and losses on these contracts are either deferred in parent equity (deficit) (as a component of accumulated other comprehensive loss) until the hedged item is recognized in earnings or offset against the change in fair value of the hedged firm commitment through earnings. Any ineffective portion of a derivative's change in fair value is immediately recognized in earnings. The gain or loss on a derivative financial instrument not designated as a hedging instrument is also immediately recognized in earnings. Gains and losses on derivative financial instruments that require immediate recognition are included as a component of other income (expense)—net in our combined statements of income.

Self-Insurance

We have certain wholly owned insurance subsidiaries that provide employer's liability, general and automotive liability and workers' compensation insurance and, from time to time, builder's risk insurance (within certain limits) to our companies. We may also, in the future, have these insurance subsidiaries accept other risks that we cannot or do not wish to transfer to outside insurance companies. Included in other liabilities on our combined balance sheets are reserves for self-insurance totaling $56.8 million and $60.6 million at December 31, 2009 and 2008, respectively.

Loss Contingencies

We estimate liabilities for loss contingencies when it is probable that a liability has been incurred and the amount of loss is reasonably estimable. We provide disclosure when there is a reasonable possibility that the ultimate loss will exceed the recorded provision or if such loss is not reasonably estimable. We are currently involved in some significant litigation, as discussed in Note 9. We have accrued our estimates of the probable losses associated with these matters. However, our losses are typically resolved over long periods of time and are often difficult to estimate due to various factors, including the possibility of multiple actions by third parties. Therefore, it is possible future earnings could be affected by changes in our estimates related to these matters.

Stock-Based Compensation

We expense stock-based compensation in accordance with FASB Topic *Compensation—Stock Compensation*. Under this topic, the fair value of equity-classified awards, such as restricted stock, performance shares and stock options, is determined on the date of grant and is not remeasured. Grant date fair values for restricted stock and performance shares are determined using the closing price of MII's common stock on the date of grant. Grant date fair values for stock options are determined using a Black-Scholes option-pricing model ("Black-Scholes"). The determination of the fair value of a share-based payment award on the date of grant using an option-pricing model requires the input of highly subjective assumptions, such as the expected life of the award and stock price volatility. For liability-classified awards, such as cash-settled deferred stock units and performance units, fair values are determined at grant date using the closing price of MII's common stock and are remeasured at the end of each reporting period through the date of settlement.

Under the provisions of this topic, we recognize expense based on the grant date fair value, net of an estimated forfeiture rate, for all share-based awards granted on a straight-line basis over the requisite service

periods of the awards, which is generally equivalent to the vesting term. This topic requires compensation expense to be recognized, net of an estimate for forfeitures, such that compensation expense is recorded only for those awards expected to vest. We review the estimate for forfeitures periodically and record any adjustments deemed necessary for each reporting period. If our actual forfeiture rate is materially different from our estimate, the stock-based compensation expense could be significantly different from what we have recorded in the current period.

Additionally, this topic amended the FASB Topic *Statement of Cash Flows* to require excess tax benefits to be reported as a financing cash flow, rather than as a reduction of taxes paid. These excess tax benefits result from tax deductions in excess of the cumulative compensation expense recognized for options exercised and other equity-classified awards.

See Note 8 for a further discussion of stock-based compensation.

Recently Adopted Accounting Standards

In June 2009, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 168—The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles a replacement of FASB Statement No. 162. SFAS No. 168 made the FASB Accounting Standards Codification (the "Codification") the single source of U.S. GAAP used by nongovernmental entities in preparation of financial statements, except for rules and interpretive releases of the Securities and Exchange Commission (the "SEC") under authority of federal securities laws, which are the sources of authoritative accounting guidance for SEC registrants. The Codification is meant to simplify user access to all authoritative accounting guidance by reorganizing U.S. GAAP pronouncements into roughly 90 accounting topics within a consistent structure; its purpose is not to create new accounting and reporting guidance. The Codification supersedes all existing non-SEC accounting and reporting standards and was effective for us beginning July 1, 2009. Following SFAS No. 168, the FASB will not issue new standards in the form of Statements, FASB Staff Positions, or Emerging Issues Task Force Abstracts; instead, it will issue Accounting Standards Updates. The FASB will not consider Accounting Standards Updates as authoritative in their own right; these updates will serve only to update the Codification, provide background information about the guidance, and provide the bases for conclusions on the change(s) in the Codification. In the discussion that follows, references in "italics" relate to Codification Topics and Subtopics, and their descriptive titles, as appropriate.

In May 2009, the FASB issued the Topic *Subsequent Events*. This section of the Codification incorporates specific accounting and disclosure requirements for subsequent events into U.S. generally accepted accounting principles. The adoption of these provisions did not have a material impact on our combined financial statements.

In April 2009, the FASB issued a revision to the Topic *Business Combinations*. This revision amends and clarifies the Topic *Business Combinations* to address subsequent measurement and accounting for, and disclosure of, assets and liabilities arising from contingencies in a business combination. On January 1, 2009, we adopted the provisions of this update. The adoption of these provisions did not have a material impact on our combined financial statements.

In April 2009, the FASB issued a revision to the Topic *Financial Instruments*. This revision requires disclosures about fair value of financial instruments in notes to interim financial statements as well as annual financial statements. The notes to our financial statements reflect this revision.

In April 2008, the FASB issued a revision to the Topic *Intangibles—Goodwill and Other*. This revision requires companies estimating the useful life of a recognized intangible asset to consider their historical

experience in renewing or extending similar arrangements or, in the absence of historical experience, to consider assumptions that market participants would use about renewals or extensions as adjusted for the entity-specific factors in this topic. On January 1, 2009, we adopted this revision. The adoption of these provisions did not have a material impact on our combined financial statements.

In March 2008, the FASB issued a revision to the Topic *Derivatives and Hedging*. This revision requires enhanced disclosures about derivative and hedging activities and is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. On January 1, 2009, we adopted this revision for our disclosures about derivative instruments and hedging activities. The notes to our combined financial statements reflect this revision.

In December 2007, the FASB issued a revision to the Topic *Consolidation*. This revision establishes accounting and reporting standards pertaining to ownership interests in subsidiaries held by parties other than the parent, the amount of net income attributable to the parent and to the noncontrolling interest, changes in a parent's ownership interest and the valuation of any retained noncontrolling equity investment when a subsidiary is deconsolidated. It also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. On January 1, 2009, we adopted this revision. We have presented noncontrolling interest as a separate component of parent equity as of December 31, 2009 and 2008.

In December 2007, the FASB issued a revision to the Topic *Business Combinations*. This revision broadens the guidance of this Topic, extending its applicability to all transactions and events in which one entity obtains control over one or more other businesses. It broadens the fair value measurements and recognition of assets acquired, liabilities assumed and interests transferred as a result of business combinations. It also provides disclosure requirements to enable users of the financial statements to evaluate the nature and financial effects of business combinations. On January 1, 2009, we adopted the provisions of this revision. The adoption of these provisions did not have a material impact on our combined financial statements.

New Accounting Standards

In June 2009, the FASB issued a revision to the Topic *Consolidation*. This revision expands the scope of this topic and amends guidance for assessing and analyzing variable interest entities. This revision will be effective for fiscal years beginning after November 15, 2009. We do not expect this revision to have a material impact on our combined financial statements.

NOTE 2—BUSINESS ACQUISITIONS

Instrumentacion y Mantenimiento de Calderas, S.A.

In September 2009, our Power Generation Systems segment acquired certain assets of Instrumentacion y Mantenimiento de Calderas, S.A. In connection with this acquisition, we recorded goodwill of $7.4 million and property, plant and equipment of $4.2 million. We accounted for this acquisition as a business combination.

Nuclear Fuel Services, Inc.

On December 31, 2008, our Government Operations segment completed its acquisition of Nuclear Fuel Services, Inc. ("NFS") for $157.1 million, net of cash acquired. NFS is a provider of specialty nuclear fuels and related services and is a leader in the conversion of Cold War-era government stockpiles of highly enriched

uranium into commercial-grade nuclear reactor fuel. NFS also owns and operates a nuclear fuel fabrication facility licensed by the NRC in Erwin, Tennessee and has approximately 790 employees. In connection with the acquisition of NFS, we initially recorded goodwill of $123.5 million, none of which will be deductible for tax purposes. We also initially recorded other intangible assets of $63.4 million. Those intangible assets now consist of the following (dollar amounts in thousands):

	Amount	Amortization Period
NRC category 1 license	$ 43,830	Indefinite
Backlog	$ 9,180	4 years
Tradename	$ 6,860	6 years
Patented technology	$ 4,440	5 years
Non-compete agreement	$ 610	5 years

During 2009, we finalized our purchase price allocation for the Nuclear Fuel Services, Inc. acquisition, which we completed on December 31, 2008. The purchase price adjustments included a reduction in goodwill of $8.1 million, an increase in property, plant and equipment of $16.2 million and an increase in environmental reserves of $13.5 million.

The Intech Group of Companies

On July 15, 2008, our Power Generation Systems segment completed its acquisition of the Intech group of companies (“Intech”) for $20.2 million. Intech consists of Intech, Inc., Ivey-Cooper Services, L.L.C. and Intech International Inc. Intech, Inc. provides nuclear inspection and maintenance services, primarily for the U.S. market. Ivey-Cooper Services, L.L.C. provides non-destructive inspection services to fossil-fueled power plants, as well as chemical, pulp and paper, and heavy fabrication facilities. Intech International Inc. provides non-destructive testing, field engineering and repair and specialized tooling services, primarily for the Canadian nuclear power generation industry. In connection with the acquisition of Intech, we recorded goodwill of $8.2 million. We also recorded other intangible assets of $10.0 million. Those intangible assets consist of the following (dollar amounts in thousands):

	Amount	Amortization Period
Unpatented technology	$5,600	10 years
Customer relationships	$2,600	10 years
Tradename	$1,800	10 years

Delta Power Services, LLC

On August 1, 2008, our Power Generation Systems segment completed its acquisition of Delta Power Services, LLC (“DPS”) for $13.5 million. DPS is a provider of operation and maintenance services for the U.S. power generation industry. Headquartered in Houston, Texas, DPS has approximately 190 employees at eight gas, biomass or coal-fired power plants in Virginia, California, Texas, Florida and Michigan. In connection with the acquisition of DPS, we recorded goodwill of $3.7 million. We also recorded other intangible assets of $9.3 million. Those intangible assets consist of the following (dollar amounts in thousands):

	Amount	Amortization Period
Customer relationships	$ 8,760	1.4 - 20 years
Tradename	$ 250	25 years
Non-compete agreement	$ 240	3 years

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NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Marine Mechanical Corporation

On May 1, 2007, our Government Operations segment completed its acquisition of Marine Mechanical Corporation ("MMC") for $71.5 million in cash. We recorded goodwill of $39.0 million in connection with this acquisition, none of which will be deductible for tax purposes. Headquartered in Euclid, Ohio, MMC designs, manufactures and supplies electro-mechanical equipment used by the U.S. Government. In addition to the goodwill, we recorded identifiable intangible assets of $31.1 million. Those intangible assets consist of the following (amounts in thousands):

	Amount	Amortization Period
Customer relationships	$ 19,790	20 years
Backlog	$ 9,540	4.7 years
Tradename	$ 1,770	5 years

NOTE 3—EQUITY METHOD INVESTMENTS

We have investments in entities that we account for using the equity method. The undistributed earnings of our equity method investees were $44.2 million and $37.6 million at December 31, 2009 and 2008, respectively.

Summarized below is combined balance sheet and income statement information, based on the most recent financial information, for investments in entities we accounted for using the equity method:

	December 31,	
	2009	2008
	(In thousands)	
Current assets	$ 360,992	$ 254,503
Noncurrent assets	78,559	124,357
Total Assets	$ 439,551	$ 378,860
Current liabilities	$ 234,451	$ 158,266
Noncurrent liabilities	65,223	73,855
Owners' equity	139,877	146,739
Total Liabilities and Owners' Equity	$ 439,551	$ 378,860

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
Revenues	$ 2,199,032	$ 2,083,809	$ 1,887,132
Gross profit	$ 180,205	$ 182,120	$ 156,527
Income before provision for income taxes	$ 131,530	$ 139,197	$ 121,859
Provision for income taxes	13,504	15,947	15,916
Net Income	$ 118,026	$ 123,250	$ 105,943

Revenues of equity method investees include $1,551.9 million, $1,584.6 million and $1,519.9 million of reimbursable costs recorded by limited liability companies in which our Government Operations segment owns an interest at December 31, 2009, 2008 and 2007, respectively. Our investment in equity method investees was $0.8 million less than our underlying equity in net assets of those investees based on stated ownership

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NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

percentages at December 31, 2009. These differences were primarily related to the timing of distribution of dividends and various adjustments under GAAP.

The provision for income taxes is based on the tax laws and rates in the countries in which our investees operate. There is no expected relationship between the provision for income taxes and income before provision for income taxes. The taxation regimes vary not only by their nominal rates, but also by the allowability of deductions, credits and other benefits. For some of our U.S. investees, U.S. income taxes are the responsibility of the respective owners.

Reconciliation of net income per combined income statement information to equity in income from investees per our combined statements of income is as follows:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
Equity income based on stated ownership percentages	$56,286	$56,420	$50,620
All other adjustments due to amortization of basis differences, timing of GAAP adjustments and other adjustments	(1,192)	(4,628)	(4,973)
Equity in income from investees net of tax	$55,094	$51,792	$45,647

Our transactions with affiliates included the following:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
Sales to	$ 35,802	$ 23,096	$ 9,404
Purchases from	$ 12,222	$ 39,963	$ 42,536
Dividends received	$ 50,644	$ 49,676	$ 41,844

Our accounts receivable-trade, net includes receivables from these affiliates of $4.8 million and $1.3 million at December 31, 2009 and 2008, respectively. Accounts payable includes payables to these affiliates of $0.4 million and $3.3 million, respectfully, at December 31, 2009 and 2008.

NOTE 4—INCOME TAXES

We conduct business globally, and as a result, we or one or more of our subsidiaries file income tax returns in the U.S. federal jurisdiction and in many state and foreign jurisdictions. In the normal course of business, we are subject to examination by taxing authorities throughout the world, including such major jurisdictions as Canada and the United States. With few exceptions, we are no longer subject to non-U.S. tax examinations for years prior to 2006.

The IRS has completed audits of the years 2001 through 2006 for the combined group that includes BWICO, and these years are awaiting review by the Joint Committee on Taxation. We anticipate review by the Joint Committee on Taxation of the group’s tax years ended 2001 through 2006 to be resolved within the next 12 months.

State income tax returns are generally subject to examination for a period of three to five years after filing the respective returns. With few exceptions, we do not have any state returns under examination for years prior to 2002.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Effective January 1, 2007, we adopted the provisions of FASB Topic *Income Taxes* regarding the treatment of uncertain tax positions. As a result of this adoption, we recognized a charge of approximately $13.0 million to our accumulated deficit component of parent equity at January 1, 2007. A reconciliation of unrecognized tax benefits for the years ended December 31, 2009, 2008 and 2007 was as follows (in thousands):

	Year Ended December 31,		
	2009	2008	2007
Balance at beginning of year	$14,521	$ 28,858	$ 41,108
Increases based on tax positions taken in the current year	1,322	3,688	391
Increases based on tax positions taken in the prior years	216	353	2,922
Decreases based on tax positions taken in the prior years	(91)	(4,525)	(13,250)
Decreases due to settlements with tax authorities	(4,126)	(13,441)	(2,313)
Decrease due to lapse of applicable statute of limitations	—	(412)	—
Balance at end of year	$11,842	$ 14,521	$ 28,858

Approximately $10.6 million of the balance of unrecognized tax benefits at December 31, 2009 would reduce our effective tax rate if recognized. The remaining balance relates to positions for which the ultimate deductibility is highly certain but for which there is uncertainty about the timing of such deductibility. Because of the impact of deferred tax accounting, other than interest and penalties, the disallowance of the shorter deductibility period would not affect the annual effective tax rate but would accelerate the payment of cash to the taxing authority to an earlier period.

During 2009, we attempted to settle several years of outstanding audits with the Commonwealth of Virginia by making payments under a special tax amnesty program. The payments approximated the unrecognized tax benefits, resulting in no adjustment to tax expense. We have not yet received formal notification that the audits are closed.

As part of the adoption of FASB Topic *Income Taxes*, we began to recognize interest and penalties related to unrecognized tax benefits in our provision for income taxes. During the year ended December 31, 2009, we recorded additional accruals of $0.4 million and made payments of $3.2 million, resulting in a year-end liability of approximately $3.6 million for the payment of tax-related interest and penalties. At December 31, 2008 and 2007, we recorded liabilities of approximately $6 million and $11.6 million, respectively, for the payment of tax-related interest and penalties. The $5.2 million change during the year ended December 31, 2008 was attributable to the settlement of certain audits and the reassessment of related tax positions.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Deferred income taxes reflect the net tax effects of temporary differences between the financial and tax bases of assets and liabilities. Significant components of deferred tax assets and liabilities as of December 31, 2009 and 2008 were as follows:

	December 31,	
	2009	2008
	(In thousands)	
Deferred tax assets:		
Pension liability	$206,757	$226,802
Accrued warranty expense	41,324	44,662
Accrued vacation pay	11,843	11,935
Accrued liabilities for self-insurance (including postretirement health care benefits)	53,121	53,862
Accrued liabilities for executive and employee incentive compensation	35,363	43,959
Net operating loss carryforward	6,273	4,619
Environmental and products liabilities	11,655	31,272
Long-term contracts	19,334	18,303
State tax net operating loss carryforward	44,781	40,876
Foreign tax credit carryforward	16,062	19,178
Other	13,143	19,253
Total deferred tax assets	459,656	514,721
Valuation allowance for deferred tax assets	(28,701)	(32,227)
Deferred tax assets	430,955	482,494
Deferred tax liabilities:		
Property, plant and equipment	28,503	27,839
Investments in joint ventures and affiliated companies	3,528	3,822
Intangibles	32,351	35,011
Other	4,651	4,786
Total deferred tax liabilities	69,033	71,458
Net deferred tax assets	$361,922	$411,036

Income from continuing operations before provision for income taxes was as follows:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
U.S.	$ 164,347	$ 351,398	$ 256,319
Other than U.S.	67,954	81,341	58,029
Income from continuing operations before provision for income taxes	$ 232,301	$ 432,739	$ 314,348

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

The provision for income taxes consisted of:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
Current:			
U.S.—federal	$26,689	$ 53,691	$64,160
U.S.—state and local	14,749	16,063	7,304
Other than U.S.	13,408	15,401	15,673
Total current	54,846	85,155	87,137
Deferred:			
U.S.—Federal	32,330	49,965	12,163
U.S.—State and local	(4,489)	(29,815)	687
Other than U.S.	1,694	3,580	(969)
Total deferred	29,535	23,730	11,881
Provision for income taxes	$84,381	$108,885	$99,018

The following is a reconciliation of the U.S. statutory federal tax rate (35%) to the combined effective tax rate:

	Year Ended December 31,		
	2009	2008	2007
U.S. federal statutory (benefit) rate	35.0%	35.0%	35.0%
State and local income taxes	3.4	3.8	0.8
Non-U.S. operations	(4.1)	(2.5)	(1.0)
Non-deductible business expense	—	0.5	1.0
Valuation allowance for deferred tax assets	(0.3)	(7.0)	0.1
Audit settlements	0.3	(4.7)	(4.0)
Other	2.0	0.1	(0.4)
Effective tax rate attributable to continuing operations	36.3%	25.2%	31.5%

At December 31, 2009, we had a valuation allowance of $28.7 million for deferred tax assets, which we expect cannot be realized through carrybacks, future reversals of existing taxable temporary differences and our estimate of future taxable income. We believe that our remaining deferred tax assets are realizable through carrybacks, future reversals of existing taxable temporary differences and our estimate of future taxable income. Any changes to our estimated valuation allowance could be material to our combined financial statements.

We have foreign net operating loss carryforwards of approximately $13.8 million available to offset future taxable income in foreign jurisdictions. The foreign net operating losses have a valuation allowance of $1.4 million against the related deferred taxes. We have U.S. federal net operating loss carryforwards of approximately $6.9 million, which carry a $1.4 million valuation allowance. These net operating loss carryforwards are scheduled to expire in years 2010 to 2026. We have state net operating losses of approximately $1 billion available to offset future taxable income in various states. The state net operating loss carryforwards begin to expire in the year 2010. We are carrying a valuation allowance of $19.5 million against the deferred tax asset related to the state loss carryforwards.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

We would be subject to withholding taxes if we were to distribute earnings from certain of our foreign subsidiaries. For the year ended December 31, 2009, the undistributed earnings of these subsidiaries is $239.0 million. Unrecognized deferred income tax liabilities, including withholding taxes, of approximately $15.5 million would be payable upon distribution of these earnings. We have provided $0.7 million of taxes on earnings we intend to remit. All other earnings are considered permanently reinvested.

NOTE 5—RELATED PARTY TRANSACTIONS

We are a party to transactions with subsidiaries, divisions and controlled joint ventures of MII and other MII subsidiaries in the normal course of operations. These transactions include the following:

	Year Ended December 31,	
	2009	2008
	(In thousands)	
Purchases	$ 251	$ 404
Interest income	$ 1,217	$ 2,604
Interest expense	$ 23,590	$ 19,645
Corporate administrative expense allocated to MII and JRM	$ 52,142	$ 34,967

Our accounts payable to McDermott International, Inc. consist of items of a normal recurring nature, including, but not limited to, the items disclosed above. These balances are generally settled within 60 days of the invoice date.

At December 31, 2009, MII had an outstanding performance guarantee for a contract executed by B&W PGG with TXU. The total contract value of this project was approximately $138.5 million.

Our note receivable from an affiliate is a 2007 loan agreement between Babcock & Wilcox Canada, Ltd., a subsidiary of B&W PGG, as lender, and J. Ray McDermott Canada Holding, Ltd. (“JRMCHL”), as borrower, for up to 60 million Canadian Dollars. The actual amount funded to JRMCHL under this agreement was $45.2 million. Interest is set at the Canadian Prime Rate and is due quarterly. The loan agreement terminates on June 30, 2011, and the entire amount outstanding under the loan agreement, including accrued interest, is scheduled to become due and payable at that time. Either party may terminate the loan agreement by providing 30 days’ written notice to the other party, in which case the entire amount outstanding under the loan agreement, including accrued interest, will become due and payable at the end of that 30-day period. JRMCHL may repay the loan at any time, without penalty. During the year ended December 31, 2007, JRMCHL made a principal payment of $2.9 million to Babcock & Wilcox Canada, Ltd. No subsequent principal payments have been made. We expect this loan to be settled in connection with the proposed spin-off.

Our note payable to an affiliate relates to a 2006 loan agreement with McDermott Kft., Budapest, Zug branch, the registered branch of McDermott Group Financing Limited Liability Company, whereby we borrowed $355 million. The loan bears interest at a rate of 7.28% per annum at December 31, 2009 and is payable quarterly. The loan is scheduled to mature on December 21, 2011. Principal is due in full on the maturity date but may be paid in whole or in part in advance without penalty. During the year ended December 31, 2009, we had no borrowings or repayments under this facility. We expect this loan to be settled in connection with the proposed spin-off.

On September 17, 2009, we entered into a loan agreement with MII, whereby we can borrow up to $5.0 million in connection with the acquisition of Instrumentacion y Mantenimiento de Calderas, S.A. Interest is set at the Eurodollar deposit rate and is due quarterly. The loan agreement is scheduled to terminate on December 31, 2014, and the entire amount outstanding under the loan agreement, including the accrued interest, is scheduled to

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

become due and payable at that time. Either party may terminate the loan agreement by providing 30 days' written notice to the other party, in which case the entire amount outstanding under the loan agreement, including the accrued interest, will become due and payable at the end of that 30-day period. During the year ended December 31, 2009, we had $2.4 million in borrowings under this facility. We expect this loan to be settled in connection with the proposed spin-off.

NOTE 6—LONG-TERM DEBT AND NOTES PAYABLE

	December 31,	
	2009	2008
	(In thousands)	
Long-term debt consists of:		
Unsecured Debt:		
Other notes payable through 2012	$5,916	$11,548
Secured Debt:		
Power Generation Systems—various notes payable	1,659	1,945
Other	13	177
	7,588	13,670
Less: Amounts due within one year	3,366	7,561
Long-term debt	4,222	$ 6,109
Notes payable and current maturities of long-term debt consist of:		
Short-term lines of credit	3,066	$ 1,460
Current maturities of long-term debt	3,366	7,561
Total	6,432	$ 9,021
Weighted average interest rate on short-term borrowing	5.3%	7.2%

Our short-term lines of credit represent borrowings by one of our subsidiaries. We have included this amount in notes payable and current maturities of long-term debt on our combined balance sheets. This facility is renewable annually and the interest rate associated with this line of credit was 5.3% per annum at December 31, 2009.

Maturities of long-term debt during the three years subsequent to December 31, 2009 are as follows: 2010, $3.4 million; 2011, $0.1 million; 2012, $4.2 million.

Power Generations Systems Credit Facility

On February 22, 2006, B&W PGG entered into a senior secured credit facility with a syndicate of lenders (the "B&W PGG Credit Facility"). As amended to date, this facility provides for borrowings and issuances of letters of credit in an aggregate amount of up to $400 million and matures on February 22, 2011. The proceeds of the B&W PGG Credit Facility are available for working capital needs and other similar corporate purposes of B&W PGG.

B&W PGG's obligations under the B&W PGG Credit Facility are unconditionally guaranteed by all of our domestic subsidiaries included in B&W PGG and secured by liens on substantially all the assets of those subsidiaries, excluding cash and cash equivalents.

The B&W PGG Credit Facility only requires interest payments on a quarterly basis until maturity. Amounts outstanding under the B&W PGG Credit Facility may be prepaid at any time without penalty.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Loans outstanding under the revolving credit subfacility bear interest at either the Eurodollar rate plus a margin ranging from 1.00% to 1.75% per year or the base rate plus a margin ranging from 0.00% to 0.75% per year. The applicable margin for revolving loans varies depending on credit ratings of the B&W PGG Credit Facility. B&W PGG is charged a commitment fee on the unused portion of the B&W PGG Credit Facility, and that fee varies between 0.25% and 0.375% per year depending on credit ratings of the B&W PGG Credit Facility. Additionally, B&W PGG is charged a letter of credit fee of between 1.00% and 1.75% per year with respect to the amount of each letter of credit issued under the B&W PGG Credit Facility. An additional 0.125% per year fee is charged on the amount of each letter of credit issued under the B&W PGG Credit Facility.

The B&W PGG Credit Facility contains customary financial covenants, including maintenance of a maximum leverage ratio and a minimum interest coverage ratio within B&W PGG and covenants that, among other things, restrict the ability of B&W PGG to incur debt, create liens, make investments and acquisitions, sell assets, pay dividends, prepay subordinated debt, merge with other entities, engage in transactions with affiliates and make capital expenditures. The capital expenditure annual limits allow us to roll forward amounts not spent under the limits from one year to the next. However, the amount rolled forward must be spent entirely in the next year and may not be rolled forward again to future years. At December 31, 2009, B&W PGG was in compliance with all of the covenants set forth in the B&W PGG Credit Facility.

As of December 31, 2009, there were no outstanding borrowings, but letters of credit issued under the B&W PGG Credit Facility totaled $199.2 million. At December 31, 2009, there was $200.8 million available for borrowings or to meet letter of credit requirements under the B&W PGG Credit Facility. If there had been borrowings under this facility, the applicable interest rate at December 31, 2009 would have been 3.25% per year.

Bank Guarantees (Foreign Operations)

Certain foreign subsidiaries of B&W PGG had credit arrangements with various commercial banks for the issuance of bank guarantees. The aggregate value of all such bank guarantees as of December 31, 2009 was $16.5 million.

Surety Bonds

In June 2008, MII, B&W PGG and BHI jointly executed a general agreement of indemnity in favor of a surety underwriter relating to surety bonds that underwriter issued in support of the contracting activity of our Power Generation Systems segment. As of December 31, 2009, surety bonds issued under this arrangement totaled approximately $98.5 million. Any claim successfully asserted against the surety by one or more of the bond obligees would likely be recoverable from any of MII, B&W PGG and BHI under the indemnity agreement.

Government Operations Credit Facility

On December 9, 2003, BWXT entered into a senior unsecured credit facility with a syndicate of lenders (the “BWXT Credit Facility”), which is currently scheduled to mature March 18, 2010. This facility provides for borrowings and issuances of letters of credit in an aggregate amount of up to $135 million. The proceeds of the BWXT Credit Facility are available for working capital needs and other general corporate purposes of BWXT. We believe we will be successful in obtaining an extension on this facility until we enter into a new, replacement credit facility. If we are not able to obtain an extension, we would consider other alternatives, which could include cash collateralizing letters of credit outstanding under this facility.

The BWXT Credit Facility only requires interest payments on a quarterly basis until maturity. Amounts outstanding under the BWXT Credit Facility may be prepaid at any time without penalty.

Loans outstanding under the BWXT Credit Facility bear interest at either the Eurodollar rate plus a margin ranging from 1.25% to 1.75% per year or the base rate plus a margin ranging from 0.25% and 0.75% per year. The applicable margin for revolving loans varies depending on the leverage ratio of BWXT as of the last day of the preceding fiscal quarter. BWXT is charged an annual commitment fee of 0.375%, which is payable quarterly. Additionally, BWXT is charged a letter of credit fee of between 1.25% and 1.75% per year with respect to the amount of each letter of credit issued, depending on the leverage ratio of BWXT as of the last day of the preceding fiscal quarter. An additional 0.125% per year fee is charged on the amount of each letter of credit issued.

The BWXT Credit Facility contains customary financial and nonfinancial covenants and reporting requirements. The financial covenants require maintenance of a maximum leverage ratio, a minimum fixed charge coverage ratio and a maximum debt to capitalization ratio within BWXT. At December 31, 2009, BWXT was in compliance with all of the covenants set forth in the BWXT Credit Facility.

At December 31, 2009, there were no borrowings outstanding, but letters of credit issued under the BWXT Credit Facility totaled $59.0 million. At December 31, 2009, there was $76.0 million available for borrowings or to meet letter of credit requirements under the BWXT Credit Facility. If there had been borrowings under this facility, the applicable interest rate at December 31, 2009 would have been 3.50% per year.

Letters of Credit (Nuclear Fuel Services, Inc.)

At December 31, 2009, NFS, had approximately $3.7 million in letters of credit issued by various commercial banks on its behalf. The obligations to the commercial banks issuing such letters of credit are secured by cash, short-term certificates of deposit and certain real and intangible assets.

NOTE 7—PENSION PLANS AND POSTRETIREMENT BENEFITS

We have historically provided defined benefit retirement benefits, primarily through noncontributory pension plans, for most of our regular employees. As of 2006, our retirement plans for U.S.-based employees were closed to new entrants for our corporate employees and were closed to new salaried plan entrants for salaried employees of BWXT and B&W PGG and their respective subsidiaries. Effective December 31, 2007, the salaried retirement plan acquired with MMC in May 2007 was closed to new entrants and benefit accruals were frozen for existing participants who were not vested as of December 31, 2007. Effective October 31, 2008, the salaried and hourly retirement plans acquired with MMC were merged into the retirement plan for employees of BWXT. Effective December 31, 2008, we acquired the retirement plans and postretirement benefit plans of our subsidiary NFS. Effective December 31, 2009, the salaried retirement plan acquired with NFS was closed to new entrants and benefit accruals were frozen for existing participants who were not vested as of December 31, 2009.

We do not provide retirement benefits to certain non-resident alien employees of foreign subsidiaries. Retirement benefits for salaried employees who accrue benefits in a defined benefit plan are based on final average compensation and years of service, while benefits for hourly paid employees are based on a flat benefit rate and years of service. Our funding policy is to fund the plans as recommended by the respective plan actuaries and in accordance with the Employee Retirement Income Security Act of 1974, as amended, or other applicable law. The Pension Protection Act of 2006 replaces the current funding provisions for single-employer defined benefit plans. Funding provisions under the Pension Protection Act accelerate funding requirements to ensure full funding of benefits accrued. The Pension Protection Act became effective in 2008 and had no impact on our combined financial condition or cash flows for 2008.

Effective December 31, 2009, we adopted the disclosure provisions of FASB Topic 715, *Compensation—Retirement Benefits*. In accordance with the provisions of this topic, we have disclosed additional information about our assets set aside to fund our pension and postretirement benefit obligations.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Effective December 31, 2007, we adopted the measurement date provision of SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans*, for our plans that were not on a calendar year measurement. In accordance with this provision, we recorded a reduction in retained earnings of $1.7 million, net of a related tax benefit of $0.8 million.

We make available other benefits which include postretirement health care and life insurance benefits to certain salaried and union retirees based on their union contracts. Certain subsidiaries provide these benefits to unionized and salaried future retirees.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Obligations and Funded Status

	Pension Benefits Year Ended December 31,		Other Benefits Year Ended December 31,	
	2009	2008	2009	2008
	(In thousands)			
Change in benefit obligation:				
Benefit obligation at beginning of period	$2,398,965	$2,355,231	$ 141,864	$ 103,476
Service cost	36,565	35,651	958	282
Interest cost	147,910	140,169	8,713	5,562
Acquisitions	—	94,082	—	45,080
Plan participants' contributions	287	283	120	—
Amendments	6,141	100	—	—
Settlements	(2,054)	(1,216)	—	—
Actuarial (gain) loss	80,860	(56,357)	2,463	1,971
Foreign currency exchange rate changes	23,154	(36,882)	964	(1,447)
Benefits paid	(139,641)	(132,096)	(9,488)	(13,060)
Benefit obligation at end of period	$2,552,187	$2,398,965	$ 145,594	$ 141,864
Change in plan assets:				
Fair value of plan assets at beginning of period	$1,695,445	$2,040,794	$ 27,079	$ —
Actual return on plan assets	168,558	(399,896)	3,346	—
Acquisitions	—	67,321	—	27,079
Plan participants' contributions	287	283	120	—
Company contributions	49,475	157,787	9,736	13,060
Foreign currency exchange rates	24,324	(38,748)	—	—
Benefits paid	(139,641)	(132,096)	(9,488)	(13,060)
Fair value of plan assets at the end of period	$1,798,448	$1,695,445	$ 30,793	$ 27,079
Funded status	$ (753,739)	$ (703,520)	$(114,801)	$(114,785)
Amounts recognized in the balance sheet consist of:				
Accrued employee benefits	$ (58,000)	$ (43,530)	$ (9,317)	$ (7,317)
Accumulated postretirement benefit obligation	—	—	(105,484)	(107,468)
Pension liability	(696,584)	(663,146)	—	—
Intangible asset	845	3,156	—	—
Net amount recognized	$ (753,739)	$ (703,520)	(114,801)	$(114,785)
Amounts recognized in accumulated other comprehensive loss:				
Net actuarial loss	$ 776,128	$ 814,486	$ 13,182	$ 14,844
Prior service cost	21,746	13,113	473	399
Unrecognized transition obligation	—	—	1,055	889
Total before taxes	$ 797,874	$ 827,599	$ 14,710	$ 16,132
Supplemental information:				
Plans with accumulated benefit obligation in excess of plan assets				
Projected benefit obligation	$2,448,685	$2,323,021	N/A	N/A
Accumulated benefit obligation	$2,341,477	$2,213,377	$ 145,594	$ 141,864
Fair value of plan assets	$1,694,101	$1,616,345	$ 30,793	$ 27,079
Plans with plan assets in excess of accumulated benefit obligation				
Projected benefit obligation	$ 103,502	$ 75,944	N/A	N/A
Accumulated benefit obligation	$ 92,812	$ 67,798	$ —	$ —
Fair value of plan assets	$ 104,347	$ 79,100	$ —	$ —

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

	Pension Benefits Year Ended December 31,			Other Benefits Year Ended December 31,		
	2009[1]	2008	2007	2009	2008	2007
			(In thousands)			
Components of net periodic benefit cost:						
Service cost	$ 36,565	$ 35,651	$ 36,679	$ 958	$ 282	$ 331
Interest cost	147,910	140,169	135,893	8,713	5,562	5,988
Expected return on plan assets	(136,211)	(170,866)	(154,939)	(1,504)	—	—
Amortization of transition obligation	—	—	—	257	281	273
Amortization of prior service cost	3,119	2,757	3,085	66	73	71
Recognized net actuarial loss	81,484	29,177	42,224	1,711	1,447	1,717
Net periodic benefit cost	$ 132,867	$ 36,888	$ 62,942	$10,201	$7,645	$8,380

(1) Excludes approximately $2.1 million of income attributable to settlement of previously recorded unfunded pension liabilities.

Additional Information

	Pension Benefits Year Ended December 31,		Other Benefits Year Ended December 31,	
	2009	2008	2009	2008
		(In thousands)		
Increase in accumulated other comprehensive loss due to actuarial losses—before taxes	$54,875	$ 513,477	$612	$ 1,971

We have recognized in the current fiscal year, and expect to recognize in the next fiscal year, the following amounts in other comprehensive loss as components of net periodic benefit cost:

	Recognized in the Year Ended December 31, 2009		To Be Recognized in the Year Ending December 31, 2010	
	Pension	Other	Pension	Other
		(In thousands)		
Pension cost in accumulated other comprehensive loss:				
Net actuarial loss	$81,484	$1,711	$ 81,612	$ 1,460
Prior service cost	3,119	66	3,486	73
Transition obligation	—	257	—	281
	$84,603	$2,034	$ 85,098	$ 1,814

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Assumptions

	Pension Benefits		Other Benefits	
	2009	2008	2009	2008
Weighted average assumptions used to determine net periodic benefit obligations at December 31:				
Discount rate	6.03%	6.32%	5.57%	6.15%
Rate of compensation increase	3.77%	3.96%	—	—
Weighted average assumptions used to determine net periodic benefit cost for the years ended December 31:				
Discount rate	6.32%	6.21%	6.11%	5.74%
Expected return on plan assets	8.19%	8.32%	—	—
Rate of compensation increase	4.20%	3.94%	—	—

The expected rate of return on plan assets assumption is based on the long-term expected returns for the investment mix of assets currently in the portfolio. In setting this rate, we use a building-block approach. Historic real return trends for the various asset classes in the plan's portfolio are combined with anticipated future market conditions to estimate the real rate of return for each class. These rates are then adjusted for anticipated future inflation to determine estimated nominal rates of return for each class. The expected rate of return on plan assets is determined to be the weighted average of the nominal returns based on the weightings of the classes within the total asset portfolio. We have been using an expected return on plan assets assumption of 8.5% for the majority of our existing pension plan assets which is consistent with the long-term asset returns of the portfolio.

Our existing other benefit plans are unfunded, with the exception of the NFS postretirement benefit plans. These plans provide health benefits to certain salaried and hourly employees, as well as retired employees, of NFS. Approximately 84% of total assets for these postretirement benefit plans are contributed into a Voluntary Employees' Beneficiary Association ("VEBA") trust.

	2009[1]	2008[1]
Assumed health-care cost trend rates at December 31		
Health-care cost trend rate assumed for next year	8.30%-8.50%	8.50%-8.60%
Rates to which the cost trend rate is assumed to decline (ultimate trend rate)	4.50%	4.50%
Year that the rate reaches ultimate trend rate	2016-2028	2016-2028

(1) Assumed health-care cost trend rates and years that the ultimate trends are reached vary among our postretirement benefit arrangements.

Assumed health-care cost trend rates have a significant effect on the amounts we report for our health-care plan. A one-percentage-point change in our assumed health-care cost trend rates would have the following effects:

	One-Percentage-Point Increase	(In thousands)	One-Percentage-Point Decrease
Effect on total of service and interest cost	$ 718		$ (623)
Effect on postretirement benefit obligation	$ 10,616		$ (9,281)

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Investment Goals

General

The overall investment strategy of the pension trusts is to achieve long-term growth of principal, while avoiding excessive risk and to minimize the probability of loss of principal over the long term. The specific investment goals that have been set for the pension trusts in the aggregate are (1) to ensure that plan liabilities are met when due and (2) to achieve an investment return on trust assets consistent with a reasonable level of risk.

Allocations to each asset class for both domestic and foreign plans are reviewed periodically and rebalanced, if appropriate, to assure the continued relevance of the goals, objectives and strategies. The pension trusts for both our domestic and foreign plans employ a professional investment advisor and a number of professional investment managers whose individual benchmarks are, in the aggregate, consistent with the plan's overall investment objectives. The goals of each investment manager are (1) to meet (in the case of passive accounts) or exceed (for actively managed accounts) the benchmark selected and agreed upon by the manager and the trust and (2) to display an overall level of risk in its portfolio that is consistent with the risk associated with the agreed upon benchmark.

The investment performance of total portfolios, as well as asset class components, is periodically measured against commonly accepted benchmarks, including the individual investment manager benchmarks. In evaluating investment manager performance, consideration is also given to personnel, strategy, research capabilities, organizational and business matters, adherence to discipline and other qualitative factors that may impact the ability to achieve desired investment results.

Domestic Plans

We sponsor the following domestic defined benefit plans:

- Retirement Plan for Employees of McDermott Incorporated and Participating Subsidiary and Affiliated Companies;
- Retirement Plan for Employees of Babcock & Wilcox Commercial Operations;
- Retirement Plan for Employees of Babcock & Wilcox Government Operations; and
- Nuclear Fuel Services, Inc. Retirement Plan for Salaried Employees and Nuclear Fuel Services, Inc. Retirement Plan for Hourly Employees acquired with NFS (the "NFS Plans").

With the exception of the NFS Plans, the assets of the domestic pension plans were commingled for investment purposes and held by the Trustee, The Bank of New York Mellon, in the McDermott Incorporated Master Trust (the "Master Trust") through December 31, 2009. Effective January 1, 2010, the NFS Plans have been merged into the Master Trust. For the years ended December 31, 2009 and 2008, the investment return (loss) on domestic plan assets of the Master Trust (before deductions for management fees) was approximately 9.3% and (19.8)%, respectively. These percentages exclude the NFS Plans.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

The following is a summary of the domestic pension plans' asset allocations at December 31, 2009 and 2008 by asset category.

	2009	2008
Asset Category:		
Equity Securities	28%	16%
Fixed Income	27%	32%
Commingled and Mutual Funds	17%	13%
U.S. Government Securities	10%	17%
Partnerships with Security Holdings	11%	11%
Real Estate	4%	6%
Other	3%	5%
Total	100%	100%

The target allocation for 2010 for the domestic plans, by asset class, is as follows:

Asset Class:	
Public Equity	42.5%
Private Equity	10.0%
Fixed Income	38.0%
Real Estate	5.0%
Other	4.5%

Foreign Plans

B&W PGG sponsors foreign plans through certain foreign subsidiaries. These plans are the plans of Babcock & Wilcox Canada, Ltd. (the "Canadian Plans") and the Diamond Power Specialty Limited Retirement Benefits Plan (the "Diamond UK Plan").

The weighted average asset allocations of these plans at December 31, 2009 and 2008 by asset category were as follows:

	2009	2008
Asset Category:		
Fixed Income	77%	53%
Equity Securities	17%	45%
Other	6%	2%
Total	100%	100%

The target allocation for 2010 for the foreign plans, by asset class, is as follows:

	Canadian Plans	Diamond UK Plan
Asset Class:		
U.S. Equity	15%	10%
Global Equity	50%	45%
Fixed Income	35%	45%

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Fair Value

Effective December 31, 2009 with the additional disclosure provisions of FASB Topic 715, *Compensation—Retirement Benefits*, the following is a summary of total investments for our plans measured at fair value at December 31, 2009. See Note 13 for a detailed description of fair value measurements and the hierarchy established for valuation inputs.

	12/31/09	Level 1	Level 2	Level 3
		(In thousands)		
Pension and Other Benefits:				
Fixed Income	$ 519,313	$ 15,690	$ 503,468	$ 155
Equities	476,709	476,500	—	209
Commingled and Mutual Funds	377,242	74,438	93,905	208,899
U.S. Government Securities	155,832	155,832	—	—
Partnerships with Security Holdings	179,358	—	2,318	177,040
Real Estate	70,048	—	—	70,048
Cash and Accrued Items	50,739	50,152	493	94
Total Assets	$ 1,829,241	$ 772,612	$ 600,184	$ 456,445

The following is a summary of the changes in the plans' Level 3 instruments measured on a recurring basis for the year ended December 31, 2009 (in thousands):

Balance at beginning of period	$ 483,153
Issuances and acquisitions	29,758
Dispositions	(64,124)
Realized loss	(2,348)
Unrealized gain	10,006
Balance at end of period	$ 456,445

Our pension plan assets are included in a master trust. The master trust invests in certain entities that do not have a quoted market price but calculate net asset value per share or its equivalent. We review these net asset values to determine if any adjustments are required. Our review considers available market data, relevant index returns, preliminary estimates from investees, directional guidance from investees and other data obtained through research, consultation with third-party advisors and direct inquiry to our investees. Based on these factors and any other relevant information we are able to obtain through consultation with third-party advisors, we estimate the value of each investment, including all level 3 investments. If using such estimated values rather than the latest investee net asset values results in a material reduction in the total value of the trust assets, we adjust the reported net asset values to the revised estimated values. For our purposes, a material reduction is 5% or more.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Cash Flows

	Domestic Plans		Foreign Plans	
	Pension Benefits	Other Benefits	Pension Benefits	Other Benefits
Expected employer contributions to trusts of defined benefit plans:				
2010	$ 57,419	N/A	$ 581	N/A
Expected benefit payments:				
2010	$ 141,387	$ 14,331	$ 13,941	$ 699
2011	$ 149,199	$ 14,203	$ 14,126	$ 738
2012	$ 157,658	$ 13,758	$ 11,924	$ 712
2013	$ 164,723	$ 13,335	$ 12,657	$ 703
2014	$ 171,382	$ 13,009	$ 13,897	$ 706
2015-2019	$ 918,338	$ 52,133	$ 87,944	$ 3,419

The expected employer contributions to trusts for 2010 are included in current liabilities at December 31, 2009.

Defined Contribution Plans

We participate in the McDermott International, Inc. Supplemental Executive Retirement Plan (“SERP Plan”), which is a defined contribution plan. We recorded income (expense) related to the SERP Plan of approximately $0.8 million, $(1.0) million and $0.9 million in the years ended December 31, 2009, 2008 and 2007, respectively.

We also have provided benefits under the Thrift Plan for Employees of McDermott Incorporated and Participating Subsidiary and Affiliated Companies (“Thrift Plan”). The Thrift Plan generally provides for matching employer contributions of 50% of participants’ contributions up to 6 percent of compensation. These matching employer contributions are typically made in shares of MII common stock. In lieu of benefit accruals under the respective retirement plans, the Thrift Plan also provides for service-based contributions to some of our employees. Amounts charged to expense for employer contributions under the Thrift Plan totaled $17.6 million, $15.3 million and $12.5 million in the years ended December 31, 2009, 2008 and 2007, respectively.

Multiemployer Plans

One of our subsidiaries contributes to various multiemployer plans. The plans generally provide defined benefits to substantially all unionized workers in this subsidiary. Amounts charged to pension cost and contributed to the plans were $20.6 million, $30.4 million and $32.6 million in the years ended December 31, 2009, 2008 and 2007, respectively.

NOTE 8—STOCK PLANS

At December 31, 2009, certain of our officers and employees participated in benefit plans of MII, which involve the issuance of MII common stock. Where required, disclosures have been adjusted for MII’s stock splits effected in the form of a stock dividend in September 2007 and May 2006.

2009 McDermott International, Inc. Long-Term Incentive Plan

In May 2009, MII’s shareholders approved the 2009 McDermott International, Inc. Long-Term Incentive Plan (the “2009 LTIP”). Executive officers, key employees and consultants are eligible to participate in the plan.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

The Compensation Committee of MII's Board of Directors selects the participants for the plan. The plan provides for a number of forms of stock-based compensation, including incentive and non-qualified stock options, restricted stock, restricted stock units and performance shares and performance units, subject to satisfaction of specific performance goals. Shares approved under MII's 2001 Directors and Officers Long-Term Incentive Plan (the "2001 LTIP") that were not awarded as of the date of approval of the 2009 LTIP, or shares that are subject to awards that are cancelled, terminated, forfeited, expired or settled in cash in lieu of shares, are available for issuance under the 2009 LTIP. Options to purchase shares are granted at not less than 100% of the fair market value (average of the high and low trading price) on the date of grant, become exercisable at such time or times as determined when granted and expire not more than seven years after the date of grant.

2001 Directors and Officers Long-Term Incentive Plan

In May 2009, MII's shareholders approved the 2009 LTIP. As a result, no further awards will be issued under the 2001 LTIP. Executive officers, key employees and consultants were eligible to participate in the 2001 LTIP. The Compensation Committee of MII's Board of Directors selected the participants for the plan. The plan provided for a number of forms of stock-based compensation, including nonqualified stock options, incentive stock options, stock appreciation rights, restricted stock, deferred stock units, performance shares and performance units, subject to satisfaction of specific performance goals. Options to purchase shares were granted at not less than 100% of the fair market value (average of the high and low trading price) on the date of grant, became exercisable at such time or times as determined when granted and expire not more than seven years after the date of the grant. Options granted prior to May 2009 expire not more than ten years after the date of the grant. Shares of common stock available to be awarded under the 2001 LTIP are available under the terms of the 2009 LTIP and have been included in the amount available for grant discussed above.

In the event of a change in control of MII, all of these stock-based compensation programs have provisions that may cause restrictions to lapse and accelerate the exercisability of outstanding options.

Total compensation expense recognized for the years ended December 31, 2009, 2008 and 2007 was as follows:

	Compensation Expense	Tax Benefit	Net Impact
	(In thousands)		
	Year Ended December 31, 2009		
Stock options	$ 2,799	$ (999)	$ 1,800
Restricted stock	3,052	(1,106)	1,946
Restricted stock units	3,870	(1,392)	2,478
Performance shares	14,248	(5,162)	9,086
Performance and deferred stock units	1,922	(686)	1,236
TOTAL	$ 25,891	$(9,345)	$16,546
	Year Ended December 31, 2008		
Stock options	$ 498	$ (178)	$ 320
Restricted stock	2,202	(805)	1,397
Performance shares	20,404	(7,244)	13,160
Performance and deferred stock units	1,732	(618)	1,114
TOTAL	$ 24,836	$(8,845)	$15,991

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

	Compensation Expense	Tax Benefit	Net Impact
	(In thousands) Year Ended December 31, 2007		
Stock options	$ 1,569	$ (560)	$ 1,009
Restricted stock	47	(17)	30
Performance shares	14,028	(4,957)	9,071
Performance and deferred stock units	5,122	(1,825)	3,297
TOTAL	$ 20,766	$(7,359)	$13,407

As of December 31, 2009, total unrecognized estimated compensation expense related to nonvested awards was $21.5 million, net of estimated tax benefits of $12.0 million. The components of the total gross unrecognized estimated compensation expense of $33.5 million and their expected weighted-average periods for expense recognition are as follows (amounts in millions; periods in years):

	Amount	Weighted-Average Period
Stock options	$ 8.7	1.1
Restricted stock	$ 3.9	1.1
Restricted stock units	$ 8.0	1.3
Performance shares	$ 12.7	0.6
Performance and deferred stock units	$ 0.2	0.4

Stock Options

The following table summarizes activity for MII's stock options for the year ended December 31, 2009 (share data in thousands):

	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value (in millions)
Outstanding, beginning of year	576	$ 3.99		
Granted	1,213	11.73		
Exercised	(202)	3.85		
Cancelled/expired/forfeited	(5)	22.69		
Transferred to affiliate	(0)	—		
Outstanding, end of year	1,582	$ 9.92	5.4 Years	$ 22.6
Exercisable, end of year	374	$ 4.07	2.7 Years	$ 7.6

The aggregate intrinsic value included in the table above represents the total pretax intrinsic value that would have been received by the option holders had all option holders exercised their options on December 31, 2009. The intrinsic value is calculated as the total number of option shares multiplied by the difference between the closing price of MII's common stock on the last trading day of each period and the exercise price of the options. This amount changes based on the fair market value of MII's common stock.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

The weighted average fair value of stock options granted in the year ended December 31, 2009 was $11.73. There were no stock options granted in the years ended December 31, 2008 and 2007. The total fair value of options vested was $1.3 million and $2.6 million during the years ended December 31, 2008 and 2007, respectively. No options vested during the year ended December 31, 2009.

During the years ended December 31, 2009, 2008 and 2007, the total intrinsic value of stock options exercised was $3.8 million, $54.5 million and $105.6 million, respectively. The actual tax benefits realized related to stock options exercised during the years ended 2009 and 2008 was $1.7 million and $11.6 million, respectively.

Restricted Stock

Non-vested restricted stock awards as of December 31, 2009 and changes during the year ended December 31, 2009 were as follows (share data in thousands):

	Number of Shares	Weighted-Average Grant Date Fair Value
Non-vested, beginning of year	243	$ 37.86
Granted	—	—
Restrictions lapsed	(82)	15.55
Cancelled/forfeited	(2)	52.65
Transferred to affiliate	3	56.25
Nonvested, end of year	162	$ 37.86

Restricted Stock Units

Non-vested restricted stock awards as of December 31, 2009 and changes during the year ended December 31, 2009 were as follows (share data in thousands):

	Number of Shares	Weighted-Average Grant Date Fair Value
Non-vested, beginning of year	—	$ —
Granted	1,114	11.40
Restrictions lapsed	—	—
Cancelled/forfeited	(9)	21.54
Transferred to affiliate	—	—
Nonvested, end of year	1,105	$ 11.36

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Performance Shares

Non-vested performance share awards as of December 31, 2009 and changes during the year ended December 31, 2009 were as follows (share data in thousands):

	Number of Shares	Weighted-Average Grant Date Fair Value
Non-vested, beginning of year	1,615	$ 33.06
Granted	708	15.00
Vested	(977)	23.12
Cancelled/forfeited	(5)	43.68
Transferred to affiliate	9	32.08
Non-vested, end of year	1,350	$ 30.72

For awards made in 2007 and 2008, the actual number of shares earned by each participant is dependent upon achievement of certain consolidated operating income targets over the three-year performance periods. The awards actually earned will range from zero to 150% of the targeted number of performance shares, to be determined upon completion of the three-year performance period.

For awards made in 2009, the actual number of shares earned by each participant is dependent upon (1) achievement of certain consolidated operating income targets and (2) total shareholder return relative to our peers over the three-year performance periods. The awards actually earned will range from zero to 200% of the targeted number of performance shares, to be determined upon completion of the three-year performance period.

The intrinsic value of performance shares vested during the year ended December 31, 2009 was $18.0 million. No performance shares vested during the years ended December 31, 2008 and 2007.

Performance and Deferred Stock Units

Nonvested performance and deferred stock unit awards as of December 31, 2009 and changes during the year ended December 31, 2009 were as follows (share data in thousands):

	Number of Units	Aggregate Intrinsic Value (in millions)
Nonvested, beginning of year	157	
Granted	—	
Vested	(84)	
Cancelled/forfeited	(1)	
Transferred to Affiliate	—	
Nonvested, end of year	72	$ 1.7

The aggregate intrinsic value included in the table above represents the total pretax intrinsic value recorded as a liability at December 31, 2009 in the combined balance sheets. During the years ended December 31, 2009, 2008 and 2007, we paid $1.5 million, $4.1 million and $3.3 million, respectively, for the settlement of vested performance and deferred stock units.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

NOTE 9—COMMITMENTS AND CONTINGENCIES

Investigations and Proceedings

On January 29, 2010, Michelle McMunn, Cara D. Steele and Yvonne Sue Robinson filed suit against B&W PGG, Babcock & Wilcox Technical Services Group, Inc., formerly known as B&W Nuclear Environmental Services, Inc. (together with B&W PGG, the "B&W Parties") and Atlantic Richfield Company ("ARCO") in the United States District Court for the Western District of Pennsylvania (the "McMunn Litigation"). The plaintiffs in the McMunn Litigation allege, among other things, that they suffered personal injuries and property damage as a result of alleged radioactive and non-radioactive releases relating to the operation, remediation and/or decommissioning of two former nuclear fuel processing facilities located in Apollo and Parks Township, Pennsylvania. Those facilities previously were owned by Nuclear Materials and Equipment Company, a former subsidiary of ARCO ("NUMEC") which was acquired by B&W PGG. The plaintiffs in the McMunn Litigation seek compensatory and punitive damages.

At the time of ARCO's sale of NUMEC to B&W PGG, B&W PGG received an indemnity and hold harmless agreement from ARCO from claims or liabilities arising as a result of pre-closing NUMEC or ARCO actions.

We intend to vigorously defend this matter, and believe that in the event of liability, if any, the claims alleged in the McMunn Litigation will be resolved within the limits of coverage of our insurance policies and/or the ARCO indemnity.

B&W PGG settled approximately 245 personal injury and wrongful death claims, as well as approximately 125 property damage claims, alleging injury and damage as a result of alleged releases relating to these two facilities. The aggregate settlement amount for these claims was $52.5 million, which was paid during 2009, all of which had been previously accrued. In connection with that settlement, the B&W Parties are pursuing recovery in the matter of *The Babcock & Wilcox Company et al. v. American Nuclear Insurers et al.* (the "ANI Litigation") from their insurer, American Nuclear Insurers and Mutual Atomic Energy Liability Underwriters, of the amounts paid in settlement of that prior action. The ANI Litigation is pending before the Court of Common Pleas of Allegheny County, Pennsylvania. No trial date has been set in the matter.

An action entitled *Iroquois Falls Power Corp. v. Jacobs Canada Inc., et al.*, was filed in the Superior Court of Justice, in Ontario, Canada, on June 1, 2005. Iroquois Falls Power Corp. ("Iroquois") seeks damages of approximately $14 million (Canadian) as a result of an alleged breach by one of our former subsidiaries in connection with the supply and installation of heat recovery steam generators. MI, which provided a guarantee to certain obligations of the former subsidiary, and two bonding companies with whom MII entered into an indemnity arrangement, were also named as defendants. In March 2007, the Superior Court granted summary judgment in favor of all defendants and dismissed all claims of Iroquois, which appealed the ruling. Subsequently, the Court of Appeals for Ontario upheld the summary judgment, but sent the case back to the Superior Court of Justice to allow Iroquois an opportunity to amend its complaint to assert new claims. The Superior Court of Justice, however, denied Iroquois' request to amend its complaint and assert new claims against the defendants based on a breach of contractual warranty. Iroquois appealed the Superior Court's decision
and, in June 2009, the Court of Appeals for Ontario reversed the decision and sent the case back to the Superior Court for Iroquois to file an amended complaint on those new claims. In January 2010, our notice to appeal the Court of Appeals' decision was dismissed by the Supreme Court.

Other

Warranty Claim

One of our Canadian subsidiaries has received notice of a warranty claim on one of its projects on a contract executed in 1998. This situation relates to technical issues concerning components associated with nuclear steam generators. Data collection and analysis can only be performed at specific time periods when the power plant is scheduled to be off-line for maintenance. We also received a notice from the customer during October 2008, and, during November 2008, we responded to the notice by disagreeing with the matters stated in the claim and disputing the claim. This project included a limited-term performance bond totaling approximately $140 million for which we entered into an indemnity arrangement with the surety underwriters. It is possible that our subsidiary may incur warranty costs in excess of amounts provided for as of December 31, 2009. It is also possible that a claim could be initiated by our subsidiary's customer against the surety underwriter should certain events occur. If such a claim were successful, the surety could seek to recover from our subsidiary the costs incurred in satisfying the customer claim. If the surety seeks recovery from our subsidiary, we believe that our subsidiary would have adequate liquidity to satisfy its obligations. However, the ultimate resolution of this possible claim is uncertain, and an adverse outcome could have a material adverse impact on our combined financial condition, results of operations and cash flows.

Suspended Operations

In December 2009, our subsidiary Nuclear Fuel Services, Inc., which we acquired in December 2008, implemented a suspension of some operations at its Erwin, Tennessee manufacturing facility while implementing organizational, facility and management changes to enhance safety controls and processes. We suspended the operations in consultation with the NRC following the occurrence of two separate incidents that we reported to the NRC in October and November 2009. The October 2009 incident involved the generation of excessive heat and a hazardous gas at a specialized cleaning station. The incident was caused by the processing of a small amount of uranium-aluminum material in nitric acid. This incident resulted in some damage to piping, but did not result in any injuries to personnel or offsite releases of chemical or radioactive material. The November 2009 incident involved a fire in a glovebox enclosure. The incident was caused by a reaction between fluorine gas in a cylinder of uranium and the fiberglass backing of the teflon lining of a vent hose attached to the cylinder within the glovebox enclosure. This incident resulted in damage to a hose and a faceplate within the glove box enclosure, but did not result in any injuries to personnel or offsite releases of chemical or radioactive material. Inspections conducted separately by the NRC, our existing nuclear liability underwriter and us revealed specific modifications necessary to improve Nuclear Fuel Services, Inc.'s overall safety performance. Although the NRC did not issue any directive or order to us to suspend these operations, we believe the NRC likely would have done so had we not voluntarily suspended the operations. Although we were already in the process of implementing safety, cultural and procedural improvements at NFS, we have refined and accelerated those changes and have developed other specific enhancements in consultation with the NRC, as confirmed in the NRC's January 7, 2010 confirmatory action letter to Nuclear Fuel Services, Inc.

The suspended operations include production operations, the commercial development line and the highly enriched uranium down-blending facility. There can be no assurance that we will not have to suspend our operations in the future to implement additional changes to enhance our safety controls and processes in order to comply with applicable laws and regulations.

Additionally, due to the nature of our business, we are, from time to time, involved in routine litigation or subject to disputes or claims related to our business activities, including, among other things:

- performance- or warranty-related matters under our customer and supplier contracts and other business arrangements; and
- workers' compensation claims, premises liability claims and other claims.

Based upon our prior experience, we do not expect that any of these other litigation proceedings, disputes and claims will have a material adverse effect on our combined financial condition, results of operations or cash flows.

Environmental Matters

We have been identified as a potentially responsible party at various cleanup sites under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"). CERCLA and other environmental laws can impose liability for the entire cost of cleanup on any of the potentially responsible parties, regardless of fault or the lawfulness of the original conduct. Generally, however, where there are multiple responsible parties, a final allocation of costs is made based on the amount and type of wastes disposed of by each party and the number of financially viable parties, although this may not be the case with respect to any particular site. We have not been determined to be a major contributor of wastes to any of these sites. On the basis of our relative contribution of waste to each site, we expect our share of the ultimate liability for the various sites will not have a material adverse effect on our financial condition, results of operations or cash flows in any given year.

The Department of Environmental Protection of the Commonwealth of Pennsylvania ("PADEP") advised us in March 1994 that it would seek monetary sanctions and remedial and monitoring relief related to the Parks Facilities. The relief sought is related to potential groundwater contamination resulting from previous operations at the facilities. These facilities are currently owned by a subsidiary in our Government Operations segment. PADEP has advised us that it does not intend to assess any monetary sanctions, provided our Government Operations segment continues its remediation program for the Parks Facilities. Whether additional nonradiation contamination remediation will be required at the Parks Facility remains unclear. Results from sampling completed by our Government Operations segment have indicated that such remediation may not be necessary. Our Government Operations segment continues to evaluate closure of the groundwater issues pursuant to applicable Pennsylvania law.

We perform significant amounts of work for the U.S. Government under both prime contracts and subcontracts and operate certain facilities that are licensed to possess and process special nuclear materials. As a result of these activities, we are subject to continuing reviews by governmental agencies, including the U.S. Environmental Protection Agency and the NRC.

The NRC's decommissioning regulations require our Government Operations segment to provide financial assurance that it will be able to pay the expected cost of decommissioning each of its facilities at the end of its service life. We will continue to provide financial assurance aggregating $33.7 million during the year ending December 31, 2010 with existing letters of credit for the ultimate decommissioning of all of these licensed facilities, except two. These two facilities, which represent the largest portion of our eventual decommissioning costs, have provisions in their government contracts pursuant to which substantially all of our decommissioning costs and financial assurance obligations are covered by the U.S. Department of Energy, including the costs to complete the decommissioning projects underway at the facility in Erwin, Tennessee.

At December 31, 2009 and 2008, we had total environmental reserves (including provisions for the facilities discussed above) of $50.3 million and $38.0 million, respectively. Of our total environmental reserves at December 31, 2009 and 2008, $2.5 million and $5.0 million, respectively, were included in current liabilities. Inherent in the estimates of those reserves and recoveries are our expectations regarding the levels of contamination, decommissioning costs and recoverability from other parties, which may vary significantly as decommissioning activities progress. Accordingly, changes in estimates could result in material adjustments to our operating results, and the ultimate loss may differ materially from the amounts that we have provided for in our combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

Operating Leases

Future minimum payments required under operating leases that have initial or remaining non-cancellable lease terms in excess of one year at December 31, 2009 are as follows (in thousands):

Fiscal Year Ending December 31,	Amount
2010	$5,577
2011	$3,955
2012	$2,961
2013	$1,351
2014	$ 977
Thereafter	—

Total rental expense for the years ended December 31, 2009, 2008 and 2007 was $9.8 million, $9.2 million and $8.9 million respectively. These expense amounts include contingent rentals and are net of sublease income, neither of which is material.

Surety Bonds

In June 2008, MII, B&W PGG and BHI jointly executed a general agreement of indemnity in favor of a surety underwriter relating to surety bonds that underwriter issued in support of B&W PGG's contracting activity. As of December 31, 2009, bonds issued under this arrangement totaled approximately $98.5 million. Any claim successfully asserted against the surety by one or more of the bond obligees would likely be recoverable from MII, B&W PGG and BHI under the indemnity agreement.

Proposed Unfavorable Tax Adjustments

We were advised in 2006 by the IRS of proposed unfavorable tax adjustments related to the 2001 through 2003 tax years. We reviewed the IRS positions and disagreed with certain proposed adjustments. Accordingly, we filed a protest with the IRS regarding the resolution of these issues, and the process has proceeded through an appeals hearing with an IRS appellate conferee. We have provided for any amounts that we believe will ultimately be payable for these proposed adjustments. However, the ultimate resolution of these proposed adjustments are uncertain, and an adverse outcome could have a material adverse impact on our combined financial condition, results of operations and cash flows.

We perform significant amounts of work for the U.S. Government under both prime contracts and subcontracts. As a result, various aspects of our operations are subject to continuing reviews by governmental agencies.

We maintain liability and property insurance against such risk and in such amounts as we consider adequate. However, certain risks are either not insurable or insurance is available only at rates that we consider uneconomical.

NOTE 10—FINANCIAL INSTRUMENTS WITH CONCENTRATIONS OF CREDIT RISK

Our primary customers are the U.S. Government and companies in the electric power generation industry (including several government-owned utilities and independent power producers). These concentrations of customers may impact our overall exposure to credit risk, either positively or negatively, in that our customers may be similarly affected by changes in economic or other conditions. In the years ended December 31, 2009 and 2008, the U.S. Government accounted for approximately 33% and 22%, respectively, of our total revenues.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

We and some of our customers operate worldwide and are therefore exposed to risks associated with the economic and political forces of various countries and geographic areas. Approximately 16% of our trade receivables at December 31, 2009 are due from foreign customers. See Note 14 for additional information about our foreign operations. We generally do not obtain any collateral for our receivables.

We believe that our provision for possible losses on uncollectible accounts receivable is adequate for our credit loss exposure. At December 31, 2009 and 2008, the allowance for possible losses that we deducted from accounts receivable—trade on the accompanying balance sheet was $3.3 million and $2.7 million, respectively.

NOTE 11—INVESTMENTS

The following is a summary of our available-for-sale securities at December 31, 2009:

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
		(In thousands)		
U.S. Treasury securities and obligations of U.S. Government agencies	$ 63,997	$ 44	$ (4)	$ 64,037
Money market instruments and short-term investments	461	2	—	463
Asset-backed securities and collateralized mortgage obligations	1,169	—	(429)	740
Corporate and foreign government bonds and notes	8,302	14	(2)	8,314
Total	$ 73,929	$ 60	$ (435)	$ 73,554

The following is a summary of our available-for-sale securities at December 31, 2008:

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
		(In thousands)		
U.S. Treasury securities and obligations of U.S. Government agencies	$ 72,858	$ 658	$ —	$ 73,516
Money market instruments and short-term investments	28,003	77	—	28,080
Asset-backed securities and collateralized mortgage obligations	1,501	—	(548)	953
Corporate and foreign government bonds and notes	16,788	—	(253)	16,535
Total	$119,150	$ 735	$ (801)	$119,084

Proceeds, gross realized gains and gross realized losses on sales of available-for-sale securities were as follows:

	Proceeds	Gross Realized Gains	Gross Realized Losses
Year Ended December 31, 2009	$140,203	$ —	$ 30
Year Ended December 31, 2008	$367,109	$ 148	$ —

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

NOTE 12—DERIVATIVE FINANCIAL INSTRUMENTS

Our worldwide operations give rise to exposure to market risks from changes in foreign exchange rates. We use derivative financial instruments (primarily foreign currency forward-exchange contracts) to reduce the impact of changes in foreign exchange rates on our operating results. We use these instruments primarily to hedge our exposure associated with revenues or costs on our long-term contracts and other cash flow exposures that are denominated in currencies other than our operating entities' functional currencies. We do not hold or issue financial instruments for trading or other speculative purposes.

We enter into derivative financial instruments primarily as hedges of certain firm purchase and sale commitments denominated in foreign currencies. We record these contracts at fair value on our combined balance sheets. Depending on the hedge designation at the inception of the contract, the related gains and losses on these contracts are either deferred in parent equity (deficit) as a component of accumulated other comprehensive loss, until the hedged item is recognized in earnings, or offset against the change in fair value of the hedged firm commitment through earnings. The ineffective portion of a derivative's change in fair value and any portion excluded from the assessment of effectiveness are immediately recognized in earnings. The gain or loss on a derivative instrument not designated as a hedging instrument is also immediately recognized in earnings. Gains and losses on derivative financial instruments that require immediate recognition are included as a component of other income (expense) – net in our combined statements of income.

We have designated all of our forward contracts as cash flow hedges. The hedged risk is the risk of changes in functional-currency-equivalent cash flows attributable to changes in spot exchange rates of firm commitments related to long-term contracts. We exclude from our assessment of effectiveness the portion of the fair value of the forward contracts attributable to the difference between spot exchange rates and forward exchange rates. Ineffective portions of our forward contracts are recorded in other income (expense) – net on our combined statements of income. At December 31, 2009, we had deferred approximately $5.8 million of net losses on these derivative financial instruments in accumulated other comprehensive loss. We expect to recognize approximately $3.5 million of this amount in the next 12 months.

At December 31, 2009, all of our derivative financial instruments consisted of foreign currency forward-exchange contracts, and foreign currency options. The notional value of our forward contracts totaled $120.4 million at December 31, 2009, with maturities extending to December 2011. These instruments consist primarily of contracts to purchase or sell Euros or Canadian Dollars. The fair value of these contracts totaled ($1.8) million, all of which are Level 2 in nature (See Note 13). The fair value of our foreign currency option contracts totaled $4.7 million at December 31, 2009, and is included in other current assets on our combined balance sheets. We are exposed to credit-related losses in the event of nonperformance by counterparties to derivative financial instruments. However, when possible, we enter into International Swaps and Derivative Association, Inc. agreements with our hedge counterparties to mitigate this risk. We also attempt to mitigate this risk by using major financial institutions with high credit ratings and limit our exposure to hedge counterparties based on their credit ratings. The counterparties to all of our derivative financial instruments are financial institutions included in our credit facilities. Our hedge counterparties have the benefit of the same collateral arrangements and covenants as described under these facilities.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

The following tables summarize our derivative financial instruments at December 31, 2009:

	Asset Derivatives December 31, 2009		Liability Derivatives December 31, 2009	
	Balance Sheet Account	Fair Value	Balance Sheet Account	Fair Value
		(In thousands)		
Derivatives designated as hedging instruments:				
Foreign-exchange contracts	Accounts receivable-other	$ 1,582	Accounts payable	$ 3,350
Derivatives not designated as hedging instruments:				
Foreign currency options	Other current assets	$ 4,747	Accounts payable	$ —

The Effect of Derivative Instruments on the Statements of Financial Performance December 31, 2009
(In thousands)

	Twelve Months Ended December 31, 2009
Derivatives Designated as Hedges:	
Cash Flow Hedges:	
Foreign Exchange Contracts:	
Amount of gain recognized in other comprehensive income	$ 10,979
Income (loss) reclassified from accumulated other comprehensive loss into income: effective portion	
Location	
Revenues	$ 71
Cost of operations	$ 1,499
Other—net	$ 624
Gain (loss) recognized in income: portion excluded from effectiveness testing	
Location	
Other—net	$ (4,335)

NOTE 13—FAIR VALUES OF FINANCIAL INSTRUMENTS

As discussed in Note 1, we adopted FASB Topic, *Fair Value Measurements and Disclosure*, January 1, 2008 for fair value measurement of financial instruments and recurring fair value measurements of nonfinancial assets and liabilities. This topic defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements.

This topic defines fair value as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the measurement date. This topic also sets forth the disclosure requirements regarding fair value and establishes a hierarchy for valuation inputs that emphasizes the use of observable inputs when measuring fair value. A financial instrument's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The fair value hierarchy established by this topic is broken down as follows:

- Level 1—inputs are based upon quoted prices for identical instruments traded in active markets.

- Level 2—inputs are based upon quoted prices for similar instruments in active markets, quoted prices for similar or identical instruments in inactive markets and model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the assets and liabilities.
- Level 3—inputs are generally unobservable and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability. The fair values are therefore determined using model-based techniques that include option pricing models, discounted cash flow models and similar valuation techniques.

The following sections describe the valuation methodologies we use to measure the fair values of our available-for-sale securities and derivatives.

Derivatives

Level 2 derivative assets and liabilities primarily include over-the-counter forwards. These currently consist of foreign exchange rate derivatives. Where applicable, the value of these derivative assets and liabilities is computed by discounting the projected future cash flow amounts to present value using market-based observable inputs, including foreign exchange forward and spot rates, interest rates and counterparty performance risk adjustments.

At December 31, 2009, we had forward contracts outstanding to purchase or sell foreign currencies, primarily Euros and Canadian Dollars, with a total notional value of $120.4 million and a total fair value of $(1.8) million. In addition, we had foreign currency options outstanding at December 31, 2009 with a total fair value of $4.7 million.

Available-for-Sale Securities

Investments other than derivatives primarily include U.S. Government and agency securities, money market funds, mortgage-backed securities, corporate notes and bonds and certificates of deposit.

In general, and where applicable, we use a pricing service that principally uses a composite of observable prices and quoted prices in active markets for identical assets or liabilities to determine fair value. This pricing methodology applies to our Level 2 investments.

Fair Value Measurements

The following is a summary of our available-for-sale securities measured at fair value at December 31, 2009:

	12/31/09	Level 1	Level 2	Level 3
		(In thousands)		
Certificates of deposit	$ 463	$ —	$ 463	$ —
U.S. Government and agency securities	64,037	63,005	1,032	—
Asset-backed/mortgage-backed securities	740	—	572	168
Corporate notes and bonds	8,314	—	8,314	—
Total	$73,554	$63,005	$10,381	$ 168

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

The following is a summary of our available-for-sale securities measured at fair value at December 31, 2008:

	12/31/08	Level 1	Level 2	Level 3
		(In thousands)		
Commercial paper	$ 19,080	$ —	$ 19,080	$ —
Certificates of deposit	9,000	—	9,000	—
U.S. Government and agency securities	73,516	68,452	5,064	—
Asset-backed/mortgage-backed securities	953	—	786	167
Foreign government bonds	839	—	839	—
Corporate notes and bonds	15,696	—	15,696	—
Total	$ 119,084	$ 68,452	$ 50,465	$ 167

Changes in Level 3 Instrument

The following is a summary of the changes in our Level 3 instrument measured on a recurring basis for the years ended December 31, 2009 and 2008 (in thousands):

	Year ended December 31,	
	2009	2008
Balance at beginning of period	$ 167	$ 386
Total realized and unrealized gains (losses):	54	(150)
Included in other income (expense)	—	1
Included in other comprehensive income	54	(151)
Purchases, issuances, and settlements	—	—
Principal repayments	(53)	(69)
Balance at end of period	$ 168	$ 167

Other Financial Instruments

We used the following methods and assumptions in estimating our fair value disclosures for financial instruments:

Cash and cash equivalents and restricted cash and cash equivalents: The carrying amounts that we have reported in the accompanying combined balance sheets for cash and cash equivalents approximate their fair values.

Investments: We estimate the fair values of investments based on quoted market prices. For investments for which there are no quoted market prices, we derive fair values from available yield curves for investments of similar quality and terms.

Long- and short-term debt: We base the fair values of debt instruments on quoted market prices. Where quoted prices are not available, we base the fair values on the present value of future cash flows discounted at estimated borrowing rates for similar debt instruments or on estimated prices based on current yields for debt issues of similar quality and terms.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

The estimated fair values of our financial instruments are as follows:

	December 31, 2009		December 31, 2008	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
	(In thousands)			
Balance Sheet Instruments				
Cash and cash equivalents	$469,468	$469,468	$279,646	$279,646
Restricted cash and cash equivalents	$ 15,305	$ 15,305	$ 7,116	$ 7,116
Investments	$ 73,554	$ 73,554	$119,084	$119,084
Debt	$ 10,654	$ 10,782	$ 15,130	$ 15,221
Forward contracts	$ (1,769)	$ (1,769)	$ (17,000)	$ (17,000)
Foreign currency options	$ 4,747	$ 4,747	$ —	$ —

NOTE 14—SEGMENT REPORTING

Our reportable segments are Power Generation Systems and Government Operations, as described in Note 1. The operations of our segments are managed separately and each has unique technology, services and customer class.

We account for intersegment sales at prices that we generally establish by reference to similar transactions with unaffiliated customers. Reportable segments are measured based on operating income exclusive of general corporate expenses, contract and insurance claims provisions, legal expenses and gains (losses) on sales of corporate assets. Other reconciling items to income before provision for income taxes are interest income, interest expense, minority interest and other income (expense)—net.

Segment Information for the Years Ended December 31, 2009, 2008 and 2007

1. Information about Operations in our Different Industry Segments:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
REVENUES[1]:			
Power Generation Systems	$1,824,450	$2,548,855	$2,506,814
Government Operations	1,032,023	851,019	694,029
Adjustments and Eliminations	(1,841)	(1,300)	(899)
	$2,854,632	$3,398,574	$3,199,944

(1) Segment revenues are net of the following intersegment transfers and other adjustments:

Power Generation Systems Transfers	$ 2	$ 55	$ 123
Government Operations Transfers	1,839	1,245	776
	$ 1,841	$ 1,300	$ 899

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
OPERATING INCOME:			
Power Generation Systems	$157,869	$315,397	$234,066
Government Operations	154,542	150,232	122,941
	$312,411	$465,629	$357,007
Unallocated Corporate[1]	(42,847)	(21,146)	(19,374)
Total Operating Income[2]	$269,564	$444,483	$337,633
Other Income (Expense):			
Interest income	3,439	15,286	25,220
Interest expense	(24,590)	(22,740)	(38,094)
Other expense—net	(16,112)	(4,290)	(10,411)
Total Other Expense	(37,263)	(11,744)	(23,285)
Income before Provision for Income Taxes	232,301	432,739	314,348

(1) Unallocated corporate includes general corporate overhead not allocated to segments.
(2) Included in operating income is the following:

Gains (Losses) on Asset Disposal and Impairments—Net:			
Power Generation Systems	$ (272)	$ 9,606	$ (25)
Government Operations	(171)	—	1,631
Unallocated Corporate	(783)	(3)	—
	$ (1,226)	$ 9,603	$ 1,606
Equity in Income of Investees:			
Power Generation Systems	$14,043	$10,411	$14,359
Government Operations	41,051	41,381	31,288
	$55,094	$51,792	$45,647

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
SEGMENT ASSETS:			
Power Generation Systems	$ 1,429,475	$ 1,523,488	$ 1,483,704
Government Operations	945,806	711,628	479,026
Total Segment Assets	2,375,281	2,235,116	1,962,730
Corporate Assets	228,578	271,725	186,906
Total Assets	$ 2,603,859	$ 2,506,841	$ 2,149,636
CAPITAL EXPENDITURES:			
Power Generation Systems	$ 32,148	$ 33,896	$ 40,218
Government Operations	45,062	16,348	14,117
Segment Capital Expenditures	77,210	50,244	54,335
Corporate Capital Expenditures	16,515	12,770	6,374
Total Capital Expenditures	$ 93,725	$ 63,014	$ 60,709
DEPRECIATION AND AMORTIZATION:			
Power Generation Systems	$ 17,859	$ 22,080	$ 21,266
Government Operations	51,588	22,445	19,269
Segment Depreciation and Amortization	69,447	44,525	40,535
Corporate Depreciation and Amortization	3,265	1,460	1,137
Total Depreciation and Amortization	$ 72,712	$ 45,985	$ 41,672
INVESTMENT IN AFFILIATES:			
Power Generation Systems	$ 64,666	$ 57,701	$ 50,919
Government Operations	3,661	3,926	3,983
Total Investment in Affiliates	$ 68,327	$ 61,627	$ 54,902

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

2. Information about our Product Lines:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
REVENUES:			
Power Generation Systems:			
Original Equipment Manufacturers' Operations	673,920	1,185,305	1,371,427
Aftermarket Goods and Services	778,075	974,730	829,185
Nuclear Equipment Operations	174,785	187,312	137,864
Boiler Auxiliary Equipment	124,363	138,192	115,855
Operations and Maintenance	70,444	60,171	54,854
Eliminations/Other	2,863	3,145	(2,371)
	1,824,450	2,548,855	2,506,814
Government Operations:			
Nuclear Component Program	$ 885,507	$ 705,442	$ 619,154
Commercial Operations	98,189	89,857	3,853
Nuclear Environmental Services	33,702	40,352	51,703
Management & Operation Contracts of U.S. Government Facilities	13,174	15,779	18,776
Contract Research	—	46	1,877
Other Government Operations	833	821	708
Eliminations	618	(1,278)	(2,042)
	1,032,023	851,019	694,029
Eliminations	(1,841)	(1,300)	(899)
	$2,854,632	$3,398,574	$3,199,944

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO COMBINED FINANCIAL STATEMENTS—(Continued)

3. Information about our Operations in Different Geographic Areas:

	Year Ended December 31,		
	2009	2008	2007
		(In thousands)	
REVENUES[3]:			
United States	$ 2,300,039	$ 2,819,616	$ 2,746,834
Canada	267,567	317,422	227,233
China	54,192	50,197	32,595
Sweden	40,852	42,576	41,754
Japan	26,904	2,007	3,362
Denmark	21,965	31,333	36,382
Belgium	2,666	20,423	17,416
Germany	15,734	12,893	8,815
Ireland	10,336	1,083	251
Norway	21,996	11,467	1,457
United Kingdom	6,746	10,899	7,050
Indonesia	8,834	7,090	25,056
India	5,229	5,794	2,556
France	8,351	5,323	9,595
Brazil	2,131	4,199	4,536
Other Countries	61,090	56,252	35,052
	$ 2,854,632	$ 3,398,574	$ 3,199,944

(3) We allocate geographic revenues based on the location of the customer's operations.

PROPERTY, PLANT AND EQUIPMENT, NET:			
United States	$ 360,076	$ 313,006	$ 235,274
Canada	40,058	33,524	41,146
United Kingdom	11,234	10,661	14,587
Denmark	8,852	8,549	8,943
Other Countries	9,841	5,085	4,792
	$ 430,061	$ 370,825	$ 304,742

4. Information about our Major Customers:

In the years ended December 31, 2009, 2008 and 2007, the U.S. Government accounted for approximately 33%, 22% and 21%, respectively, of our total revenues. We have included these revenues in our Government Operations segment.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

CONDENSED COMBINED BALANCE SHEETS (UNAUDITED)

	March 31, 2010	December 31, 2009
	(In thousands)	
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 401,124	$ 469,468
Restricted cash and cash equivalents (Note 1)	17,821	15,305
Investments	14	14
Accounts receivable—trade, net	302,506	319,861
Accounts receivable—other	42,496	39,289
Contracts in progress	299,166	245,998
Inventories (Note 1)	95,009	98,644
Deferred income taxes	99,109	96,680
Other current assets	25,259	21,456
Total Current Assets	1,282,504	1,306,715
Property, Plant and Equipment	953,715	945,298
Less accumulated depreciation	522,504	515,237
Net Property, Plant and Equipment	431,211	430,061
Investments	70,909	73,540
Goodwill (Note 1)	269,950	262,866
Deferred Income Taxes	265,048	270,002
Investments in Unconsolidated Affiliates	77,965	68,327
Note Receivable from Affiliate	43,835	42,573
Other Assets	147,347	149,775
TOTAL	$ 2,588,769	$ 2,603,859

See accompanying notes to condensed combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

CONDENSED COMBINED BALANCE SHEETS (UNAUDITED)

	March 31, 2010	December 31, 2009
	(In thousands)	
LIABILITIES AND PARENT EQUITY		
Current Liabilities:		
Notes payable and current maturities of long-term debt	$ 4,993	$ 6,432
Accounts payable	183,360	178,350
Accounts payable to McDermott International, Inc.	142,967	112,053
Accrued employee benefits	299,026	198,195
Accrued liabilities—other	85,468	74,700
Advance billings on contracts	494,579	537,448
Accrued warranty expense	119,531	115,055
Income taxes payable	4,020	12,943
Total Current Liabilities	1,333,944	1,235,176
Long-Term Debt	5,343	4,222
Accumulated Postretirement Benefit Obligation	106,329	105,484
Environmental Liabilities	48,523	47,795
Pension Liability	550,562	699,117
Notes Payable to Affiliate	320,588	320,568
Other Liabilities	69,841	70,791
Commitments and Contingencies		
Total Parent Equity	153,639	120,706
TOTAL	$ 2,588,769	$ 2,603,859

See accompanying notes to condensed combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

CONDENSED COMBINED STATEMENTS OF INCOME (UNAUDITED)

	Three Months Ended March 31,	
	2010	2009
	(In thousands)	
Revenues	$662,388	$785,053
Costs and Expenses:		
Cost of operations	544,951	610,914
Selling, general and administrative expenses	92,723	88,969
(Gains) losses on asset disposals and impairments—net	(13)	207
Total Costs and Expenses	637,661	700,090
Equity in Income of Investees	14,019	10,345
Operating Income	38,746	95,308
Other Income (Expense):		
Interest income	449	1,239
Interest expense	(5,993)	(5,261)
Other expense—net	(3,090)	(2,040)
Total Other Expense	(8,634)	(6,062)
Income before Provision for Income Taxes	30,112	89,246
Provision for Income Taxes	13,256	35,710
Net Income	16,856	53,536
Less: Net Income attributable to Noncontrolling Interest	(13)	(52)
Net Income Attributable to The Babcock & Wilcox Operations of McDermott International, Inc.	$ 16,843	$ 53,484

See accompanying notes to condensed combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

CONDENSED COMBINED STATEMENTS OF COMPREHENSIVE INCOME (UNAUDITED)

	Three Months Ended March 31,	
	2010	2009
	(In thousands)	
Net Income	$16,856	$53,536
Other Comprehensive Income (Loss):		
Currency translation adjustments:		
Foreign currency translation adjustments	728	(4,676)
Unrealized (losses) gains on derivative financial instruments:		
Unrealized gains (losses) on derivative financial instruments	947	(1,545)
Realized gains (losses) on derivative financial instruments	609	(876)
Amortization of benefit plan costs	13,629	13,055
Unrealized gains (losses) on investments:		
Unrealized gains (losses) arising during the period, net of taxes	16	(359)
Realized gains recognized during the period	115	—
Other Comprehensive Income	16,044	5,599
Total Comprehensive Income	32,900	59,135
Comprehensive Income attributable to Noncontrolling Interest	(16)	(43)
Comprehensive Income Attributable to The Babcock & Wilcox Operations of McDermott International, Inc.	$32,844	$59,092

See accompanying notes to condensed combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

CONDENSED COMBINED STATEMENTS OF PARENT EQUITY (DEFICIT) (UNAUDITED)

(In thousands)

	Accumulated Other Comprehensive Loss	Parent Equity	Non-Controlling Interest	Total Parent Equity (Deficit)
Balance December 31, 2009	$ (546,574)	$666,777	$ 503	$ 120,706
Net income	—	16,843	13	16,856
Amortization of benefit plan costs	13,629	—	—	13,629
Unrealized gains on investments	131	—	—	131
Foreign currency translation adjustments	725	—	3	728
Unrealized gain on derivatives	1,556	—	—	1,556
Stock-based compensation charges	—	33	—	33
Balance March 31, 2010	$ (530,533)	$683,653	$ 519	$ 153,639
Balance December 31, 2008	$ (592,998)	$523,090	$ 360	$ (69,548)
Net income	—	49,584	52	53,536
Amortization of benefit plan costs	13,055	—	—	13,055
Unrealized losses of investments	(359)	—	—	(359)
Foreign currency translation adjustments	(4,667)	—	(9)	(4,676)
Unrealized loss on derivatives	(2,421)	—	—	(2,421)
Stock-based compensation charges	—	(193)	—	(193)
Balance March 31, 2009	$ (587,390)	$572,481	$ 403	$ (10,606)

See accompanying notes to condensed combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

CONDENSED COMBINED STATEMENTS OF CASH FLOWS (UNAUDITED)

	Three Months Ended March 31,	
	2010	2009
	(In thousands)	
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net Income	$ 16,856	$ 53,536
Non-cash items included in net income:		
Depreciation and amortization	16,812	16,263
Income of investees, net of dividends	(8,758)	(2,287)
(Gains) losses on asset disposals and impairments—net	(13)	207
Excess tax benefits from ASC 718 stock-based compensation	(1,908)	(123)
Amortization of pension and postretirement costs	21,420	20,602
Other, net	49,558	(1,027)
Changes in assets and liabilities, net of effects from acquisition and divestitures:		
Accounts receivable	15,624	34,724
Accounts payable and other	36,836	(33,867)
Income tax receivable	(313)	(1,140)
Inventories	2,372	14,556
Net contracts in progress and advance billings	(96,575)	(43,230)
Income taxes	(12,053)	(2,488)
Accrued and other current liabilities	13,117	19,010
Pension liability, accumulated postretirement benefit obligation and accrued employee benefits	(95,974)	(46,548)
Other, net	(2,533)	12,307
NET CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES	(45,532)	40,495
CASH FLOWS FROM INVESTING ACTIVITIES:		
Increase in restricted cash and cash equivalents	(2,516)	(8,098)
Purchases of property, plant and equipment	(18,763)	(20,029)
Acquisition of businesses, net of cash acquired	(8,165)	—
Decrease in available-for-sale securities	2,739	27,095
Proceeds from asset disposals	79	25
Other	—	(39)
NET CASH USED IN INVESTING ACTIVITIES	(26,626)	(1,046)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Payment of short-term borrowings and long-term debt	(150)	(4,825)
Increase in note payable to affiliate	20	—
Excess tax benefits from ASC 718 stock-based compensation	1,908	123
Other	—	(32)
NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES	1,778	(4,734)
EFFECTS OF EXCHANGE RATE CHANGES ON CASH	2,036	(6,050)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	(68,344)	28,655
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	469,468	279,646
CASH AND CASH EQUIVALENTS AT END OF PERIOD	$401,124	$308,311
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid (received) during the period for:		
Interest (net of amount capitalized)	$ 5,993	$ 5,380
Income taxes (net of refunds)	$ 5,502	$ 8,103

See accompanying notes to condensed combined financial statements.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.
NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (UNAUDITED)

NOTE 1—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Company, Basis of Presentation and Principles of Combination

The Babcock & Wilcox Operations of McDermott International, Inc. (the "Company") represent a combined reporting entity comprised of the assets and liabilities used in managing and operating the Power Generation Systems and Government Operations segments of McDermott International, Inc. ("MII") in addition to two captive insurance companies which will be combined and contributed to The Babcock & Wilcox Company ("B&W") in conjunction with the planned spin-off of B&W by MII. On December 7, 2009, MII announced a plan to separate B&W from MII through a spin-off transaction that is intended to be tax-free to MII.

The accompanying condensed combined financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. We have presented our condensed combined financial statements in U.S. Dollars in accordance with the interim reporting requirements of Form 10 and Rule 10-01 of Regulation S-X. Financial information and disclosures normally included in our financial statements prepared annually in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted. Readers of these financial statements should, therefore, refer to the combined financial statements for the years ended December 31, 2009, 2008 and 2007 included in this information statement. All intercompany balances and transactions have been eliminated in the condensed combined financial statements. We use the equity method to account for investments in entities that we do not control, but over which we have significant influence. We generally refer to these entities as "joint ventures." We present the notes to our condensed combined financial statements on the basis of continuing operations, unless otherwise stated.

The combined results of operations, financial position and cash flows reflected in the accompanying condensed combined financial statements may not be indicative of the future performance of the combined businesses and do not necessarily reflect what its combined results of operations, financial position and cash flows would have been had the combined businesses operated as an independent public company during the periods presented, including changes in its operations and capitalization as a result of the separation and distribution from MII.

Certain corporate and general and administrative expenses, including those related to executive management, tax, accounting, legal and treasury services, and certain employee benefits, have been allocated based on a level of effort calculation. Our management believes such allocations are reasonable. However, the associated expenses reflected in the accompanying combined statements of income may not be indicative of the actual expenses that would have been incurred had the combined businesses been operating as an independent public company for the periods presented. Following the separation and distribution from MII, B&W will perform these functions using internal resources or services provided by third parties, certain of which may be provided by MII during a transitional period pursuant to a transition services agreement.

In presenting the condensed combined financial statements, our management makes estimates and assumptions that affect the amounts reported and related disclosures. Estimates, by their nature, are based on judgment and available information. Accordingly, actual results could differ from those estimates.

As used in these footnote disclosures, the following terms have the meanings set forth below:

- MII (or McDermott) means McDermott International, Inc., a Panamanian corporation;
- BHI means Babcock & Wilcox Holdings, Inc., a Delaware corporation;
- MI means McDermott Incorporated, a Delaware corporation and a subsidiary of BHI, and its consolidated subsidiaries;

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

- BWICO means Babcock & Wilcox Investment Company, a Delaware corporation and a subsidiary of MI, and its consolidated subsidiaries;
- BWXT means BWX Technologies, Inc., a Delaware corporation and a subsidiary of BWICO, and its consolidated subsidiaries;
- B&W PGG means Babcock & Wilcox Power Generation Group, Inc., a Delaware corporation and a subsidiary of BWICO, and its consolidated subsidiaries;
- B&W NE means Babcock & Wilcox Nuclear Energy. Inc., a Delaware corporation and a subsidiary of BWICO, and its consolidated subsidiaries; and
- JRM means J. Ray McDermott, S.A., a Panamanian corporation and a subsidiary of MII, and its consolidated subsidiaries.

Unless the context otherwise indicates, “we,” “us” and “our” mean The Babcock & Wilcox Operations of McDermott International, Inc.

We operate in two business segments: Power Generation Systems; and Government Operations.

Our Power Generation Systems segment includes the business and operations of B&W PGG and B&W NE. Through this segment, we supply boilers fired with fossil fuels, such as coal, oil and natural gas, or renewable fuels such as biomass, municipal solid waste and concentrated solar energy. In addition, we supply commercial nuclear steam generators and components, environmental equipment and components, and related services to customers in different regions around the world. We design, engineer, manufacture, supply, construct and service large utility and industrial power generation systems, including boilers used to generate steam in electric power plants, pulp and paper making, chemical and process applications and other industrial uses.

Our Government Operations segment includes the business and operations of Babcock & Wilcox Nuclear Operations Group, Inc., Babcock & Wilcox Technical Services Group, Inc. and their respective subsidiaries. Through this segment, we manufacture nuclear components and provide various services to the U.S. Government, including uranium processing, environmental site restoration services, and management and operating services for various U.S. Government-owned facilities. These services are provided to the DOE, including the National Nuclear Security Administration, the Office of Nuclear Energy, the Office of Science and the Office of Environmental Management.

Comprehensive Loss

The components of accumulated other comprehensive loss included in parent equity (deficit) are as follows:

	March 31, 2010	December 31, 2009
	(In thousands)	
Net unrealized loss on investments	$ (244)	$ (375)
Currency translation adjustments	32,453	31,728
Net unrealized loss on derivative financial instruments	(4,202)	(5,758)
Unrecognized losses on benefit obligations	(558,540)	(572,169)
Accumulated Other Comprehensive Loss	$(530,533)	$ (546,574)

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

Inventories

The components of inventories are as follows:

	March 31, 2010	December 31, 2009
	(In thousands)	
Raw Materials and Supplies	$64,308	$ 71,207
Work in Progress	7,925	6,381
Finished Goods	22,776	21,056
Total Inventories	$95,009	$ 98,644

Restricted Cash and Cash Equivalents

At March 31, 2010, we had restricted cash and cash equivalents totaling $17.8 million, $9.7 million of which was held in restricted foreign accounts, $3.8 million of which was held as cash collateral for letters of credit, $4.0 million of which was held for future decommissioning of facilities, and $0.3 million of which was held to meet reinsurance reserve requirements of our captive insurance companies.

Warranty Expense

We accrue estimated expense to satisfy contractual warranty requirements when we recognize the associated revenue on the related contracts. In addition, we make specific provisions where we expect the actual warranty costs to significantly exceed the accrued estimates. Such provisions could have a material effect on our combined financial condition, results of operations and cash flows.

The following summarizes the changes in the carrying amount of accrued warranty:

	Three Months Ended March 31,	
	2010	2009
	(Unaudited) (In thousands)	
Balance at beginning of period	$115,055	$119,722
Additions and adjustments	7,372	2,016
Charges	(2,896)	(2,530)
Balance at end of period	$119,531	$119,208

Research and Development

Research and development activities are related to the development and improvement of new and existing products and equipment as well as conceptual and engineering evaluation for translation into practical applications. We charge to cost of operations the costs of research and development unrelated to specific contracts as incurred. For the three months ended March 31, 2010 and 2009, our net research and development expense included in cost of operations totaled $17.1 million and $10.0 million, respectively. Substantially all of these costs are in our Power Generation Systems segment and include costs related to the development of carbon capture and sequestration technologies and our modular and scalable reactor, B&W mPower™.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

Recently Adopted Accounting Standards

In January 2010, the Financial Accounting Standards Board ("FASB") issued a revision to the topic Fair Value Measurements and Disclosures. This revision adds new fair value disclosures for certain transfers of investments between Level 1 and Level 2 measurements and clarifies existing disclosures regarding valuation techniques. On January 1, 2010, we adopted this revision. The adoption of this revision did not have an impact on our condensed combined financial statements.

In January 2010, the FASB issued a revision to the topic Consolidation. This revision clarifies the scope of partial sale and deconsolidation provisions related to acquisitions and noncontrolling interests. On January 1, 2010, we adopted this revision. The adoption of this revision did not have an impact on our condensed combined financial statements.

In June 2009, the FASB issued a revision to the topic Consolidation. This revision was subsequently amended in December 2009 and February 2010. These revisions expand the scope of this topic and amend guidance for assessing and analyzing variable interest entities. These revisions were effective on January 1, 2010 and had no impact on our condensed combined financial statements.

New Accounting Standards

In January 2010, the FASB issued a revision to the topic Fair Value Measurements and Disclosures. This revision sets forth new rules on providing enhanced information for Level 3 measurements. The disclosure provisions under this revision will be effective for fiscal years beginning after December 15, 2010, in both interim and annual disclosures. The adoption of this revision is not expected to have an impact on our condensed combined financial statements.

NOTE 2—BUSINESS ACQUISITIONS

In January 2010, B&W PGG acquired all the outstanding equity interests in Götaverken Miljö AB, a flue gas cleaning and energy recovery company based in Gothenburg, Sweden. In connection with this acquisition, we recorded goodwill of approximately $7.8 million. We accounted for this acquisition as a business combination.

NOTE 3—PENSION PLANS AND POSTRETIREMENT BENEFITS

Components of net periodic benefit cost included in net income are as follows:

	Pension Benefits Three Months Ended March 31,		Other Benefits Three Months Ended March 31,	
	2010	2009	2010	2009
	(In thousands)			
Service cost	$ 9,627	$ 9,020	$ 267	$ 231
Interest cost	37,342	36,745	1,963	2,168
Expected return on plan assets	(35,566)	(33,826)	(411)	(376)
Amortization of prior service cost	894	686	18	15
Amortization of transition obligation	—	—	70	59
Recognized net actuarial loss	20,098	19,438	341	403
Net periodic benefit cost	$ 32,395	$ 32,063	$ 2,248	$ 2,500

Included in accrued employee benefits on our condensed combined balance sheet at March 31, 2010 is $209.3 million of current liability related to our pension plans, which we expect to fund within the next 12 months.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

NOTE 4—COMMITMENTS AND CONTINGENCIES

On March 19, 2010, Jessi Ann Casella, William E. Uhing and Kenneth B. Cyphert filed suit against B&W PGG, Babcock & Wilcox Technical Services Group, Inc., formerly known as B&W Nuclear Environmental Services, Inc. and Atlantic Richfield Company in the United States District Court for the Western District of Pennsylvania (the "Casella Litigation"). The plaintiffs in the Casella Litigation allege, among other things, that they suffered personal injuries and property damage as a result of alleged radioactive and non-radioactive releases relating to the operation, remediation and/or decommissioning of the same two former nuclear fuel processing facilities located in Apollo and Parks Township, Pennsylvania involved in the McMunn Litigation described in our combined financial statements for the years ended December 31, 2009, 2008 and 2007.

NOTE 5—DERIVATIVE FINANCIAL INSTRUMENTS

Our worldwide operations give rise to exposure to market risks from changes in foreign exchange rates. We use derivative financial instruments (primarily foreign currency forward-exchange contracts) to reduce the impact of changes in foreign exchange rates on our operating results. We use these instruments primarily to hedge our exposure associated with revenues or costs on our long-term contracts and other cash flow exposures that are denominated in currencies other than our operating entities' functional currencies. We do not hold or issue financial instruments for trading or other speculative purposes.

We enter into derivative financial instruments primarily as hedges of certain firm purchase and sale commitments denominated in foreign currencies. We record these contracts at fair value on our condensed combined balance sheets. Depending on the hedge designation at the inception of the contract, the related gains and losses on these contracts are either deferred in parent equity (deficit) as a component of accumulated other comprehensive loss until the hedged item is recognized in earnings, or offset against the change in fair value of the hedged firm commitment through earnings. The ineffective portion of a derivative's change in fair value and any portion excluded from the assessment of effectiveness are immediately recognized in earnings. The gain or loss on a derivative instrument not designated as a hedging instrument is also immediately recognized in earnings. Gains and losses on derivative financial instruments that require immediate recognition are included as a component of other income (expense)—net in our condensed combined statements of income.

We have designated all of our forward contracts as cash flow hedges. The hedged risk is the risk of changes in functional-currency-equivalent cash flows attributable to changes in spot exchange rates of forecasted transactions related to long-term contracts and certain capital expenditures. We exclude from our assessment of effectiveness the portion of the fair value of the forward contracts attributable to the difference between spot exchange rates and forward exchange rates. Ineffective portions of our forward contracts are recorded in other income (expense)—net on our combined statements of income. At March 31, 2010, we had deferred approximately $4.2 million of net losses on these derivative financial instruments in accumulated other comprehensive loss. We expect to recognize substantially all of this amount in the next 12 months.

At March 31, 2010, all of our derivative financial instruments consisted of foreign currency forward-exchange contracts and foreign currency options. The notional value of our forward contracts totaled $143.2 million at March 31, 2010, with maturities extending to June 2013. These instruments consist primarily of contracts to purchase or sell Euros or Canadian Dollars. The fair value of these contracts was in a net liability position totaling $1.0 million at March 31, 2010 and was Level 2 in nature. The fair value of our foreign currency options totaled $4.8 million at March 31, 2010 and was included in other current assets on our combined balance sheets. The foreign currency options were Level 2 in nature (See Note 6).

We are exposed to credit-related losses in the event of nonperformance by counterparties to derivative financial instruments. However, when possible, we enter into International Swaps and Derivative Association,

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

Inc. agreements with our hedge counterparties to mitigate this risk. We also attempt to mitigate this risk by using major financial institutions with high credit ratings and limit our exposure to hedge counterparties based on their credit ratings. The counterparties to all of our derivative financial instruments are financial institutions included in our credit facilities described in Note 6 to our combined financial statements for the years ended December 31, 2009, 2008 and 2007. Our hedge counterparties have the benefit of the same collateral arrangements and covenants as those described with respect to our credit facilities.

The following tables summarize our derivative financial instruments:

	Asset and Liability Derivatives	
	March 31, 2010	December 31, 2009
	(In thousands)	
Derivatives Designated as Hedges:		
Foreign Exchange Contracts:		
Location		
Accounts receivable-other	$ 668	$ 1,582
Accounts payable	$ 1,597	$ 3,350

The Effects of Derivative Instruments on our Financial Statements

	Three Months Ended March 31,	
	2010	2009
	(In thousands)	
Derivatives Designated as Hedges:		
Cash Flow Hedges:		
Foreign Exchange Contracts:		
Amount of gain (loss) recognized in other comprehensive income	$ 1,226	$(2,562)
Loss reclassified from accumulated other comprehensive loss into income: effective portion		
Location		
Revenues	$ 459	$ 577
Cost of operations	$ 154	$(1,871)
Other-net	$ 331	$ 37
Gain (loss) recognized in income: portion excluded from effectiveness testing		
Location		
Other-net	$(1,564)	$(1,081)
Derivatives Not Designated as Hedges:		
Currency Options:		
Gain (loss) recognized in income		
Location		
Other-net	$ 34	$ —

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

NOTE 6—FAIR VALUES OF FINANCIAL INSTRUMENTS

The following is a summary of our available-for-sale securities measured at fair value at March 31, 2010:

	03/31/10	Level 1	Level 2	Level 3
		(In thousands)		
Certificates of deposit	$ 461	$ —	$ 461	$ —
U.S. Government and agency securities	65,581	65,380	201	
Asset-backed/mortgage-backed securities	570	—	570	
Corporate notes and bonds	4,311	—	4,311	
Total	$70,923	$65,380	$5,543	$ —

The following is a summary of our available-for-sale securities measured at fair value at December 31, 2009:

	12/31/09	Level 1	Level 2	Level 3
		(In thousands)		
Certificates of deposit	$ 463	$ —	$ 463	$ —
U.S. Government and agency securities	64,037	63,005	1,032	—
Asset-backed/mortgage-backed securities	740	—	572	168
Corporate notes and bonds	8,314	—	8,314	—
Total	$73,554	$63,005	$10,381	$ 168

Changes in Level 3 Instrument

The following is a summary of the changes in our Level 3 instrument measured on a recurring basis for the three months ended March 31, 2010 (in thousands):

	March 31, 2010
Balance at beginning of period	$ 168
Total realized and unrealized gains (losses):	119
Included in other income (expense)	—
Included in other comprehensive income	119
Purchases, issuances, and settlements	(283)
Principal repayments	(4)
Balance at end of period	$ —

Other Financial Instruments

We used the following methods and assumptions in estimating our fair value disclosures for financial instruments:

Cash and cash equivalents and restricted cash and cash equivalents: The carrying amounts that we have reported in the accompanying combined balance sheets for cash and cash equivalents approximate their fair values.

Investments: We estimate the fair values of investments based on quoted market prices. For investments for which there are no quoted market prices, we derive fair values from available yield curves for investments of similar quality and terms.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

Long- and short-term debt: We base the fair values of debt instruments on quoted market prices. Where quoted prices are not available, we base the fair values on the present value of future cash flows discounted at estimated borrowing rates for similar debt instruments or on estimated prices based on current yields for debt issues of similar quality and terms.

The estimated fair values of our financial instruments are as follows:

	March 31, 2010		December 31, 2009	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
	(In thousands)			
Balance Sheet Instruments				
Cash and cash equivalents	$401,124	$401,124	$469,468	$469,468
Restricted cash and cash equivalents	$ 17,821	$ 17,821	$ 15,305	$ 15,305
Investments	$ 70,923	$ 70,923	$ 73,554	$ 73,554
Debt	$ 10,336	$ 10,413	$ 10,654	$ 10,782
Forward contracts	$ (929)	$ (929)	$ (1,769)	$ (1,769)
Foreign currency options	$ 4,782	$ 4,782	$ 4,747	$ 4,747

NOTE 7—STOCK-BASED COMPENSATION

	Compensation Expense	Tax Benefit	Net Impact
	(In thousands)		
	Three Months Ended March 31, 2010		
Stock Options	$ 448	$ (162)	$ 286
Restricted Stock	551	(202)	349
Performance Shares	2,284	(828)	1,456
Performance and Deferred Stock Units	541	(193)	348
Total	$ 3,824	$ (1,385)	$ 2,439
	Three Months Ended March 31, 2009		
Stock Options	$ 179	$ (64)	$ 115
Restricted Stock	757	(274)	483
Performance Shares	4,598	(1,677)	2,921
Performance and Deferred Stock Units	406	(144)	262
Total	$ 5,940	$ (2,159)	$ 3,781

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

NOTE 8—SEGMENT REPORTING

An analysis of our operations by segment is as follows:

	Three Months Ended March 31,	
	2010	2009
	(In thousands)	
REVENUES[1]:		
Power Generation Systems	$409,731	$528,573
Government Operations	253,251	257,105
Adjustments and Eliminations	(594)	(625)
	$662,388	$785,053

(1) Segment revenues are net of the following intersegment transfers and other adjustments:

Power Generation Systems Transfers	$ 4	$ —
Government Operations Transfers	590	625
	$ 594	$ 625

	2010	2009
OPERATING INCOME		
Power Generation Systems	$ 9,300	$ 58,159
Government Operations	35,953	45,752
	$45,253	103,911
Unallocated Corporate[1]	(6,507)	(8,603)
Total Operating Income[2]	$38,746	$ 95,308
Other Income (Expense):		
Interest income	449	1,239
Interest expense	(5,993)	(5,261)
Other expense—net	(3,090)	(2,040)
Total Other Expense	(8,634)	(6,062)
Income before Provision for Income Taxes	$30,112	$ 89,246

(1) Unallocated corporate includes general corporate overhead not allocated to segments.
(2) Included in operating income is the following:

Gains (Losses) on Asset Disposal and Impairments—Net:		
Power Generation Systems	$ (12)	$ 12
Government Operations	25	—
Unallocated Corporate	—	(219)
	$ 13	$ (207)
Equity in Income of Investees:		
Power Generation Systems	$ 4,541	$ 1,643
Government Operations	9,478	8,702
	$14,019	$ 10,345

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

NOTE 9—RELATED PARTY

We have transactions with MII and its other subsidiaries occurring in the normal course of operations. These transactions included the following:

	Three Months Ended March 31,	
	2010	2009
	(In thousands)	
Purchases	$ 357	$ 206
Interest income	$ 259	$ 358
Interest expense	$ 5,774	$ 5,057
Corporate administrative expense allocated to MII and JRM	$ 9,201	$ 11,274

Our accounts payable with MII consist of items of a normal recurring nature, including, but not limited to, the items disclosed above. The balances are generally settled within 60 days of the invoice date.

Our note receivable from affiliate is a loan executed by Babcock & Wilcox Canada, Ltd., a subsidiary of B&W PGG, with J. Ray McDermott Canada Holding, Ltd. (“JRMCHL”) for up to 60 million Canadian Dollars. The actual amount funded to JRMCHL under this agreement was $45.2 million. Interest is set at the Canadian Prime Rate and is due quarterly. The loan agreement is scheduled to terminate on June 30, 2011, and the entire amount outstanding under the loan agreement, including accrued interest, is scheduled to become due and payable at that time. Either party may terminate the loan agreement by providing 30 days’ written notice to the other party, in which case the entire amount outstanding under the loan agreement, including accrued interest, would be due and payable at the end of that 30-day period. JRMCHL may repay the loan at any time, without penalty. No payments were made during the three months ended March 31, 2010. We expect this loan will be settled in connection with the spin-off.

Our note payable relates to a loan agreement with McDermott Kft., Budapest, Zug branch, the registered branch of McDermott Group Financing Limited Liability Company, whereby we borrowed $355 million in connection with a reorganization of various subsidiaries of McDermott. The loan bears interest at a rate of 7.25% and is payable quarterly. The loan matures on December 21, 2011. The loan principal is due in full on the maturity date but may be paid in whole or in part in advance without penalty. During the three months ended March 31, 2010 we had no new borrowings or repayments under this facility. We expect this loan will be settled in connection with the spin-off.

On September 17, 2009, we entered into a loan agreement with MII whereby we may borrow up to $5.0 million in connection with the acquisition of Instrumentacion y Mantenimiento de Calderas, S.A. Interest is set at the Eurodollar deposit rate and is due quarterly. The loan agreement is scheduled to terminate on December 31, 2014, and the entire amount outstanding under the loan agreement, including the accrued interest, is scheduled to become due and payable at that time. Either party may terminate the loan agreement by providing 30 days’ written notice to the other party, in which case the entire amount outstanding under the loan agreement, including the accrued interest, will become due and payable at the end of that 30-day period. We expect this loan will be settled in connection with the proposed spin-off.

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.

NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (UNAUDITED)—(Continued)

NOTE 10—CREDIT FACILITY

On May 3, 2010, BWICO entered into a credit agreement with a syndicate of lenders and credit issuers. The facility provides an aggregate outstanding amount of up to $700.0 million for revolving credit borrowings and issuances of letters of credit and expires on May 3, 2014. Upon completion of the spin-off, we will become the borrower under the credit agreement, and BWICO will become a guarantor under the credit agreement. The facility replaces our existing facilities.

Schedule II

THE BABCOCK & WILCOX OPERATIONS OF McDERMOTT INTERNATIONAL, INC.
VALUATION AND QUALIFYING ACCOUNTS

Description	Balance at Beginning of Period	Additions: Charged to Costs and Expenses[1]	Additions: Charged to Other Accounts	Balance at End of Period
Valuation Allowance for Deferred Tax Assets				
Year Ended December 31, 2009	$ (32,227)	$ 3,238	$ 288	$(28,701)
Year Ended December 31, 2008	$ (85,384)	$ 53,496	$ (339)	$(32,227)
Year Ended December 31, 2007	$(122,215)	$ (36,831)	—	$(85,384)

(1) Net of reductions and other adjustments, all of which are charged to costs and expenses.

May 19, 2010

MEMORANDUM

TO: Division of Corporation Finance
Securities and Exchange Commission

FROM: The Babcock & Wilcox Company

RE: Registration Statement on Form 10
(File No. 001-34658)
Response to Staff Comments

Set forth below are responses from The Babcock & Wilcox Company (the "Company," "we" or "us") to the comments (the "Comments") of the staff (the "Staff") of the United States Securities and Exchange Commission (the "SEC"), dated May 14, 2010, concerning the Company's Registration Statement on Form 10 filed on March 12, 2010 and Amendment No. 1 to the Registration Statement on Form 10 filed on April 23, 2010 ("Amendment No. 1").

Amendment No. 2 to the Registration Statement on Form 10 ("Amendment No. 2") is being electronically transmitted for filing under the Securities Exchange Act of 1934 (the "Exchange Act"). Amendment No. 2 reflects revisions made to Amendment No. 1, including revisions made in response to the Comments.

For your convenience, the responses set forth below have been put in the same order as the Comments were presented and repeat each Comment prior to the response. The Comments are highlighted in bold. All pages referenced in the responses set forth below refer to the pages of Amendment No. 2. We have sent to your attention three hard copies of Amendment No. 2 (clean and marked).

The Spin-Off, page 37

Reasons for the Spin-Off, page 37

Comment 1.

Please disclose the first sentence of your response to comment 5.

Response 1.

We have added the requested disclosure on page 40 of Amendment No. 2.

Treatment of Fractional Shares, page 42

Comment 2.

We note you added disclosure in response to comment 7. Please disclose when McDermott would not pay broker selling expenses and how instead those fees are to be paid.

Response 2.

We have revised the disclosures on page 42 to reflect that McDermott will pay all such broker selling expenses.

Management's Discussion and Analysis . . ., page 57

Overview – Government Operations, page 58

Comment 3.

Regarding your disclosure in response to comment 15, please disclose the nature of the two incidents you refer to in the second sentence of the third paragraph of this section.

Response 3.

We have disclosed the nature of the two incidents on pages 21, 59, 66 and F-42 of Amendment No.2.

Comment 4.

Please note that we may have further comments after you revise your disclosure in response to prior comment 16, as well as prior comments 27, 39, and 40.

Response 4.

We acknowledge the Staff's comment. Please see pages 59, 66, 73, 111, 112, 114, 115, 116 and 117 and exhibits 10.16 and 10.17, which include updated and expanded disclosure that we believe is fully responsive to prior comments.

The Babcock & Wilcox Operations of McDermott International, Inc. (Combined), page 62

Comment 5.

We note your response to prior comment 20; however, we do not see where you have provided a discussion of combined results of operations for each line item presented in the combined statements of income on page F-4. Please revise.

Response 5.

We have further expanded our results of operations discussions on pages 64-71 to discuss each significant line item variance in the period-to-period comparisons. We have followed this expanded approach in the discussion of the interim results of operations that we have added in Amendment No. 2 on pages 64-66.

Power Generation Systems, page 63

Comment 6.

We reference prior comments 22 and we note the additional detail you provided in the revised disclosure. Please revise the disclosure to further disclose why revenues and segment operating income decreased substantially over the prior period. For example, you state that revenue decreased because of lower orders booked in 2008; however you do not state why orders booked in 2008 decreased. In addition, you state that decreases in fabrication, repair and retrofit of existing facilities operations was attributable to a reduction in revenues associated with utility power plant enhancements but do not disclose why revenues associated with utility power plant enhancement projects decreased.

Response 6.

We have expanded the results of operations disclosure on page 68 of Amendment No. 2 to provide explanations of the period-to-period variances in revenues and operating income.

Comment 7.

As a related matter, the disclosure in response to prior comment 23 primarily refers back to the discussion of revenues. As requested in the prior comment, please revise to also provide disclosure about the reasons for decreases in margins and volumes.

Response 7.

We have revised the disclosure on pages 68 and 69 to include discussions of the reasons for the decreases in margins and volumes.

Contractual Obligations, page 72

Comment 8.

We note your response to prior comment 30 that the borrowings on the short-term line of credit are excluded from the table because there is no fixed contractual period for repayment of this amount. We also note that the debt is described as "short-term" and appears to be included in current liabilities. Please revise to disclose in a footnote to the contractual obligations table and in footnote 6 in the consolidated financial statements the repayment provisions and other relevant terms of the debt to allow readers a full understanding of your future liquidity requirements.

Response 8.

We have revised the disclosure on pages 77 and F-26 to disclose in a footnote to the contractual obligations table and in footnote 6 in the consolidated financial statements the repayment provisions and other relevant terms of the debt.

Agreements Between McDermott and Us, page 95

Comment 9.

We note your response to comment 38 and reissue our comment. It is unclear how your Information Statement will provide all material information to your shareholders given the possibility that you may not receive all required consents by the spin-off date.

Response 9.

We have added disclosure on page 106 of Amendment No.2 to the effect that, based on the third-party consents and approvals received to date, we do not anticipate that any "savings clause" provisions will need to be relied on for any material item. For the information of the Staff, the only remaining items in the nature of material approvals/consents that are conditions to the spin-off are the SEC's effectiveness order with respect to the Form 10 and receipt of the final private letter ruling requested from the IRS. We disclose both of those on page 45 of Amendment No.2 under the caption "The Spin-Off–Spin-off Conditions and Termination." The spin-off will not be completed, and the information statement will not be mailed to shareholders, unless and until both of those are received. We are also awaiting another U.S. Government agency approval on an administrative matter, which we expect to have in hand in June 2010.

Executive Compensation, page 114

Defining Market Range . . ., page 113

Comment 10.

Please disclose the substance of the last two sentences of your response to comment 45. In addition, identify the company that was also a component in the other peer groups and how this affected the results of those peer groups.

Response 10.

We have added the disclosure requested in the first sentence of the comment on page 124 of Amendment No. 2. The Staff has also requested that we identify how the component companies that are common to the Custom Peer Group and the other peer groups affected the results of those other groups. However, based on Instruction 1 to Regulation S-K Item 402(b), we understand that the purpose of the Compensation Discussion and Analysis is to provide "investors material information that is necessary to an understanding of the registrant's compensation policies and decisions regarding the named executive officers." As we note on page 124 of Amendment No. 2, the Custom Peer Group had no effect on the market range of compensation and, as a result, describing the affect of any component company of the Custom Peer Group on the market range compensation results of either the Corporate Group or the Babcock & Wilcox Group would not provide material information necessary to an understanding of our compensation policies and decisions. Accordingly, we do not believe disclosure on this point is required under Regulation S-K Item 402(b).

Combined Financial Statements

Comment 11.

We see from page 85 that you acquired the electrostatic precipitator aftermarket and emissions monitoring business units of GE Energy in April 2010. Please tell us how you considered that this acquisition should be disclosed as a subsequent event. Refer to FASB ASC 855-10-25-4.

Response 11.

We did not consider the acquisition of the GE Energy business units for $22 million to be material to our financial statements. Therefore, it was not disclosed as a subsequent event. Our evaluation was based on the definition of "significant subsidiary" in Rule 1-02(w) of Regulation S-X. The purchase price was less than 1% of our total assets at December 31, 2009.

Note 2. Business Combinations, page F-18

Instrumentacion y Mantenimiento de Calderas, S.A., page F-18

Comment 12.

Please revise to disclose that you are accounting for the acquisition of "certain assets" of Instrumentacion y Mantenimiento de Calderas, S.A as a business combination, similar to your response to prior comment 59.

Response 12.

We have added the requested disclosure on page F-18 of Amendment No. 2. We have also added similar disclosure with respect to the Götaverken acquisition on page F-64 of Amendment No.2.

Note 9. Commitments and Contingencies, page F-41

Comment 13.

We reference the disclosure that B&W PGG settled approximately 245 personal injury and wrongful death claims, as well as approximately 125 property damage claims and that you are currently pursuing recovery of these amounts in a lawsuit against American Nuclear Insurers (ANI). Please revise to disclose the timing and dollar amount of the settlement payments. Additionally, disclose how the settlements were recorded in your financial statements. Tell us why you believe you will recover these amounts from ANI.

Response 13.

We have revised the disclosure to include the requested information. We believe we will ultimately recover these amounts from ANI because the settled *Hall* claims are within the scope of coverage afforded under the insurance policies issued by ANI and the settlement was approved by the United States District Court for the Western District of Pennsylvania in the *Hall* action as a good faith, fair and reasonable compromise of disputed claims in light of the litigation risk and potential exposure. However, due to the ongoing litigation, we have not recorded the anticipated recovery in our financial statements as we do not believe it qualifies for recognition under FASB ASC 450-30-05.

Note 14. Segment Reporting, page F-50

Comment 14.

We reissue prior comment 66. We note that your response does not state that the measure, "segment operating income" is used by your chief operating decision maker for decision making purposes. If this measure is not provided to your chief operating decision maker, please tell us why it is provided in the footnote disclosure and how this presentation complies with FASB ASC 280-10-50-28.

Response 14.

We have revised our segment disclosures to display one measure of operating income used by our Chief Operating Decision Maker.

Comment 15.

As a related matter, please clarify how your reconciliation complies with FASB ASC 280-10-50-30b. Under that guidance, you should reconcile the total of the reportable segments' measures of profit or loss to consolidated income before income taxes, extraordinary items, and discontinued operations. Please also refer to FASB ASC 280-10-55-49 through 55-50. Please revise to include a reconciliation that is similar to your response to prior comment 67.

Response 15.

We have added the requested reconciliation to our segment table disclosures on pages F-51 and F-69 of Amendment No.2.

Acknowledgements

The Company hereby acknowledges that:

- the Company is responsible for the adequacy and accuracy of the disclosure in the Form 10, as amended;
- Staff comments or changes to disclosure in response to Staff comments do not foreclose the SEC from taking any action with respect to the Form 10, as amended; and

- the Company may not assert Staff comments as a defense in any proceeding initiated by the SEC or any person under the federal securities laws of the United States.

We believe that the information contained in this letter, together with the revised disclosures in Amendment No. 2, is responsive to the Comments. In addition to reflecting the responses to the Comments described above, Amendment No. 2 includes other changes that are intended to update, clarify or render more complete the information contained therein.

Please call Ted W. Paris or James H. Mayor of Baker Botts L.L.P. at (713) 229-1838 or (713) 229-1749, respectively, if you have any questions regarding this submission.