

# **EXHIBIT 1**

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

GOOGLE INC.,

RB98 INC.

and

MOTOROLA MOBILITY HOLDINGS, INC.

Dated as of August 15, 2011

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**Defined Terms**

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<u>Defined Terms</u>	<u>Defined in Section</u>
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## AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is made and entered into as of August 15, 2011, by and among GOOGLE INC., a Delaware corporation ("Parent"), RB98 INC., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and MOTOROLA MOBILITY HOLDINGS, INC., a Delaware corporation (the "Company").

### RECITALS

WHEREAS, the Board of Directors of the Company has unanimously determined that this Agreement and the transactions contemplated hereby, including the Merger (as defined below), are advisable and fair to, and in the best interests of, the Company and its stockholders;

WHEREAS, the Board of Directors of the Company has unanimously adopted resolutions approving the execution of this Agreement and the consummation of the transactions contemplated hereby and recommending that the Company's stockholders adopt the agreement of merger (as such term is used in Section 251 of the Delaware General Corporation Law (the "Corporation Law")) contained in this Agreement;

WHEREAS, the Board of Directors of each of Parent and Merger Sub has approved and declared advisable and in the best interests of Parent and Merger Sub, respectively, this Agreement and the transactions contemplated hereby, including the Merger, and the Board of Directors of Merger Sub has determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to and in the best interests of its stockholder;

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with this Agreement; and

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I

#### THE MERGER

SECTION 1.01. The Merger. Upon the terms and subject to the conditions set forth herein, and in accordance with the relevant provisions of the Corporation Law, Merger Sub shall be merged with and into the Company (the "Merger") on the second (2nd) Business Day (as defined below), following the satisfaction or, to the extent permitted by applicable Law (as defined below), waiver of the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied at the Closing (as defined below) but subject to their satisfaction or, to the extent permitted by applicable Law, waiver, at the Closing) or on such other day as the parties may mutually agree. The Company shall be the surviving corporation in the Merger (the "Surviving Corporation") under the name "Motorola Mobility Holdings, Inc." and shall continue its existence under the Law of the State of Delaware. In connection with the Merger, the separate corporate existence of Merger Sub shall cease.

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SECTION 1.02. Consummation of the Merger. Upon the terms and subject to the conditions set forth herein, Merger Sub and the Company shall cause the Merger to be consummated by filing with the Secretary of State of the State of Delaware a duly executed certificate of merger (the "Certificate of Merger"), as required by the Corporation Law, which may specify the date and time mutually agreed by the parties at which the Merger will become effective, and the parties shall take all such further actions as may be required by applicable Law to make the Merger effective. Prior to the filing referred to in this Section 1.02, a closing (the "Closing") will be held at the offices of Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, New York (or such other place as the parties may mutually agree) for the purpose of confirming all the matters contained herein. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware, or at such later time as the parties shall agree and as shall be set forth in the Certificate of Merger (such time as the Merger becomes effective is referred to in this Agreement as the "Effective Time").

SECTION 1.03. Effects of the Merger. The Merger shall have the effects set forth herein and in the applicable provisions of the Corporation Law. Without limiting the generality of the foregoing, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation, all as provided under the applicable Laws of the State of Delaware.

SECTION 1.04. Certificate of Incorporation and Bylaws. The Restated Certificate of Incorporation of the Company (the "Certificate of Incorporation") shall, by virtue of the Merger, be amended and restated in its entirety to read as set forth in Annex A to this Agreement and, as so amended and restated, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as permitted by Law and this Agreement. The Restated Bylaws of the Company (the "Bylaws"), as in effect immediately prior to the Effective Time, shall, by virtue of the Merger, be amended and restated in their entirety to read as set forth in Annex B to this Agreement and, as so amended and restated, shall be the bylaws of the Surviving Corporation until thereafter amended as permitted by Law and this Agreement.

SECTION 1.05. Directors and Officers. The directors of Merger Sub immediately prior to the Effective Time and the officers of the Company immediately prior to the Effective Time shall be the directors and officers, respectively, of the Surviving Corporation until their respective death, permanent disability, resignation or removal or until their respective successors are duly elected and qualified.

SECTION 1.06. Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Merger Sub or the holders of any securities of the Company or Merger Sub, each share of common stock of the Company, par value \$0.01 per share (each, a "Share"), issued and outstanding immediately prior to the Effective Time (other than Shares owned by Parent, Merger Sub or any wholly owned

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Subsidiary (as defined below) of Parent or the Company or held in the treasury of the Company, all of which shall be canceled without any consideration being exchanged therefor, and other than Dissenting Shares (as defined below), which shall have only those rights set forth in Section 2.01 shall, subject to Section 1.10, be converted at the Effective Time into the right to receive in cash an amount per Share (subject to any applicable withholding Tax (as defined below)) equal to \$40.00, without interest (the "Merger Consideration"). At the Effective Time all such Shares shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of such Shares shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration as provided herein.

SECTION 1.07. Conversion of Common Stock of Merger Sub. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each share of common stock, \$0.01 par value, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one (1) share of common stock of the Surviving Corporation.

SECTION 1.08. Withholding Taxes. Parent and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as are required to be withheld and paid over to the applicable Governmental Entity (as defined below) under the Internal Revenue Code of 1986, as amended (the "Code"), or any applicable provision of state, local or foreign Tax Law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Shares in respect of which such deduction and withholding was made.

SECTION 1.09. Subsequent Actions. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to continue, vest, perfect or confirm of record or otherwise the Surviving Corporation's right, title or interest in, to or under any of the rights, properties, privileges, franchises or assets of the Company as a result of, or in connection with, the Merger, or otherwise to carry out the intent of this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of the Company, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of the Company or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties, privileges, franchises or assets in the Surviving Corporation or otherwise to carry out the intent of this Agreement.

SECTION 1.10. Adjustments. If at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company shall occur as a result of any reclassification, recapitalization, stock split (including a reverse stock split) or combination, exchange or readjustment of shares, or any stock dividend or stock distribution with a record date during such period, the Merger Consideration shall be equitably adjusted to reflect such change; provided, that nothing in this Section 1.10 shall be construed as permitting the Company to take any action otherwise prohibited by this Agreement.

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## ARTICLE II

### DISSENTING SHARES; PAYMENT FOR SHARES; OPTIONS

SECTION 2.01. Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, Shares that are issued and outstanding immediately prior to the Effective Time and that are held by stockholders properly exercising appraisal rights available under Section 262 of the Corporation Law (the "Dissenting Shares") shall not be converted into or be exchangeable for the right to receive the Merger Consideration, unless and until such holders shall have failed to perfect or shall have effectively withdrawn or lost their rights to appraisal under the Corporation Law. Dissenting Shares shall be treated in accordance with Section 262 of the Corporation Law. If any such holder shall have failed to perfect or shall have effectively withdrawn or lost such right to appraisal, such holder's Shares shall thereupon be converted into and become exchangeable only for the right to receive, as of the later of the Effective Time and the time that such right to appraisal shall have been irrevocably lost, withdrawn or expired, the Merger Consideration, without interest. The Company shall give Parent and Merger Sub (a) prompt notice of any written demands for appraisal of any Shares, attempted withdrawals of such demands and any other instruments served pursuant to the Corporation Law and received by the Company relating to rights to be paid the "fair value" of Dissenting Shares, as provided in Section 262 of the Corporation Law and (b) the opportunity to participate in and control all negotiations and proceedings with respect to demands for appraisal under the Corporation Law. The Company shall not, except with the prior written consent of Parent, voluntarily make or agree to make any payment with respect to any demands for appraisals of capital stock of the Company, offer to settle or settle any such demands or approve any withdrawal of any such demands.

SECTION 2.02. Payment for Shares. (a) Prior to the Effective Time, Parent will deposit or cause to be deposited, with a U.S. bank or trust company designated by Parent and reasonably acceptable to the Company (the "Paying Agent"), in trust for the benefit of holders of the Shares, sufficient cash to make the payments due pursuant to Section 1.06 on a timely basis to holders of Shares that are issued and outstanding immediately prior to the Effective Time (such amounts being hereinafter referred to as the "Payment Fund"). The Paying Agent shall, pursuant to irrevocable instructions, make the payments provided for in the preceding sentence out of the Payment Fund. Such funds may be invested by the Paying Agent as directed by Parent or the Surviving Corporation; provided, that (i) no such investment gains or losses thereon shall affect the Merger Consideration payable to the holders of Shares and following any losses that result in the amount of funds in the Payment Fund being insufficient to pay the portion of the aggregate Merger Consideration that remains unpaid, Parent shall promptly provide additional funds to the Paying Agent for the benefit of the former stockholders of the Company to the extent of such insufficiency and (ii) such investments shall be in obligations of, or guaranteed by, the United States of America. The Payment Fund shall not be used for any other purpose, except as provided in this Agreement.

(b) As soon as reasonably practicable after the Effective Time and in any event not later than the fifth (5th) Business Day following the Effective Time, the Surviving Corporation shall cause the Paying Agent to mail to each Person (as defined below) who, as of the Effective Time, was the record holder of Shares whose Shares were converted into the

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Merger Consideration pursuant to Section 1.06: (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the certificates that immediately prior to the Effective Time represented Shares (the “Certificates”) shall pass, only upon proper delivery of the Certificates to the Paying Agent) and (ii) instructions for use in effecting the surrender of the Certificates (or affidavits of loss in lieu thereof) or non-certificated Shares represented by book-entry (“Book-Entry Shares”) in exchange for the Merger Consideration. Following surrender to the Paying Agent of a Certificate (or affidavit of loss in lieu thereof and bond as provided in Section 2.02(c)) or Book-Entry Shares, together with such letter of transmittal duly executed, the holder of such Certificate or Book-Entry Shares shall be paid in exchange therefor cash in an amount (subject to any applicable withholding Tax (as defined below)) equal to the product of the number of Shares represented by such Certificate (or affidavit of loss in lieu thereof) or Book-Entry Shares multiplied by the Merger Consideration, and such Certificate shall forthwith be canceled. No interest will be paid or accrued on the cash payable upon the surrender of the Certificates or Book-Entry Shares. If payment is to be made to a Person other than the Person in whose name the Certificate surrendered is registered, it shall be a condition of payment that the Certificate so surrendered shall be properly endorsed or otherwise in proper form for transfer and that the Person requesting such payment pay any transfer or other Taxes required by reason of the payment to a Person other than the registered holder of the Certificate surrendered or establish to the satisfaction of the Surviving Corporation that such Tax has been paid or is not applicable. From and after the Effective Time and until surrendered in accordance with the provisions of this Section 2.02, each Certificate shall represent for all purposes solely the right to receive, in accordance with the terms hereof, the Merger Consideration in cash multiplied by the number of Shares evidenced by such Certificate, without any interest thereon.

(c) If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such Person of a bond in such reasonable amount as the Surviving Corporation or the Paying Agent may direct as indemnity against any claim that may be made against it with respect to such Certificate, the Paying Agent will deliver in exchange for such lost, stolen or destroyed Certificate the applicable Merger Consideration with respect to the Shares formerly represented thereby.

(d) Any portion of the Payment Fund (including the proceeds of any investments thereof) that remains unclaimed by the former stockholders of the Company for one (1) year after the Effective Time shall be delivered to the Surviving Corporation. Any former stockholders of the Company who have not complied with this Section 2.02 prior to the end of such one (1) year period shall thereafter look only to the Surviving Corporation (subject to abandoned property, escheat or other similar Laws) but only as general creditors thereof for payment of their claim for the Merger Consideration, without any interest thereon. Neither Parent nor the Surviving Corporation shall be liable to any holder of Shares for any amounts (whether in respect of such Shares or otherwise) delivered from the Payment Fund or otherwise to a public official pursuant to any applicable abandoned property, escheat or similar Law. If any Certificates shall not have been surrendered immediately prior to the date that such unclaimed funds would otherwise become subject to any abandoned property, escheat or similar Law, any unclaimed funds payable with respect to such Certificates shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, and any former holder of Shares who has not theretofore complied with this Section 2.02 shall thereafter look only to the Surviving Corporation for payment of their claim for Merger Consideration, without any interest thereon.

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SECTION 2.03. Closing of the Company's Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed and no transfer of Shares shall thereafter be made. If, after the Effective Time, Certificates are presented to the Surviving Corporation for transfer, they shall be canceled and exchanged for the Merger Consideration as provided in this Article II.

SECTION 2.04. Existing Equity Awards. (a) Each unvested option to purchase Shares granted pursuant to the terms of the Motorola Mobility Holdings, Inc. 2011 Incentive Compensation Plan (together with the Motorola Mobility Holdings, Inc. Legacy Incentive Plan, the "Stock Plans") (each such unvested option, an "Existing Rollover Stock Option," and collectively, the "Existing Rollover Stock Options") that is outstanding immediately prior to the Effective Time, shall, as of the Effective Time, be converted into an option (an "Assumed Stock Option") to acquire the number of shares of Class A Common Stock, par value \$0.001 per share, of Parent ("Parent Common Stock") (rounded down to the nearest whole share) that is equal to the product obtained by multiplying (i) the number of Shares subject to the holder's Existing Rollover Stock Option immediately prior to the Effective Time, by (ii) the quotient obtained by dividing (A) the Merger Consideration by (B) the average closing price per share of Parent Common Stock on the Nasdaq Global Select Market ("NASDAQ") for the five (5) trading day period ending on the trading day preceding the date of Closing (the "Closing Date") or, if Parent Common Stock was not available for trading on the NASDAQ on the day preceding the Closing Date, on the last day prior to the day preceding the Closing Date that Parent Common Stock was available for trading on the NASDAQ (the "Parent Stock Price" and such quotient, the "Exchange Ratio"), which option shall have an exercise price per share of Parent Common Stock equal to the quotient (rounded up to the nearest whole cent) obtained by dividing (x) the exercise price per Share of such Existing Rollover Stock Option in effect immediately prior to the Effective Time by (y) the Exchange Ratio. The term, vesting schedule and all of the other terms of each Assumed Stock Option shall otherwise remain unchanged and identical, subject to the rights of Parent to amend or modify any such Assumed Stock Option in accordance with the terms of the corresponding Existing Rollover Stock Option and applicable Law. Notwithstanding the foregoing, Existing Rollover Stock Options shall not include any option granted in respect of director service and no such option shall be subject to the terms of this Section 2.04(a).

(b) Each option to purchase Shares granted pursuant to the Stock Plans, other than any Existing Rollover Stock Option, whether vested or unvested (each, an "Existing Cash-Out Stock Option," and collectively, the "Existing Cash-Out Stock Options," and together with the Existing Rollover Stock Options, the "Existing Stock Options") that is outstanding immediately prior to the Effective Time, shall, as of the Effective Time, become fully vested and be converted into the right at the Effective Time to receive an amount, payable in cash, equal to the product obtained by multiplying (i) the total number of Shares subject to such Existing Cash-Out Stock Option, by (ii) the excess, if any, of the amount of the Merger Consideration over the exercise price per share of the Shares subject to the Existing Cash-Out Stock Option (with the aggregate amount of such payment rounded to the nearest cent) less such amounts as are required to be withheld or deducted under the Code or any provision of state, local or foreign Tax Law

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with respect to the making of such payment. The Surviving Corporation shall pay to the holders of Existing Cash-Out Stock Options the cash payments described in this [Section 2.04\(b\)](#) on or as soon as reasonably practicable after the Closing Date, but in any event within ten (10) Business Days following the Closing Date.

(c) Each award of restricted Shares granted pursuant to the Motorola Mobility Holdings, Inc. 2011 Incentive Compensation Plan (each, an “[Existing Restricted Stock Award](#)”) outstanding immediately prior to the Effective Time (after giving effect to the relevant accelerated vesting requirements contained in the Motorola Mobility Holdings, Inc. 2011 Incentive Compensation Plan and the grant agreements pursuant thereto) shall, as of the Effective Time, be converted into an award (an “[Assumed Restricted Stock Award](#)”) with respect to the number of restricted shares of Parent Common Stock (rounded to the nearest whole share) that is equal to the product obtained by multiplying (i) the number of Shares subject to the holder’s Existing Restricted Stock Award, by (ii) the Exchange Ratio. The vesting schedule and all of the other terms of each Assumed Restricted Stock Award shall otherwise remain unchanged and identical to the terms of the corresponding Existing Restricted Stock Award, subject to the rights of Parent to amend or modify any such Assumed Restricted Stock Award in accordance with the terms of the corresponding Existing Restricted Stock Award and applicable Law.

(d) Each restricted stock unit award with respect to Shares granted pursuant to the terms of the Motorola Mobility Holdings, Inc. 2011 Incentive Compensation Plan which is outstanding immediately prior to the Effective Time (each, an “[Existing Rollover RSU Award](#),” and collectively, the “[Existing Rollover RSU Awards](#)”) shall, as of the Effective Time, be converted into a restricted stock unit award (an “[Assumed RSU Award](#)”) with respect to a number of shares of Parent Common Stock (rounded to the nearest whole share) that is equal to the product obtained by multiplying (i) the number of Shares subject to the holder’s Existing Rollover RSU Award by (ii) the Exchange Ratio. The vesting schedule, and all of the other terms of each Assumed RSU Award shall otherwise remain unchanged and identical to the terms of the corresponding Existing Rollover RSU Award, subject to the rights of Parent to amend or modify any such Assumed RSU Award in accordance with the terms of the corresponding Existing Rollover RSU Award and applicable Law. Existing Rollover RSU Awards shall not include any restricted stock unit award granted in respect of service as a director that by its terms would be settled at the Effective Time or upon a director’s departure from the Board of Directors of the Company and no such restricted stock unit award shall be subject to the terms of this [Section 2.04\(d\)](#).

(e) At the Effective Time, (i) each restricted stock unit award with respect to Shares, other than any Existing Rollover RSU Award (each, an “[Existing Cash-Out RSU Award](#),” and collectively, the “[Existing Cash-Out RSU Awards](#),” and together with the Existing Rollover RSU Awards, the “[Existing RSU Awards](#),”) and (ii) each deferred stock unit award with respect to Shares (each, an “[Existing DSU Award](#),” and collectively, the “[Existing DSU Awards](#),” and together with the Existing Cash-Out RSU Awards, the “[Existing Cash-Out Stock Awards](#)”), in each case, granted pursuant to the terms of the Stock Plans, that is outstanding immediately prior to the Effective Time, shall cease to represent a right or award with respect to Shares, shall become fully vested and shall entitle the holder thereof to receive, at the Effective Time, an amount in cash equal to the Merger Consideration in respect of each Share underlying



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such Existing Cash-Out Stock Award, less such amounts as are required to be withheld or deducted under the Code or any provision of state, local or foreign Tax Law with respect to the making of such payment. The Surviving Corporation shall pay to the holders of Existing Cash-Out Stock Awards the cash payments described in this Section 2.04(e) on or as soon as reasonably practicable after the Closing Date, but in any event within ten (10) Business Days following the Closing Date.

(f) As soon as practicable following the date of this Agreement, the Board of Directors of the Company or the appropriate committee of the Board of Directors of the Company shall take all reasonable actions, including adopting any necessary resolutions, to (i) terminate the Company's Employee Stock Purchase Plan (the "ESPP") as of immediately prior to the Closing Date, (ii) ensure that no offering period under the ESPP shall be commenced on or after the date of this Agreement, (iii) if the Closing shall occur prior to the end of the offering period in existence under the ESPP on the date of this Agreement, cause a new exercise date to be set under the ESPP, which date shall be the Business Day immediately prior to the anticipated Closing Date, (iv) prohibit participants in the ESPP from altering their payroll deductions from those in effect on the date of this Agreement (other than to discontinue their participation in the ESPP in accordance with the terms and conditions of the ESPP) and (v) provide that the amount of the accumulated contributions of each participant under the ESPP as of immediately prior to the Effective Time shall, to the extent not used to purchase Shares in accordance with the terms and conditions of the ESPP (as amended pursuant to this Section 2.04(f), be refunded to such participant as promptly as practicable following the Effective Time (without interest).

(g) Prior to the Effective Time, the Company shall take all necessary or appropriate action to effectuate the provisions of this Section 2.04. As of the Effective Time, Parent shall assume the obligations and succeed to the rights of the Company under the Stock Plans with respect to the Existing Rollover Stock Options (as converted into Assumed Stock Options), the Existing Restricted Stock Awards (as converted into Assumed Restricted Stock Awards) and the Existing Rollover RSU Awards (as converted into Assumed RSU Awards).

(h) All of the conversions and adjustments made pursuant to Section 2.04(a), Section 2.04(b), Section 2.04(c), Section 2.04(d) or Section 2.04(e), including without limitation, the determination of the number of shares of Parent Common Stock subject to any award and the exercise price of the Assumed Stock Options, shall be made in a manner consistent with the requirements of Section 409A of the Code. As soon as practicable after the Effective Time, Parent shall prepare and file with the SEC (as defined below) a Form S-8 (or file such other appropriate form) registering a number of shares of Parent Common Stock necessary to fulfill Parent's obligations under Section 2.04(a), Section 2.04(c) and Section 2.04(d).

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except, with respect to any Section of this Article III, (i) as set forth in the Section of the disclosure letter dated the date hereof and delivered by the Company to Parent with respect to this Agreement on the date hereof (the "Disclosure Letter") that specifically corresponds to

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such Section (or in any other Section of the Disclosure Letter if it is reasonably apparent upon reading the disclosure in such other Section that such disclosure is responsive to the appropriate Section of this Article III) and (ii) as disclosed in the Company SEC Reports (as defined below) filed or furnished by the Company to the U.S. Securities and Exchange Commission (the “SEC”) filed on or after November 30, 2010 and prior to the date hereof (to the extent such disclosure does not constitute a “risk factor” or forward-looking statement), the Company represents and warrants to Parent and Merger Sub as follows:

SECTION 3.01. Organization and Qualification. The Company and each of its Subsidiaries is (a) a duly organized and validly existing entity in good standing (to the extent such concepts are recognized in the applicable jurisdiction) under the Law of its jurisdiction of incorporation, (b) with all corporate power and authority to own its properties and conduct its business as currently conducted and is duly licensed, qualified and in good standing as a foreign corporation authorized to do business in each of the jurisdictions in which the character of the properties owned or held under lease by it or the nature of the business transacted by it makes such qualification necessary, except (i) in the case of (a), with respect to the Subsidiaries, where the failure to be so duly organized or validly existing, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect (as defined below), and (ii) in the case of (b), where the failure to have such corporate power or authority, or to be so licensed, qualified or in good standing, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. The Company has heretofore made available to Parent copies that are true, correct and complete of the Certificate of Incorporation and Bylaws of the Company as in effect as of the date of this Agreement. Neither the Company nor any of its Subsidiaries owns, directly or indirectly, any interest in any Person, other than interest in the Company’s Subsidiaries and immaterial interests.

SECTION 3.02. Capitalization. (a) The authorized capital stock of the Company consists of 900,000,000 Shares and 500,000 shares of preferred stock, par value \$0.01 per share (the “Preferred Stock”). As of the close of business on the Business Day immediately preceding the date hereof, 298,022,521 Shares were issued and outstanding, no shares of Preferred Stock were issued and outstanding and 794,656 Shares were held in the Company’s treasury. In addition, as of the end of the Business Day on August 11, 2011, there were outstanding Existing Stock Options to purchase an aggregate of 23,555,133 Shares, Existing Restricted Stock Awards with respect to an aggregate of 318,792 Shares, Existing RSU Awards with respect to an aggregate of 8,417,987 Shares, and Existing DSU Awards with respect to an aggregate of 37,670 Shares. Since such date, and prior to the date hereof, the Company has not issued any Shares, has not granted any options, restricted stock, warrants or rights or entered into any other agreements or commitments that might require it to issue any Shares, or granted any other awards in respect of any Shares and has not split, combined or reclassified any of its shares of capital stock, other than Shares issuable upon exercise of the Existing Stock Options, upon the settlement of Existing Restricted Stock Awards, Existing RSU Awards or the Existing DSU Awards. All of the Shares outstanding have been duly authorized and validly issued and are fully paid and nonassessable and are free of preemptive rights.

(b) Except for the Existing Stock Options, the Existing Restricted Stock Awards, the Existing RSU Awards and the Existing DSU Awards, there are on the date hereof no outstanding (i) securities of the Company convertible into or exchangeable for shares of capital

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stock or voting securities or ownership interests in the Company, (ii) options, warrants, rights or other agreements or commitments to acquire from the Company, or obligations of the Company to issue, any capital stock, voting securities or other equity ownership interests in (or securities convertible into or exchangeable for capital stock or voting securities or other equity ownership interests in) the Company, (iii) obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock, voting securities or other ownership interests in the Company (the items in clauses (i), (ii) and (iii) of this Section 3.02(b), together with the capital stock of the Company, being referred to collectively as “Company Securities”) or (iv) obligations (excluding Taxes and other fees) by the Company or any of its Subsidiaries to make any payments based on the market price or value of the Shares. As of the date of this Agreement, neither the Company nor any of its Subsidiaries has outstanding obligations to purchase, redeem or otherwise acquire any Company Securities.

(c) The Company or another of its Subsidiaries is the record and beneficial owner of all the outstanding shares of capital stock of each material Subsidiary of the Company (except for directors’ qualifying shares or the like), free and clear of any lien, mortgage, pledge, charge, irrevocable proxy, security interest or encumbrance of any kind (each, but excluding any license of Intellectual Property Rights (as defined below), a “Lien”), except where the failure to be so free and clear, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. There are no outstanding (i) securities of the Company or any of its Subsidiaries convertible into or exchangeable for shares of capital stock or other voting securities or ownership interests in any Subsidiary of the Company, (ii) options, restricted stock, warrants, rights or other agreements or commitments to acquire from the Company or any of its Subsidiaries, or obligations of the Company or any of its Subsidiaries to issue, any capital stock, voting securities or other ownership interests in (or securities convertible into or exchangeable for capital stock or voting securities or other ownership interests in) any Subsidiary of the Company, (iii) obligations of the Company or any of its Subsidiaries to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock, voting securities or other ownership interests in any Subsidiary of the Company (the items in clauses (i), (ii) and (iii) of this Section 3.02(c), together with the capital stock of such Subsidiaries, being referred to collectively as “Subsidiary Securities”) or (iv) obligations (excluding Taxes and other fees) of the Company or any of its Subsidiaries to make any payment based on the value of any shares of any Subsidiary of the Company. There are no outstanding obligations of the Company or any of its Subsidiaries to purchase, redeem or otherwise acquire any outstanding Subsidiary Securities. There are no voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting of capital stock of any material Subsidiary of the Company.

SECTION 3.03. Authority for this Agreement: Board Action. (a) The Company has all necessary corporate power and authority to execute and deliver this Agreement and, subject to the adoption of the agreement of merger (as such term is used in Section 251 of the Corporation Law) contained in this Agreement by the holders of a majority of the outstanding Shares prior to the consummation of the Merger and the filing of the Certificate of Merger with the Secretary of State of Delaware, to consummate the transactions contemplated hereby and to perform its obligations hereunder. The execution and delivery of this Agreement, including the