

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

**Amendment No. 3
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
(State of incorporation
or organization)

80-0558025
(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**
Common Stock, par value \$0.01 per share

**Name of Each Exchange
on Which Such Class will be Registered**
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

Smaller reporting company

(Do not check if a 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.

<u>Item No.</u>	<u>Item Caption</u>	<u>Location in Information Statement</u>
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.”

- | <u>Item No.</u> | <u>Item Caption</u> | <u>Location in Information Statement</u> |
|-----------------|---|--|
| 14. | Changes in and Disagreements with Accountants on Accounting and Financial Disclosure. | Not Applicable. |
| 15. | Financial Statements and Exhibits. | |
| (a) | <u>Combined Financial Statements</u> : 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) | <u>Combined Financial Statements Schedules</u> : 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) | <u>Exhibits</u> . The following documents are filed as exhibits hereto: | |

<u>Exhibit Number</u>	<u>Exhibit Description</u>
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.

<u>Exhibit Number</u>	<u>Exhibit Description</u>
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

* Previously filed.

EXHIBIT INDEX

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MASTER SEPARATION AGREEMENT

between

MCDERMOTT INTERNATIONAL, INC.,

and

THE BABCOCK & WILCOX COMPANY

dated as of

[] [], 2010

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MASTER SEPARATION AGREEMENT

This MASTER SEPARATION AGREEMENT (this "Agreement") is entered into as of [] [], 2010, between McDermott International, Inc., a Panamanian corporation ("MII") and The Babcock & Wilcox Company, a Delaware corporation ("B&W"). MII and B&W are sometimes referred to herein individually as a "Party," and collectively as the "Parties." Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Article I hereof.

RECITALS

WHEREAS, B&W is a wholly owned Subsidiary of 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 Business from the MII Business;

WHEREAS, in furtherance thereof, the Board of Directors of MII has determined that, following the Separation, it would be appropriate and in the best interests of MII and its stockholders for MII 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 MII ("MII Common Stock") all of the outstanding shares of common stock, par value \$0.01 per share, of B&W ("B&W Common Stock") owned by MII as of the Distribution Date immediately before the Distribution Time;

WHEREAS, for U.S. federal income tax purposes, (i) certain transactions to be effected in connection with the Separation are intended to qualify as reorganizations under Sections 355 and/or 368 or as complete liquidations under Section 332(a) of the U.S. Internal Revenue Code of 1986 (the "Code") and (ii) the Distribution is intended to qualify as a transaction under Section 355 of the Code; and

WHEREAS, the Parties intend in this Agreement, including the Schedules hereto, to set forth the principal arrangements between them regarding the Separation and the Distribution.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

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

"AAA" has the meaning set forth in Section 5.3(a).

"AAA Rules" has the meaning set forth in Section 5.3(a).

"Action" means any demand, claim, action, suit, countersuit, arbitration, litigation, inquiry, proceeding or investigation by or before any Governmental Authority or any arbitration or mediation tribunal or authority.

"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 preamble to this Agreement and includes all Schedules attached hereto or delivered pursuant hereto.

“Ancillary Agreements” has the meaning set forth in Section 2.6.

“Applicable Deadline” has the meaning set forth in Section 5.3(b).

“Appropriate Member of the B&W Group” has the meaning set forth in Section 3.3.

“Appropriate Member of the MII Group” has the meaning set forth in Section 3.4.

“Arbitration Act” means the United States Arbitration Act, 9 U.S.C. §§ 1 *et seq.*

“Arbitration Demand Notice” has the meaning set forth in Section 5.3(a).

“Asset” means all rights, properties or assets, whether real, personal or mixed, tangible or intangible, of any kind, nature and description, whether accrued, contingent or otherwise, and wheresoever situated and whether or not carried or reflected, or required to be carried or reflected, on the books of any Person.

“Assumption and Loss Allocation Agreement” means the Agreement dated as of May 12, 2010 to which MII, Babcock & Wilcox Holdings, Inc. and ACE American Insurance Company are parties.

“B&W” has the meaning set forth in the preamble to this Agreement.

“B&W Assets” means only the following Assets of MII, B&W and their respective Subsidiaries, in each case not including any Excluded Assets:

(i) all of the outstanding equity interests of the members of the B&W Group that are owned by MII, B&W or any of their respective Subsidiaries as of the Distribution Time (other than the B&W Common Stock);

(ii) all Assets reflected on the B&W Pro Forma Balance Sheet or any subledger thereto that are owned by MII, B&W or any of their respective Subsidiaries as of the Distribution Time;

(iii) all Assets owned by MII, B&W or any of their respective Subsidiaries as of the Distribution Time that were acquired or created after the date of the B&W Pro Forma Balance Sheet and that are of a nature or type that would have resulted in them being reflected on a pro forma, as adjusted consolidated balance sheet of B&W and its Subsidiaries and the notes or subledgers thereto as of the Distribution Time (were the balance sheet, notes and subledgers to be prepared as of that time) on a basis consistent with the determination of the Assets reflected on the B&W Pro Forma Balance Sheet or any subledger thereto, including Assets allocated to B&W in accordance with the definition of “Separation” herein;

(iv) the B&W Intellectual Property; and

(v) except as otherwise provided in this Agreement or one or more Ancillary Agreements, all other Assets held by a member of the MII Group or the B&W Group as of the Distribution Time and used primarily in or that primarily relate to the B&W Business as of the Distribution Time.

“B&W Books and Records” means the corporate books and records (whether in hard copy or electronic format and including all minute books, corporate charters and bylaws or comparable constitutive documents, records of share issuances and related corporate records) of any member of the B&W Group and such other books and records, including operating, accounting, engineering, corporate department and any other written record, whether in hard copy or electronic format, to the extent they primarily relate to the B&W Business, the B&W Assets or the B&W Liabilities, including, without limitation, all such books and records primarily relating to Persons who are employees of the B&W Group as of the Distribution Time, the purchase of materials, supplies

and services, dealings with customers of the B&W Business, and all files relating to any Action the liability with respect to which is a B&W Liability, except that no portion of the books and records of the MII Group containing minutes of meetings of any board of directors of any of them shall be included. Notwithstanding the foregoing, "B&W Books and Records" shall not include any Tax Returns or other information, documents or materials relating to Taxes, which Tax Returns and other information, documents and materials are treated in accordance with the provisions of the Tax Sharing Agreement. For the avoidance of doubt, no Information meeting the definition of "B&W Books and Records" shall be deemed not to be B&W Books and Records because it is provided (or made available) 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 services by any member of the MII Group pursuant to the B&W Transition Services Agreement, or because it is generated, maintained or held in connection with the provision of services by any member of the MII Group pursuant to the B&W Transition Services Agreement after the Distribution Date. Furthermore, B&W and MII each acknowledge and agree that the B&W Books and Records described in the immediately preceding sentence shall belong solely to B&W and shall not, as between the Parties, be considered Privileged Information of MII.

"B&W Business" means the business and operations conducted by the B&W Group as of the Distribution Date, as such business and operations are described in the Information Statement.

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

"B&W Entity" means any member of the B&W Group (together with each current and former, direct or indirect, subsidiary of any such member (and of any such former subsidiary)), but also includes any entity which was sold or otherwise disposed of or the business of which was discontinued at such time as such entity's assets, liabilities or results of operations were accounted for within the Power Generation Systems, Government Operations or Industrial Operations segment of MII and its Subsidiaries (or any predecessor to any such segment). For the avoidance of doubt and in addition to the foregoing, each entity listed on Schedule 1.1(a) is a B&W Entity. Notwithstanding the foregoing, none of the entities listed on Schedule 1.1(b) or Schedule 1.1(h) shall be deemed to be a B&W Entity.

"B&W Group" means B&W and each Person that is a Subsidiary of B&W immediately after the Distribution Time or becomes a Subsidiary of B&W after the Distribution Time. For the avoidance of doubt and for the purposes of this Agreement, each entity listed on Schedule 1.1(c) will be a Subsidiary of B&W immediately after the Distribution Time.

"B&W Indemnitees" has the meaning set forth in Section 3.4.

"B&W Intellectual Property" means all intellectual property rights, including the B&W Marks, patents, copyrights, design rights, rights in know-how, trade secrets and other rights of a similar nature (excluding the MII Marks) subsisting anywhere in the world, registered or unregistered, and including all applications for the registration of the same, to the extent (as between the B&W Group and the MII Group) exclusively related to the B&W Business or the B&W Assets, in each case to the extent owned or used by the MII Group or the B&W Group as of the Distribution Time. Notwithstanding the foregoing, the intellectual property rights described on Schedule 1.1(d) shall be deemed to be B&W Intellectual Property, even though they are not exclusively related to the B&W Business or the B&W Assets.

"B&W Liabilities" shall mean (without duplication):

(i) all Liabilities of the (A) B&W Entities (and their respective predecessors and former Subsidiaries) and (B) all of the entities listed on Schedule 1.1(e) under the caption "B&W Joint Ventures" (and the respective predecessors and Subsidiaries of such entities), in each case whether arising out of, resulting from or relating to the ownership of equity interests in, or operations of, any of such entities prior to, at or after the Distribution Time;

(ii) all Liabilities reflected on the B&W Pro Forma Balance Sheet or any subledger thereto that remain outstanding as of the Distribution Time;

(iii) all other Liabilities that are incurred or accrued by MII, B&W or any of their respective Subsidiaries after the date of the B&W Pro Forma Balance Sheet and that remain outstanding as of the Distribution Time that are of a nature or type that would have resulted in the Liabilities being reflected on a pro forma, as adjusted consolidated balance sheet of B&W and its Subsidiaries and the notes or subledgers thereto as of the Distribution Time (were the balance sheet, notes or subledgers to be prepared as of that time) on a basis consistent with the determination of the Liabilities reflected on the B&W Pro Forma Balance Sheet or any subledger thereto;

(iv) all Liabilities delegated or allocated to, or assumed by, B&W or any member of the B&W Group under this Agreement or any Ancillary Agreement (provided that "B&W Liabilities" shall exclude all Liabilities delegated or allocated to, or assumed by, MII or any member of the MII Group under this Agreement or any Ancillary Agreement);

(v) all Liabilities arising out of, resulting from or relating to any Future B&W Disclosure Claim;

(vi) all Liabilities arising out of, resulting from or relating to any of the matters (A) described under the captions "Investigations and Proceedings," "Other" and "Environmental Matters" in Note 9 (Commitments and Contingencies) to the combined financial statements of The Babcock & Wilcox Operations of McDermott International, Inc. included in the Registration Statement or (B) listed on Schedule 1.1(f);

(vii) 50% of all Liabilities arising out of the settlement or other resolution of any Action described on Schedule 1.1(g), in each case, to the extent such Liabilities are not paid or otherwise satisfied by the third-party insurance companies that provided directors' and officers' insurance coverages to MII on or prior to the Distribution Date;

(viii) 50% of all Liabilities arising out of, resulting from or relating to the former ownership of or investment in the entities listed on Schedule 1.1(h) (or any of their respective predecessors) by any member of the B&W Group or the MII Group (or any of their respective predecessors); provided, however, that: (A) 100% of the Liabilities described on Schedule 1.1(h)(i) shall be deemed to be B&W Liabilities; and (B) 100% of the Liabilities described on Schedule 1.1(h)(ii) shall be deemed to be MII Liabilities; and

(ix) except as otherwise expressly provided in this Agreement or one or more Ancillary Agreements, all Liabilities arising out of the B&W Assets or the operation of the B&W Business (including all Liabilities arising out of the use by any member of the B&W Group of any of the MII Intellectual Property), whether prior to, on or after the Distribution Date.

For the avoidance of doubt: (A) Liabilities that are B&W Liabilities pursuant to the definition set forth in clause (ix) of the immediately preceding sentence shall not be excluded from the definition of B&W Liabilities simply because such B&W Liabilities are attributable to, relate to, arose out of or resulted from operations or Assets no longer owned by MII, B&W or their respective Subsidiaries as of the Distribution Time (e.g., previously sold, disposed or lost operations or Assets); (B) the designation in this Agreement of any Liability as a B&W Liability shall be binding on the B&W Group, notwithstanding that such Liability may arise out of, directly or indirectly, the negligence, strict liability or other legal fault of any one or more members of the MII Group; and (C) except as expressly set forth in this Agreement or an Ancillary Agreement, the designation in this Agreement of Liabilities as B&W Liabilities or MII Liabilities is only for purposes of allocating responsibility for such Liabilities as between the Parties and their respective Subsidiaries and shall not affect any obligations to, or give rise to any rights of, any third parties.

"B&W Marks" means trade names, registered and unregistered trademarks, service marks, domain names and e-mail addresses used on or in connection with the B&W Assets, including any such names, marks, domain names and e-mail addresses that incorporate the terms "Babcock," "Wilcox," "Babcock & Wilcox," "B&W" or "Diamond Power," or any related trademarks or trade names, or any translations or derivatives thereof, or any terms of a confusingly similar nature, and all goodwill embodied in the foregoing, excluding the MII Marks.

“B&W Pro Forma Balance Sheet” means the unaudited consolidated pro forma, as adjusted balance sheet of the B&W Group as of March 31, 2010 included in the Information Statement.

“B&W Transition Services Agreement” means the Transition Services Agreement dated the date hereof between MII, as service provider, and B&W, as service receiver.

“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.

“Captive Insurance Novation and Assumption Agreements” means (i) the 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. and (ii) the Novation and Assumption Agreement dated as of May 18, 2010 by and among MII, Babcock & Wilcox Holdings, Inc., Boudin Insurance Company, Ltd. and Creole Insurance Company, Ltd.

“Change of Control” shall mean, with respect to a specified Person, the occurrence of any of the following after the Distribution Date:

(i) any “person” (as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act) is or becomes a beneficial owner, directly or indirectly, of securities of such Person representing 30% or more of the combined voting power of such Person’s then-outstanding securities;

(ii) during any period of 12 consecutive months, individuals who, as of the Distribution Date, constitute the members of such Person’s Board of Directors (the “Incumbent Directors”) cease for any reason other than due to death or disability to constitute at least a majority of the members of such Person’s Board of Directors, provided that any director who was nominated for election by, or was elected with the approval of, at least a majority of the members of such Person’s Board of Directors who are at the time Incumbent Directors shall be considered an Incumbent Director;

(iii) the consummation of any transaction (including any merger, amalgamation or consolidation), a result of which is that less than 50% of the total voting power of the surviving entity is held by the stockholders of such Person prior to such transaction; or

(iv) such Person shall have sold, transferred or exchanged all, or substantially all, of its assets to another Person.

“Code” has the meaning set forth in the recitals to this Agreement.

“Confidential Information” has the meaning set forth in Section 6.9(a).

“Consent” means any consents, waivers or approvals from, or notification requirements to, any third parties, including any notices or reports to be submitted to, filings to be made with, or consents, registrations, approvals, permits or authorizations to be obtained from, any Governmental Authority.

“Contract” means any written, oral, implied or other contract, agreement, covenant, lease, license, guaranty, indemnity, representation, warranty, assignment, sales order, purchase order, power of attorney, instrument or other commitment, assurance, undertaking or arrangement that is binding on any Person or entity or any part of its property under applicable Law.

“Covered Matter” has the meaning set forth in Section 6.10(i).

“Dispute” has the meaning set forth in Section 5.1.

“Distribution” has the meaning set forth in the recitals to this Agreement.

“Distribution Agent” has the meaning set forth in Section 4.1.

“Distribution Date” means the date on which the Distribution occurs, such date to be determined by, or under the authority of, the Board of Directors of MII in its sole and absolute discretion.

“Distribution Multiple” means 1/[] , the number determined by the MII Board of Directors in its sole discretion at the time of its approval of the Distribution as the number of shares of B&W Common Stock to be distributed in respect of each share of MII Common Stock, which number will be multiplied by the number of shares of MII Common Stock outstanding on the Record Date to determine the number of shares of B&W Common Stock to be issued and outstanding immediately before the Distribution Time.

“Distribution Time” means the time at which the Distribution is effective on the Distribution Date.

“Employee Matters Agreement” means the Employee Matters Agreement dated the date hereof among MII, McDermott Incorporated, B&W and Babcock & Wilcox Investment Company.

“Escalation Notice” has the meaning set forth in Section 5.2(a).

“Exchange Act” means the Securities Exchange Act of 1934.

“Excluded Assets” means any Assets that are contemplated by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto, including Assets described in Schedule 1.1(i)) as Assets to be retained by MII or any member of the MII Group.

“Future B&W Disclosure Claim” means any Third Party Claim that is first asserted after the Distribution Time and arises out of any disclosure or omission with respect to MII’s Power Generations Systems segment or Government Operations segment in any of MII’s reports filed pursuant to the Securities Exchange Act of 1934 (including MII’s Quarterly Report on Form 10-Q for the quarter ending June 30, 2010), including in any such report under the caption “Management’s Discussion and Analysis of Financial Condition and Results of Operations” or in the financial statements (or any notes thereto) contained therein.

“Good Faith Judgment” shall mean (a) the good faith judgment of the General Counsel of MII or B&W, as the case may be, in office immediately after the Distribution Time, or (b) the good faith judgment of a successor General Counsel who is appointed by the Chief Executive Officer of MII or B&W in office immediately after the Distribution Time, as the case may be; provided, however, that if both the individual appointed as General Counsel as of the Distribution Time or his or her designated successor meeting the requirements of clause (b) is no longer serving in such office, then “Good Faith Judgment” shall mean the good faith judgment of a reasonable person under the same or similar circumstances.

“Governmental Authority” shall mean any U.S. federal, state, local or non-U.S. court, government, department, commission, board, bureau, agency, official or other regulatory, administrative or governmental authority.

“Group” means either of the MII Group or the B&W Group, as the context requires.

“Hyperion Transition Services Agreement” means the Transition Services Agreement for Hyperion Financial Consolidation System dated the date hereof between MII, as service provider, and B&W, as service receiver.

“Indebtedness” of any specified Person means (a) all obligations of such specified Person for borrowed money or arising out of any extension of credit to or for the account of such specified Person (including reimbursement or payment obligations with respect to surety bonds, letters of credit, bankers’ acceptances and similar instruments), (b) all obligations of such specified Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such specified Person upon which interest charges are customarily paid, (d) all obligations of such specified Person under conditional sale or other title retention agreements relating to Assets

purchased by such specified Person, (e) all obligations of such specified Person issued or assumed as the deferred purchase price of property or services, (f) all liabilities secured by (or for which any Person to which any such liability is owed has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge or other encumbrance on property owned or acquired by such specified Person (or upon any revenues, income or profits of such specified Person therefrom), whether or not the obligations secured thereby have been assumed by the specified Person or otherwise become liabilities of the specified Person, (g) all capital lease obligations of such specified Person, (h) all securities or other similar instruments convertible or exchangeable into any of the foregoing, but excluding daily cash overdrafts associated with routine cash operations, and (i) any liability of others of a type described in any of the preceding clauses (a) through (g) in respect of which the specified Person has incurred, assumed or acquired a liability by means of a guaranty.

“Indemnifiable Loss” has the meaning set forth in Section 3.5(a).

“Indemnifying Party” has the meaning set forth in Section 3.5(a).

“Indemnitee” has the meaning set forth in Section 3.5(a).

“Indemnity Payment” has the meaning set forth in Section 3.5(a).

“Information” means information, whether or not patentable or copyrightable, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), memos and other materials prepared by attorneys or under their direction (including attorney work product), and other technical, financial, employee or business information or data.

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

“Insurance Proceeds” means those monies:

(a) received by an insured Person from any insurer, insurance underwriter, mutual protection and indemnity club or other risk collective, excluding any proceeds received directly or indirectly (such as through reinsurance arrangements) from any captive insurance Subsidiary of the insured Person; or

(b) paid on behalf of an insured Person by any insurer, insurance underwriter, mutual protection and indemnity club or other risk collective, excluding any such payment made directly or indirectly (such as through reinsurance arrangements) from any captive insurance Subsidiary of the insured Person, on behalf of the insured; in any such case net of any out-of-pocket costs or expenses incurred in the collection thereof.

“Intercompany Agreement” means any Contract between any entities included within the B&W Group, on the one hand, and any entities within the MII Group, on the other hand, entered into prior to the Distribution Time, excluding any Contract to which a Person other than MII, B&W or one of their Subsidiaries is a party.

“Law” means any law, statute, ordinance, code, rule, regulation, order, writ, proclamation, judgment, injunction or decree of any Governmental Authority.

“Liabilities” shall mean any and all Indebtedness, liabilities and obligations, whether accrued, fixed or contingent, mature or inchoate, known or unknown, reflected on a balance sheet or otherwise, including those arising under any Law, Action or any judgment of any court of any kind or any award of any arbitrator of any kind, and those arising under any Contract.

“Losses” shall mean any and all damages, losses, deficiencies, Liabilities, obligations, penalties, judgments, settlements, claims, payments, interest costs, Taxes, fines and expenses (including the costs and expenses of any and all Actions and demands, assessments, judgments, settlements and compromises relating thereto and attorneys’, accountants’, consultants’ and other professionals’ fees and expenses incurred in the investigation or defense thereof or the enforcement of rights hereunder).

“MII” has the meaning set forth in the preamble to this Agreement.

“MII Assets” means all Assets of MII, B&W and their respective Subsidiaries, including the Excluded Assets but excluding the B&W Assets.

“MII Books and Records” means the corporate books and records (whether in hard copy or electronic format and including all minute books, corporate charters and bylaws or comparable constitutive documents, records of share issuances and related corporate records) of the MII Group and such other books and records, including operating, accounting, engineering, corporate department and any other written record, whether in hard copy or electronic format, to the extent they relate to the MII Business, the MII Assets, or the MII Liabilities, excluding the B&W Books and Records. Notwithstanding the foregoing, “MII Books and Records” shall not include any Tax Returns or other information, documents or materials relating to Taxes, which Tax Returns and other information, documents and materials are treated in accordance with the provisions of the Tax Sharing Agreement. For the avoidance of doubt, no Information meeting the definition of “MII Books and Records” shall be deemed not to be MII Books and Records because it is provided (or made available) by any member of the MII Group to any member of the B&W Group after the Distribution Time in connection with the provision of services by any member of the B&W Group pursuant to the MII Transition Services Agreement, or because it is generated, maintained or held in connection with the provision of services by any member of the B&W Group pursuant to the MII Transition Services Agreement after the Distribution Time. Furthermore, B&W and MII each acknowledge and agree that the MII Books and Records described in the immediately preceding sentence shall belong solely to MII and shall not, as between the Parties, be considered Privileged Information of B&W.

“MII Business” means any business of MII and its Subsidiaries other than the B&W Business.

“MII Common Stock” has the meaning set forth in the recitals to this Agreement.

“MII Entity” means any member of the MII Group, but also includes: (i) any entity which was sold or otherwise disposed of or the business of which was discontinued at such time as such entity’s assets, liabilities or results of operations were accounted for within the Offshore Oil and Gas Construction segment of MII and its Subsidiaries (or any predecessor to such segment, including Marine Construction Services); and (ii) each of the entities listed on Schedule 1.1(b). For the avoidance of doubt, none of the B&W Entities and none of the entities listed on Schedule 1.1(h) shall be deemed to be an MII Entity.

“MII Group” means MII and its Subsidiaries, other than the B&W Group. For the avoidance of doubt and for the purposes of this Agreement, each entity listed on Schedule 1.1(j) shall be deemed a Subsidiary of MII (and not a member of the B&W Group).

“MII Guarantees” has the meaning set forth in Section 6.8.

“MII Indemnitees” has the meaning set forth in Section 3.3.

“MII Intellectual Property” means all intellectual property rights, including the MII Marks, patents, copyrights, design rights, rights in know-how, trade secrets and other rights of a similar nature subsisting anywhere in the world, in each case whether registered or unregistered, and including all applications for the registration of the same, owned or used by any member of the MII Group or the B&W Group on or prior to the Distribution Date, excluding the B&W Intellectual Property.

“MII Liabilities” means all Liabilities of MII and its Subsidiaries, whether arising prior to, on or after the Distribution Date, other than the B&W Liabilities. For the avoidance of doubt, MII Liabilities shall include: (i) all Liabilities of the MII Entities (but excluding any B&W Liabilities); and (ii) except as provided in clause (viii) of the definition of “B&W Liabilities” above (including in the Schedules referenced therein), 50% of all Liabilities arising out of, resulting from or relating to the former ownership of or investment in the entities listed on Schedule 1.1(h) (or any of their respective predecessors) by any member of the B&W Group or the MII Group (or any of their respective predecessors). For the avoidance of doubt: (A) the designation in this Agreement of any Liability as an MII Liability shall be binding on the MII Group, notwithstanding that such Liability may arise out of, directly or indirectly, the negligence, strict liability or other legal fault of any one or more members of the B&W Group; and (B) except as expressly set forth in this Agreement or an Ancillary Agreement, the designation in this Agreement of Liabilities as B&W Liabilities or MII Liabilities is only for purposes of allocating responsibility for such Liabilities as between the Parties and their respective Subsidiaries and shall not affect any obligations to, or give rise to any rights of, any third parties.

“MII Marks” means trade names, registered and unregistered trademarks, service marks, domain names and e-mail addresses used on or in connection with the MII Assets, including any such names, marks, domain names and e-mail addresses that incorporate the terms “McDermott” or “J. Ray McDermott,” or any related trademarks or trade names, or any translations or derivatives thereof, or any terms of a confusingly similar nature, and all goodwill embodied in the foregoing, excluding the B&W Marks.

“MII Transition Services Agreement” means the Transition Services Agreement dated the date hereof between B&W, as service provider, and MII, as service receiver.

“Moody’s” means Moody’s Investors Service, Inc., and its successors.

“MPLS Transition Services Agreement” means the Transition Services Agreement for MPLS and Facility Access dated the date hereof between MII, as service provider, and B&W, as service receiver.

“NYSE” means the New York Stock Exchange, Inc.

“Omnibus Restructuring Agreement” means the Omnibus Restructuring Agreement dated as of May 10, 2010 by and among the members of the MII Group and the members of the B&W Group that are parties thereto.

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

“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.

“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.

“Prior Transfer” means (i) a transfer prior to the date of this Agreement of any B&W Asset from MII or any its Subsidiaries included in the MII Group to B&W or any other entity included in the B&W Group, (ii) an assumption prior to the date of this Agreement by B&W or any other entity included in the B&W Group of any of the B&W Liabilities from MII or any of its Subsidiaries included in the MII Group, (iii) a transfer prior to the date of this Agreement of any MII Asset from B&W or any other entity included in the B&W Group to MII or any of its Subsidiaries included in the MII Group, or (iv) an assumption prior to the date of this Agreement by MII or any of its Subsidiaries included in the MII Group of any of the MII Liabilities from B&W or any other entity included in the B&W Group.

“Privilege” has the meaning set forth in Section 6.5(a).

“Privileged Information” has the meaning set forth in Section 6.5(a).

“Record Date” means the close of business on the date to be determined by the Board of Directors of MII as the record date for determining stockholders of MII entitled to receive shares of B&W Common Stock on the Distribution Date pursuant to Section 4.2.

“Record Holders” has the meaning set forth in Section 4.1.

“Registration Statement” means the registration statement on Form 10 of B&W with respect to the registration under the Exchange Act of the B&W Common Stock, including any amendments or supplements thereto.

“S&P” means Standard & Poor’s Ratings Services, a division of McGraw-Hill, Inc., and its successors.

“SAP-HCM Transition Services Agreement” means the SAP-HCM Transition Services Agreement dated the date hereof between B&W, as service provider, and MII, as service receiver.

“SEC” means the United States Securities and Exchange Commission.

“Separation” means:

(i) the transfer to B&W or any other entity included in the B&W Group of all rights, titles and interests of MII or any of its Subsidiaries included in the MII Group in any B&W Assets that are held by MII or any of its Subsidiaries included in the MII Group and the assumption by B&W or any other entity included in the B&W Group of any B&W Liabilities that were incurred by, or as to which there exists any obligation of MII or any of its Subsidiaries included in the MII Group;

(ii) the transfer to MII or any of its Subsidiaries included in the MII Group of all rights, titles and interests of B&W or any other entity included in the B&W Group in any MII Assets that are held by B&W or any other entity included in the B&W Group and the assumption by MII or any of its Subsidiaries included in the MII Group of any MII Liabilities that were incurred by, or as to which there exists any obligation of B&W or any other entity included in the B&W Group; and

(iii) the issuance by B&W to MII of a number of shares of B&W Common Stock such that the number of shares of B&W Common Stock issued and outstanding immediately before the Distribution Time will equal the product of (i) the Distribution Multiple and (ii) the number of shares of MII Common Stock outstanding as of the Record Date, which B&W Common Stock owned by MII will constitute all of the issued and outstanding common stock of B&W.

The transactions contemplated by the Separation will be accomplished in part as provided herein.

“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. For the avoidance of doubt and for the purposes of this Agreement, none of the joint venture entities listed on Schedule 1.1(e) shall be deemed to be Subsidiaries of either MII or B&W.

“Surety Instruments” has the meaning set forth in Section 6.7.

“Taxes” has the meaning set forth in the Tax Sharing Agreement.

“Tax Returns” has the meaning set forth in the Tax Sharing Agreement.

“Tax Sharing Agreement” means the Tax Sharing Agreement dated the date hereof by and among J. Ray Holdings, Inc., Babcock & Wilcox Holdings, Inc. and (for the limited purpose set forth therein) B&W.

“Third Party Claim” has the meaning set forth in Section 3.7(a).

Section 1.2 *Interpretation*. In this Agreement, unless the context clearly indicates otherwise:

- (a) words used in the singular include the plural and words used in the plural include the singular;
- (b) if a word or phrase is defined in this Agreement, its other grammatical forms, as used in this Agreement, shall have a corresponding meaning;
- (c) reference to any gender includes the other gender and the neuter;
- (d) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”;
- (e) the words “shall” and “will” are used interchangeably and have the same meaning;
- (f) the word “or” shall have the inclusive meaning represented by the phrase “and/or”;
- (g) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including”;
- (h) all references 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;
- (i) whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified;
- (j) accounting terms used herein shall have the meanings historically ascribed to them by MII and its Subsidiaries, including B&W, in its and their internal accounting and financial policies and procedures in effect immediately prior to the date of this Agreement;
- (k) reference to any Article, Section or Schedule means such Article or Section of, or such 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;
- (l) 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;
- (m) the term “commercially reasonable efforts” means efforts which are commercially reasonable to enable a Party, directly or indirectly, to satisfy a condition to or otherwise assist in the consummation of a desired result and which do not require the performing Party to expend funds or assume Liabilities other than expenditures and Liabilities which are customary and reasonable in nature and amount in the context of a series of related transactions similar to the Separation;
- (n) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;
- (o) reference to any Law (including statutes and ordinances) means such Law (including any and all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;
- (p) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement; a reference to such Person’s “Affiliates” shall be deemed to mean such Person’s Affiliates following the Distribution and any reference to a third party shall be deemed to mean a Person who is not a Party or an Affiliate of a Party;

(q) if there is any conflict between the provisions of the main body of this Agreement and the Schedules hereto, the provisions of the main body of this Agreement shall control unless explicitly stated otherwise in such Schedule;

(r) if there is any conflict between the provisions of this Agreement and any Ancillary Agreement, the provisions of such Ancillary Agreement shall control (but only with respect to the subject matter thereof) unless explicitly stated otherwise therein;

(s) the titles to Articles and headings of Sections contained in this Agreement, in any 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; and

(t) any portion of this Agreement obligating a Party to take any action or refrain from taking any action, as the case may be, shall mean that such Party shall also be obligated to cause its relevant Subsidiaries to take such action or refrain from taking such action, as the case may be.

ARTICLE II

SEPARATION AND RELATED TRANSACTIONS

Section 2.1 *The Separation*. Subject to the satisfaction or waiver (in accordance with the provisions of Section 4.3) of the conditions set forth in Section 4.3, each of MII and B&W will use commercially reasonable efforts to take, or cause to be taken, any actions, including the transfer of Assets and the assumption of Liabilities, necessary to effect the Separation on or prior to the Distribution Date. As of and after the Distribution Time, B&W and its Subsidiaries shall, as between the B&W Group and the MII Group, be responsible for all B&W Liabilities, regardless of when or where such B&W Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the date hereof, regardless of where or against whom such B&W Liabilities are asserted or determined or whether asserted or determined prior to, at or after the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of statute or Law, fraud or misrepresentation, breach of contract or other theory, by any member of the MII Group or the B&W Group or any of their respective directors, officers, employees, agents, Subsidiaries or Affiliates. As of and after the Distribution Time, MII and its Subsidiaries shall, as between the MII Group and the B&W Group, be responsible for all MII Liabilities, regardless of when or where such MII Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the date hereof, regardless of where or against whom such MII Liabilities are asserted or determined or whether asserted or determined prior to, at or after the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of statute or Law, fraud or misrepresentation, breach of contract or other theory, by any member of the MII Group or the B&W Group or any of their respective directors, officers, employees, agents, Subsidiaries or Affiliates. Subject to Section 3.8(f), each of MII and B&W agrees on behalf of itself and each of its Subsidiaries as of the Distribution Time that the provisions of the Tax Sharing Agreement shall exclusively govern the allocation of Assets and Liabilities related to Taxes.

Section 2.2 *Charter and Bylaws*. Effective as of the Distribution Time, the Restated Certificate of Incorporation and the Amended and Restated Bylaws of B&W shall be substantially in the forms of Schedule 2.2(a) and Schedule 2.2(b), respectively, with such changes therein as may be agreed to in writing by MII.

Section 2.3 *Intellectual Property*.

(a) B&W, for itself and as representative of all other members of the B&W Group, hereby assigns to MII all right, title and interest, held by B&W or any member of the B&W Group, in and to any MII Intellectual Property, including any and all MII Marks, except to the extent prohibited by, or requiring any Consent under (to the extent such Consent has not been obtained), any Contract under which B&W holds or uses such MII Intellectual Property. MII, for itself and as representative of all other members of the MII

Group, hereby assigns to B&W all right, title and interest, held by MII or any other member of the MII Group, in and to any B&W Intellectual Property, including any and all B&W Marks, except to the extent prohibited by, or requiring any Consent under (to the extent such Consent has not been obtained), any Contract under which MII holds or uses such B&W Intellectual Property. The provisions of Section 2.7 shall apply to any such assignments un consummated as of the Distribution Time as the result of a prohibition under a Contract or a requirement under a Contract for a Consent, which Consent has not been obtained.

(b) B&W, for itself and as representative of all other members of the B&W Group, hereby grants to MII and each of its Subsidiaries a non-exclusive, royalty-free, worldwide license to use the B&W Intellectual Property, to the extent used within the 36-month period prior to the Distribution Date in connection with the MII Business, for the continued operation of the MII Business and any future extensions of the MII Business into other areas of oil and gas construction products or services or other oilfield-related products or services; provided, however, the foregoing license shall not extend to (i) the B&W Marks, (ii) B&W Intellectual Property licensed by B&W or any other member of the B&W Group from a third party if and to the extent the licensing of same to MII would constitute a breach of agreement with such third party or result in any expense to B&W or any member of the B&W Group for payments to such third party or (iii) any intellectual property not owned by one or more members of the B&W Group, or as to which no member of the B&W Group has the right to grant sublicenses, as of the Distribution Time. In addition, B&W, for itself and as representative of all other members of the B&W Group, hereby grants to MII a right of first refusal with respect to the B&W Intellectual Property described on Schedule 2.3(b)(i) with respect to any proposed sale or other disposition of such B&W Intellectual Property to a third party (excluding any sale or disposition to any Subsidiary of B&W) which is independent of any proposed sale of the business to which such B&W Intellectual Property relates, such right of first refusal to be pursuant to the terms and provisions described on Schedule 2.3(b)(iii). MII, for itself and as representative of all other members of the MII Group, hereby grants to B&W and each of its Subsidiaries a non-exclusive, royalty-free, worldwide license to use the MII Intellectual Property, to the extent used within the 36-month period prior to the Distribution Date in connection with the B&W Business, for the continued operation of the B&W Business and any future extensions of the B&W Business into other areas of power generation systems products and services and contracting operations for the U.S. Government; provided, however, the foregoing license shall not extend to (i) the MII Marks, (ii) MII Intellectual Property licensed by MII or any member of the MII Group from a third party if and to the extent the licensing of same to B&W would constitute a breach of agreement with such third party or result in any expense to MII or any member of the MII Group for payments to such third party or (iii) any intellectual property not owned by one or more members of the MII Group, or as to which no member of the MII Group has the right to grant sublicenses, as of the Distribution Time. In addition, MII, for itself and as representative of all other members of the MII Group, hereby grants to B&W a right of first refusal with respect to the MII Intellectual Property described on Schedule 2.3(b)(ii) with respect to any proposed sale or other disposition of such MII Intellectual Property to a third party (excluding any sale or disposition to any Subsidiary of MII) which is independent of any proposed sale of the business to which such MII Intellectual Property relates, such right of first refusal to be pursuant to the terms and provisions described on Schedule 2.3(b)(iii). The foregoing licenses shall be assignable only to the extent the licensee transfers to a third party all or substantially all of the assets of the business to which such B&W Intellectual Property or MII Intellectual Property, as applicable, relates. MII and its Subsidiaries may sublicense the B&W Intellectual Property to customers, contractors, subcontractors and others to facilitate the conduct of the businesses described above to which the license granted by B&W as provided above relates; provided, however, that neither MII nor any of its Subsidiaries shall grant any sublicense with respect to the B&W Intellectual Property to any competitor of B&W in the power generation systems business for use in direct competition (on any proposed customer project) with B&W or any of its Subsidiaries, without the prior written consent of B&W. B&W and its Subsidiaries may sublicense the MII Intellectual Property to customers, contractors, subcontractors and others to facilitate the conduct of the businesses described above to which the license granted by MII as provided above relates; provided, however, that neither B&W nor any of its Subsidiaries shall grant any sublicense with respect to

the MII Intellectual Property to any competitor of MII in the offshore oil and gas construction business or oilfield services business for use in direct competition (on any proposed customer project) with MII or any of its Subsidiaries, without the prior written consent of MII. The foregoing right of first refusal granted to MII shall terminate immediately upon a Change of Control of MII. The foregoing right of first refusal granted to B&W shall terminate immediately upon a Change in Control of B&W.

(c) B&W agrees and acknowledges that (i) as of the date of this Agreement, as between the MII Group and the B&W Group, all right, title and interest in and to any and all MII Marks shall be the sole and exclusive property of the MII Group and (ii) except as otherwise provided in Section 2.3(d), the B&W Group shall cease and discontinue all use of the MII Marks as of the date of this Agreement. MII agrees and acknowledges that (x) as of the date of this Agreement, as between the MII Group and the B&W Group, all right, title and interest in and to any and all B&W Marks shall be the sole and exclusive property of the B&W Group and (y) the MII Group shall cease and discontinue all use of the B&W Marks as of the date of this Agreement. MII and B&W further agree and acknowledge that, as of the date of this Agreement, there are B&W Marks registered or applied for in jurisdictions throughout the world and referred to as the “BABCOCK & WILCOX M BULLSEYE LOGO,” which consists of the letter “M” in a circle surrounded by the mark “BABCOCK & WILCOX” located within an outer annular ring. MII and B&W agree that, as of the date of this Agreement, neither MII nor B&W (nor any of their respective Subsidiaries) will use the BABCOCK & WILCOX M BULLSEYE LOGO following the Distribution Date, and that, following the Distribution Date, B&W will abandon any trademark applications therefor and allow any trademark registrations therefor, in all jurisdictions throughout the world, to lapse at the time for the next renewal; provided, however, that this provision shall not affect the rights of MII and its Subsidiaries to use other “BULLSEYE LOGOS” with the letter “M” in a circle surrounded by any mark that uses the word “McDermott” or the name of any Subsidiary of MII or any part of any such name.

(d) B&W shall have the right to use the MII Marks in connection with the operation of the B&W Business for a limited period of 270 days following the Distribution Date. After such 270-day period, B&W shall discontinue all use of the MII Marks, including any use on stationery or letterhead and any use on or in connection with other B&W Assets. However, the Parties agree that the B&W Group may continue, beyond such 270-day period, to distribute copies of any existing inventory of its marketing literature, including technical papers, brochures, printed promotional material and its publication *Steam* in existence on the Distribution Date, provided, however, that (except with respect to any item described on Schedule 2.3(d)) reasonable efforts are made to remove or cover up any MII Marks appearing thereon prior to distribution. Notwithstanding the foregoing provisions of this Section 2.3(d), in no event shall any of the members of the B&W Group continue to use the MII Marks (whether in any of the materials referenced in the immediately preceding sentence or otherwise) following a Change of Control of B&W. For the avoidance of doubt, none of the foregoing shall apply to any stationery, letterhead or marketing literature, including technical papers, brochures, printed promotional material and its publication *Steam*, distributed by any member of the B&W Group to its customers prior to the Distribution Date. All of B&W’s use of the MII Marks shall inure to the benefit of MII. B&W agrees to use the MII Marks in accordance with such quality standards established by MII and described in Schedule 2.3(d). Except as set forth in this Section 2.3(d), it is expressly agreed that B&W is not obtaining any right, title or interest in the MII Marks. B&W will not contest the ownership, validity or enforceability of the MII Marks, and nothing in this Section 2.3(d) shall be construed to limit MII’s ability to use the MII Marks following the Distribution Date.

(e) Nothing contained in this Section 2.3 shall be construed as (i) a warranty or representation as to the validity or scope of the B&W Intellectual Property; (ii) a warranty or representation that the B&W Business does not or will not infringe the intellectual property rights of a third party; (iii) a warranty or representation that the B&W Intellectual Property constitutes all intellectual property the B&W Group may need for the conduct of the B&W Business; (iv) an agreement to defend any member of the B&W Group against actions or suits of any nature brought by any third parties regarding the B&W Intellectual Property or the intellectual property rights of such third party; (v) a warranty or representation as to the validity or scope of the MII Intellectual Property; (vi) a warranty or representation that the MII Business does not or will not

infringe the intellectual property rights of a third party; (vii) a warranty or representation that the MII Intellectual Property constitutes all intellectual property the MII Group may need for the conduct of the MII Business; or (viii) an agreement to defend any member of the MII Group against actions or suits of any nature brought by any third parties regarding the MII Intellectual Property or the intellectual property rights of such third party.

Section 2.4 *Instruments of Transfer and Assumption*. MII and B&W agree that (a) transfers of Assets required to be transferred by this Agreement shall be effected by delivery by the transferring entity to the transferee of (i) with respect to those Assets that constitute stock, certificates endorsed in blank or evidenced or accompanied by stock powers or other instruments of transfer endorsed in blank, against receipt, (ii) with respect to any real property interest or any improvements thereon, a general warranty deed with general warranty of limited application limiting recourse and remedies to title insurance and warranties by predecessors in title and (iii) with respect to all other Assets, such good and sufficient instruments of contribution, conveyance, assignment and transfer, in form and substance reasonably satisfactory to MII and B&W, as shall be necessary, in each case, to vest in the designated transferee all of the title and ownership interest of the transferor in and to any such Asset, and (b) to the extent necessary, the assumption of the Liabilities contemplated pursuant to Section 2.1 shall be effected by delivery by the transferee to the transferor of such good and sufficient instruments of assumption, in form and substance reasonably satisfactory to MII and B&W, as shall be necessary for the assumption by the transferee of such Liabilities. MII and B&W agree that, to the extent that the documents described in clause (a)(i), (ii) and (iii) and clause (b) of the immediately preceding sentence have not previously been delivered in connection with any Prior Transfers, the documents relating to such Prior Transfers shall be delivered by the appropriate Party or Subsidiary thereof. Each Party also agrees to deliver to the other Party such other documents, instruments and writings as may be reasonably requested by the other Party in connection with the transactions contemplated hereby or by Prior Transfers.

Section 2.5 *No Representations or Warranties*. Except as expressly set forth in this Agreement or in an Ancillary Agreement, B&W and MII understand and agree that no member of the MII Group is making any representation or warranty of any kind whatsoever, express or implied, to B&W or any member of the B&W Group in any way as to the B&W Business, the B&W Assets, the B&W Liabilities or the MII Intellectual Property licensed to B&W and its Subsidiaries pursuant to the provisions of Section 2.3(b); and, no member of the B&W Group is making any representation or warranty of any kind whatsoever, express or implied, to MII or any member of the MII Group in any way as to the MII Business, the MII Assets, the MII Liabilities or the B&W Intellectual Property licensed to MII and its Subsidiaries pursuant to the provisions of Section 2.3(b). WITHOUT LIMITING THE GENERALITY OF THE FOREGOING (x) THE TRANSFERS, LICENSES AND ASSUMPTIONS REFERRED TO IN THIS ARTICLE II (INCLUDING PRIOR TRANSFERS) HAVE BEEN, OR WILL BE, MADE WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY NATURE, EXPRESS OR IMPLIED, AT COMMON LAW, BY STATUTE OR OTHERWISE, RELATING TO (A) THE VALUE OR FREEDOM FROM ENCUMBRANCE OF, ANY ASSETS, (B) THE CONDITION OR SUFFICIENCY OF ANY ASSETS (INCLUDING ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, MARKETABILITY, TITLE, VALUE, FREEDOM FROM ENCUMBRANCE OR OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, OR THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS IN OR ON, OR DISPOSED OR DISCHARGED FROM, SUCH ASSETS), (C) THE NON-INFRINGEMENT OF ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY, (D) ANY OTHER MATTER CONCERNING ANY ASSETS OR (E) AS TO THE LEGAL SUFFICIENCY TO CONVEY TITLE TO ANY ASSETS, and (y) the instruments of transfer or assumption referred to in this Article II shall not include any representations and warranties other than as specifically provided herein. MII and B&W hereby acknowledge and agree that ALL ASSETS TRANSFERRED OR LICENSED PURSUANT TO THIS ARTICLE II AND ALL ASSETS INCLUDED IN PRIOR TRANSFERS ARE BEING OR WERE TRANSFERRED "AS IS, WHERE IS." To the extent that the instruments of transfer and assumption with respect to any Prior Transfers are inconsistent with this Section 2.5, the B&W Group and the MII Group agree that the inconsistent provisions of such instruments are hereby amended and superseded by the provisions of this Section 2.5. To the extent

reasonably requested by a member of either Group, each Party will, or will cause its Subsidiaries to, execute any documents necessary to evidence such amendment.

Section 2.6 *Agreements*. Prior to the Distribution Time, MII and B&W shall execute and deliver (or shall cause their appropriate Subsidiaries to execute and deliver, as applicable) the agreements between them designated as follows:

- (i) the Omnibus Restructuring,
- (ii) the MII Transition Services Agreement,
- (iii) the B&W Transition Services Agreement,
- (iv) the SAP-HCM Transition Services Agreement,
- (v) the Hyperion Transition Services Agreement,
- (vi) the Employee Matters Agreement,
- (vii) the Tax Sharing Agreement,
- (viii) the Assumption and Loss Allocation Agreement,
- (ix) the Captive Insurance Novation and Assumption Agreements, and
- (x) such other written agreements, documents or instruments as the Parties may agree are necessary or desirable and which specifically state that they are Ancillary Agreements within the meaning of this Agreement

(collectively, the “Ancillary Agreements”).

Section 2.7 *Transfers Not Effected Prior to the Distribution Time*. To the extent that any transfers contemplated by this Article II shall not have been consummated as of the Distribution Time, the Parties shall cooperate to effect such transfers as promptly following the Distribution Time as shall be practicable. Nothing herein shall be deemed to require the transfer of any Assets or the assumption of any Liabilities that by their terms or operation of Law cannot be transferred or assumed; provided, that the B&W Group and the MII Group shall cooperate and use their respective commercially reasonable efforts to obtain any necessary consents or approvals for the transfer of all Assets and the assumption of all Liabilities contemplated to be transferred or assumed pursuant to this Article II and shall, even in the absence of necessary consents or approvals, transfer the equitable ownership of Assets when such a transfer is permitted. In the event that any such transfer of Assets or assumption of Liabilities has not been consummated effective as of the Distribution Time (or such earlier time as any such Asset may have been acquired or Liability assumed), the Party retaining such Asset or Liability shall thereafter hold such Asset in trust for the use and benefit of the Party entitled thereto (at the expense of the Party entitled thereto) and retain such Liability for the account of the Party by whom such Liability is to be assumed pursuant hereto, and take such other action as may be reasonably requested by the Party to which such Asset is to be transferred, or by whom such Liability is to be assumed, as the case may be, in order to place such Party, insofar as reasonably possible, in the same position as would have existed had such Asset or Liability been transferred or assumed as contemplated hereby. Without limiting any other duty of a Party holding any Asset in trust for the use and benefit of the Party entitled thereto, such Party shall take all reasonable actions that it deems necessary to preserve the value of that Asset. As and when any such Asset becomes transferable or such Liability can be assumed, such transfer or assumption shall be effected forthwith, without the payment of any further consideration therefor. Subject to the foregoing, the Parties agree that, as of the Distribution Time (or such earlier time as any such Asset may have been acquired or Liability assumed), each Party shall be deemed to have acquired complete and sole beneficial ownership over all of the Assets, together with all rights, powers and privileges incident thereto, and shall be deemed to have assumed in accordance with the terms of this Agreement all of the Liabilities, and all duties, obligations and responsibilities incident thereto, which such Party is entitled to acquire or required to assume pursuant to the terms of this Agreement.

ARTICLE III
MUTUAL RELEASES; INDEMNIFICATION

Section 3.1 *Release of Pre-Closing Claims.*

(a) Except as provided in Section 3.1(c), effective as of the Distribution Time, B&W does hereby, for itself and each other member of the B&W Group, their respective Affiliates, successors and assigns, and all Persons who at any time prior to the Distribution Time have been stockholders, directors, officers, agents or employees of any member of the B&W Group (in each case, in their respective capacities as such), remise, release and forever discharge MII, each member of the MII Group and their respective Affiliates, successors and assigns, and all stockholders, directors, officers, agents or employees of any member of the MII Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all Liabilities whatsoever to B&W and each other member of the B&W Group, whether at law or in equity (including any right of contribution), whether arising under any Contract, by operation of Law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed at or before the Distribution Time, including in connection with the transactions and all other activities to implement any Prior Transfers, the Separation and the Distribution.

(b) Except as provided in Section 3.1(c), effective as of the Distribution Time, MII does hereby, for itself and each other member of the MII Group, their respective Affiliates, successors and assigns, and all Persons who at any time prior to the Distribution Time have been stockholders, directors, officers, agents or employees of any member of the MII Group (in each case, in their respective capacities as such), remise, release and forever discharge B&W, each member of the B&W Group and their respective Affiliates, successors and assigns, and all stockholders, directors, officers, agents or employees of any member of the B&W Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all Liabilities whatsoever to MII and each other member of the MII Group, whether at law or in equity (including any right of contribution), whether arising under any Contract, by operation of Law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed at or before the Distribution Time, including in connection with the transactions and all other activities to implement any Prior Transfers, the Separation and the Distribution.

(c) Nothing contained in Section 3.1(a) or (b) shall impair any right of any Person to enforce this Agreement, any Ancillary Agreement or any agreements, arrangements, commitments or understandings that are specified in, or contemplated to continue pursuant to, this Agreement or any Ancillary Agreement. Nothing contained in Section 3.1(a) or (b) shall release any Person from:

(i) any Liability, contingent or otherwise, assumed, transferred, assigned or allocated to the Group of which such Person is a member in accordance with, or any other Liability of any member of that Group under, this Agreement or any Ancillary Agreement;

(ii) any Liability that such Person may have with respect to indemnification or contribution pursuant to this Agreement or any Ancillary Agreement for claims brought against the Parties by third Persons, which Liability shall be governed by the provisions of this Article III and, if applicable, the appropriate provisions of the Ancillary Agreements;

(iii) any unpaid accounts payable or receivable arising from or relating to the sale, provision, or receipt of goods, payment for goods, property or services purchased, obtained or used in the ordinary course of business by any member of the MII Group from any member of the B&W Group, or by any member of the B&W Group from any member of the MII Group, pursuant to: (A) either of the Support Services Agreements dated as of January 1, 2000 to which certain of the B&W Entities and certain of the MII Entities are parties, as amended or supplemented through the Distribution Time (provided, however, that it is acknowledged that all outstanding amounts under such Support Services Agreements owing from any member of the MII Group to any member of the B&W Group or from any member of

the B&W Group to any member of the MII Group as of April 30, 2010 have been settled pursuant to the Omnibus Restructuring Agreement; or (B) any agreement entered into in the ordinary course of business prior to the Distribution Date, or any related refund claims;

(iv) any Liability that such Person may have pursuant to the Non-Debtor Affiliate Settlement Agreement, dated as of February 21, 2006, to which MII and various members of the B&W Group are parties; or

(v) any Liability the release of which would result in the release of any Person other than an Indemnitee; provided that the Parties agree not to bring suit or permit any of their Subsidiaries to bring suit against any Indemnitee with respect to such Liability.

(d) B&W shall not make, and shall not permit any member of the B&W Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or indemnification, against MII or any member of the MII Group, or any other Person released pursuant to Section 3.1(a), with respect to any Liabilities released pursuant to Section 3.1(a). MII shall not make, and shall not permit any member of the MII Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against B&W or any member of the B&W Group, or any other Person released pursuant to Section 3.1(b), with respect to any Liabilities released pursuant to Section 3.1(b).

(e) It is the intent of each of MII and B&W by virtue of the provisions of this Section 3.1 to provide for a full and complete release and discharge of all Liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or to have failed to occur and all conditions existing or alleged to have existed at or before the Distribution Time, between or among B&W or any member of the B&W Group, on the one hand, and MII or any member of the MII Group, on the other hand (including any contractual agreements or arrangements existing or alleged to exist between or among any such members at or before the Distribution Time), except as expressly set forth in Section 3.1(c). At any time, at the reasonable request of the other Party, each Party shall cause each member of its respective Group to execute and deliver releases reflecting the provisions hereof.

Section 3.2 *Termination of Intercompany Agreements*. Without limiting the generality of Section 3.1(e) and subject to the provisions of Section 3.1(c), each of the Parties agrees that, except for this Agreement and the Ancillary Agreements (including any amounts owed with respect to such agreements), all Intercompany Agreements and all other intercompany arrangements and course of dealings, whether or not in writing and whether or not binding or in effect immediately prior to the Distribution Time, shall terminate immediately prior to the Distribution Time unless the Parties thereto otherwise agree in writing after the date of this Agreement.

Section 3.3 *Indemnification by B&W*. Except as provided in Sections 3.5 and 3.6, B&W shall, and in the case of clauses (a), (b) and (c) below shall in addition cause the Appropriate Member of the B&W Group to, indemnify, defend and hold harmless MII, each member of the MII Group and their respective Affiliates, successors and assigns, and all stockholders, directors, officers, agents or employees of any member of the MII Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns (collectively, the "MII Indemnitees") from and against any and all Losses of the MII Indemnitees relating to, arising out of or resulting from any of the following (without duplication):

(a) the failure of B&W or any other member of the B&W Group or any other Person to pay, perform or otherwise promptly discharge any B&W Liabilities in accordance with their respective terms, whether prior to, at or after the Distribution Time;

(b) any B&W Liability;

(c) any breach by B&W or any member of the B&W Group of any provision of this Agreement or of any of the Ancillary Agreements, subject (in the case of each of the Ancillary Agreements) to any limitations of liability provisions and other provisions applicable to any such breach set forth therein; and

(d) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all Information contained in the Registration Statement or the Information Statement (other than Information regarding MII provided by MII in writing to B&W expressly for inclusion in the Registration Statement or the Information Statement);

in each case, regardless of when or where the loss, claim, accident, occurrence, event or happening giving rise to the Loss took place, or whether any such loss, claim, accident, occurrence, event or happening is known or unknown, or reported or unreported and regardless of whether such loss, claim, accident, occurrence, event or happening giving rise to the Loss existed prior to, on or after the Distribution Date or relates to, arises out of or results from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to, on or after the Distribution Date. For the avoidance of doubt, for purposes of clause (d) of the first sentence of this Section 3.3 and clause (d) of the first sentence of Section 3.4, the only information provided by MII in writing to B&W expressly for inclusion in the Registration Statement or the Information Statement is the information appearing under the caption “The Spin-Off—Reasons for the Spin-Off” in the Information Statement included in the Registration Statement, as amended through the date of this Agreement. As used in this Section 3.3, “Appropriate Member of the B&W Group” means the member or members of the B&W Group, if any, whose acts, conduct or omissions or failures to act caused, gave rise to or resulted in the Loss from and against which indemnity is provided. In support of its indemnification obligations related to third-party casualty claims, B&W shall maintain throughout the existence of its indemnity obligations hereunder commercial general liability insurance in an amount not less than \$350 million with responsible and reputable insurers and shall cause the MII Indemnities to be named thereon as additional insureds to the extent of the insured contractual indemnity obligations expressly assumed or undertaken by B&W under this Agreement.

Section 3.4 *Indemnification by MII*. Except as provided in Sections 3.5 and 3.6, MII shall, and in case of clauses (a), (b) and (c) below shall in addition cause the Appropriate Member of the MII Group to, indemnify, defend and hold harmless B&W, each member of the B&W Group and their respective Affiliates, successors and assigns, and all stockholders, directors, officers, agents or employees of any member of the B&W Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns (collectively, the “B&W Indemnitees”) from and against any and all Losses of the B&W Indemnitees relating to, arising out of or resulting from any of the following (without duplication):

(a) the failure of MII or any other member of the MII Group or any other Person to pay, perform or otherwise promptly discharge any MII Liabilities in accordance with their respective terms, whether prior to, at or after the Distribution Time;

(b) any MII Liability;

(c) any breach by MII or any member of the MII Group of any provision of this Agreement or of any of the Ancillary Agreements, subject (in the case of each of the Ancillary Agreements) to any limitations of liability provisions and other provisions applicable to any such breach set forth therein; and

(d) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, solely with respect to information regarding MII provided by MII in writing to B&W expressly for inclusion in the Registration Statement or the Information Statement;

in each case, regardless of when or where the loss, claim, accident, occurrence, event or happening giving rise to the Loss took place, or whether any such loss, claim, accident, occurrence, event or happening is known or unknown, or reported or unreported and regardless of whether such loss, claim, accident, occurrence, event or happening giving rise to the Loss existed prior to, on or after the Distribution Date or relates to, arises out of or results from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to, on or after the Distribution Date. As used in this Section 3.4, “Appropriate Member of the MII Group” means the member or members of the MII Group, if any, whose acts, conduct or omissions or failures to act caused,

gave rise to or resulted in the Loss from and against which indemnity is provided. In support of its indemnification obligations related to third-party casualty claims, MII shall maintain throughout the existence of its indemnity obligations hereunder commercial general liability insurance in an amount not less than \$350 million with responsible and reputable insurers and shall cause the B&W Indemnities to be named thereon as additional insureds to the extent of the insured contractual indemnity obligations expressly assumed or undertaken by MII under this Agreement.

Section 3.5 Indemnification Obligations Net of Insurance Proceeds.

(a) The Parties intend that any Loss subject to indemnification or reimbursement pursuant to this Article III (an "Indemnifiable Loss") will be net of Insurance Proceeds that actually reduce the amount of the Loss. Accordingly, the amount which either Party (an "Indemnifying Party") is required to pay to any Person entitled to indemnification hereunder (an "Indemnitee") will be reduced by any Insurance Proceeds theretofore actually recovered by or on behalf of the Indemnitee in reduction of the related Loss. If an Indemnitee receives a payment (an "Indemnity Payment") required by this Agreement from an Indemnifying Party in respect of any Loss and subsequently receives Insurance Proceeds, then the Indemnitee will pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payments received over the amount of the Indemnity Payments that would have been due if the Insurance Proceeds recovery had been received, realized or recovered before the Indemnity Payments were made. The Indemnitee shall use and cause its Affiliates to use commercially reasonable efforts to recover any proceeds of insurance policies to which the Indemnitee is entitled with respect to any Indemnifiable Loss. The existence of a claim by an Indemnitee for insurance or against a third party in respect of any Indemnifiable Loss shall not, however, delay any payment pursuant to the indemnification provisions contained in this Article III and otherwise determined to be due and owing by an Indemnifying Party; rather, the Indemnifying Party shall make payment in full of such amount so determined to be due and owing by it against a concurrent written assignment by the Indemnitee to the Indemnifying Party of the portion of the claim of the Indemnitee for such insurance or against such third party equal to the amount of such payment. The Indemnitee shall use and cause its Affiliates to use commercially reasonable efforts to assist the Indemnifying Party in recovering or to recover on behalf of the Indemnifying Party, any Insurance Proceeds to which the Indemnifying Party is entitled with respect to any Indemnifiable Loss as a result of such assignment. The Indemnitee shall make available to the Indemnifying Party and its counsel all employees, books and records, communications, documents, items or matters within its knowledge, possession or control that are necessary, appropriate or reasonably deemed relevant by the Indemnifying Party with respect to the recovery of such Insurance Proceeds; provided, however, that subject to Section 6.5 hereof, nothing in this sentence shall be deemed to require a Party to make available books and records, communications, documents or items which (i) in such Party's Good Faith Judgment could result in a waiver of any Privilege with respect to a third party even if B&W and MII cooperated to protect such Privilege as contemplated by this Agreement, or (ii) such Party is not permitted to make available because of any Law or any confidentiality obligation to a third party, in which case such Party shall use commercially reasonable efforts to seek a waiver of or other relief from such confidentiality restriction. Unless the Indemnifying Party has made payment in full of any Indemnifiable Loss, such Indemnifying Party shall use and cause its Affiliates to use commercially reasonable efforts to recover any Insurance Proceeds to which it or such Affiliate is entitled with respect to any Indemnifiable Loss.

(b) An insurer who would otherwise be obligated to pay any claims shall not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto, it being expressly understood and agreed that no insurer or any other third party shall be entitled to a "windfall" (i.e., a benefit it would not be entitled to receive in the absence of the indemnification provisions set forth in this Agreement) by virtue of the indemnification provisions hereof.

Section 3.6 Indemnification Obligations Net of Taxes. The Parties intend that any Loss subject to indemnification or reimbursement pursuant to this Article III will be net of Taxes. Accordingly, the amount

which an Indemnifying Party is required to pay to an Indemnitee will be adjusted to reflect any tax benefit to the Indemnitee from the underlying Loss and to reflect any Taxes imposed upon the Indemnitee as a result of the receipt of such payment. Such an adjustment will first be made at the time that the indemnity payment is made and will further be made, as appropriate, to take into account any change in the liability of the Indemnitee for Taxes that occurs in connection with the final resolution of an audit by a taxing authority. For purposes of this Section 3.6, the value of any tax benefit to the Indemnitee from the underlying Loss shall be an amount equal to the product of (x) the amount of any present or future deduction allowed or allowable to the Indemnitee by the Code, or other applicable Law, as a result of such Loss and (y) the highest statutory rate applicable under Section 11 of the Code, or other applicable Law. Except with respect to any indemnity payment for Losses relating to a breach of the Tax Sharing Agreement, which indemnity payments shall be treated in accordance with Section 4.7 of the Tax Sharing Agreement, and to the extent permitted by Law, the Parties will treat any indemnity payment as a capital contribution made by MII to B&W or as a distribution made by B&W to MII, as the case may be, on the date of this Agreement.

Section 3.7 Procedures for Indemnification of Third Party Claims.

(a) If an Indemnitee shall receive notice or otherwise learn of the assertion by a Person (including any Governmental Authority) who is not a member of the MII Group or the B&W Group of any claims or of the commencement by any such Person of any Action (each such claim or Action being a "Third Party Claim") with respect to which an Indemnifying Party may be obligated to provide indemnification to such Indemnitee pursuant to Section 3.3 or 3.4, or any other Section of this Agreement or any Ancillary Agreement, such Indemnitee shall promptly give such Indemnifying Party written notice thereof. Any such notice shall describe the Third Party Claim in reasonable detail. Notwithstanding the foregoing, the failure of any Indemnitee or other Person to give notice as provided in this Section 3.7(a) shall not relieve the applicable Indemnifying Party of its obligations under this Article III, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice.

(b) If the Indemnifying Party does not dispute its potential liability to the Indemnitee, the Indemnifying Party may elect to defend (and to settle or compromise in accordance with the applicable provisions of this Section 3.7), at such Indemnifying Party's own expense and by such Indemnifying Party's own counsel, any Third Party Claim. Within 30 days after the receipt of notice from an Indemnitee in accordance with Section 3.7(a) (or sooner, if the nature of such Third Party Claim so requires), the Indemnifying Party shall notify the Indemnitee of its election whether the Indemnifying Party will assume responsibility for defending such Third Party Claim. The failure to give such notice of election within the 30-day period shall be deemed a rejection of the opportunity to assume responsibility. After notice from an Indemnifying Party to an Indemnitee of its election to assume the defense of a Third Party Claim, such Indemnitee shall have the right to employ separate counsel and to participate in (but not control) the defense, compromise or settlement thereof, but the fees and expenses of such counsel shall be at the expense of such non-defending Person, except that the Indemnifying Party shall be liable for the fees and expenses of counsel employed by the Indemnitee (i) for any period during which the Indemnifying Party has not assumed the defense of such Third Party Claim (other than during any period in which the Indemnitee shall have failed to give notice of the Third Party Claim in accordance with Section 3.7(a)) or (ii) to the extent that such engagement of counsel is as a result of a conflict of interest, as reasonably determined in the Good Faith Judgment of the Indemnitee.

(c) Notwithstanding anything to the contrary in this Section 3.7: (i) MII will have the right to defend or assume the defense of, and/or settle or compromise (or seek to settle or compromise or to reject any proposed settlement or compromise), the Action described on Schedule 1.1(g), any Future B&W Disclosure Claim asserted in whole or in part against any member of the MII Group or any of their respective current or former officers, directors, employees or Affiliates and any claim asserted by a third party which may give rise to any Liability described in clause (viii) of the definition of B&W Liabilities herein (other than subclause (A) in the proviso thereof); and (ii) MII may settle or compromise such Action or claim without the consent of B&W, if such settlement or compromise provides for a release of the applicable member of the B&W Group to at least the same extent as MII and does not involve any monetary damages (including monetary fines or penalties) to be imposed on B&W or any other member of the B&W Group or injunctive relief to be imposed on B&W or any other member of the B&W Group.

(d) A Party's defense of any Third Party Claim pursuant to Section 3.7(b) or (c) includes the right (after consultation with the other Party following at least ten Business Days' written notice thereof) to compromise, settle or consent to the entry of any judgment or determination of liability concerning such Third Party Claim; provided, however, that, except as provided in Section 3.7(c), the Party defending the Third Party Claim shall not compromise, settle or consent to the entry of judgment or determination of liability concerning any Third Party Claim without prior written approval by the other Party (which may not be unreasonably withheld, conditioned or delayed) if the terms or conditions of such compromise, settlement or consent would, (i) impose injunctive relief on the other Party or any of its Affiliates or (ii) in the reasonable judgment of the other Party (as reflected in a written objection delivered by the other Party to the defending Party within the period of ten Business Days following receipt of the written notice described above in this Section 3.7(d)), have a material adverse financial impact or a material adverse effect upon the ongoing operations of such other Party (taken together with its Subsidiaries). Notwithstanding any other provision of this Section 3.7, unless otherwise specifically agreed to by the Parties in writing (which agreement may not be unreasonably withheld, conditioned or delayed), neither Party shall enter into any compromise or settlement or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the third party of a release of both the Indemnitee and the Indemnifying Party from all further liability concerning such Third Party Claim.

(e) If the Party having the right to elect to defend a particular Third Party Claim pursuant to Section 3.7(b) elects, or is deemed to have elected, not to defend a particular Third Party Claim, the other Party may defend such Third Party Claim without any prejudice to its rights to indemnification from the Indemnifying Party pursuant to this Article III. In such case, such other Party shall have the right to compromise, settle or consent to the entry of any judgment with respect to such Third Party Claim as provided in Section 3.7(d) without the consent of the Indemnifying Party.

(f) The Indemnifying Party shall bear all costs and expenses of defending any Third Party Claim; provided, however, that (A) if both Parties may be Indemnifying Parties with respect to such Third Party Claim but only one Party is defending such Third Party Claim, the non-defending Party shall reimburse the defending Party promptly upon demand by the defending Party for the non-defending Party's proportionate share, allocated based on each Party's proportionate responsibility for the Indemnifiable Loss pursuant to this Agreement, of all out-of-pocket costs and expenses reasonably incurred in connection with the defending Party's defense of such Third Party Claim, and (B) if both Parties may be Indemnifying Parties with respect to such Third Party Claim and both Parties are defending such Third Party Claim, the Parties shall effect such reimbursements necessary so that each Party bears its proportionate share, allocated based on each Party's proportionate responsibility for the Indemnifiable Loss pursuant to this Agreement, of all out-of-pocket costs and expenses reasonably incurred in connection with the defense of such Third Party Claim.

(g) The non-defending or co-defending Party shall make available to the other Party and its counsel all employees, books and records, communications, documents, items or matters within its knowledge, possession or control that are necessary, appropriate or reasonably deemed relevant by the other Party with respect to such defense; provided, however, that subject to Section 6.5 hereof, nothing in this Section 3.7(g) shall be deemed to require a Party to make available books and records, communications, documents or items which (i) in such Party's Good Faith Judgment could result in a waiver of any Privilege with respect to a third party even if B&W and MII cooperated to protect such Privilege as contemplated by this Agreement, or (ii) such Party is not permitted to make available because of any Law or any confidentiality obligation to a third party, in which case such Party shall use commercially reasonable efforts to seek a waiver of or other relief from such confidentiality restriction.

(h) With respect to any Third Party Claim in which both Parties are, or reasonably may be expected to be, named as parties, or that otherwise implicates both Parties to a material degree, the Parties shall reasonably cooperate with respect to such Third Party Claim and maintain a joint defense in a manner that will preserve applicable Privileges.

(i) Upon final judgment, determination, settlement or compromise of any Third Party Claim, and unless otherwise agreed by the Parties in writing, the Indemnifying Party shall pay promptly on behalf of the Indemnitee, or to the Indemnitee in reimbursement of any amount theretofore required to be paid by it, all amounts required to be paid by the Indemnifying Party pursuant to this Article III with respect to such claim as determined by such final judgment, determination, settlement or compromise.

Section 3.8 *Additional Matters.*

(a) Any claim on account of a Loss which does not result from a Third Party Claim shall be asserted by written notice given by the Indemnitee to the Indemnifying Party. Any such notice shall describe the claim in reasonable detail. Such Indemnifying Party shall have a period of 30 days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such 30-day period, such Indemnifying Party shall be deemed to have refused to accept responsibility to make payment. If such Indemnifying Party does not respond within such 30-day period or rejects such claim in whole or in part, such Indemnitee shall be free to pursue such remedies as may be available to such Party as contemplated by this Agreement and the Ancillary Agreements.

(b) In the event of payment by or on behalf of any Indemnifying Party to any Indemnitee in connection with any Third Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnitee in respect of any rights, defenses or claims of such Indemnitee relating to such Third Party Claim. Such Indemnitee shall cooperate with such Indemnifying Party as may reasonably be required in connection with the prosecution of any subrogated right, defense or claim, and its reasonable out-of-pocket costs and expenses in connection therewith shall be reimbursed by the Indemnifying Party.

(c) In the event of an Action involving a Third Party Claim in which the Indemnitee is a named defendant, if either the Indemnitee or Indemnifying Party shall so request, the Parties shall endeavor to cause the Indemnitee not to remain a named defendant, if reasonably practicable.

(d) Except as expressly provided herein, the indemnity obligations under this Article III shall apply notwithstanding any investigation made by or on behalf of any Indemnitee and shall apply without regard to whether the Loss for which indemnity is claimed hereunder is based on strict liability, absolute liability or any other theory of liability or arises as an obligation for contribution.

(e) THE PARTIES UNDERSTAND AND AGREE THAT THE RELEASE FROM LIABILITIES AND INDEMNIFICATION OBLIGATIONS HEREUNDER AND UNDER THE ANCILLARY AGREEMENTS MAY INCLUDE RELEASE FROM LIABILITIES AND INDEMNIFICATION FOR LOSSES RESULTING FROM, OR ARISING OUT OF, DIRECTLY OR INDIRECTLY AND IN WHOLE OR IN PART, AN INDEMNITEE'S OWN NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL FAULT.

(f) Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that indemnification for Losses (including Taxes) incurred as a result of any breach of the Tax Sharing Agreement shall be governed by this Article III.

Section 3.9 *Contribution.* If the indemnification provided for in this Article III is unavailable to an Indemnitee in respect of any Losses for which indemnification is provided for herein, then the Indemnifying Party, in lieu of indemnifying such Indemnitee, shall contribute to the Losses paid or payable by such Indemnitee as a result of such Indemnifiable Loss in such proportion as is appropriate to reflect the relative fault of B&W and each other member of the B&W Group, on the one hand, and MII and each other member of the MII Group, on the other hand, in connection with the circumstances which resulted in such Indemnifiable Loss. For purposes of this Section 3.9, with respect to any Indemnifiable Loss relating to matters covered by Section 3.3(d) or 3.4(d) or otherwise relating to misstatements or omissions under securities or antifraud Laws, the relative fault of a member of the B&W Group, on the one hand, and of a member of the MII Group, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact

or the omission or alleged omission to state a material fact (i) relates to a member of the B&W Group or a member of the MII Group and (ii) relates to information that was supplied by a member of the B&W Group or a member of the MII Group.

Section 3.10 *Remedies Cumulative*. The remedies provided in this Article III shall be cumulative and, subject to the provisions of Article V, shall not preclude assertion by any Indemnitee of any other rights or the seeking of any and all other remedies against any Indemnifying Party.

Section 3.11 *Survival of Indemnities*. The rights and obligations of each of MII and B&W and their respective Indemnitees under this Article III shall survive the Distribution Date indefinitely, unless a specific survival or other applicable period is expressly set forth herein, and shall survive the sale or other transfer by any Party or any of its Subsidiaries of any Assets or businesses or the assignment by it of any Liabilities.

Section 3.12 *Limitation of Liability*. EXCEPT TO THE EXTENT SPECIFICALLY PROVIDED IN ANY ANCILLARY AGREEMENT, IN NO EVENT SHALL ANY MEMBER OF THE MII GROUP OR THE B&W GROUP OR THEIR RESPECTIVE DIRECTORS, OFFICERS AND EMPLOYEES BE LIABLE TO ANY OTHER MEMBER OF THE MII GROUP OR THE B&W GROUP 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) ARISING IN ANY WAY OUT OF ANY PROVISION 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 ARTICLE III OR ANY ANCILLARY AGREEMENT.

ARTICLE IV THE DISTRIBUTION

Section 4.1 *Delivery to Distribution Agent*. Subject to Section 4.3, on or prior to the Distribution Date MII will authorize Computershare Trust Company, N.A., as distribution agent (the "Distribution Agent"), for the benefit of holders of record of MII Common Stock at the close of business on the Record Date (the "Record Holders") to effect the book-entry transfer of all outstanding shares of B&W Common Stock and will order the Distribution Agent to effect the Distribution at the Distribution Time in the manner set forth in Section 4.2.

Section 4.2 *Mechanics of the Distribution*.

(a) On the Distribution Date, MII will direct the Distribution Agent to distribute, effective as of the Distribution Time, to each Record Holder a number of shares of B&W Common Stock equal to the number of shares of MII Common Stock held by such Record Holder multiplied by the Distribution Multiple, except that the Distribution Agent will not issue any fractional shares of B&W Common Stock and will distribute cash in lieu of fractional shares as provided in Section 4.2(b). All such shares of B&W Common Stock to be so distributed shall be distributed as uncertificated shares registered in book-entry form through the direct registration system. No certificates therefor shall be distributed. MII shall cause the Distribution Agent to deliver an account statement to each holder of B&W Common Stock reflecting such holder's ownership thereof. All of the shares of B&W Common Stock distributed in the Distribution will be validly issued, fully paid and non-assessable.

(b) MII will direct the Distribution Agent to determine, as soon as is practicable after the Distribution Date, the number of fractional shares, if any, of B&W Common Stock allocable to each Record Holder entitled to receive B&W Common Stock in the Distribution and to promptly aggregate all the fractional shares and sell the whole shares obtained thereby, in open market transactions or otherwise, at the then-prevailing trading prices, and to cause to be distributed to each Record Holder, in lieu of any fractional

share, each Record Holder's ratable share of the proceeds of the sale, after making appropriate deductions of the amounts required to be withheld for federal income tax purposes and after deducting an amount equal to all brokerage charges, commissions and transfer taxes attributed to the sale.

(c) Any B&W Common Stock or cash in lieu of fractional shares with respect to B&W Common Stock that remains unclaimed by any Record Holder on the first anniversary of the Distribution Date will be delivered to B&W. B&W will hold the B&W Common Stock or cash for the account of the Record Holder and any Record Holder will look only to B&W for the B&W Common Stock or cash, if any, in lieu of fractional shares, subject in each case to applicable escheat or other abandoned property Laws.

(d) B&W shall mail or cause to be mailed to the Record Holders, on or prior to the Distribution Date, the Information Statement.

(e) Notwithstanding the foregoing provisions of this Section 4.2, the rights of holders of restricted stock of MII shall be as provided in the Employee Matters Agreement.

Section 4.3 *Conditions Precedent to Consummation of the Separation and the Distribution.* Neither the Separation, the Distribution nor the related transactions set forth in this Agreement or in any of the Ancillary Agreements will become effective unless the following conditions have been satisfied or waived by MII, in its sole and absolute discretion, at or before the Distribution Time:

(a) the private letter ruling from the Internal Revenue Service dated May [], 2010 and any supplemental rulings received before the date of this Agreement will continue to be in effect;

(b) MII will have received an opinion from Baker Botts L.L.P. (which opinion will rely upon the effectiveness of the private letter ruling (and any supplemental rulings) referred to in Section 4.3(a)), dated the Distribution Date, in form and substance acceptable to MII substantially to the effect that, for U.S. federal income tax purposes, (i) certain transactions to be effected in connection with the Separation qualify as reorganizations under Sections 355 and/or 368 of the Code or as complete liquidations under Section 332(a) of the Code, and (ii) the Distribution and such transactions will qualify for tax-free treatment to MII and to B&W;

(c) the Separation and the Distribution will not violate or result in a breach of any Law or any material agreement;

(d) the Registration Statement will have become effective, and no stop order suspending the effectiveness of the Registration Statement shall be in effect or, to the knowledge of either MII or B&W, threatened by the SEC;

(e) the actions and filings necessary or appropriate under applicable federal or state securities Laws and state blue sky Laws in connection with the Distribution will have been taken;

(f) the NYSE will have approved B&W's Common Stock for listing, subject to official notice of issuance;

(g) the Ancillary Agreements will have been executed and delivered by each of the parties thereto and no party to any of the Ancillary Agreements will be in material breach of any Ancillary Agreement;

(h) all Consents required to be received or made before the Distribution may take place will have been received or made and be in full force and effect, and this Agreement and the Ancillary Agreements will not have been terminated and will not violate, conflict with or result in a breach (with or without the passage of time) of any Law or any material agreements of MII; and

(i) no preliminary or permanent injunction or other order, decree, or ruling issued by a Governmental Authority, and no statute (as interpreted through orders or rules of any Governmental Authority duly authorized to effectuate the statute), rule, regulation or executive order promulgated or enacted by any Governmental Authority will be in effect preventing, or materially limiting the benefits of, the Separation or the Distribution.

Each of the conditions set forth in this Section 4.3 is for the benefit of MII, and MII may, in its sole and absolute discretion, determine whether to waive any condition, in whole or in part. Any determination made by MII concerning the satisfaction or waiver of any or all of the conditions in this Section 4.3 will be conclusive and binding on the Parties. The satisfaction of those conditions will not create any obligation on the part of MII to B&W or any other Person to effect the Separation or the Distribution or in any way limit MII's right to terminate as set forth in Section 7.2 or alter the consequences of any termination from those specified in Section 7.2.

ARTICLE V
ARBITRATION; DISPUTE RESOLUTION

Section 5.1 *General*. Except as otherwise specifically provided in any Ancillary Agreement, the procedures for negotiation and binding arbitration set forth in this Article V shall apply to any dispute, controversy or claim (whether sounding in contract, tort or otherwise) that arises out of or relates to this Agreement or any Ancillary Agreement, any breach or alleged breach hereof or thereof, the transactions contemplated hereby or thereby (including all actions taken in furtherance of the transactions contemplated hereby or thereby on or prior to the date hereof), or the construction, interpretation, enforceability or validity hereof or thereof (a "Dispute"). Each Party agrees on behalf of itself and each member of its respective Group that the procedures set forth in this Article V shall be the sole and exclusive remedy in connection with any Dispute and irrevocably waives any right to commence any Action in or before any Governmental Authority, except (i) as expressly provided in Section 5.7(b), (ii) as provided for under the Arbitration Act, and (iii) as required by applicable Law. Each Party on behalf of itself and each member of its respective Group irrevocably waives any right to any trial by jury and any right to any trial in a court with respect to any Dispute to which this Section 5.1 applies. As used in the following provisions of this Article V, any reference to "party" or "parties" shall mean and refer to a party or parties involved in a Dispute.

Section 5.2 *Negotiation*.

(a) It is the intent of the Parties to use their respective commercially reasonable efforts to resolve expeditiously any Dispute that may arise on a mutually acceptable negotiated basis. In furtherance of the foregoing, any party involved in a Dispute may deliver a notice (an "Escalation Notice") demanding an in-person meeting involving representatives of the parties at a senior level of management of the parties (or if the parties agree, of the appropriate strategic business unit or division within such entity). A copy of any such Escalation Notice shall be given to the General Counsel, or, if one does not exist, the President or Chief Executive Officer, of each party involved in the Dispute (which copy shall state that it is an Escalation Notice pursuant to this Agreement). Any agenda, location or procedures for such discussions or negotiations between the parties may be established by the parties from time to time; provided, however, that the parties shall use their commercially reasonable efforts to meet within 20 days of the Escalation Notice. Notwithstanding the provisions of Section 5.3(a), during the period from the date hereof through the first anniversary of the Distribution Date, in the event the parties involved in a Dispute do not resolve the Dispute in accordance with the foregoing provisions of this Section 5.2(a) within 60 days after the delivery of the Escalation Notice with respect to such Dispute, the Dispute shall be referred to the Board of Directors of each of MII and B&W, which shall each be requested to select a subcommittee thereof to meet to resolve the Dispute within 45 days of such referral, and no party involved in a Dispute may deliver an Arbitration Demand Notice pursuant to Section 5.3(a) until after such 45-day period has elapsed. Any resolution of a Dispute pursuant to this Section 5.2 shall be memorialized in a writing signed by both parties.

(b) The parties may, by mutual consent, select a mediator to aid the parties in their discussions and negotiations. Any opinion expressed by the mediator shall be strictly advisory and shall not be binding on the parties, nor shall any opinion expressed by the mediator be admissible in any arbitration proceedings. Costs of any mediation shall be borne equally by the parties involved in the Dispute, except that each Party shall be responsible for its own expenses. Mediation is not a prerequisite to a demand for arbitration under Section 5.3.

Section 5.3 *Demand for Arbitration.*

(a) Any Dispute that has not been resolved after the delivery of the related Escalation Notice, and as to which an Arbitration Notice is provided in accordance with the immediately following sentence, shall be resolved by final and binding arbitration pursuant to the then current Commercial Arbitration Rules (the “AAA Rules”) of the American Arbitration Association (“AAA”), except as modified by the provisions of this Article V. At any time after 30 days from the delivery of an Escalation Notice, any party involved in the related Dispute (regardless of whether such party delivered the Escalation Notice) may deliver a notice demanding arbitration of such Dispute (an “Arbitration Demand Notice”). In the event that any party shall deliver an Arbitration Demand Notice to another party, such other party may itself deliver an Arbitration Demand Notice to such first party with respect to any related Dispute with respect to which the Applicable Deadline has not passed without the requirement of delivering an Escalation Notice. No party may assert that the failure to resolve any matter during any discussions or negotiations, the course of conduct during the discussions or negotiations or the failure to agree on a mutually acceptable time, agenda, location or procedures for the meeting, in each case, as contemplated by Section 5.2, is a prerequisite to a demand for arbitration under this Section 5.3. In the event that any party delivers an Arbitration Demand Notice with respect to any Dispute that is the subject of any then pending arbitration proceeding or of a previously delivered Arbitration Demand Notice, all such Disputes shall be resolved in the arbitration proceeding for which an Arbitration Demand Notice was first delivered unless the arbitrators in their sole discretion determine that it is impracticable or otherwise inadvisable to do so.

(b) Except as may be expressly provided in any Ancillary Agreement, any Arbitration Demand Notice may be given until one year after the later of the occurrence of the act or event giving rise to the underlying claim or the date on which such act or event was, or should have been, in the exercise of reasonable due diligence, discovered by the party asserting the claim (as applicable and as it may in a particular case be specifically extended by the parties in writing, the “Applicable Deadline”). In the case of a Third Party Claim, the Applicable Deadline shall be one year after the date on which the MII Group or the B&W Group, as the case may be, receives notice or otherwise learns of the assertion of the claim against it. Any discussions, negotiations or mediations between the Parties pursuant to this Agreement or otherwise will not toll the Applicable Deadline unless expressly agreed in writing by the Parties. Each of the Parties agrees on behalf of itself and each member of its Group that if an Arbitration Demand Notice with respect to a Dispute is not given prior to the expiration of the Applicable Deadline, as between or among the Parties and the members of their Groups, such Dispute will be barred, and any right to bring any Action with respect to, or otherwise to pursue, any such barred Dispute is hereby irrevocably waived. Subject to Section 5.8, upon delivery of an Arbitration Demand Notice pursuant to Section 5.3(a) prior to the Applicable Deadline, the Dispute shall be decided by arbitrators in accordance with the rules set forth in this Article V. This Section 5.3(b) shall not be deemed to extend any notice period set forth in Section 3.7.

Section 5.4 *Arbitrators.*

(a) The party delivering the Arbitration Demand Notice shall, within five days of the date of such notice, notify the AAA and the other parties in writing describing in reasonable detail the nature of the Dispute. The arbitration shall be conducted before three neutral arbitrators. Each party shall, within 20 days of the date of the Arbitration Demand Notice, select one arbitrator. The parties shall mutually agree upon a third arbitrator. If the third arbitrator is not selected within 30 days of the date of the Arbitration Demand Notice, the two arbitrators already selected shall select the third arbitrator. In the event that any arbitrator is or becomes unable to serve, his or her replacement will be selected in the same manner described above. The extent, if any, to which testimony previously given shall be repeated or as to which any replacement arbitrator elects to rely on the stenographic record (if there is one) of such testimony shall be determined by the arbitrators. The vote of two of the three arbitrators shall be required for any decision under this Article V.

(b) The arbitrators will set a time for the hearing of the matter, which will commence no later than 180 days (or the soonest Business Day thereafter) after the date of appointment of the third arbitrator pursuant to

Section 5.4(a) above, and which hearing will be no longer than 15 days (unless in the judgment of the arbitrators the matter is unusually complex and sophisticated and thereby requires a longer time, in which event such hearing shall be no longer than 20 days). The arbitrators shall use their best efforts to reach a final decision and render the same in writing to the parties not later than 60 days after the last hearing date, unless otherwise agreed by the parties in writing. Failure of the arbitrators to do so, however, shall not be a basis for challenging the decision. An arbitrator dissenting from a decision or portion thereof may issue a dissent from the decision or portion thereof in writing, stating the reasons therefor.

(c) The place of any arbitration hereunder will be Houston, Texas, unless otherwise agreed by the Parties.

Section 5.5 *Hearings*. Within the time period specified in Section 5.4(b), the matter shall be presented to the arbitrators at a hearing by means of written submissions of memoranda and verified witness statements, filed simultaneously, and responses, if necessary in the judgment of the arbitrators or both the Parties. Live direct and cross-examination will be permitted upon request of any party. The arbitrators shall actively manage the arbitration with a view to achieving a just, speedy and cost-effective resolution of the Dispute. The arbitrators may, in their discretion, set time and other limits on the presentation of each party's case, its memoranda or other submissions, and refuse to receive any proffered evidence, which the arbitrators, in their discretion, find to be cumulative, unnecessary, irrelevant or of low probative nature. The decision of the arbitrators will be final and binding on the parties, and judgment thereon may be had and will be enforceable in any court having jurisdiction over the parties. Arbitration awards will bear interest at an annual rate of the Prime Rate plus 2% per annum, subject to any maximum amount permitted by applicable Law. To the extent that the provisions of this Agreement and the AAA Rules conflict, the provisions of this Agreement shall govern.

Section 5.6 *Discovery and Certain Other Matters*.

(a) Any party involved in a Dispute subject to this Article V may request limited document production from the other party or parties of specific and expressly relevant documents. Any such discovery shall be conducted expeditiously and shall not cause the hearing provided for in Section 5.5 to be adjourned except upon consent of all parties involved in the applicable Dispute or upon an extraordinary showing of cause demonstrating that such adjournment is necessary to permit discovery essential to a party to the proceeding. Interrogatories or other forms of discovery (other than the document production and depositions set forth above) shall not occur except by consent of the parties involved in the applicable Dispute. Disputes concerning the scope of document production or depositions and enforcement of the document production or deposition requests will be determined by written agreement of the parties involved in the applicable Dispute or, failing such agreement, will be referred to the arbitrators for resolution. All discovery requests will be subject to the parties' rights (and the rights of any witness) to claim any applicable Privilege. The arbitrators will adopt procedures to protect the proprietary rights of the parties and to maintain the confidential treatment of the arbitration proceedings (except as may be required by Law).

(b) The arbitrators shall have full power and authority to determine issues of arbitrability but shall otherwise be limited to interpreting or construing the applicable provisions of this Agreement or any Ancillary Agreement, and will have no authority or power to limit, expand, alter, amend, modify, revoke or suspend any condition or provision of this Agreement or any Ancillary Agreement; it being understood, however, that the arbitrators will have full authority to implement the provisions of this Agreement or any Ancillary Agreement, and to fashion appropriate remedies for breaches of this Agreement; provided that the arbitrators shall not have (i) any authority in excess of the authority a court having jurisdiction over the parties and the Dispute would have absent these arbitration provisions or (ii) any right or power to award exemplary, punitive, special, indirect, consequential, remote or speculative damages (including in respect of lost profits or revenues) or treble damages (provided that this clause (ii) shall not limit the award of any such damages to the extent they are included in any Liabilities to third parties as to which the provisions of this Article V are applicable). It is the intention of the Parties that in rendering a decision the arbitrators should give effect to the applicable provisions of this Agreement and the Ancillary Agreements and follow applicable Law (it being understood and agreed that this sentence shall not give rise to a right of judicial review of the arbitrators' award).

(c) If a party fails or refuses to appear at and participate in an arbitration hearing after due notice, the arbitrators may hear and determine the controversy upon evidence produced by the appearing party. Any decision rendered under such circumstances shall be as valid and enforceable as if the parties had appeared and participated fully at all stages.

(d) Without limiting the generality of Section 6.6, each party shall bear its own expenses in connection with any arbitration under this Article V; provided, that the parties shall share equally the fees and expenses of the third arbitrator.

Section 5.7 *Certain Additional Matters.*

(a) Any arbitration award shall be an award with a holding in favor of or against a party and shall include findings as to facts, issues or conclusions of law (including with respect to any matters relating to the validity or infringement of patents or patent applications) and shall include a statement of the reasoning on which the award rests. The award must also be in adequate form so that a judgment of a court may be entered thereupon. Judgment upon any arbitration award hereunder may be entered in any court having jurisdiction thereof. Any award shall not be vacated or appealed except on the bases of (i) the award being procured by fraud or corruption, (ii) an arbitrator being partial or corrupt, (iii) the arbitrators wrongfully refusing to postpone a hearing or hear evidence, or (iv) the arbitrators exceeding the scope of the power granted to them in this Agreement.

(b) Regardless of whether an Escalation Notice has been delivered, at any time prior to the time at which arbitrators are appointed pursuant to Section 5.4, any party may seek one or more temporary restraining orders or other injunctive relief in a court of competent jurisdiction if necessary in order to preserve and protect the status quo. Neither the request for, nor the grant or denial of, any such temporary restraining order or other injunctive relief shall be deemed a waiver of the right or obligation to arbitrate as set forth herein, and the arbitrators may dissolve, continue or modify any such order after their appointment. Any such temporary restraining order or other injunctive relief shall remain in effect until the first to occur of the expiration of the order in accordance with its terms or the dissolution thereof by the arbitrators.

(c) Except as required by applicable Law, the parties shall hold, and shall cause their respective officers, directors, employees, agents and other representatives to hold, the existence, content and result of discussions, negotiations, mediation or arbitration under this Article V in confidence in accordance with the provisions of Section 6.9 and except as may be required in order to enforce any award. Each of the parties shall request that any mediator or arbitrator comply with such confidentiality requirement.

Section 5.8 *Continuity of Service and Performance.* Unless otherwise agreed in writing, the parties will continue to provide service and honor all other commitments under this Agreement and each Ancillary Agreement during the course of dispute resolution pursuant to the provisions of this Article V with respect to all matters not subject to such Dispute.

Section 5.9 *Law Governing Arbitration Procedures.* The interpretation of the provisions of this Article V, only insofar as they relate to the agreement to arbitrate and any procedures pursuant thereto, shall be governed by the Arbitration Act and other applicable U.S. federal Law. In all other respects, the interpretation of this Agreement shall be governed as set forth in Section 7.10.

ARTICLE VI

COVENANTS AND OTHER MATTERS

Section 6.1 *Other Agreements.* In addition to the specific agreements, documents and instruments annexed to this Agreement, MII and B&W agree to execute or cause to be executed by the appropriate parties and deliver, as appropriate, such other agreements, instruments and other documents as may be reasonably requested by either Party and necessary or desirable in order to effect the purposes of this Agreement and the Ancillary Agreements.

Section 6.2 *Further Instruments*. Subject to Section 2.5, at the request of B&W or MII and without payment of any further consideration, the other Party will execute and deliver, and will cause its applicable Subsidiaries to execute and deliver, to the requesting Party and its Subsidiaries such other instruments of transfer, conveyance, assignment, substitution and confirmation and take such action as the requesting Party may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign to the requesting Party and its Subsidiaries and confirm the requesting Party's and its Subsidiaries' title to all of the Assets, rights and other things of value contemplated to be transferred to the requesting Party and its Subsidiaries pursuant to this Agreement, the Ancillary Agreements, any documents referred to therein and any Prior Transfers, to put the requesting Party and its Subsidiaries in actual possession and operating control thereof and to permit the requesting Party and its Subsidiaries to exercise all rights with respect thereto (including rights under Contracts and other arrangements as to which the consent of any third party to the transfer thereof shall not have previously been obtained). At the request of B&W or MII and without payment of any further consideration, the other Party will execute and deliver, and will cause its applicable Subsidiaries to execute and deliver, to the requesting Party and its Subsidiaries all instruments, assumptions, novations, undertakings, substitutions or other documents and take such other action as the requesting Party may reasonably deem necessary or desirable in order to have the other Party fully and unconditionally assume and discharge the Liabilities contemplated to be assumed by such Party under this Agreement, any Ancillary Agreement, any document in connection herewith or the Prior Transfers and to relieve the B&W Group or the MII Group, as applicable, of any Liability or obligation with respect thereto and evidence the same to third parties. Neither MII nor B&W shall be obligated, in connection with the foregoing, to expend money other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees. Furthermore, each Party, at the request of another Party, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the transactions contemplated hereby or by the Prior Transfers.

Section 6.3 *Provision of Books and Records*. Subject to the provisions of this Section 6.3, MII shall use commercially reasonable efforts to deliver or make available or cause to be delivered or made available to B&W all B&W Books and Records in the possession of the MII Group, and B&W shall use commercially reasonable efforts to deliver or make available or cause to be delivered or made available to MII all MII Books and Records in the possession of the B&W Group. The foregoing shall be limited by, or subject to, the following:

(a) To the extent any document can be subdivided without unreasonable effort or cost into two portions, one of which constitutes a B&W Book and Record and the other of which constitutes a MII Book and Record, such document shall be so subdivided and the appropriate portions shall be delivered or made available to the Parties.

(b) Each Party may retain copies of books and records delivered or made available to the other, subject to holding in confidence in accordance with Section 6.9 Information contained in such books and records.

(c) Without limiting the generality of the first sentence of this Section 6.3, for a period beginning on the Distribution Date and continuing in perpetuity, if either MII or B&W identifies any MII Books and Records then in the possession of a member of the B&W Group or any B&W Books and Records then in the possession of a member of the MII Group, as applicable, MII or B&W, as the case may be, shall or shall cause any such MII Books and Records or B&W Books and Records to be conveyed, assigned, transferred and delivered, or otherwise made available, to the entity identified by B&W or MII, as the case may be, as the appropriate transferee.

(d) Each Party may refuse to furnish any Information if so doing, in such Party's Good Faith Judgment, could result in a waiver of any Privilege with respect to a third party even if B&W and MII cooperated to protect such Privilege as contemplated by this Agreement.

(e) Neither Party shall be required to deliver or make available to the other books and records or portions thereof which are subject to any applicable Law or confidentiality agreements which would by their terms prohibit such delivery; provided, however, if requested by the other Party, such Party shall use commercially reasonable efforts to seek a waiver of or other relief from such confidentiality restriction.

(f) To the extent any B&W Books and Records or MII Books and Records are subject to restrictions or limitations set forth the Employee Matters Agreement, such restrictions and limitations shall apply to such B&W Books and Records or MII Books and Records, notwithstanding any provisions of this Agreement.

Notwithstanding the foregoing, the documents described on Schedule 6.3 shall be subject to the specific provisions set forth on Schedule 6.3.

Section 6.4 Agreement For Exchange of Information.

(a) Subject to any limitations or restrictions pursuant to any applicable Law or pursuant to the provisions set forth on Schedule 6.3, from and after the Distribution Date for a period of ten years, each of MII and B&W agrees to provide or make available, or cause to be provided or made available, to each other as soon as reasonably practicable after written request therefor, any Information in the possession or under the control of such Party that the requesting Party reasonably needs (i) to comply with reporting, disclosure, filing or other requirements, requests or Laws imposed on the requesting Party (including under applicable securities Laws) by a Governmental Authority having jurisdiction over the requesting Party, (ii) for use in any pending or threatened judicial, regulatory, arbitration, mediation or other proceeding or investigation or in order to satisfy audit requirements (whether in connection with audits conducted by independent accounting firms, internal audits, or audits conducted by third parties entitled to do so by Contract, including customers and vendors), or in connection with accounting, claims, regulatory, litigation or other similar requirements, except in the case of a Dispute subject to Article V brought by one Party against the other Party (which shall be governed by such discovery rules as may be applicable under Article V), (iii) to comply with its obligations under this Agreement, any Ancillary Agreement or any Contract with a third party that is not an Affiliate, employee or agent of the requesting Party, or (iv) for any other significant business need as mutually determined in good faith by the Parties; provided, however, that in the event that either Party determines that any such provision (or making available) of Information is reasonably likely to be commercially detrimental or violate any Law or agreement, the Parties shall take reasonable measures to permit the compliance with such obligations in a manner that avoids any such harm or consequence; provided, that this Section 6.4(a) shall not limit any Party's ability to implement such Party's records retention policies (including the record destruction provisions thereof). Without limiting the generality of the foregoing, for so long as MII (or any successor thereto) is required to reflect any financial information with respect to the B&W Entities in any of MII's reports filed with the SEC under the Exchange Act, B&W shall: (i) upon request, provide certifications of its chief executive officer and its chief financial officer substantially similar in form and substance to the certifications provided to MII or its executive officers in the last 12 months preceding the Distribution Date with respect to periodic reporting of assets, liabilities and financial results of the operations conducted by the B&W Entities; (ii) provide reasonable access to the books and records of the B&W Entities to permit MII's independent auditors to audit or review, as applicable, any such financial information to be reflected in any such reports filed with the SEC; and (iii) consent to the inclusion (or incorporation by reference) of any financial statements reflecting any such financial information in any of MII's reports filed with the SEC under the Exchange Act or in any registration statements filed by MII with the SEC under the Securities Act of 1933.

(b) Any Information owned by a Party that is provided or made available to a requesting Party pursuant to this Section 6.4 shall be deemed to remain the property of the Party providing or making available such Information. Unless specifically set forth herein, nothing contained in this Agreement shall be construed as granting or conferring rights of license or otherwise in any such Information.

(c) The Party requesting the Information under this Section 6.4 will reimburse the other Party for the reasonable out-of-pocket costs of gathering, compiling and copying the Information.

(d) Except as otherwise agreed in writing, or as otherwise provided in any Ancillary Agreement, each Party will use commercially reasonable efforts to retain in accordance with such Party's record retention policies in effect from time to time (which will comply with all applicable Laws) all significant Information in the Party's possession or under its control relating to the business, Assets or Liabilities of the other

Party's Group, and, before destroying or disposing of any Information relating to the business, Assets or Liabilities of the other Party's Group, (i) the Party proposing to dispose of or destroy the Information will use commercially reasonable efforts to provide no less than 90 days' prior written notice to the other Party, specifying the Information proposed to be destroyed or disposed of and (ii) if, before the scheduled date for the destruction or disposal, the other Party requests in writing that any of the Information proposed to be destroyed or disposed of be delivered or made available to the other Party, the Party proposing to dispose of or destroy the Information will promptly arrange for the delivery or making available of the requested Information to or at a location specified by, and at the expense of, the requesting Party; provided, that each Party may destroy or dispose of any Information that the other Party has previously copied.

(e) Except as otherwise provided for herein or in any Ancillary Agreement, neither Party shall have any liability to the other Party or any of its Subsidiaries or other Affiliates in the event that any Information exchanged or provided pursuant to this Section 6.4 is found to be inaccurate or incomplete (including by misstatement or omission), in the absence of willful misconduct or fraud by the Party providing such Information.

(f) The rights and obligations granted under this Section 6.4 are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange or confidential treatment of Information set forth in this Agreement and any Ancillary Agreement.

(g) Each Party shall, except in the case of a dispute subject to Article V brought by one Party against another Party (which shall be governed by such discovery rules as may be applicable under Article V or otherwise), use commercially reasonable efforts to make available to the other Party, upon written request, (i) the former, current and future directors, officers, employees, other personnel and agents of such Party's Group for fact finding, consultation and interviews and as witnesses to the extent such Persons may reasonably be required in connection with any Actions (other than Actions in which both MII or any of its Subsidiaries, on the one hand, and B&W or any of its Subsidiaries, on the other hand, as the case may be, are parties and may be adverse to one another in such Action) in which the requesting Party may from time to time be involved relating to the conduct of the B&W Business or the MII Business and (ii) any books, records or other documents within its control or which it otherwise has the ability to make available, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with any judicial proceeding or other proceeding in which the requesting Party may from time to time be involved, regardless of whether such judicial proceeding or other proceeding is a matter with respect to which indemnification may be sought hereunder. The requesting Party shall bear all costs and expenses in connection therewith.

Section 6.5 Preservation of Legal Privileges; Attorney Representation.

(a) MII and B&W recognize that the members of their respective Groups possess and will possess information and advice that has been previously developed but is legally protected from disclosure under legal privileges, such as the attorney-client privilege or work product exemption and other concepts of legal privilege ("Privilege"). Each Party recognizes that it shall be jointly entitled to the Privilege with respect to such privileged information and that each shall be entitled to maintain and use for its own benefit all such information and advice, but both Parties shall ensure that such information is maintained so as to protect the Privileges with respect to the other Party's interest. MII and B&W agree that their respective rights and obligations to maintain, preserve, assert or waive any or all Privileges belonging to either Party with respect to the B&W Business or the MII Business shall be governed by the provisions of this Section 6.5. With respect to matters relating to the MII Business, MII shall have sole authority in perpetuity to determine whether to assert or waive any or all Privileges, and B&W shall take no action (or permit any of its Subsidiaries to take action) without the prior written consent of MII that could, in MII's Good Faith Judgment, result in any waiver of any Privilege that could be asserted by MII or any of its Subsidiaries under applicable Law and this Agreement. With respect to matters relating to the B&W Business, B&W shall have sole authority in perpetuity to determine whether to assert or waive any or all Privileges, and MII

shall take no action (or permit any of its Subsidiaries to take action) without the prior written consent of B&W that could, in B&W's Good Faith Judgment, result in any waiver of any Privilege that could be asserted by B&W or any of its Subsidiaries under applicable Law and this Agreement. The rights and obligations created by this Section 6.5 shall apply to all Information as to which MII or B&W or their respective Subsidiaries would be entitled to assert or has asserted a Privilege without regard to the effect, if any, of the Separation and Distribution ("Privileged Information"). Privileged Information of MII includes (i) any and all Privileged Information existing prior to the Distribution regarding the MII Business but which after the Distribution is in the possession of B&W or any of its Subsidiaries; (ii) all communications subject to a Privilege occurring prior to the Distribution between counsel for MII or any of its Subsidiaries (including in-house counsel and former in-house counsel who are employees of B&W) and any person who, at the time of the communication, was an employee of MII or any of its Subsidiaries, regardless of whether such employee is or becomes an employee of B&W or any of its Subsidiaries; and (iii) all Privileged Information generated, received or arising after the Distribution that refers or relates to Privileged Information existing prior to the Distribution generated, received or arising prior to the Distribution. Privileged Information of B&W includes (i) any and all Privileged Information existing prior to the Distribution regarding the B&W Business but which after the Distribution is in the possession of MII or any of its Subsidiaries; (ii) all communications subject to a Privilege occurring prior to the Distribution between counsel for B&W or any of its Subsidiaries (including in-house counsel and former in-house counsel who are employees of MII or its Subsidiaries) and any person who, at the time of the communication, was an employee of B&W or any of its Subsidiaries, regardless of whether such employee is or becomes an employee of MII or any of its Subsidiaries; and (iii) all Privileged Information generated, received or arising after the Distribution that refers or relates to Privileged Information generated, received or arising prior to the Distribution.

(b) Upon receipt by MII or B&W, as the case may be, of any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Privileged Information of the other or if MII or B&W, as the case may be, obtains knowledge that any current or former employee of MII or B&W, as the case may be, has received any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Privileged Information of the other, MII or B&W, as the case may be, shall promptly notify the other of the existence of the request and shall provide the other a reasonable opportunity to review the Privileged Information and to assert any rights it may have under this Section 6.5 or otherwise to prevent the production or disclosure of Privileged Information. MII or B&W, as the case may be, will not produce or disclose to any third party any of the other's Privileged Information under this Section 6.5 unless (A) the other has provided its express written consent to such production or disclosure, or (B) a court of competent jurisdiction has entered an order not subject to interlocutory appeal or review finding that the Information is not entitled to protection from disclosure under any applicable Privilege, doctrine or rule.

(c) MII's transfer of B&W Books and Records and other Information to B&W, MII's agreement to permit B&W to obtain Information existing prior to the Distribution, B&W's transfer of MII Books and Records and other Information to MII, and B&W's agreement to permit MII to obtain Information existing prior to the Distribution are made in reliance on MII's and B&W's respective agreements, as set forth in Section 6.9 and this Section 6.5, to maintain the confidentiality of such Privileged Information and to take the steps provided herein for the preservation of all Privileges that may belong to or be asserted by MII or B&W, as the case may be. The access to Privileged Information being granted pursuant to Section 6.3 hereof, the agreement to provide witnesses and individuals pursuant to Section 6.4(g) hereof and the disclosure to B&W and MII of Privileged Information relating to the B&W Business or the MII Business pursuant to this Agreement in connection with the Separation and Distribution shall not be asserted by MII or B&W to constitute, or otherwise be deemed, a waiver of any Privilege that has been or may be asserted under this Section 6.5 or otherwise. Nothing in this Agreement shall operate to reduce, minimize or condition the rights granted to MII and B&W in, or the obligations imposed upon MII and B&W by, this Section 6.5.

(d) MII, on behalf of itself and on behalf of each other member of the MII Group, hereby waives any conflict of interest with respect to any attorney who is or becomes an officer or employee of B&W or any of

its Subsidiaries resulting from such person being an officer or employee of MII or any of its Subsidiaries (including B&W and its Subsidiaries) at any time prior to the Distribution and agrees to allow such attorney to represent B&W and its Subsidiaries in any transaction or dispute with respect to this Agreement, the Ancillary Agreements, the transactions contemplated hereby and thereby and transactions between the Parties and their Subsidiaries and other Affiliates which commence following the Distribution Date. B&W, on behalf of itself and on behalf of its Subsidiaries, hereby waives any conflict of interest with respect to any attorney who is or becomes an officer or employee of MII or any other member of the MII Group resulting from such person being an officer or employee of B&W or any of its Subsidiaries at any time prior to the Distribution and agrees to allow such attorney to represent MII or any other member of the MII Group in any transaction or dispute with respect to this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby and transactions between the Parties and their Subsidiaries and other Affiliates which commence following the Distribution Date. In furtherance of the foregoing, each member of the MII Group and each member of the B&W Group will, upon request, execute and deliver a specific waiver as may be appropriate in connection with a particular transaction or dispute under the applicable rules of professional conduct in order to effectuate the general waiver set forth above.

Section 6.6 *Payment of Expenses*. Except as otherwise provided in this Agreement or in any Ancillary Agreement, each Party will bear its own expenses in connection with the Separation, the Distribution and the other transactions contemplated by this Agreement.

Section 6.7 *Surety Instruments*. On or after the Distribution Date, if any letters of credit, financial or surety bonds issued by third parties or other similar financial instruments issued by third parties (collectively, "Surety Instruments") for the account of MII or any of its Subsidiaries issued on behalf of or for the benefit of the B&W Business are outstanding, B&W shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to replace such Surety Instruments as promptly as practicable with Surety Instruments that (x) are issued for B&W's own account or the account of any of its Subsidiaries (or any combination thereof), (y) are acceptable to the beneficiary or beneficiaries thereof and (z) neither impose any Liabilities, directly or indirectly, on MII or any of its Subsidiaries nor encumber or otherwise restrict, directly or indirectly, any Assets of MII or any of its Subsidiaries. Notwithstanding the provisions of the immediately preceding sentence, if, after using commercially reasonable efforts, B&W and its Subsidiaries are unable to obtain access to a third-party surety arrangement immediately after the Distribution Time, then MII shall use commercially reasonable efforts to permit B&W and its Subsidiaries to maintain access to the existing surety arrangements to which MII is a party and pursuant to which Surety Instruments for the benefit of the B&W Business are outstanding as of the Distribution Time, for a period of time that does not extend beyond 720 days following the Distribution Date, to the extent permitted pursuant to MII's credit facilities, as the same may hereafter be amended or replaced; provided, however, that (for so long as MII may have any obligation under or in respect of any additional Surety Instruments that may be issued in accordance with this sentence pursuant to the existing surety arrangements described in the foregoing provisions of this sentence, as they may hereafter be amended or otherwise modified from time to time) in no event shall (i) B&W and its Subsidiaries utilize pursuant to this sentence, at any point in time, aggregate bonding capacity under such existing surety arrangements in excess of \$200 million (with any Surety Instruments outstanding as of the Distribution Date not being taken into account to determine if this limit has been reached), and (ii) any Surety Instrument issued pursuant to this sentence have a term that exceeds five years; provided, further, that (i) the ability of B&W and its Subsidiaries to access such existing surety arrangements shall terminate immediately upon B&W ceasing to maintain a corporate rating of BB- or higher by S&P (or its equivalent under any successor rating categories of S&P) and Ba3 or higher by Moody's (or its equivalent under any successor rating categories of Moody's) and (ii) neither B&W nor any of its Subsidiaries shall access any such existing surety arrangements during any period following B&W's receipt of notice from, or a public announcement by, either S&P or Moody's that such rating agency is considering a possible ratings change below the level specified in the immediately preceding clause (i) unless and until such rating agency has advised B&W in writing that such ratings agency is no longer considering such a ratings change. From and after the Distribution Time: B&W shall (i) directly pay to the Person issuing any Surety Instrument pursuant to the immediately preceding sentence any surety fees or other fees or costs charged with respect to such Surety

Instruments; (ii) promptly pay to MII upon written request amounts equal to any out-of-pocket or other expenses incurred by MII or any of its Subsidiaries (including any expenses recorded pursuant to the provisions of the Financial Accounting Standards Board's Interpretation No. 45, *Guarantor's Accounting and Disclosure Requirements for Guarantees*) arising from or relating to any Surety Instruments described in the second sentence of this Section 6.7 or any actions taken by MII in accordance with the provisions of this Section 6.7; and (iii) indemnify and hold harmless MII and each of its Subsidiaries from and against any other Losses arising from or relating to any Surety Instruments described in the foregoing provisions of this Section 6.7, as set forth in Section 3.3. B&W shall not, and shall not permit any of its Subsidiaries to, enter into, renew or extend the term of, increase its obligations under, or transfer to a third party, any loan, lease, Contract or other obligation in connection with which MII or any of its Subsidiaries has issued, or caused to be issued, any Surety Instruments which remain outstanding. The Parties agree that neither MII nor any of its Subsidiaries will have any obligation to renew any Surety Instruments issued on behalf of a member of the B&W Group after the expiration of any such Surety Instruments, provided that nothing in this Section 6.7 shall prevent MII from renewing any Surety Instrument. If B&W is unable to replace any of the Surety Instruments within ten days after a Change of Control of B&W, B&W will cause letters of credit to be issued to MII (or, as applicable, the Subsidiaries of MII that are directly or contingently liable with respect thereto) by one or more financial institutions reasonably acceptable to MII to provide, in each case, MII (or, as applicable, its Subsidiaries) with prompt cash reimbursement, in full, in the event of any draw, cash call or other event giving rise to any payment obligation on the part of MII or any of its Subsidiaries with respect to any such Surety Instrument, for so long as such Surety Instruments remain outstanding or in effect. For the avoidance of doubt, it is understood and acknowledged that the performance obligations of the Parties under this Section 6.7 are subject to the limitations on liability set forth in Section 3.12.

Section 6.8 *Guarantee Obligations.* MII and B&W shall cooperate and B&W shall use its commercially reasonable efforts to terminate, or to cause B&W, one of its Subsidiaries, or one of its Affiliates (other than, if applicable, MII or any of its Subsidiaries) to be substituted in all respects for MII and any of its Subsidiaries in respect of, all obligations of MII or any of its Subsidiaries under any loan, financing, lease, Contract or other obligation (other than Surety Instruments governed by Section 6.7) in existence as of the Distribution Time pertaining to the B&W Business for which MII or any of its Subsidiaries is or may be liable as guarantor ("MII Guarantees"). If such a termination or substitution is not effected by the Distribution Time, (i) B&W shall indemnify and hold harmless the MII Group for any Losses arising from or relating to MII Guarantees and (ii) neither MII nor any of its Subsidiaries will have any obligation to renew any MII Guarantees after the expiration of such MII Guarantees. To the extent that MII or any of its Subsidiaries have performance obligations under any MII Guarantee, B&W will use its commercially reasonable efforts to (i) perform such obligations on behalf of MII and its Subsidiaries or (ii) otherwise take such action as reasonably requested by MII so as to put MII and its Subsidiaries in the same position as if B&W, and not MII and its Subsidiaries, had performed or were performing such obligations. If B&W is unable to be substituted in all respects for any of the MII Guarantees within ten days after a Change of Control of B&W, B&W will cause letters of credit to be issued to MII (or, as applicable, the Subsidiaries of MII that are directly or contingently liable with respect thereto) by one or more financial institutions reasonably acceptable to MII to provide, in each case, MII (or, as applicable, its Subsidiaries) with prompt cash reimbursement, in full, in the event of any event giving rise to any payment obligation on the part of MII or any of its Subsidiaries with respect to any such MII Guarantee, for so long as such MII Guarantees remain outstanding or in effect.

Section 6.9 *Confidentiality.*

(a) MII and B&W shall hold and shall cause the members of the MII Group and the B&W Group, respectively, to hold, and shall each cause their respective officers, employees, agents, consultants and advisors 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) to their respective 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, MII or B&W, as the case may be, will be responsible or (ii) to the extent any member of the MII 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, MII or B&W, 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 6.9, "Confidential Information" shall mean all proprietary, technical or proprietary, operational Information (including proprietary Information relating to the ages, birth dates, social security numbers, health-related matters or other confidential matters concerning employees or former employees) of one Party which, prior to or following the Distribution Time, has been disclosed by MII or members of the MII Group, on the one hand, or B&W or members of the B&W Group, on the other hand, to, or otherwise has come into the possession of, the other, including pursuant to the access provisions of Section 6.4 hereof or any other provision of this Agreement or by virtue of employees of the MII Group becoming employees of the B&W Group as a result of the transactions contemplated hereby (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 MII, any other member of the MII Group or, in the case of B&W, any other member of the B&W Group) or (b) later lawfully acquired from other sources by the Party (or, in the case of MII, such member of the MII Group or, in the case of B&W, 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) MII and the other members of the MII Group, on the one hand, and B&W 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 MII or any other member of the MII Group, or B&W or any other member of the B&W Group, on the one hand, and any employee of MII or any other member of the MII Group, or B&W or any other member of the B&W Group, on the other hand, shall remain in full force and effect. Confidential Information of MII or any other member of the MII Group, on the one hand, or B&W 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 Distribution Time may continue to be used by such Person in possession of the Confidential Information in and only in the operation of the MII Business or the B&W Business, as the case may be, and may be used only so long as the Confidential Information is maintained in confidence and not disclosed in violation of Section 6.9(a). 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 MII or B&W, or any Asset of MII or B&W 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 B&W or MII, as the case may be (which agreement shall be fully and directly enforceable by B&W or MII, respectively), in which such Party agrees to be bound in perpetuity by the terms of this Section 6.9.

Section 6.10 *Insurance.*

(a) The Parties intend by this Agreement that, to the extent permitted under the terms of any applicable insurance policy, B&W, each other member of the B&W Group and each of their respective directors, officers and employees will be successors in interest and will have and be fully entitled to continue to exercise all rights that any of them may have as of the Distribution Time (with respect to events occurring before the Distribution Time) as a Subsidiary, Affiliate, division, director, officer or employee of MII before the Distribution Time under any policy of insurance issued to MII or any member of the MII Group by any

third-party insurance carrier not affiliated with MII or under any agreements related to such policies executed and delivered before the Distribution Time, including any rights that B&W, any other member of the B&W Group or any of its or their respective directors, officers, or employees may have as an insured or additional named insured, Subsidiary, Affiliate, division, director, officer or employee to avail itself, himself or herself of any policy of insurance or any agreements related to the policies in effect before the Distribution Time, with respect to events occurring before the Distribution Time. In addition, for a period of six years from and after the Distribution Date, MII shall use commercially reasonable efforts to maintain the “tail coverage” described in Schedule 6.10, provided that each of MII and B&W shall bear one-half of (i) the premiums paid or payable with respect to such coverage and (ii) amounts actually incurred as retention amounts under such coverage.

(b) After the Distribution Time, MII (and each other member of the MII Group) and B&W (and each other member of the B&W Group) shall not, without the consent of B&W or MII, respectively (such consent not to be unreasonably withheld, conditioned or delayed), provide any insurance carrier with a release or amend, modify or waive any rights under any insurance policy or agreement if such release, amendment, modification or waiver thereunder would materially adversely affect any rights of any member of the Group of the other Party with respect to insurance coverage otherwise afforded to such other Party for pre-Distribution claims; provided, however, that the foregoing shall not (A) preclude any member of any Group from presenting any claim or from exhausting any policy limit, (B) require any member of any Group to pay any premium or other amount or to incur any Liability or (C) require any member of any Group to renew, extend or continue any policy in force. Subject to Section 6.5, each of MII and B&W will share such Information as is reasonably necessary in order to permit the other to manage and conduct its insurance matters in an orderly fashion.

(c) The provisions of this Agreement are not intended to relieve any insurer of any Liability under any policy.

(d) No member of the MII Group or any MII Indemnitee will have any Liabilities whatsoever as a result of the insurance policies and practices of MII or any other member of the MII Group as in effect at any time before the Distribution Time, including as a result of (i) the level or scope of any insurance, (ii) the creditworthiness of any insurance carrier, (iii) the terms and conditions of any policy, or (iv) the adequacy or timeliness of any notice to any insurance carrier with respect to any claim or potential claim.

(e) Except to the extent otherwise provided in Section 6.10(b), in no event will MII, any other member of the MII Group or any MII Indemnitee have any Liability or obligation whatsoever to any member of the B&W Group if any insurance policy or other contract of insurance is terminated or otherwise ceases to be in effect for any reason, is unavailable or inadequate to cover any Liability of any member of the B&W Group for any reason whatsoever or is not renewed or extended beyond the current expiration date.

(f) This Agreement is not intended as an attempted assignment of any policy of insurance or as a contract of insurance and will not be construed to waive any right or remedy of any members of the MII Group in respect of any insurance policy or any other contract or policy of insurance.

(g) Nothing in this Agreement will be deemed to restrict any member of the B&W Group from acquiring at its own expense any other insurance policy in respect of any Liabilities or covering any period.

(h) To the extent that any insurance policy provided for the reinstatement of policy limits, and both MII and B&W desire to reinstate such limits, the cost of reinstatement will be shared by MII and B&W as the Parties may agree. If either Party, in its sole discretion, determines that such reinstatement would not be beneficial, that Party shall not contribute to the cost of reinstatement and will not make any claim thereunder nor otherwise seek to benefit from the reinstated policy limits.

(i) For purposes of this Agreement, “Covered Matter” shall mean any matter, whether arising before or after the Distribution Time, with respect to which any member of the B&W Group or any of their respective directors, officers or employees may seek to exercise any right under any MII policy of insurance or related agreement pursuant to this Section 6.10. If B&W receives notice or otherwise learns of any Covered Matter,

B&W shall promptly give MII written notice thereof. Any such notice shall describe the Covered Matter in reasonable detail. With respect to each Covered Matter (other than any such Covered Matter with respect to which any member of the MII Group or any of their respective directors, officers or employees may seek to exercise any right under any MII policy of insurance or related agreement), B&W shall have sole responsibility for reporting the claim to the insurance carrier and managing and defending the claim (collectively, "Claims Administration"); provided that B&W shall provide MII with at least ten days' prior written notice before settling or seeking settlement authority from any MII insurance underwriter for an amount equal to or exceeding \$5 million with respect to any such Covered Matter. Except as provided above in this Section 6.10(i), MII shall have responsibility for Claims Administration with respect to Covered Matters.

(j) B&W agrees that, from and after the Distribution Time: (i) B&W will be responsible for submitting (or causing another member of the B&W Group to submit) to ACE American Insurance Company or its applicable affiliates (collectively, "ACE") any insurance claims under any of the Existing Policies (as defined in the Assumption and Loss Allocation Agreement) with respect to any B&W Liabilities for which insurance coverage is available under any of the Existing Policies; (ii) B&W will (or will cause another member of the B&W Group to) duly and timely submit each insurance claim referred to in the immediately preceding clause (i) to ACE; and (iii) in the event B&W or another member of the B&W Group fails to duly and timely submit any such insurance claim, B&W hereby authorizes MII to submit (on behalf of each applicable member of the B&W Group) such insurance claim, if the underlying liability relates to a B&W Liability as to which B&W has agreed to indemnify the members of the MII Group pursuant to this Agreement. For purposes of this Section 6.10(j), submitting an insurance claim includes tendering notice of a third-party claim and such other acts as are necessary to comply with the policyholder's responsibilities under the Existing Policy with respect to the applicable Loss.

ARTICLE VII MISCELLANEOUS

Section 7.1 *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 and the Ancillary Agreements, (b) the execution, delivery and performance of this Agreement and the Ancillary Agreements by it have been duly authorized by all necessary corporate or other actions, (c) it has duly and validly executed and delivered this Agreement and the Ancillary Agreements to be executed and delivered on or prior to the Distribution Time, and (d) this Agreement and such Ancillary Agreements are legal, valid and binding obligations, enforceable against it in accordance with their respective terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting creditors' rights generally and general equity principles.

Section 7.2 *Termination*. This Agreement and each of the Ancillary Agreements may be terminated at any time prior to the Distribution Time by and in the sole discretion of MII without the approval of B&W. In the event of termination pursuant to this Section, neither Party shall have any Liability of any kind to the other Party.

Section 7.3 *Entire Agreement*. This Agreement, the Ancillary Agreements and the Schedules referenced herein or therein or attached hereto or thereto, constitute the entire agreement and understanding between the Parties 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 7.4 *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 as provided in Article III and Section 6.5(d) and Section 6.10, nothing in this Agreement, express or implied, is intended to confer upon any Person except the Parties and their respective Subsidiaries 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, except with the prior written consent of the other Party.

Section 7.5 *Amendment*. No change or amendment may be made to this Agreement except by an instrument in writing signed on behalf of both of the Parties.

Section 7.6 *Failure or Indulgence Not Waiver; Remedies Cumulative*. 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. All rights and remedies existing under this Agreement or the Schedules attached hereto are cumulative to, and not exclusive of, any rights or remedies otherwise available.

Section 7.7 *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 7.8 *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 7.9 *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. 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 7.10 *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 7.11 *Construction*. This Agreement and the Ancillary Agreements shall be construed as if jointly drafted by B&W and MII and no rule of construction or strict interpretation shall be applied against either Party. The Parties represent that this Agreement is entered into with full consideration of any and all rights which the Parties may have. The Parties have relied upon their own knowledge and judgment and upon the advice of the attorneys of their choosing. The Parties have had access to independent legal advice, have conducted such investigations they and their counsel thought appropriate, and have consulted with such other independent advisors as they and their counsel deemed appropriate regarding this Agreement and their rights and asserted rights in connection therewith. The Parties are not relying upon any representations or statements made by any other Party, or such other Party's employees, agents, representatives or attorneys, regarding this Agreement, except to the extent such representations are expressly set forth or incorporated in this Agreement. The Parties are not relying upon a legal duty, if one exists, on the part of the other Party (or such other Party's employees, agents, representatives or attorneys) to disclose any information in connection with the execution of this

Agreement or its preparation, it being expressly understood that neither Party shall ever assert any failure to disclose information on the part of the other Party as a ground for challenging this Agreement.

Section 7.12 *Performance*. Each Party 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 7.13 *Limited Liability*. Notwithstanding any other provision of this Agreement, no individual who is a stockholder, director, employee, officer, agent or representative of MII or B&W, in such individual's capacity as such, shall have any liability in respect of or relating to the covenants or obligations of MII or B&W, as applicable, under this Agreement or any Ancillary Agreement or in respect of any certificate delivered with respect hereto or thereto and, to the fullest extent legally permissible, each of MII and B&W, for itself and its respective stockholders, directors, employees, officers and Affiliates, waives and agrees not to seek to assert or enforce any such liability that any such Person otherwise might have pursuant to applicable Law.

[INTENTIONALLY LEFT BLANK]

WHEREFORE, the Parties have signed this Master Separation Agreement effective as of the date first set forth above.

MCDERMOTT INTERNATIONAL, INC.

By: _____
Name:
Title:

THE BABCOCK & WILCOX COMPANY

By: _____
Name:
Title:

AMENDED AND RESTATED
BYLAWS
OF
THE BABCOCK & WILCOX COMPANY

AMENDED AND RESTATED
BYLAWS
OF
THE BABCOCK & WILCOX COMPANY

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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) No person shall be nominated to stand for election or re-election to the Company's Board of Directors if such person will have attained the age of 72 prior to the date of election or re-election. Any Director elected or re-elected who attains the age of 72 during a term to which he or she was elected or re-elected shall continue to

serve as a Director until the first annual meeting of stockholders immediately following his or her attainment of the age of 72, at which time said Director shall be deemed to have resigned and retired from the Board of Directors.

(f) 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

EMPLOYEE MATTERS AGREEMENT

among

MCDERMOTT INTERNATIONAL, INC.,

MCDERMOTT INCORPORATED,

THE BABCOCK & WILCOX COMPANY,

and

BABCOCK & WILCOX INVESTMENT COMPANY

dated as of

[] [], 2010

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EMPLOYEE MATTERS AGREEMENT

THIS EMPLOYEE MATTERS AGREEMENT dated as of [], 2010 among McDermott International, Inc., a Panamanian corporation (“MII”), McDermott Incorporated, a Delaware corporation (“MI”), The Babcock & Wilcox Company, a Delaware corporation (“B&W”), and Babcock & Wilcox Investment Company, a Delaware corporation (“BWICO”). MII, MI, B&W and BWICO are sometimes referred to herein, individually, as a “Party,” and, collectively, as the “Parties.” Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in Article I hereof.

RECITALS

WHEREAS, each of MI, B&W and BWICO is a direct or indirect, wholly owned subsidiary of 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 to effectuate the Distribution as described in the Master Separation Agreement between MII and B&W dated as of , 2010 (the “Master Separation Agreement”); and

WHEREAS, the Master Separation Agreement provides, among other things, subject to the terms and conditions thereof, for the Distribution and for the execution and delivery of certain other agreements, including this Agreement, in order to facilitate and provide for the separation of B&W and its subsidiaries from MII; and

WHEREAS, in order to ensure an orderly transition under the Master Separation Agreement, it will be necessary for the Parties to allocate between them assets, liabilities and responsibilities with respect to certain employee compensation, benefit plans and programs, and certain employment matters.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the Parties, 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 in this Section 1.1:

(a) “Additional MII RSAs” has the meaning set forth in Section 3.2(b).

(b) “Additional MII RSUs” has the meaning set forth in Section 3.3(b).

(c) “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.

(d) “Agreement” means this Employee Matters Agreement together with all Schedules hereto and all amendments, modifications and changes hereto and thereto entered into in accordance with Section 11.10.

(e) “Ancillary Agreements” has the meaning set forth in the Master Separation Agreement.

(f) “Benefit Arrangement” means any contract, agreement, policy, practice, program, plan, trust or arrangement (other than any deferred compensation, profit sharing, bonus, stock-based compensation or other form of incentive compensation), providing for benefits, perquisites or compensation of any nature to any Employee, or to any family member, dependent or beneficiary of any such Employee, including, travel and accident, tuition reimbursement, vacation, sick, personal or bereavement days, and holidays.

- (g) "B&W" has the meaning set forth in the preamble to this Agreement.
- (h) "B&W Common Stock" means the common stock of B&W, par value \$0.01 per share.
- (i) "B&W Employee" means any individual who is employed by a member of the B&W Group on the day after the Distribution Date.
- (j) "B&W Entity" means any member of the B&W Group (together with each current and former, direct or indirect, subsidiary of any such member (and of any such former subsidiary)), but also includes any entity which was sold or otherwise disposed of or the business of which was discontinued at such time as such entity's assets, liabilities or results of operations were accounted for within the Power Generation Systems, Government Operations or Industrial Operations segment of MII and its Subsidiaries (or any predecessor to any such segment). The Parties acknowledge that this term is defined differently in the Master Separation Agreement.
- (k) "B&W Excess Plan" means any excess plan sponsored or maintained by any one or more members of the B&W Group on the day after the Distribution Date, including each of those set forth on Schedule 1.1(k).
- (l) "B&W FSA" has the meaning set forth in Section 7.4(b).
- (m) "B&W Group" means, collectively, B&W and each B&W Subsidiary.
- (n) "B&W Legacy Award Holders" means the holders of one or more MII RSAs, MII RSUs, MII Options or performance-based equity awards under any of the MII Legacy Plans who are former employees of a member of the B&W Group (and will not be B&W Employees or McDermott Employees) and are listed on Schedule 1.1(n).
- (o) "B&W Master Trust" has the meaning set forth in Section 5.1.
- (p) "B&W New Equity Plan" means the plan adopted by B&W and approved by MII, as sole stockholder of B&W prior to the Distribution, as set forth on Schedule 1.1(p), under which the B&W equity-based awards described in Article III shall be issued.
- (q) "B&W New SERP Plan" means the supplemental executive retirement plan adopted by B&W and approved by MII, as sole shareholder of B&W prior to the Distribution.
- (r) "B&W Pension Beneficiaries" has the meaning set forth in Section 5.1.
- (s) "B&W Pension Plan" means any pension plan sponsored or maintained by any one or more members of the B&W Group on the day after the Distribution Date, including each of those set forth on Schedule 1.1(s).
- (t) "B&W Subsidiary" means any Subsidiary of B&W, other than Babcock & Wilcox Technical Services Group Pantex, LLC or Babcock & Wilcox Technical Services Group Y-12, LLC, as of the Distribution Date.
- (u) "B&W Thrift Plan Beneficiaries" has the meaning set forth in Section 6.1.
- (v) "B&W Thrift Plan" has the meaning set forth in Section 6.1 and on Schedule 1.1(v).
- (w) "B&W Transferee Plan" has the meaning set forth in Section 5.1.
- (x) "B&W Welfare Plan" means any Welfare Plan sponsored or maintained by any one or more members of the B&W Group on the day after the Distribution Date, including each of those set forth on Schedule 1.1(x).
- (y) "B&W Welfare Plan Participants" has the meaning set forth in Section 7.1.
- (z) "BWICO" has the meaning set forth in the preamble to this Agreement.
- (aa) "COBRA" means the U.S. Consolidated Omnibus Budget Reconciliation Act of 1985, as codified at Part 6 of Subtitle B of Title I of ERISA and at Code Section 4980B.

- (bb) "Code" means the Internal Revenue Code of 1986.
- (cc) "Confidential Information" has the meaning set forth in the Master Separation Agreement.
- (dd) "Distribution" has the meaning set forth in the Master Separation Agreement.
- (ee) "Distribution Date" has the meaning set forth in the Master Separation Agreement.
- (ff) "Employee" means any McDermott Employee, Former McDermott Employee, B&W Employee or Former B&W Employee.
- (gg) "ERISA" means the U.S. Employee Retirement Income Security Act of 1974.
- (hh) "Final Transfer Amount" has the meaning set forth in Section 5.2(b).
- (ii) "FMLA" means the U.S. Family and Medical Leave Act.
- (jj) "Former B&W Employee" has the meaning set forth in Section 2.2(c).
- (kk) "Former B&W Officer" means the persons listed on Schedule 1.1(kk), each of whom has been an officer of B&W prior to the date hereof but will not be a B&W Employee.
- (ll) "Former McDermott Employee" has the meaning set forth in Section 2.2(b).
- (mm) "Initial Transfer Amount" has the meaning set forth in Section 5.2(a).
- (nn) "Initial Transfer Date" has the meaning set forth in Section 5.2(a).
- (oo) "IRS" means the U.S. Internal Revenue Service.
- (pp) "Master Separation Agreement" has the meaning set forth in the recitals to this Agreement.
- (qq) "McDermott Benefit Arrangement" means any Benefit Arrangement sponsored or maintained by a member of the McDermott Group on the Distribution Date.
- (rr) "McDermott Employee" means any individual who is employed by a member of the McDermott Group on the day after the Distribution Date.
- (ss) "McDermott Entity" means any member of the McDermott Group, but also includes any entity which was sold or otherwise disposed of or the business of which was discontinued at such time as such entity's assets, liabilities or results of operations were accounted for within the Offshore Oil and Gas Construction segment of MII and its Subsidiaries (or any predecessor to such segment, including Marine Construction Services). The Parties acknowledge that this term is defined differently in the Master Separation Agreement.
- (tt) "McDermott Excess Plan" means any excess plan sponsored or maintained by any one or more members of the McDermott Group on the Distribution Date, including each of those set forth on Schedule 1.1(tt).
- (uu) "McDermott Group" means, collectively, MII and each MII Subsidiary.
- (vv) "McDermott Master Trust" means the trust that holds the commingled assets of the McDermott Pension Plan and the B&W Pension Plans.
- (ww) "McDermott Pension Plan" means the Retirement Plan for Employees of McDermott Incorporated and Participating Subsidiary and Affiliate Companies.
- (xx) "McDermott SRPP" means the McDermott Incorporated Supplemental Retirement Payments Plan.
- (yy) "McDermott Thrift Plan Beneficiaries" has the meaning set forth in Section 6.1.
- (zz) "McDermott Thrift Plan" means the Thrift Plan for Employees of McDermott Incorporated and Participating Subsidiary and Affiliated Companies.
- (aaa) "McDermott Welfare Plan" means any Welfare Plan sponsored or maintained by any one or more members of the McDermott Group on the Distribution Date, including each of those set forth on Schedule 1.1(aaa).

- (bbb) “MI” has the meaning set forth in the preamble to this Agreement.
- (ccc) “MI Actuary” means an enrolled actuary appointed by MI.
- (ddd) “MII” has the meaning set forth in the preamble to this Agreement.
- (eee) “MII Common Stock” means the common stock of MII, par value \$1.00 per share.
- (fff) “MII Legacy Award Holder” means any holder of one or more MII RSAs, MII RSUs, MII Options or performance-based equity awards under any of the MII Legacy Plans who will not be a McDermott Employee or a B&W Employee and will not, as of the Distribution Date, be a member of the Board of Directors of either MII or B&W; provided, however, that the term “MII Legacy Award Holder” shall not include any Former B&W Officer or any B&W Legacy Award Holder.
- (ggg) “MII Legacy Equity Plan” means any equity plan sponsored or maintained by MII immediately prior to the Distribution Date, including each of those set forth on Schedule 1.1(ggg).
- (hhh) “MII Options” means options to purchase shares of MII Common Stock granted pursuant to any of the MII Legacy Equity Plans.
- (iii) “MII RSAs” means restricted stock awards issued under any of the MII Legacy Equity Plans.
- (jjj) “MII RSUs” means restricted stock units or deferred stock units issued under any of the MII Legacy Equity Plans that are not subject to performance conditions.
- (kkk) “MII SERP” means the McDermott International, Inc. New Supplemental Executive Retirement Plan.
- (lll) “MII Subsidiary” means any Subsidiary of MII as of the Distribution Date; provided, however, that (unless otherwise expressly stated) no B&W Entity shall be considered an “MII Subsidiary” for purposes of this Agreement.
- (mmm) “NYSE” means the New York Stock Exchange.
- (nnn) “Participating B&W Employers” has the meaning set forth in Section 7.1.
- (ooo) “Participation Period” has the meaning set forth in Section 7.4(b).
- (ppp) “Party” or “Parties” has the meaning set forth in the preamble to this Agreement.
- (qqq) “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.
- (rrr) “Post-Distribution B&W Share Price” means the opening price on the NYSE of a share of B&W Common Stock on the next trading day following the Distribution Date.
- (sss) “Post-Distribution MII Option” has the meaning set forth in Section 3.4(b).
- (ttt) “Post-Distribution MII Share Price” means the opening price on the NYSE of a share of MII Common Stock on the next trading day following the Distribution Date.
- (uuu) “Pre-Distribution MII Share Price” means the “regular way” closing price of a share of MII Common Stock on the Distribution Date, as reported on the NYSE’s Consolidated Transactions Reporting System.
- (vvv) “Privacy Contract” means any contract entered into in connection with applicable privacy protection laws or regulations.
- (www) “Registration Statement Effectiveness Date” means the first date on which the registration statement on Form S-8 (or other appropriate form) contemplated by Section 11.7 shall be effective under the Securities Act of 1933.

(xxx) "Replacement B&W Option" has the meaning set forth in Section 3.4(a).

(yyy) "Replacement B&W RSAs" has the meaning set forth in Section 3.2(a).

(zzz) "Replacement B&W RSUs" has the meaning set forth in Section 3.3(a).

(aaaa) "Replacement MII Performance RSUs" has the meaning set forth in Section 3.5(b).

(bbbb) "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.

(cccc) "U.S." means the United States of America.

(dddd) "Value" has the meaning set forth in Section 5.5.

(eeee) "VEBA" has the meaning set forth in Section 7.3.

(ffff) "WARN" means the U.S. Worker Adjustment and Retraining Notification Act, and any applicable state or local law equivalent.

(gggg) "Welfare Plan" means a "welfare plan" as defined in ERISA Section 3(1) and also means a cafeteria plan under Code Section 125 and any benefits offered thereunder, including pre-tax premium conversion benefits, a dependent care assistance program, contribution funding toward a health savings account and flex or cashable credits.

Section 1.2 *Interpretation*. In this Agreement, unless the context clearly indicates otherwise:

(a) words used in the singular include the plural and words used in the plural include the singular;

(b) if a word or phrase is defined in this Agreement, its other grammatical forms, as used in this Agreement, shall have a corresponding meaning;

(c) reference to any gender includes the other gender and the neuter;

(d) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation";

(e) the words "shall" and "will" are used interchangeably and have the same meaning;

(f) the word "or" shall have the inclusive meaning represented by the phrase "and/or";

(g) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including";

(h) all references 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;

(i) whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified;

(j) accounting terms used herein shall have the meanings historically ascribed to them by MII and its Subsidiaries, including B&W for this purpose, in its and their internal accounting and financial policies and procedures in effect immediately prior to the date of this Agreement;

(k) reference to any Article, Section or Schedule means such Article or Section of, or such 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;

(l) 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;

(m) reference to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and not prohibited by this Agreement;

(n) reference to any Law (including statutes and ordinances) means such Law (including any and all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;

(o) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement; and any reference to a third party shall be deemed to mean a Person who is not a Party or an Affiliate of a Party;

(p) if there is any conflict between the provisions of the main body of this Agreement and the Schedules hereto, the provisions of the main body of this Agreement shall control unless explicitly stated otherwise in such Schedule;

(q) unless otherwise specified in this Agreement, all references to dollar amounts herein shall be in respect of lawful currency of the U.S.;

(r) the titles to Articles and headings of Sections contained in this Agreement, in any 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; and

(s) any portion of this Agreement obligating a Party to take any action or refrain from taking any action, as the case may be, shall mean that such Party shall also be obligated to cause its relevant Subsidiaries to take such action or refrain from taking such action, as the case may be.

ARTICLE II ASSIGNMENT OF EMPLOYEES

Section 2.1 *Active Employees.*

(a) B&W Employees. Except as otherwise set forth in this Agreement, effective not later than the day immediately following the Distribution Date, the employment of each individual (collectively, the “B&W Employees”) whose employment duties are to be primarily related to the business activities of the B&W Group after the Distribution shall be continued by a member of the B&W Group or shall be assigned and transferred to a member of the B&W Group (in each case, as determined by B&W). Each of the Parties agrees to execute, and to seek to have the applicable employees execute, such documentation as may be necessary to reflect such assignments and transfers.

(b) McDermott Employees. Except as otherwise set forth in this Agreement, effective not later than the day immediately following the Distribution Date, the employment of each individual (collectively, the “McDermott Employees”) whose employment duties are to be primarily related to the business activities of the McDermott Group after the Distribution shall be continued by a member of the McDermott Group or shall be assigned and transferred to a member of the McDermott Group (in each case as determined by MII). Each of the Parties agrees to execute, and to seek to have the applicable employees execute, such documentation as may be necessary to reflect such assignments and transfers.

(c) At-Will Status. Notwithstanding the above or any other provision of this Agreement, nothing in this Agreement shall create any obligation on the part of any member of the McDermott Group or any member of the B&W Group to continue the employment of any employee for any period following the date of this Agreement or the Distribution or to change the employment status of any employee from “at will,” to the extent such employee is an “at will” employee under applicable law.

(d) Severance. The Distribution and the assignment, transfer or continuation of the employment of employees as contemplated by this Section 2.1 shall not be deemed a severance of employment of any employee for purposes of this Agreement and any plan, policy, practice or arrangement of any member of the McDermott Group or any member of the B&W Group.

(e) Change of Control/Change in Control. Neither the completion of the Distribution nor any transaction in connection with the Distribution shall be deemed a “change of control” or “change in control” for purposes of any plan, policy, practice or arrangement relating to directors, employees or consultants of any member of the McDermott Group or any member of the B&W Group.

Section 2.2 *Former Employees.*

(a) General Principles. Except as otherwise provided in this Agreement, each former employee of any member of the McDermott Group or any member of the B&W Group as of the Distribution Date will be considered a former employee of the McDermott Group or the B&W Group based on his employer as of his first day of employment with any McDermott Entity or B&W Entity.

(b) Former McDermott Employees. For purposes of this Agreement, former employees of the McDermott Group shall be deemed to include all employees who, as of their first day of employment, were employed by a McDermott Entity and will not be either a B&W Employee or a McDermott Employee (collectively, the “Former McDermott Employees”).

(c) Former B&W Employees. For purposes of this Agreement, former employees of the B&W Group shall be deemed to include all employees who, as of their first day of employment, were employed by a B&W Entity and will not be either a B&W Employee or a McDermott Employee (collectively, the “Former B&W Employees”).

Section 2.3 *Employment Law Obligations.*

(a) WARN Act. After the Distribution Date, (i) MII or MI shall be responsible for providing any necessary WARN notice (and meeting any similar state law notice requirements) with respect to any termination of any McDermott Employee and (ii) B&W or BWICO shall be responsible for providing any necessary WARN notice (and meeting any similar state law notice requirements) with respect to any termination of any B&W Employee.

(b) Compliance With Employment Laws. On and after the Distribution Date, (i) each member of the McDermott Group shall be responsible for adopting and maintaining any policies or practices, and for all other actions and inactions, necessary to comply with employment-related laws and requirements relating to the employment of its McDermott Employees and the treatment of any applicable Former McDermott Employees in respect of their former employment, and (ii) each member of the B&W Group shall be responsible for adopting and maintaining any policies or practices, and for all other actions and inactions, necessary to comply with employment-related laws and requirements relating to the employment of its B&W Employees and the treatment of any applicable Former B&W Employees in respect of their former employment.

Section 2.4 *Employee Records.*

(a) Records Relating to McDermott Employees and Former McDermott Employees. All records and data in any form relating to McDermott Employees and Former McDermott Employees shall be the property of the McDermott Group, except that records and data pertaining to such an employee and relating to any period that such employee was (i) employed by any member of the B&W Group or (ii) covered under any employee benefit plan sponsored by any member of the B&W Group (to the extent that such records or data relate to such coverage) prior to the Distribution Date shall be jointly owned by those members of the B&W Group and the McDermott Group.

(b) Records Relating to B&W Employees and Former B&W Employees. All records and data in any form relating to B&W Employees and Former B&W Employees shall be the property of the B&W Group,

except that records and data pertaining to such an employee and relating to any period that such employee was (i) employed by any member of the McDermott Group or (ii) covered under any employee benefit plan sponsored by any member of the McDermott Group (to the extent that such records or data relate to such coverage) prior to the Distribution Date shall be jointly owned by those members of the McDermott Group and the B&W Group.

(c) Sharing of Records. The Parties shall use their respective commercially reasonable efforts to provide the other Parties such employee-related records and information as necessary or appropriate to carry out their respective obligations under applicable law (including any relevant privacy protection laws or regulations in any applicable jurisdictions or Privacy Contract), this Agreement, any other Ancillary Agreement or the Master Separation Agreement, and for the purposes of administering their respective employee benefit plans and policies. All information and records regarding employment, personnel and employee benefit matters of McDermott Employees and Former McDermott Employees shall be accessed, retained, held, used, copied and transmitted after the Distribution Date by members of the McDermott Group in accordance with all applicable laws, policies and Privacy Contracts relating to the collection, storage, retention, use, transmittal, disclosure and destruction of such records. All information and records regarding employment, personnel and employee benefit matters of B&W Employees and Former B&W Employees shall be accessed, retained, held, used, copied and transmitted after the Distribution Date by members of the B&W Group in accordance with all applicable laws, policies and Privacy Contracts relating to the collection, storage, retention, use, transmittal, disclosure and destruction of such records.

(d) Access to Records. To the extent not inconsistent with this Agreement and any applicable privacy protection laws or regulations or Privacy Contracts, access to such records after the Distribution Date will be provided to members of the McDermott Group and members of the B&W Group in accordance with the Master Separation Agreement. In addition, notwithstanding anything to the contrary, MII and MI shall be provided reasonable access to those records necessary for their administration of any plans or programs on behalf of McDermott Employees and Former McDermott Employees after the Distribution Date as permitted by any applicable privacy protection laws or regulations or Privacy Contracts. MII and MI shall also be permitted to retain copies of all restrictive covenant agreements with any B&W Employee or Former B&W Employee in which any member of the McDermott Group has a valid business interest. In addition, B&W and BWICO shall be provided reasonable access to those records necessary for their administration of any plans or programs on behalf of B&W Employees and Former B&W Employees after the Distribution Date as permitted by any applicable privacy protection laws or regulations or Privacy Contracts. B&W and BWICO shall also be permitted to retain copies of all restrictive covenant agreements with any McDermott Employee or Former McDermott Employee in which any member of the B&W Group has a valid business interest.

(e) Maintenance of Records. With respect to retaining, destroying, transferring, sharing, copying and permitting access to all such information, MII and B&W shall (and shall cause their respective Subsidiaries to) comply with all applicable laws, regulations, Privacy Contracts and internal policies, and shall indemnify and hold harmless each other from and against any and all liability, claims, actions, and damages that arise from a failure (by the indemnifying party or its Subsidiaries or their respective agents) to so comply with all applicable laws, regulations, Privacy Contracts and internal policies applicable to such information.

(f) No Access to Computer Systems or Files. Except as set forth in the Master Separation Agreement or any Ancillary Agreement, no provision of this Agreement shall give (i) any member of the McDermott Group direct access to the computer systems or other files, records or databases of any member of the B&W Group or (ii) any member of the B&W Group direct access to the computer systems or other files, records or databases of any member of the McDermott Group, unless specifically permitted by the owner of such systems, files, records or databases.

(g) Relation to Master Separation Agreement. The provisions of this Section 2.4 shall be in addition to, and not in derogation of, the provisions of the Master Separation Agreement governing Confidential Information, including Sections 6.3, 6.4 and 6.5 of the Master Separation Agreement.

(h) Confidentiality. Except as otherwise set forth in this Agreement, all records and data relating to Employees shall, in each case, be subject to the confidentiality provisions of the Master Separation Agreement and any other applicable agreement and applicable law.

(i) Cooperation. Each Party shall use commercially reasonable efforts to cooperate to share, retain and maintain data and records that are necessary or appropriate to further the purposes of this Section 2.4 and for each Party to administer its respective benefit plans to the extent consistent with this Agreement and applicable law, and each Party agrees to cooperate as long as is reasonably necessary to further the purposes of this Section 2.4. Except as provided under any Ancillary Agreement, no Party shall charge another Party a fee for such cooperation.

ARTICLE III EQUITY AND INCENTIVE COMPENSATION PLANS

Section 3.1 *General Principles*.

(a) For the avoidance of doubt, the provisions of this Article III shall not apply unless the Distribution takes place. MII and B&W shall take any and all reasonable action as shall be necessary and appropriate to further the provisions of this Article III.

(b) Where an award granted under one of the MII Legacy Equity Plans is replaced by an award under the B&W New Equity Plan in accordance with the provisions of this Article III, such award generally shall be on terms which are in all material respects identical to the terms of the award which it replaces (including any requirements of continued employment) but subject to any necessary changes to take into account that (i) the award relates to B&W Common Stock, (ii) the B&W New Equity Plan is administered by B&W, (iii) if applicable, the grantee under the award is employed or affiliated with a new employer or plan sponsor, and (iv) the award is not subject to any performance conditions. Where an award granted under one of the MII Legacy Equity Plans is adjusted in accordance with the provisions of this Article III, such award shall otherwise continue to retain the same terms and conditions of the original award, subject to any necessary changes to take into account the adjustments required by this Article III.

(c) Following the Distribution, a grantee who has outstanding awards under one or more of the MII Legacy Equity Plans and/or replacement awards under the B&W New Equity Plan shall be considered to have been employed by the applicable plan sponsor before and after the Distribution for purposes of (1) vesting and (2) determining the date of termination of employment as it applies to any such award.

(d) Notwithstanding the other provisions of this Article III, in the case of Michael S. Taff, fifty percent (50%) of the unvested awards otherwise subject to Section 3.2(a) shall be treated as if subject to Section 3.2(b), fifty percent (50%) of the unvested awards otherwise subject to Section 3.3(a) shall be treated as if subject to Section 3.3(b), fifty percent (50%) of the unvested awards otherwise subject to Section 3.4(a) shall be treated as if subject to Section 3.4(b) and fifty percent (50%) of the awards otherwise subject to Section 3.5(a) shall be treated as if subject to Section 3.5(b).

(e) No award described in this Article III, whether outstanding or to be issued, adjusted, substituted or cancelled by reason of or in connection with the Distribution, shall be adjusted, settled, cancelled, or exercisable, until in the judgment of the administrator of the applicable plan or program such action is consistent with all applicable law, including federal securities laws. Any period of exercisability will not be extended on account of a period during which such an award is not exercisable in accordance with the preceding sentence.

Section 3.2 *Restricted Stock*.

(a) Each grantee under any of the MII Legacy Equity Plans who will be a B&W Employee and who will hold, as of the Distribution Date, one or more MII RSAs that are unvested as of the Distribution Date (and will not become vested as of the Distribution Date) shall receive, on the last to occur of the Distribution

Date and the Registration Statement Effectiveness Date, as a replacement award in substitution for each such MII RSA (which shall be cancelled), a number of restricted shares of B&W Common Stock (a "Replacement B&W RSA") under the B&W New Equity Plan having a value immediately following the Distribution Date equal to the value of the MII RSA (calculated using the Pre-Distribution MII Share Price), as calculated pursuant to the following provisions. In each case, the number of shares of B&W Common Stock subject to the Replacement B&W RSA shall be equal to (x) divided by (y), where (x) is the Pre-Distribution MII Share Price multiplied by the number of shares of MII Common Stock subject to the MII RSA that is being cancelled and replaced pursuant to this Section 3.2(a), and (y) is the Post-Distribution B&W Share Price, with the resulting number of shares subject to the Replacement B&W RSAs being rounded up or down to the nearest whole share. B&W shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the delivery of shares of B&W Common Stock to B&W Employees and the vesting of Replacement B&W RSAs and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities in respect of the delivery and vesting of all such restricted shares. Except as provided in the foregoing provisions of this Section 3.2(a), Replacement B&W RSAs shall be granted on terms which are in all material respects identical (including with respect to vesting) to the terms of the MII RSAs which they replace.

(b) Each grantee under any of the MII Legacy Equity Plans who will be a McDermott Employee and who will hold, as of the Distribution Date, one or more MII RSAs that are unvested as of the Distribution Date (and will not become vested as of the Distribution Date), shall, for each such MII RSA (in lieu of receiving any restricted shares of B&W Common Stock in connection with such MII RSA), receive a number of additional restricted shares of MII Common Stock (the "Additional MII RSA"), under one of the MII Legacy Equity Plans. In each case, the number of shares of MII Common Stock subject to an Additional MII RSA shall be equal to the product of (x) and (y), where (x) is the number of shares of MII Common Stock covered by the MII RSA and (y) is equal to (a) the Pre-Distribution MII Share Price minus the Post-Distribution MII Share Price, divided by (b) the Post-Distribution MII Share Price, with the resulting number of shares subject to the Additional MII RSA being rounded up or down to the nearest whole share. MII (or one or more of the MII Subsidiaries, as designated by MII) shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the Additional MII RSAs and (ii) responsible for remitting the appropriate tax or withholding amounts to the appropriate taxing authorities in respect of the distribution and vesting of all such restricted shares. Except as provided in the foregoing provisions of this Section 3.2(b), Additional MII RSAs shall be granted on terms which are in all material respects identical (including with respect to vesting) to the terms of the MII RSAs with respect to which they are granted.

(c) Each grantee under the MII Legacy Equity Plans who will not be a McDermott Employee or B&W Employee (including each B&W Legacy Award Holder, each MII Legacy Award Holder and each Former B&W Officer) and who holds one or more MII RSAs that become vested as of the Distribution Date (whether pursuant to the terms of the applicable MII RSAs or the terms of any agreement between MII and such grantee) shall retain each such MII RSA and shall receive, on the last to occur of the Distribution Date and the Registration Statement Effectiveness Date, a number of shares of B&W Common Stock equal to the number of shares received by a stockholder of MII Common Stock in connection with the Distribution with respect to the number of shares of MII Common Stock subject to such MII RSA, with the resulting number of shares of B&W Common Stock being rounded up or down to the nearest whole share. MII (or one or more of the MII Subsidiaries, as designated by MII) shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the MII RSAs to be issued in accordance with this Section 3.2(c) and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities. B&W shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the distribution of B&W Common Stock as described in this Section 3.2(c) and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities.

Section 3.3 Restricted Stock Units.

(a) Each B&W Legacy Award Holder and each grantee under any of the MII Legacy Equity Plans who will be a B&W Employee and (in either case) who holds, as of the Distribution Date, one or more MII RSUs shall receive, on the last to occur of the Distribution Date and the Registration Statement Effectiveness Date, as a replacement award in substitution for each such MII RSU (which shall be cancelled), a number of restricted stock units with respect to and payable in shares of B&W Common Stock or (if, but only if, provided for under the terms of the applicable MII RSU) cash (“Replacement B&W RSUs”) under the B&W New Equity Plan having a value immediately after the Distribution Date equal to the value of the shares of MII Common Stock subject to the MII RSU (calculated using the Pre-Distribution MII Share Price), as calculated pursuant to the following provisions. In each case, the number of Replacement B&W RSUs shall be equal to (x) divided by (y), where (x) is the Pre-Distribution MII Share Price multiplied by the number of MII RSUs that are being cancelled and replaced pursuant to this Section 3.3(a), and (y) is the Post-Distribution B&W Share Price, with the resulting number of Replacement B&W RSUs being rounded up or down to the nearest whole unit. B&W shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the distribution of B&W Common Stock to B&W Legacy Award Holders and B&W Employees and the vesting of Replacement B&W RSUs and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities in respect of the distribution and vesting of all such restricted stock units. Except as provided in the foregoing provisions of this Section 3.3(a), Replacement B&W RSUs shall be granted on terms which are in all material respects identical (including with respect to vesting) to the terms of the MII RSUs which they replace.

(b) Each MII Legacy Award Holder and each grantee under any of the MII Legacy Equity Plans who will be a McDermott Employee and (in either case) who will hold one or more MII RSUs as of the Distribution Date shall receive, for each award of MII RSUs (in lieu of receiving any B&W restricted or deferred stock units in connection with such MII RSUs), a number of additional restricted or deferred (as applicable) stock units with respect to MII Common Stock (the “Additional MII RSUs”), under one of the MII Legacy Equity Plans. In each case, the number of shares of MII Common Stock subject to an award of Additional MII RSUs shall be equal to the product of (x) and (y), where (x) is the number of shares of MII Common Stock covered by the original award of MII RSUs and (y) is equal to (a) the Pre-Distribution MII Share Price minus Post-Distribution MII Share Price, divided by (b) the Post-Distribution MII Share Price, with the resulting number of shares subject to the Additional MII RSUs being rounded up or down to the nearest whole share. MII (or one or more of the MII Subsidiaries, as designated by MII) shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the vesting of the Additional MII RSUs or distribution of MII Common Stock to MII Legacy Award Holders and McDermott Employees and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities in respect of the distribution and vesting of all such restricted stock units. Except as provided in the foregoing provisions of this Section 3.3(b), Additional MII RSUs shall be granted on such terms which are in all material respects identical (including with respect to vesting) to the terms of the MII RSUs with respect to which they are granted.

(c) Each Former B&W Officer who will hold MII RSUs as of the Distribution Date shall receive, on the last to occur of the Distribution Date and the Registration Statement Effectiveness Date, upon full settlement of such MII RSUs effective as of the Distribution Date, a number of shares of MII Common Stock payable with respect to such MII RSUs, plus an additional number of shares of B&W Common Stock (subject to applicable tax withholding) equal to the number of shares of B&W Common Stock that would have been distributed in the Distribution with respect to the number of shares of MII Common Stock subject to grantee’s vested MII RSUs. MII (or one or more of the MII Subsidiaries, as designated by MII) shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the distribution of MII Common Stock upon settlement of an MII RSU in accordance with this Section 3.3(c) and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities. B&W shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the distribution of B&W Common Stock as described in this Section 3.3(c) and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities.

Section 3.4 *Stock Options*.

(a) Each grantee under any of the MII Legacy Equity Plans (i) who is a B&W Legacy Award Holder or will be a B&W Employee, or who will not be a B&W Employee but will serve on the board of directors of B&W and not on the board of directors of MII immediately after the Distribution Date, and (ii) who holds as of the Distribution Date, one or more MII Options, shall receive, as a replacement award in substitution for each such MII Option (which shall be cancelled), an option to purchase a number of shares of B&W Common Stock under the B&W New Equity Plan (a "Replacement B&W Option") having a value (calculated using the Post-Distribution B&W Share Price) equal to the value of the MII Common Stock subject to the MII Option (calculated using the Pre-Distribution MII Share Price), as calculated pursuant to the following provisions. The number of shares of B&W Common Stock subject to a Replacement B&W Option shall be equal to the product of (i) the number of shares of MII Common Stock subject to an MII Option as of the Distribution Date and (ii) a fraction, the numerator of which is the Pre-Distribution MII Share Price and the denominator of which is the Post-Distribution MII Share Price. Each such Replacement B&W Option shall have the same comparative ratio of the exercise price to the Post-Distribution B&W Share Price as the exercise price of each MII Option to the Pre-Distribution MII Share Price. B&W shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the exercise of Replacement B&W Options issued in accordance with this Section 3.4(a) and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities. Replacement B&W Options shall not be exercisable until the Registration Statement Effectiveness Date. Except as provided in the foregoing provisions of this Section 3.4(a), Replacement B&W Options granted under this Section 3.4(a) shall be granted on terms which are in all material respects identical (including with respect to vesting) to the terms of the MII Options with respect to which they replace.

(b) Each grantee under any of the MII Legacy Equity Plans (i) who is an MII Legacy Award Holder or will be a McDermott Employee, or who will not be a McDermott Employee but will serve on the board of directors of MII and not on the board of directors of B&W immediately after the Distribution Date, and (ii) who will hold one or more MII Options as of the Distribution Date, shall receive, in substitution for each such MII Option (which shall be cancelled), an option to purchase shares of MII Common Stock under one of the MII Legacy Equity Plans (a "Post-Distribution MII Option") having a value (calculated using the Post-Distribution MII Share Price) equal to the value of the shares of MII Common Stock subject to the MII Option (calculated using the Pre-Distribution MII Share Price), as calculated pursuant to the following provisions. The number of shares of MII Common Stock subject to a Post-Distribution MII Option shall be equal to the product of (i) the number of shares of MII Common Stock subject to an MII Option as of the Distribution Date and (ii) a fraction, the numerator of which is the Pre-Distribution MII Share Price and the denominator of which is the Post-Distribution B&W Share Price. Each such Post-Distribution MII Option shall have the same comparative ratio of the exercise price to the Post-Distribution MII Share Price as the exercise price of each MII Option to the Pre-Distribution MII Share Price. MII (or one or more of the MII Subsidiaries, as designated by MII) shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the exercise of Post-Distribution MII Options issued in accordance with this Section 3.4(b) and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities. Except as provided in the foregoing provisions of this Section 3.4(b), Post-Distribution MII Options shall be granted on terms which are in all material respects identical (including with respect to vesting) to the terms of the MII Options with respect to which they are substituted.

(c) Each grantee under any of the MII Legacy Equity Plans (i) who is a Former B&W Officer, or who will serve on the board of directors of both MII and B&W immediately after the Distribution Date, and (ii) who will hold one or more MII Options as of the Distribution Date shall receive, in substitution for each such MII Option (which shall be cancelled), both a Replacement B&W Option with respect to shares of B&W Common Stock and a Post-Distribution MII Option with respect to shares of MII Common Stock, with such shares of B&W Common Stock and MII Common Stock having an aggregate value (calculated using the Post-Distribution MII Share Price and the Post-Distribution B&W Share Price) equal to the value of the shares of MII Common Stock subject to the MII Option (calculated using the Pre-Distribution MII

Share Price), as calculated pursuant to the following provisions. In each case, the number of shares of MII Common Stock subject to the Post-Distribution MII Option shall be determined by multiplying the aggregate fair market value of the number of shares of MII Common Stock subject to the MII Option using the Pre-Distribution MII Share Price by a fraction, the numerator of which is the Post-Distribution MII Share Price and the denominator of which is the Post-Distribution MII Share Price plus the Post-Distribution B&W Share Price. In each case, the number of shares of B&W Common Stock subject to the Replacement B&W Option shall be determined by multiplying the fair market value of the number of shares of MII Common Stock subject to the MII Option using the Pre-Distribution MII Share Price by a fraction the numerator of which is the Post-Distribution B&W Share Price and the denominator of which is the Post-Distribution MII Share Price plus the Post-Distribution B&W Share Price. Each of the Replacement B&W Options and the Post-Distribution MII Options shall have the same comparative ratio of the exercise price to the Post-Distribution B&W Share Price and Post-Distribution MII Share Price, respectively, as the exercise price of the MII Option being replaced to the Pre-Distribution MII Share Price. MII (or one or more of the MII Subsidiaries, as designated by MII) shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the exercise of Post-Distribution MII Options issued in accordance with this Section 3.4(c) and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities. Replacement B&W Options shall not be exercisable until the Registration Statement Effectiveness Date. B&W shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the exercise of Replacement B&W Options issued in accordance with this Section 3.4(c) and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities. Except as provided in the foregoing provisions of this Section 3.4(c), Replacement B&W Options and Post-Distribution MII Options shall be granted on such terms which are in all material respects identical (including with respect to vesting) to the terms of the MII Options with respect to which they are granted.

Section 3.5 *Performance-Based Awards.*

(a) Each grantee under any of the MII Legacy Equity Plans who is a B&W Legacy Award Holder or will be a B&W Employee and (in either case) who holds, as of the Distribution Date, one or more performance-based awards as of the Distribution Date shall receive, on the last to occur of the Distribution Date and the Registration Statement Effectiveness Date, as a replacement award in substitution for each such performance-based award (which shall be cancelled), a number of restricted stock units with respect to and payable in shares of B&W Common Stock (“Replacement B&W Performance RSUs”) under the B&W New Equity Plan. The Replacement B&W Performance RSUs will have a value (calculated using the Post-Distribution B&W Share Price) equal to the value of the shares of MII Common Stock (calculated using the Pre-Distribution MII Share Price) that would vest under the performance-based award at target, as calculated pursuant to the following provisions. In each case, the number of Replacement B&W Performance RSUs shall be equal to (x) divided by (y), where (x) is the Pre-Distribution MII Share Price multiplied by the number of shares of MII Common Stock subject to the performance-based awards at target performance that are being cancelled and replaced pursuant to this Section 3.5(a), and (y) is the Post-Distribution B&W Share Price, with the resulting number of Replacement B&W Performance RSUs being rounded up or down to the nearest whole unit. B&W shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the distribution of B&W Common Stock in accordance with this Section 3.5(a) and the vesting of Replacement B&W Performance RSUs and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities in respect of the distribution and vesting of all such restricted stock units. Continued employment conditions applicable to such awards will apply to the converted award.

(b) Each grantee under any of the MII Legacy Equity Plans who is an MII Legacy Award Holder or will be a McDermott Employee and (in either case) who will hold one or more performance-based equity awards as of the Distribution Date, shall receive, as a replacement award in substitution for each such performance-based award (which shall be cancelled), a number of restricted stock units with respect to and payable in shares of MII Common Stock (“Replacement MII Performance RSUs”) under one of the MII

Legacy Equity Plans. In each case, the Replacement MII Performance RSUs will have a value (calculated using the Post-Distribution MII Share Price) equal to the value of the shares of MII Common Stock (calculated using the Pre-Distribution MII Share Price) that would vest under the performance-based award at target, as determined pursuant to the following provisions. In each case, the number of Replacement MII Performance RSUs shall be equal to (x) divided by (y), where (x) is the Pre-Distribution MII Share Price multiplied by the number of shares of MII Common Stock subject to the performance-based awards at target performance that are being cancelled and replaced pursuant to this Section 3.5(b), and (y) is the Post-Distribution MII Share Price, with the resulting number of Replacement MII Performance RSUs being rounded up or down to the nearest whole unit. MII shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the distribution of MII Common Stock in accordance with this Section 3.5(c) and the vesting of Replacement MII Performance RSUs and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities in respect of the distribution and vesting of all such restricted stock units. Continued employment conditions applicable to such awards will apply to the converted award.

(c) Each grantee under the MII Legacy Equity Plans who is a Former B&W Officer and who will hold one or more performance-based equity awards as of the Distribution Date shall receive (subject to applicable tax withholding) a number of Replacement MII Performance RSUs equal to the number of shares of MII Common Stock that would have been earned at target performance for each such performance-based equity award, with the resulting number of Replacement MII Performance RSUs being rounded up or down to the nearest whole unit and shall also receive (subject to applicable tax withholding), on the last to occur of the Distribution Date and the Registration Statement Effectiveness Date, a number of Replacement B&W Performance RSUs equal to the number of shares of B&W Common Stock that would have been distributed in the Distribution with respect to the Replacement MII Performance RSUs as if each of such Replacement MII Performance RSUs had been MII Common Stock. MII (or one or more of the MII Subsidiaries, as designated by MII) shall be responsible for the satisfaction of all tax reporting and withholding requirements in respect of the distribution of MII Common Stock upon settlement of a performance-based equity award in accordance with this Section 3.5(c) and shall be responsible for remitting the appropriate tax or withholding amounts to the appropriate taxing authorities. B&W shall be responsible for (i) the satisfaction of all tax reporting and withholding requirements in respect of the distribution of B&W Common Stock upon settlement of the additional B&W restricted stock units in accordance with this Section 3.5(c) and (ii) remitting the appropriate tax or withholding amounts to the appropriate taxing authorities.

(d) Notwithstanding the foregoing provisions of this Section 3.5, the performance-based equity awards held by the persons listed on Schedule 3.5(d) which are scheduled to vest in August 2010, and which are no longer subject to performance conditions, shall be treated as if they were MII RSUs under the applicable provisions of Section 3.3.

Section 3.6 *Section 16(b) of the Exchange Act; Code Sections 162(m) and 409A.*

(a) By approving the adoption of this Agreement, the respective boards of directors of MII and B&W intend to exempt from the short-swing profit recovery provisions of Section 16(b) of the Exchange Act, by reason of the application of Rule 16b-3 thereunder, all acquisitions and dispositions of equity incentive awards by directors and executive officers of each of MII and B&W, and the respective boards of directors of MII and B&W also intend to expressly approve, in respect of any equity-based award, the use of any method for the payment of an exercise price and the satisfaction of any applicable tax withholding (specifically including the actual or constructive tendering of shares in payment of an exercise price and the withholding of option shares from delivery in satisfaction of applicable tax withholding requirements) to the extent such method is permitted under the applicable equity incentive plan and award agreement.

(b) Notwithstanding anything in this Agreement to the contrary (including the treatment of supplemental and deferred compensation plans, outstanding long-term incentive awards and annual incentive awards as described herein), MII and B&W agree to negotiate in good faith regarding the need for any treatment different from that otherwise provided herein to ensure that (i) a federal income tax deduction

for the payment of such supplemental or deferred compensation or long-term incentive award, annual incentive award or other compensation is not limited by reason of Code Section 162(m), and (ii) the treatment of such supplemental or deferred compensation or long-term incentive award, annual incentive award or other compensation does not cause the imposition of a tax under Code Section 409A.

Section 3.7 *Certain Bonus Payments.*

(a) Except to the extent otherwise provided in Section 10.1, annual incentive bonuses in respect of 2010 shall be paid to McDermott Employees and B&W Employees by MII and B&W, respectively, at the time such bonuses are normally paid (but no later than March 15, 2011) in accordance with the bonus pools determined by the Compensation Committee of the respective board of directors. The annual incentive bonuses in respect of 2010 for McDermott Employees and B&W Employees who are employed by MI on the day before the Distribution Date shall be bifurcated. Each such individual's bonus shall be the sum of: (i) the target bonus for the year, prorated for the period between January 1, 2010 and the day before the Distribution Date, and (ii) the bonus based on the applicable bonus plan provisions, prorated for the period between the Distribution Date and December 31, 2010.

(b) B&W shall assume responsibility for the grant of 2010 bonuses and liability for payment of bonuses to the individuals listed on Schedule 3.7(b) earned under the MII Executive Incentive Compensation Plan, the MII Management Incentive Compensation Plan for B&W Employees and the MI Salaried Employees Incentive Plan. MII shall maintain liability for payment of bonuses to individuals other than those listed on Schedule 3.7(b) earned under the MII Executive Incentive Compensation Plan, the MII Management Incentive Compensation Plan for MII Employees and the MI Salaried Employees Incentive Plan.

ARTICLE IV

GENERAL PRINCIPLES FOR ALLOCATION OF LIABILITIES

Section 4.1 *General Principles.*

(a) Each member of the McDermott Group and each member of the B&W Group shall take any and all reasonable action as shall be necessary or appropriate so that active participation in the McDermott Pension Plan, McDermott Thrift Plan, McDermott Welfare Plans and McDermott Benefit Arrangements by all B&W Employees and Former B&W Employees shall terminate in connection with the Distribution as and when provided under this Agreement (or if not specifically provided under this Agreement, as of 11:59 p.m. on the Distribution Date), and each member of the B&W Group shall cease to be a participating employer under the terms of such McDermott Pension Plan, McDermott Thrift Plan, McDermott Welfare Plans and McDermott Benefit Arrangements as of such time.

Each member of the B&W Group and each member of the McDermott Group shall take any and all reasonable action as shall be necessary or appropriate so that active participation in the B&W Pension Plans, B&W Thrift Plan, B&W Welfare Plans and B&W Benefit Arrangements by all McDermott Employees and Former McDermott Employees shall terminate in connection with the Distribution as and when provided under this Agreement (or if not specifically provided under this Agreement, as of 11:59 p.m. on the Distribution Date), and each member of the McDermott Group shall cease to be a participating employer under the terms of such B&W Pension Plans, B&W Thrift Plan, B&W Welfare Plans and B&W Benefit Arrangements as of such time.

Except as otherwise provided in this Agreement, one or more members of the B&W Group (as designated by B&W) shall continue to be responsible for or assume, effective as of the day after the Distribution Date, all employee benefits liabilities for B&W Employees and Former B&W Employees, and the assets relating to such employee benefits for B&W Employees and Former B&W Employees shall be

transferred to or continue to be held by one or more members of the B&W Group (as designated by B&W); and one or more members of the McDermott Group (as designated by MII) shall continue to be responsible for or assume all employee benefits liabilities for McDermott Employees and Former McDermott Employees and the assets relating to such employee benefits for McDermott Employees and Former McDermott Employees shall be transferred to or continue to be held by one or more members of the McDermott Group (as designated by MII).

(b) Except as otherwise provided in this Agreement, effective as of the day after the Distribution Date, one or more members of the B&W Group (as determined by B&W) shall assume or continue the sponsorship of, and no member of the McDermott Group shall have any further liability for or under, the following agreements, obligations and liabilities, and B&W shall indemnify each member of the McDermott Group, and the officers, directors, and employees of each member of the McDermott Group, and hold them harmless with respect to such agreements, obligations or liabilities:

(i) any and all individual agreements entered into between any member of the McDermott Group and any B&W Employee or Former B&W Employee;

(ii) any and all agreements entered into between any member of the McDermott Group and any individual who is an independent contractor providing services primarily for the business activities of the B&W Group;

(iii) any and all collective bargaining agreements, collective agreements and trade union or works council agreements entered into between any member of the McDermott Group and any union, works council or other body representing only B&W Employees or Former B&W Employees;

(iv) any and all wages, salaries, incentive compensation (as the same may be modified by this Agreement), commissions and bonuses payable to any B&W Employees or Former B&W Employees after the Distribution Date, without regard to when such wages, salaries, incentive compensation, commissions and bonuses are or may have been earned;

(v) any and all moving expenses and obligations related to relocation, repatriation, transfers or similar items incurred by or owed to any B&W Employees or Former B&W Employees, whether or not accrued as of the Distribution Date (other than such expenses and obligations incurred by MII on or prior to the Distribution Date as a result of which there is an existing liability as of the Distribution Date and items set forth on Schedule 4.1(b)(v), all of which shall remain MII's obligation);

(vi) any and all immigration-related, visa, work application or similar rights, obligations and liabilities related to any B&W Employees or Former B&W Employees; and

(vii) any and all liabilities and obligations whatsoever with respect to claims made by or with respect to any B&W Employees or Former B&W Employees in connection with any employee benefit plan, program or policy not otherwise retained or assumed by any member of the McDermott Group pursuant to this Agreement, including such liabilities relating to actions or omissions of or by any member of the B&W Group or any officer, director, employee or agent thereof on or prior to the Distribution Date.

(c) Except as otherwise provided in this Agreement, effective as of the day after the Distribution Date, no member of the B&W Group shall have any further liability for, and MII shall indemnify each member of the B&W Group, and the officers, directors, and employees of each member of the B&W Group, and hold them harmless with respect to any and all liabilities and obligations whatsoever with respect to, claims made by or with respect to any McDermott Employees or Former McDermott Employees in connection with any employee benefit plan, program or policy not otherwise retained or assumed by any member of the B&W Group pursuant to this Agreement, including such liabilities relating to actions or omissions of or by any member of the McDermott Group or any officer, director, employee or agent thereof on or prior to the Distribution Date.

Section 4.2 *Sponsorship and/or Establishment of B&W Plans*. Except as otherwise provided in this Agreement, sponsorship of benefit plans that cover solely B&W Employees and Former B&W Employees shall

become effective no later than the day after the Distribution Date by the member of the B&W Group specified on Schedule 4.2, and to the extent necessary to achieve such sponsorship, each member of the McDermott Group and each member of the B&W Group shall take appropriate action, including transfer of sponsorship of each such plan. McDermott Welfare Plans in which both (i) McDermott Employees or Former McDermott Employees and (ii) B&W Employees or Former B&W Employees participate shall be divided into two separate plans, with one covering McDermott Employees and Former McDermott Employees sponsored by a member of the McDermott Group, and the other covering B&W Employees and Former B&W Employees sponsored by a member of the B&W Group.

Section 4.3 Service Credit.

(a) Service for Eligibility and Vesting Purposes. Except as otherwise provided in any other provision of this Agreement, for purposes of eligibility and vesting under the B&W Pension Plan, B&W Thrift Plan and B&W Welfare Plans, B&W shall, and shall cause each member of the B&W Group to, credit each B&W Employee and Former B&W Employee with service for any period of employment with any member of the McDermott Group on or prior to the Distribution Date to the same extent such service would be credited if it had been performed for a member of the B&W Group.

(b) Service for Benefit Purposes. Except as otherwise provided in any other provision of this Agreement, (i) for purposes of benefit levels and accruals and benefit commencement entitlements under the B&W Pension Plan, B&W Thrift Plan and B&W Welfare Plans, B&W shall, and shall cause each member of the B&W Group to, credit each B&W Employee and Former B&W Employee with service for any period of employment with any member of the McDermott Group on or prior to the Distribution Date to the same extent that such service is taken into account pursuant to the terms of the McDermott Pension Plan, McDermott Thrift Plan and McDermott Welfare Plans, and (ii) for purposes of benefit commencement entitlements under the McDermott Pension Plan, McDermott Thrift Plan and McDermott Welfare Plans, MII shall, and shall cause each member of the McDermott Group to, credit each McDermott Employee and Former McDermott Employee with service for any period of employment with any member of the B&W Group on or prior to the Distribution Date to the same extent such service would be credited if it had been performed for a member of the McDermott Group.

(c) Evidence of Prior Service. Notwithstanding anything to the contrary, but subject to applicable law, upon reasonable request by one Party to the other Party, the first Party will provide to the other Party copies of any records available to the first Party to document such service, plan participation and membership of such Employees and cooperate with the first Party to resolve any discrepancies or obtain any missing data for purposes of determining benefit eligibility, participation, vesting and calculation of benefits with respect to any Employee.

Section 4.4 Plan Administration.

(a) Transition Services. The Parties acknowledge that the McDermott Group or the B&W Group may provide administrative services for certain of the other Party's benefit programs for a transitional period under the terms of an applicable transition services agreement. The Parties agree to enter into a business associate agreement (if required by applicable health information privacy laws) in connection with such transition services agreement.

(b) Administration. B&W shall use its best efforts to, and shall cause each member of the B&W Group to use its best efforts to, administer its benefit plans in a manner that does not jeopardize the tax-favored status of the tax-favored benefit plans maintained by any member of the McDermott Group. MII shall use its best efforts to, and shall cause each member of the McDermott Group to use its best efforts to, administer its benefit plans in a manner that does not jeopardize the tax-favored status of the tax-favored benefit plans maintained by any member of the B&W Group.

(c) Participant Elections and Beneficiary Designations. All participant elections and beneficiary designations made under any plan sponsored by a member of the McDermott Group prior to the effective date as of which assets or liabilities relating to that plan are transferred or allocated to a member of the

B&W Group shall continue in effect under any plan maintained by any member of the B&W Group to which liabilities are transferred or allocated pursuant to this Agreement until such time as any applicable participant changes his elections or beneficiary designations in accordance with the procedures of the relevant plan, as the case may be, including deferral, investment, and payment form elections, dividend elections, coverage options and levels, beneficiary designations and the rights of alternate payees under qualified domestic relations orders.

ARTICLE V

PENSION, EXCESS AND SUPPLEMENTAL PLANS

Section 5.1 *General Principles*. The B&W Pension Plans shall continue to be maintained and sponsored by one or more members of the B&W Group after the Distribution Date. Additionally, on or prior to the Distribution Date, B&W shall amend one of the B&W Pension Plans (the "B&W Transferee Plan") in order that the B&W Transferee Plan will provide to each B&W Employee and Former B&W Employee who was a participant in the McDermott Pension Plan (and each alternate payee or beneficiary of such person) (the "B&W Pension Beneficiaries") benefits identical to those accrued with respect to such person under the McDermott Pension Plan as of the close of business on April 30, 2010 (the "Initial Transfer Date") (the "Transferred Benefit"). On or prior to the Distribution Date, B&W shall also establish a trust intended to be qualified under Code Section 501(a) (the "B&W Master Trust"), and MI and B&W shall cause the transfer from the McDermott Master Trust to the B&W Master Trust of the assets of the B&W Pension Plans as described in Section 5.2. A B&W Pension Beneficiary shall not accrue benefits under the McDermott Pension Plan after the Initial Transfer Date, unless such B&W Pension Beneficiary shall become employed by any member of the McDermott Group that participates in the McDermott Pension Plan after the Distribution Date. A McDermott Employee or Former McDermott Employee shall not accrue benefits under the B&W Transferee Plan, unless such McDermott Employee or Former McDermott Employee shall become employed by any member of the B&W Group that participates in the B&W Transferee Plan. The McDermott Group and the B&W Group shall each be responsible for the funding of their respective pension plans after the Distribution Date.

Section 5.2 *Pension Transfers*.

(a) Initial Transfer. On or prior to the Distribution Date, with the assistance of the MI Actuary, MI shall establish and communicate to B&W an amount equal to 90% of the estimated asset transfer amount attributable to the Transferred Benefit, calculated as of the Initial Transfer Date in accordance with Code Section 414(l) but based on January 1, 2009 census data and trust assets as of the last business day of the month immediately preceding the month in which the Initial Transfer Date occurs, as estimated in good faith by MI (the "Initial Transfer Amount"). Following the determination of the Initial Transfer Amount by MI, MI shall cause to be transferred from the McDermott Pension Plan to the B&W Transferee Plan assets having an aggregate Value (as defined below) equal to the Initial Transfer Amount. As of June 1, 2010, the B&W Transferee Plan shall commence making the required benefit payments. Effective as of the Initial Transfer Date, B&W shall assume all liabilities with respect to the payment of benefits previously accrued under the McDermott Pension Plan by the B&W Pension Beneficiaries.

(b) Calculation of Final Transfer Amount and True-Up Adjustment. Promptly following the Initial Transfer Date, the MI Actuary shall determine the Final Transfer Amount and the True-Up Adjustment, each of which is defined herein. The "Final Transfer Amount" means the amount required to be transferred from the McDermott Pension Plan to the B&W Transferee Plan in respect of the assumption by the B&W Transferee Plan of the Transferred Benefit obligations, as determined in accordance with Code Section 414(l) and the regulations thereunder, as appropriately adjusted to reflect the following amounts arising after the Initial Transfer Date and before the True-Up Adjustment: (i) any distributions and contributions made in respect of the B&W Pension Beneficiaries; (ii) administrative expenses of the McDermott Pension Plan reasonably allocable to the B&W Pension Beneficiaries; (iii) the net gain or loss (realized and unrealized) of the McDermott Pension Plan allocable to the B&W Pension Beneficiaries;

(iv) changes in the census data from January 1, 2009 through the Initial Transfer Date; and (v) other appropriate items. Promptly upon determination of the Final Transfer Amount, MI shall cause the MI Actuary to provide to B&W a written statement of the Final Transfer Amount, a summary of the calculation of such amount and a written statement that the sum of the Initial Transfer Amount and the True-Up Adjustment satisfies the requirements of Code Section 414(l). MI and B&W shall use commercially reasonable efforts to cause the determination of the Final Transfer Amount and the True-Up Adjustment to be completed as promptly as practicable, subject to the time frames established herein, but in no event later than December 31, 2010.

(c) Transfer of True-Up Adjustment. Transfer of the True-Up Adjustment shall be made promptly after the date on which the Final Transfer Amount is determined by the MI Actuary. The "True-Up Adjustment" means: (A) if the Final Transfer Amount exceeds the Initial Transfer Amount, MI shall cause to be transferred from the McDermott Pension Plan to the B&W Transferee Plan trust assets having a Value (as defined below) equal to such excess, and (B) if the Initial Transfer Amount exceeds the Final Transfer Amount, B&W shall cause to be transferred from the B&W Transferee Plan to the McDermott Pension Plan assets having a Value equal to such excess.

(d) B&W Pension Plans Transfer. Effective as of June 30, 2010, assets attributable to the B&W Pension Plans held in the McDermott Master Trust shall be transferred to the B&W Master Trust.

(e) Assets and Value.

(i) Assets To Be Transferred. Assets to be transferred under this Article V shall be in kind and/or in cash in a manner that represents, as closely as commercially practical, a pro rata portion of each asset and position held by the applicable of the McDermott Pension Plan or the B&W Pension Plans in the McDermott Master Trust as of the date of such transfer, except that reasonable adjustments shall be made where MI determines such transfers cannot reasonably be made due to investment manager account minimums or where other considerations prevent such pro rata transfers or render such pro rata transfers impractical.

(ii) Value. For purposes of this Agreement, the "Value" of all pension assets shall be the fair market value of such assets as determined in good faith by the named fiduciary of the McDermott Master Trust based on the most recent audited account statements provided to such named fiduciary by the trustee of the McDermott Master Trust.

(f) Merger of the McDermott Pension Plan. The McDermott Pension Plan subject to the Initial Transfer Amount and/or the True-Up Adjustment may be merged into and become a part of another McDermott tax-qualified defined benefit plan. In the event of such merger, the resulting plan will be subject to any subsequent Initial Transfer Amount or True-Up Adjustment.

Section 5.3 *Excess and Supplemental Plans*.

(a) Excess Plans. The liabilities attributable to McDermott Employees and Former McDermott Employees in a B&W Excess Plan, if any, shall be assumed by a member of the McDermott Group which sponsors the McDermott Excess Plans and the liabilities attributable to B&W Employees and Former B&W Employees in a McDermott Excess Plan, if any, shall be assumed by a member of the B&W Group which sponsors a B&W Excess Plan, each effective as of the Distribution Date.

(b) Supplemental Plans. On or prior to the Distribution Date, B&W shall establish the B&W New SERP. The liabilities attributable to B&W Employees and Former B&W Employees in the McDermott SRPP shall be assumed by a member of the B&W Group which sponsors the B&W New SERP, effective as of the Distribution Date. Each member of the B&W Group shall cease to be a participating employer in the McDermott SRPP and the MII SERP, and the B&W Employees and the Former B&W Employees shall no longer participate in the McDermott SRPP or MII SERP, each effective as of the Distribution Date, unless any such B&W Employee or Former B&W Employee shall become employed by any member of the McDermott Group after such date and such member participates in the McDermott SRPP or the MII SERP and such employee is eligible for participation therein.

(c) Liability and Responsibility. B&W shall have sole responsibility for the administration of each B&W Excess Plan and the B&W New SERP and the payment of benefits thereunder to or on behalf of B&W Employees and Former B&W Employees, and no member of the McDermott Group shall have any liability or responsibility therefor. MII shall have sole responsibility for the administration of each McDermott Excess Plan and the McDermott SRPP and the payment of benefits thereunder to or on behalf of McDermott Employees and Former McDermott Employees, and no member of the B&W Group shall have any liability or responsibility therefor.

ARTICLE VI
THRIFT PLANS

Section 6.1 *General Principles*. On or prior to the Distribution Date, B&W shall establish and adopt a qualified employee cash or deferred arrangement under Code Section 401(k) (the “B&W Thrift Plan”) intended to be qualified under Code Section 401(a) and containing provisions that will provide, among other things, (i) benefits for each B&W Employee and Former B&W Employee who was a participant (or former participant with a remaining account balance) in the McDermott Thrift Plan as of the Distribution Date (and each beneficiary and alternate payee of such person) (the “B&W Thrift Plan Beneficiaries”) identical (except as provided in this Article VI) to those in effect for the B&W Thrift Plan Beneficiaries under the McDermott Thrift Plan as of the date of transfer of assets and liabilities with respect to such plan (as described below), and (ii) McDermott Employees or Former McDermott Employees (and each beneficiary or alternate payee of such person) (the “McDermott Thrift Plan Beneficiaries”) with participant account balances reflecting shares of B&W Common Stock received in the Distribution. Each B&W Employee who was an active participant in the McDermott Thrift Plan immediately prior to the Distribution Date shall participate in the B&W Thrift Plan effective on the Distribution Date. B&W Employees and Former B&W Employees shall not make or receive additional contributions under the McDermott Thrift Plan after the Distribution Date, unless any such B&W Employee or Former B&W Employee shall become employed by any member of the McDermott Group after such date and such member participates in the McDermott Thrift Plan. A McDermott Employee or Former McDermott Employee shall not participate in the B&W Thrift Plan after the Distribution Date, unless any such McDermott Employee or Former McDermott Employee shall become employed by any member of the B&W Group after such date and such member participates in the B&W Thrift Plan. The interest of each B&W Thrift Plan Beneficiary in the McDermott Thrift Plan attributable to employer matching contributions as of the Distribution Date shall be 100% vested on the Distribution Date. The interest of each McDermott Thrift Plan Beneficiary in the B&W Thrift Plan attributable to employer matching contributions as of the Distribution Date shall be 100% vested on the Distribution Date.

Section 6.2 *Treatment of MII Common Stock and B&W Common Stock*.

(a) B&W Common Stock Fund. The B&W Thrift Plan will provide as of the Distribution Date: (i) for the establishment of a B&W Common Stock fund; (ii) that such B&W Common Stock fund shall receive and hold all shares of B&W Common Stock to be distributed in the Distribution on behalf of B&W Thrift Plan Beneficiaries and McDermott Thrift Plan Beneficiaries; (iii) that, following the Distribution Date, contributions made by or on behalf of B&W Thrift Plan Beneficiaries may be allocated to the B&W Common Stock fund; (iv) that the McDermott Thrift Plan Beneficiaries will be prohibited from increasing their holdings in the B&W Common Stock fund; (v) that the McDermott Thrift Plan Beneficiaries may elect to liquidate their holdings in the B&W Common Stock fund and invest those monies in any other investment fund offered under the B&W Thrift Plan; and (vi) that the McDermott Thrift Plan Beneficiaries may elect to receive their holdings in the B&W Thrift Plan in accordance with the distribution options provided under such plan to terminated employees. Additionally, B&W shall cause the B&W Thrift Plan to provide that the McDermott Thrift Plan Beneficiaries shall participate in the B&W Thrift Plan in respect of their accounts thereunder; provided, however, B&W may in its discretion provide that the B&W Common Stock fund shall no longer be offered as an investment alternative under the B&W Thrift Plan.

(b) McDermott Common Stock Fund. MI shall amend the McDermott Thrift Plan, on or prior to the Distribution Date, to provide that, following the Distribution: (i) the MII Common Stock fund will hold the assets of the accounts of the B&W Thrift Plan Beneficiaries invested in the MII Common Stock fund; (ii) the B&W Thrift Plan Beneficiaries will be prohibited from increasing their holdings in the MII Common Stock fund; (iii) the B&W Thrift Plan Beneficiaries may elect to liquidate their holdings in the MII Common Stock fund and invest those monies in any other investment fund offered under the McDermott Thrift Plan; and (iv) the B&W Thrift Plan Beneficiaries may elect to receive their holdings in the MII Thrift Plan in accordance with the distribution options available under such plan to terminated employees. MI shall cause the McDermott Thrift Plan to provide that B&W Thrift Plan Beneficiaries shall participate in the McDermott Thrift Plan in respect of their accounts thereunder; provided, however, MI may in its discretion provide that the MII Common Stock fund shall no longer be offered as an investment alternative under the McDermott Thrift Plan.

Section 6.3 *Transfer of Accounts*. Before or as soon as reasonably practicable after the Distribution Date, but in no event later than six months following the Distribution Date, MI shall cause to be transferred from the trust under the McDermott Thrift Plan to the trust under the B&W Thrift Plan the aggregate amount that is credited to the accounts of the B&W Thrift Plan Beneficiaries as of the date of transfer, but not less than or more than permitted by applicable law, as determined by MI, save and except for the portion of the MII Common Stock fund attributable to the accounts of the B&W Thrift Plan Beneficiaries. The transfer shall, to the extent reasonably possible, be an in-kind transfer, subject to the reasonable consent of the trustee of the B&W Thrift Plan trust and shall include the transfer of the aggregate assets held in the accounts relating to each B&W Thrift Plan Beneficiary under the McDermott Thrift Plan and any participant loan notes held under such plans. MI shall cause the McDermott Thrift Plan to allocate to the B&W Thrift Plan the portion of any forfeiture account under the McDermott Thrift Plan that relates to forfeiture by Former B&W Employees consistent with MI's recent past practice regarding allocation of forfeitures under the McDermott Thrift Plan.

ARTICLE VII WELFARE PLANS

Section 7.1 *Establishment of B&W Welfare Plans*. Except as provided below, the members of the B&W Group who had previously adopted a McDermott Welfare Plan and were participating employers therein on the Distribution Date ("Participating B&W Employers") shall, at 11:59 p.m. on that date, withdraw from such participation, and, effective as of the Distribution Date, one or more of the Participating B&W Employers shall assume sponsorship, under newly established welfare plans, of the coverage and benefits which were offered under such plans to the B&W Employees and the Former B&W Employees (and their eligible spouses and dependents as the case may be) of the Participating B&W Employers (collectively, the "B&W Welfare Plan Participants"). Such coverage and benefits shall then be provided to the B&W Welfare Plan Participants on an uninterrupted basis under the newly established B&W Welfare Plans which shall contain substantially the same benefit provisions as in effect under the corresponding McDermott Welfare Plan on the Distribution Date. Except as provided below, effective as of the day after the Distribution Date, liabilities relating to the B&W Welfare Plan Participants shall be spun off from each McDermott Welfare Plan and allocated to the corresponding new B&W Welfare Plan.

As a result of withdrawal from participation in the McDermott Welfare Plans by the Participating B&W Employers, the B&W Welfare Plan Participants shall lose eligibility for coverage under the McDermott Welfare Plans at the close of business on the Distribution Date. B&W Welfare Plan Participants shall not participate in any McDermott Welfare Plans after the Distribution Date, unless they shall become employed after the Distribution Date by any member of the McDermott Group that participates in such plans and meet the terms and conditions of participation thereunder. McDermott Employees and Former McDermott Employees shall not participate in any B&W Welfare Plans after the Distribution Date, unless they shall become employed after the Distribution Date by any member of the B&W Group that participates in such plans and meet the terms and conditions of participation thereunder.

Section 7.2 *Transitional Matters Under B&W Welfare Plans.*

(a) Treatment of Claims Incurred.

(i) Self-Insured Benefits. B&W shall assume and shall be responsible for the funding of payment for all unpaid covered claims and eligible expenses incurred by any B&W Employees and Former B&W Employees under the McDermott Welfare Plans and McDermott Benefit Arrangements on or prior to the Distribution Date that are not described in section 7.2(a)(ii) below. No member of the McDermott Group shall be responsible for any liability with respect to any such claims or expenses.

(ii) Insured Benefits. With respect to benefits that, on or prior to the Distribution Date, are provided for under the McDermott Welfare Plans through the purchase of insurance, MI shall cause the McDermott Welfare Plans to fully perform, pay and discharge all claims of B&W Welfare Plan Participants that are incurred prior to the Distribution Date.

(iii) Claims Incurred. For purposes of this Section 7.2(a), a claim or liability is deemed to be incurred (A) with respect to medical, dental, vision and/or prescription drug benefits, upon the rendering of health services giving rise to such claim or liability; (B) with respect to life insurance, accidental death and dismemberment and business travel accident insurance, upon the occurrence of the event giving rise to such claim or liability; (C) with respect to long-term disability benefits, upon the date of an individual's disability, as determined by the disability benefit insurance carrier or claim administrator, giving rise to such claim or liability; and (D) with respect to a period of continuous hospitalization, upon the date of admission to the hospital, unless otherwise provided under the terms of the applicable McDermott Welfare Plan or McDermott Benefit Arrangement.

(b) Credit for Deductibles and Other Limits. With respect to each B&W Welfare Plan Participant, the B&W Welfare Plans will give credit in the year of the Distribution Date for any amount paid, number of services obtained or visits provided under the comparable type McDermott Welfare Plan by such B&W Welfare Plan Participant in the year of the Distribution Date toward deductibles, out-of-pocket maximums, limits on number of services or visits, or other similar limitations to the extent such amounts are taken into account under the comparable type McDermott Welfare Plan. For purposes of any lifetime maximum benefit limit payable to a B&W Welfare Plan Participant under any B&W Welfare Plan, the B&W Welfare Plans will recognize any expenses paid or reimbursed by a McDermott Welfare Plan with respect to such participant on or prior to the Distribution Date to the same extent such expense payments or reimbursements would be recognized in respect of an active plan participant under that McDermott Welfare Plan.

(c) COBRA. Effective as of the day after the Distribution Date, B&W shall assume and satisfy all requirements under COBRA with respect to all B&W Employees and Former B&W Employees and their qualified beneficiaries, including for individuals who are already receiving benefits as of such date under COBRA.

(d) Long-Term Care Insurance. Effective as of June 30, 2010, the McDermott Welfare Plan sponsored by MI which provides long-term care insurance shall be terminated and no corresponding coverage shall be provided by any B&W Entity under any B&W Welfare Plan or otherwise.

Section 7.3 *VEBA.* MI is the grantor of a Code Section 501(c)(9) trust (the "VEBA") that holds the plan assets of a B&W Welfare Plan. On or prior to the Distribution Date, B&W or a member of the B&W Group shall assume the status as settlor and sponsor of the VEBA, and no member of the McDermott Group shall have any further responsibility or liability therefor.

Section 7.4 *Continuity of Benefits, Benefit Elections and Beneficiary Designations.*

(a) Benefit Elections and Designations. As of the day after the Distribution Date (or such other date provided for under subsection 7.4(b)), B&W shall cause the B&W Welfare Plans to recognize and give effect to all elections and designations (including all coverage and contribution elections and beneficiary designations) made by each B&W Welfare Plan Participant under, or with respect to, the corresponding

McDermott Welfare Plan for the year including the Distribution Date. Notwithstanding the foregoing, no elections with respect to long-term care insurance shall be given effect by B&W under any B&W Welfare Plan or otherwise.

(b) Additional Details Regarding Flexible Spending Accounts. To the extent any B&W Welfare Plan provides or constitutes a health care flexible spending account or dependent care flexible spending account (each a "B&W FSA"), such B&W Welfare Plan shall be effective as of January 1, 2010 rather than the day after the Distribution Date. It is the intention of the Parties that all activity under a B&W Welfare Plan Participant's flexible spending account with McDermott for the year including the Distribution Date be treated instead as activity under the corresponding B&W FSA. Accordingly, (i) any period of participation by a B&W Welfare Plan Participant in a McDermott flexible spending account during the year including the Distribution Date (the "Participation Period") will be deemed a period when the B&W Welfare Plan Participant participated in the corresponding B&W FSA; (ii) all expenses incurred during a Participation Period will be deemed incurred while the participant's coverage was in effect under the corresponding B&W FSA; and (iii) all elections and reimbursements made with respect to a Participation Period under a McDermott flexible spending account will be deemed to have been made with respect to the corresponding B&W FSA.

(c) Employer Non-elective Contributions. As of the day after the Distribution Date, B&W shall cause any B&W Welfare Plan that constitutes a cafeteria plan under Section 125 of the Code to recognize and give effect to all non-elective employer contributions payable and paid toward coverage of a B&W Welfare Plan Participant under the corresponding McDermott Welfare Plan that is a cafeteria plan under Section 125 of the Code for the applicable cafeteria plan year.

Section 7.5 *Insurance Contracts*. To the extent any McDermott Welfare Plan is funded through the purchase of an insurance contract or is subject to any stop loss contract, MI and B&W will cooperate and use their commercially reasonable efforts to replicate such insurance contracts for B&W (except to the extent changes are required under applicable state insurance laws) and to maintain any pricing discounts or other preferential terms for both MI and B&W for a reasonable term. Neither Party shall be liable for failure to obtain such pricing discounts or other preferential terms for the other Party. Each Party shall be responsible for any additional premiums, charges or administrative fees that such Party may incur pursuant to this Section 7.5.

Section 7.6 *Third-Party Vendors*. Except as provided below, to the extent any McDermott Welfare Plan is administered by a third-party vendor, MI and B&W will cooperate and use their commercially reasonable efforts to replicate any contract with such third-party vendor for B&W and to maintain any pricing discounts or other preferential terms for both MI and B&W for a reasonable term. Neither Party shall be liable for failure to obtain such pricing discounts or other preferential terms for the other Party. Each Party shall be responsible for any additional premiums, charges or administrative fees that such Party may incur pursuant to this Section 7.6.

Section 7.7 *Claims Experience*. Notwithstanding the foregoing, MI and B&W shall use commercially reasonable efforts to ensure that any claims experience under the McDermott Welfare Plans attributable to B&W Welfare Beneficiaries shall be available to the B&W Welfare Plans, as permitted by any applicable privacy protection laws or regulations or Privacy Contracts.

ARTICLE VIII BENEFIT ARRANGEMENTS

Except as otherwise provided under this Agreement, effective as of the day after the Distribution Date, B&W Employees and Former B&W Employees shall not be eligible to participate in any McDermott Benefit Arrangement.

ARTICLE IX

WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION

Effective as of the Distribution Date, B&W shall have (and, to the extent it has not previously had such obligations, assume) the obligations for all claims and liabilities relating to workers' compensation and unemployment compensation benefits for all B&W Employees and Former B&W Employees. Effective as of the Distribution Date, MII shall have (and, to the extent it has not previously had such obligations, assume) the obligations for all claims and liabilities relating to workers' compensation and unemployment compensation benefits for all McDermott Employees and Former McDermott Employees. B&W and MII shall use commercially reasonable efforts to provide that workers' compensation and unemployment insurance costs are not adversely affected for either of them by reason of the Distribution.

ARTICLE X

RETENTION, SEVERANCE AND OTHER MATTERS

Section 10.1 *Retention Agreements.*

(a) B&W Obligations. Effective as of the Distribution Date, B&W hereby assumes MII's rights and obligations arising under the retention agreements described in Schedule 10.1(a) and agrees to honor the terms and conditions of those agreements applicable to B&W as a successor under the terms of such agreements, unless the B&W Employee covered by such an agreement terminates employment with the B&W Group within 31 days after the Distribution Date for Good Reason (as defined in the relevant retention agreement) which occurs upon the Distribution Date, in which case MII shall remain obligated under the applicable retention agreement. Except for B&W's assumption of the retention agreements as described above, the terms of the retention agreements shall in all other respects be unaffected. The Parties agree that the B&W Employees who are covered by retention agreements described above are express beneficiaries of this Section 10.1(a).

(b) MII Obligations. MII shall continue to be responsible for and remain obligated under the retention agreements described in Schedule 10.1(b) and agrees to honor the terms and conditions of those agreements.

(c) Additional Obligations. B&W and MII shall each be solely responsible for any other retention arrangements entered into by any member of the B&W Group or any member of the McDermott Group, respectively, and that are not otherwise allocated by this Agreement to a member of either the McDermott Group or the B&W Group.

Section 10.2 *Severance.*

(a) Except as otherwise provided in this Agreement, immediately following the Distribution, MII shall have no liability or obligation under any MII severance plan or policy with respect to B&W Employees or Former B&W Employees (other than with respect to those individuals set forth on Schedule 10.2(a) who have accepted temporary positions with a member of the B&W Group). B&W shall be responsible for paying any severance benefits payable under the McDermott Severance Plan to individuals who transfer from employment with a member of the McDermott Group to employment with a member of the B&W Group in connection with the Distribution and who are involuntarily terminated within twelve months of the Distribution Date for reasons other than cause (other than with respect to those individuals set forth on Schedule 10.2(a)).

(b) Except as otherwise provided in this Agreement, effective after the Distribution Date, B&W shall assume and shall be responsible for administering all payments and benefits under the applicable MII severance policies or any termination agreements with Former B&W Employees whose employment terminated prior to the Distribution Date for an eligible reason under such policies or in accordance with such agreements.

Section 10.3 *Accrued Time Off*. B&W shall recognize and assume all liability for all vacation, holiday, sick leave, flex days, personal days and paid-time off with respect to B&W Employees, and B&W shall credit each B&W Employee with such accrual.

Section 10.4 *Leaves of Absence*. B&W will continue to apply the appropriate leave of absence policies applicable to inactive B&W Employees who are on an approved leave of absence as of the Distribution Date. Leaves of absence taken by B&W Employees prior to the Distribution Date shall be deemed to have been taken as employees of a member of the B&W Group.

Section 10.5 *Collective Bargaining Agreements*. The McDermott Group shall have no further liability for all collective bargaining agreements, collective agreements, multiemployer plans, pension and welfare plans and arrangements and trade union or works council agreements entered into with any member of the McDermott Group, any union, works council or other body representing only B&W Employees and/or Former B&W Employees.

Section 10.6 *Director Programs*. MII shall retain responsibility for the payment of any fees payable in respect of service on the MII board of directors that are payable but not yet paid as of the Distribution Date, and B&W shall not have any responsibility for any such payments.

Section 10.7 *Restrictive Covenants in Employment and Other Agreements*.

(a) To the fullest extent permitted by the agreements described in this Section 10.7(a) and applicable law, MII shall assign, or cause any member of the McDermott Group to assign, to B&W or a member of the B&W Group, as designated by B&W, all agreements containing restrictive covenants (including confidentiality and non-competition provisions) between a member of the McDermott Group and a B&W Employee or Former B&W Employee, with such assignment to be effective as of the Distribution Date. To the extent that assignment of such agreements is not permitted, effective as of the Distribution Date, each member of the B&W Group shall be considered to be a successor to each member of the McDermott Group for purposes of, and a third-party beneficiary with respect to, all agreements containing restrictive covenants (including confidentiality and non-competition provisions) between a member of the McDermott Group and a B&W Employee or Former B&W Employee whom B&W reasonably determines have substantial knowledge of the business activities of the B&W Group, such that each member of the B&W Group shall enjoy all the rights and benefits under such agreements (including rights and benefits as a third-party beneficiary), with respect to the business operations of the B&W Group; provided, however, that in no event shall MII be permitted to enforce such restrictive covenant agreements against B&W Employees or Former B&W Employees for action taken in their capacity as employees of a member of the B&W Group.

(b) To the fullest extent permitted by the agreements described in this Section 10.7(b) and applicable law, B&W shall assign, or cause any member of the B&W Group to assign, to MII or a member of the McDermott Group, as designated by MII, all agreements containing restrictive covenants (including confidentiality and non-competition provisions) between a member of the B&W Group and a McDermott Employee or Former McDermott Employee, with such assignment to be effective as of the Distribution Date. To the extent that assignment of such agreements is not permitted, effective as of the Distribution Date, each member of the McDermott Group shall be considered to be a successor to each member of the B&W Group for purposes of, and a third-party beneficiary with respect to, all agreements containing restrictive covenants (including confidentiality and non-competition provisions) between a member of the B&W Group and a McDermott Employee or Former McDermott Employee whom MII reasonably determines have substantial knowledge of the business activities of the McDermott Group, such that MII and each member of the McDermott Group shall enjoy all the rights and benefits under such agreements (including rights and benefits as a third-party beneficiary), with respect to the business operations of the McDermott Group; provided, however, that in no event shall B&W be permitted to enforce such restrictive covenant agreements against McDermott Employees or Former McDermott Employees for action taken in their capacity as employees of a member of the McDermott Group.

ARTICLE XI
GENERAL PROVISIONS

Section 11.1 *Preservation of Rights to Amend*. The rights of each member of the McDermott Group and each member of the B&W Group to amend, waive, or terminate any plan, arrangement, agreement, program, or policy referred to herein shall not be limited in any way by this Agreement.

Section 11.2 *Confidentiality*. Each Party agrees that any information conveyed or otherwise received by or on behalf of a Party in conjunction herewith that is not otherwise public through no fault of such Party is confidential and is subject to the terms of the confidentiality provisions set forth in the Master Separation Agreement.

Section 11.3 *Administrative Complaints/Litigation*. Except as otherwise provided in this Agreement, on and after the Distribution Date, B&W shall assume, and be solely liable for, the handling, administration, investigation and defense of actions, including ERISA, occupational safety and health, employment standards, union grievances, wrongful dismissal, discrimination or human rights and unemployment compensation claims asserted at any time against MII or any member of the McDermott Group by any B&W Employee or Former B&W Employee (including any dependent or beneficiary of any such Employee) or any other person, to the extent such actions or claims arise out of or relate to employment or the provision of services (whether as an employee, contractor, consultant or otherwise) to or with respect to the business activities of any member of the B&W Group, whether or not such employment or services were performed before or after the Distribution. To the extent that any legal action relates to a putative or certified class of plaintiffs, which includes both McDermott Employees (or Former McDermott Employees) and B&W Employees (or Former B&W Employees) and such action involves employment or benefit plan related claims, reasonable costs and expenses incurred by the Parties in responding to such legal action shall be allocated among the Parties equitably in proportion to a reasonable assessment of the relative proportion of Employees included in or represented by the putative or certified plaintiff class. The procedures contained in the indemnification and related litigation cooperation provisions of the Master Separation Agreement shall apply with respect to each Party's indemnification obligations under this Section 11.3.

Section 11.4 *Reimbursement and Indemnification*. MII and B&W hereto agrees to reimburse the other Party, within 60 days of receipt from the other Party of reasonable verification, for all costs and expenses which the other Party may incur on its behalf as a result of any of the respective MII and B&W Welfare Plans, Pension Plans, Thrift Plan and Benefit Arrangements and, as contemplated by Section 10.2, any termination or severance payments or benefits. All liabilities retained, assumed or indemnified against by B&W pursuant to this Agreement, and all liabilities retained, assumed or indemnified against by MII pursuant to this Agreement, shall in each case be subject to the indemnification provisions of the Master Separation Agreement. Notwithstanding anything to the contrary, (i) no provision of this Agreement shall require any member of the B&W Group to pay or reimburse to any member of the McDermott Group any benefit-related cost item that a member of the B&W Group has previously paid or reimbursed to any member of the McDermott Group; and (ii) no provision of this Agreement shall require any member of the McDermott Group to pay or reimburse to any member of the B&W Group any benefit-related cost item that a member of the McDermott Group has previously paid or reimbursed to any member of the B&W Group.

Section 11.5 *Costs of Compliance with Agreement*. Except as otherwise provided in this Agreement or any other Ancillary Agreement, each Party shall pay its own expenses in fulfilling its obligations under this Agreement.

Section 11.6 *Fiduciary Matters*. MII and B&W each acknowledge that actions required to be taken pursuant to this Agreement may be subject to fiduciary duties or standards of conduct under ERISA or other applicable law, and no Party shall be deemed to be in violation of this Agreement if it fails to comply with any provisions

hereof based upon its good faith determination (as supported by advice from counsel experienced in such matters) that to do so would violate such a fiduciary duty or standard. Each Party shall be responsible for taking such actions as are deemed necessary and appropriate to comply with its own fiduciary responsibilities and shall fully release and indemnify the other Party for any liabilities caused by the failure to satisfy any such responsibility.

Section 11.7 *Form S-8*. Before the Distribution or as soon as reasonably practicable thereafter and subject to applicable law, B&W shall prepare and file with the SEC a registration statement on Form S-8 (or another appropriate form) registering under the Securities Act of 1933 the offering of a number of shares of B&W Common Stock at a minimum equal to the number of shares subject to the Replacement B&W Options, the Replacement B&W RSUs, Replacement B&W Performance RSUs and the Replacement B&W RSAs. B&W shall use commercially reasonable efforts to cause any such registration statement to be kept effective (and the current status of the prospectus or prospectuses required thereby shall be maintained) as long as any Replacement B&W Options, Replacement B&W RSUs, Replacement B&W Performance RSUs or Replacement B&W RSAs may remain outstanding.

Section 11.8 *Entire Agreement*. This Agreement, together with the documents referenced herein (including the Master Separation Agreement, the Ancillary Agreements and the plans and agreements referenced herein), constitutes the entire agreement and understanding among the Parties 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 11.9 *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. Except as otherwise expressly provided in this Agreement, this Agreement is solely for the benefit of the Parties and should not be deemed to confer upon any third parties any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to this Agreement. Nothing in this Agreement is intended to amend any employee benefit plan or affect the applicable plan sponsor's right to amend or terminate any employee benefit plan pursuant to the terms of such plan. Except as otherwise provided in Section 10.1(a), the provisions of this Agreement are solely for the benefit of the Parties, and no current or former Employee, officer, director or independent contractor or any other individual associated therewith shall be regarded for any purpose as a third-party beneficiary of this Agreement. This Agreement may not be assigned by any Party, except with the prior written consent of the other Parties.

Section 11.10 *Amendment; Waivers*. No change or amendment may be made to this Agreement except by an instrument in writing signed on behalf of each of the Parties. Any Party may, at any time, (i) extend the time for the performance of any of the obligations or other acts of another Party, (ii) waive any inaccuracies in the representations and warranties of another Party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance by another Party 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 any 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 exercises thereof or of any other right.

Section 11.11 *Remedies Cumulative*. All rights and remedies existing under this Agreement or the Schedules attached hereto are cumulative to, and not exclusive of, any rights or remedies otherwise available.

Section 11.12 *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, (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, (iii) if sent by overnight courier which delivers only upon the executed 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 11.13 *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 11.14 *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 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.

Section 11.15 *Governing Law*. To the extent not preempted by applicable federal 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 11.16 *Performance*. Each of MII and B&W shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any member of the McDermott Group and any member of the B&W Group, respectively. The Parties each agree to take such further actions and to execute, acknowledge and deliver, or to cause to be executed, acknowledged and delivered, all such further documents as are reasonably requested by the other for carrying out the purposes of this Agreement or of any document delivered pursuant to this Agreement.

Section 11.17 *Construction*. This Agreement shall be construed as if jointly drafted by the Parties and no rule of construction or strict interpretation shall be applied against any Party.

Section 11.18 *Effect if Distribution Does Not Occur*. Notwithstanding anything in this Agreement to the contrary, if the Master Separation Agreement is terminated prior to the Distribution Date, this Agreement shall be of no further force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their names by a duly authorized officer as of the date first written above.

MCDERMOTT INTERNATIONAL, INC.

By: _____
Name: _____
Title: _____

MCDERMOTT INCORPORATED

By: _____
Name: _____
Title: _____

THE BABCOCK & WILCOX COMPANY

By: _____
Name: _____
Title: _____

BABCOCK & WILCOX INVESTMENT COMPANY

By: _____
Name: _____
Title: _____