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

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended April 3, 2010

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission file number 001-33170

NETLIST, INC.
(Exact name of registrant as specified in its charter)

Delaware	**95-4812784**
State or other jurisdiction of incorporation or organization	(I.R.S. Employer Identification No.)

51 Discovery, Suite 150
Irvine, CA 92618
(Address of principal executive offices) (Zip Code)

(949) 435-0025
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

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 definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check One):

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The number of shares outstanding of each of the registrant's classes of common stock as of the latest practicable date:

Common Stock, par value $0.001 per share
25,266,327 shares outstanding at April 30, 2010

NETLIST, INC. AND SUBSIDIARIES
QUARTERLY REPORT ON FORM 10-Q
FOR THE THREE MONTHS ENDED APRIL 3, 2010

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

NETLIST, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
(in thousands, except par value)

	(unaudited) April 3, 2010	(audited) January 2, 2010
ASSETS		
Current assets:		
Cash and cash equivalents	$ 19,237	$ 9,942
Investments in marketable securities	6,268	3,949
Accounts receivable, net	5,365	4,273
Inventories	3,929	2,232
Income taxes receivable	649	—
Prepaid expenses and other current assets	880	854
Total current assets	36,328	21,250
Property and equipment, net	4,409	4,779
Long-term investments in marketable securities	906	941
Other assets	218	221
Total assets	$ 41,861	$ 27,191
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 5,388	$ 4,057
Accrued payroll and related liabilities	1,758	2,332
Accrued expenses and other current liabilities	478	605
Accrued engineering charges	1,032	661
Current portion of long-term debt	101	108
Current portion of deferred gain on sale and leaseback transaction	79	108
Total current liabilities	8,836	7,871
Long-term debt, net of current portion	24	51
Total liabilities	8,860	7,922
Commitments and contingencies		
Stockholders' equity:		
Common stock, $0.001 par value - 90,000 shares authorized; 24,780 (2010) and 20,111 (2009) shares issued and outstanding	25	20
Additional paid-in capital	88,059	71,332
Accumulated deficit	(54,991)	(52,026)
Accumulated other comprehensive loss	(92)	(57)
Total stockholders' equity	33,001	19,269
Total liabilities and stockholders' equity	$ 41,861	$ 27,191

See accompanying notes.

NETLIST, INC. AND SUBSIDIARIES
Unaudited Condensed Consolidated Statements of Operations
(in thousands, except per share amounts)

	Three Months Ended	
	April 3, 2010	April 4, 2009
Net sales	$ 7,890	$ 2,162
Cost of sales(1)	6,072	2,699
Gross profit (loss)	1,818	(537)
Operating expenses:		
Research and development(1)	3,008	1,614
Selling, general and administrative(1)	2,570	1,935
Total operating expenses	5,578	3,549
Operating loss	(3,760)	(4,086)
Other income:		
Interest income, net	1	82
Other income, net	67	175
Total other income, net	68	257
Loss before (benefit) provision for income taxes	(3,692)	(3,829)
(Benefit) provision for income taxes	(727)	18
Net loss	$ (2,965)	$ (3,847)
Net loss per common share:		
Basic	$ (0.14)	$ (0.19)
Diluted	$ (0.14)	$ (0.19)
Weighted-average common shares outstanding:		
Basic and diluted	20,688	19,855

(1) Amounts include stock-based compensation expense as follows:

Cost of sales	$ 10	$ 29
Research and development	46	58
Selling, general and administrative	326	220

See accompanying notes.

NETLIST, INC. AND SUBSIDIARIES
Unaudited Condensed Consolidated Statements of Cash Flows
(in thousands)

	Three Months Ended	
	April 3, 2010	April 4, 2009
Cash flows from operating activities:		
Net loss	$ (2,965)	$ (3,847)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	578	581
Amortization of deferred gain on sale and leaseback transaction	(29)	(30)
Gain on disposal of assets	—	(168)
Stock-based compensation	382	307
Changes in operating assets and liabilities:		
Accounts receivable	(1,092)	1,022
Inventories	(1,697)	507
Income taxes receivable	(649)	1,233
Prepaid expenses and other current assets	(26)	(25)
Other assets	3	9
Accounts payable	1,331	(466)
Accrued payroll and related expenses	(574)	(75)
Accrued expenses and other current liabilities	(127)	37
Accrued engineering charges	371	—
Net cash used in operating activities	(4,494)	(915)
Cash flows from investing activities:		
Acquisition of property and equipment	(208)	(22)
Proceeds from sales of equipment	—	276
Purchase of investments in marketable securities	(2,379)	(10,297)
Proceeds from maturities and sales of investments in marketable securities	60	4,430
Net cash used in investing activities	(2,527)	(5,613)
Cash flows from financing activities:		
Borrowings on line of credit	1,000	4,916
Payments on line of credit	(1,000)	(4,916)
Proceeds from public offering, net	16,260	—
Proceeds from exercise of stock options and warrants	90	—
Payments on debt	(34)	(123)
Net cash provided by (used in) financing activities	16,316	(123)
Increase (decrease) in cash and cash equivalents	9,295	(6,651)
Cash and cash equivalents at beginning of period	9,942	15,214
Cash and cash equivalents at end of period	$ 19,237	$ 8,563
Supplemental disclosure of non-cash investing activities:		
Unrealized losses from investments in marketable securities	$ 35	$ —

See accompanying notes.

NETLIST, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
April 3, 2010

Note 1—Description of Business

Netlist, Inc. (the "Company" or "Netlist") designs, manufactures and sells high-performance, logic-based memory subsystems for the server, storage and communications equipment markets. The Company's memory subsystems consist of combinations of dynamic random access memory integrated circuits, NAND flash memory, application —specific integrated circuits ("ASICs") and other components assembled on printed circuit boards. The Company primarily markets and sells its products to leading original equipment manufacturer ("OEM") customers. Netlist's solutions are targeted at applications where memory plays a key role in meeting system performance requirements.

Note 2—Summary of Significant Accounting Policies

Basis of Presentation

The interim unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (the "U.S.") for interim financial information and with the instructions to Securities and Exchange Commission ("SEC") Form 10-Q and Article 8 of SEC Regulation S-X. These financial statements do not include all of the information and footnotes required by accounting principles generally accepted in the U.S. for complete financial statements. Therefore, these unaudited condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes thereto for the year ended January 2, 2010, included in the Company's Annual Report on Form 10-K filed with the SEC on February 19, 2010.

The condensed consolidated financial statements included herein as of April 3, 2010 are unaudited; however, they contain all normal recurring accruals and adjustments that, in the opinion of the Company's management, are necessary to present fairly the consolidated financial position of the Company and its wholly owned subsidiaries as of April 3, 2010, the consolidated results of its operations for the three months ended April 3, 2010 and April 4, 2009, and the consolidated cash flows for the three months ended April 3, 2010 and April 4, 2009. The results of operations for the three months ended April 3, 2010 are not necessarily indicative of the results to be expected for the full year or any future interim periods.

Reclassifications

Certain amounts in the 2009 financial statements have been reclassified to conform with the current year presentation.

Principles of Consolidation

The consolidated financial statements include the accounts of Netlist, Inc. and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Fiscal Year

The Company operates under a 52/53-week fiscal year ending on the Saturday closest to December 31. For fiscal 2010, the Company's fiscal year is scheduled to end on January 1, 2011 and will consist of 52 weeks. Each of the Company's first three quarters in a fiscal year is comprised of 13 weeks.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the U.S. requires management to make estimates and assumptions that affect the reported amounts of the assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of net sales and expenses during the reporting period. By their nature, these estimates and assumptions are subject to an inherent degree of uncertainty. Significant estimates made by management include, among others, provisions for uncollectible receivables and sales returns, warranty liabilities, valuation of inventories, fair value of financial instruments, impairment of long-lived assets, stock-based compensation expense and realization of deferred tax assets. The Company bases its estimates on historical experience, knowledge of current conditions and our beliefs of what could occur in the future considering available information. The Company reviews its estimates on an on-going basis.. The actual results experienced by the Company may differ materially and adversely from its estimates. To the extent there are material differences between the estimates and the actual results, future results of operations will be affected.

Revenue Recognition

The Company's revenues primarily consist of product sales of high-performance memory subsystems to OEMs. Revenues also include sales of excess inventories to distributors and other users of memory integrated circuits ("ICs") totaling approximately $0.1 million and $0.1 million, for the three months ended April 3, 2010 and April 4, 2009, respectively.

The Company recognizes revenues in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 605. Accordingly, the Company recognizes revenues when there is persuasive evidence of an arrangement, product delivery and acceptance have occurred, the sales price is fixed or determinable, and collectibility of the resulting receivable is reasonably assured.

The Company generally uses customer purchase orders and/or contracts as evidence of an arrangement. Delivery occurs when goods are shipped for customers with FOB Shipping Point terms and upon receipt for customers with FOB Destination terms, at which time title and risk of loss transfer to the customer. Shipping documents are used to verify delivery and customer acceptance. The Company assesses whether the sales price is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund. Customers are generally allowed limited rights of return for up to 30 days, except for sales of excess inventories, which contain no right-of-return privileges. Estimated returns are provided for at the time of sale based on historical experience or specific identification of an event necessitating a reserve. The Company offers a standard product warranty to its customers and has no other post-shipment obligations. The Company assesses collectibility based on the creditworthiness of the customer as determined by credit checks and evaluations, as well as the customer's payment history.

All amounts billed to customers related to shipping and handling are classified as revenues, while all costs incurred by the Company for shipping and handling are classified as cost of sales.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash and short-term investments with original maturities of three months or less, other than short-term investments in securities that lack an active market.

Investments in Marketable Securities

The Company accounts for its investments in marketable securities in accordance with ASC Topic 320. The Company determines the appropriate classification of its investments at the time of purchase and reevaluates such designation at each balance sheet date. The Company's investments in marketable securities have been classified and accounted for as available-for-sale based on management's investment intentions relating to these securities. Available-for-sale securities are stated at market value, and are generally based on market quotes, to the extent they are available. Unrealized gains and losses, net of applicable deferred taxes, are recorded as a component of other comprehensive income (loss). Realized gains and losses and declines in value judged to be other than temporary are determined based on the specific identification method and are reported in other income, net in the unaudited condensed consolidated statements of operations.

The Company generally invests its excess cash in domestic bank-issued certificates of deposit which carry federal deposit insurance, money market funds and in highly liquid debt instruments of U.S. municipalities, corporations and the U.S. government and its agencies. All highly liquid investments with stated maturities of three months or less from the date of purchase are classified as cash equivalents; all investments with stated maturities of greater than three months are classified as investments in marketable securities.

Fair Value of Financial Instruments

The Company's financial instruments consist principally of cash and cash equivalents, investments in marketable securities, accounts receivable, accounts payable, accrued expenses and debt instruments. Other than for certain investments in auction rate securities (see Note 4), the fair value of the Company's cash equivalents and investments in marketable securities, other than commercial paper or short-term corporate bonds, is determined based on quoted prices in active markets for identical assets or Level 1 inputs. Because of their short-term nature, commercial paper and short-term corporate bonds are not frequently traded. Although there are observable quotes for these securities, the markets are not considered active. Accordingly, the fair values of these investments are based on Level 2 inputs. The Company recognizes transfers between Levels 1 through 3 of the fair value hierarchy at the beginning of the reporting period. The Company believes that the carrying values of all other financial instruments approximate their current fair values due to their nature and respective durations.

Allowance for Doubtful Accounts

The Company evaluates the collectibility of accounts receivable based on a combination of factors. In cases where the Company is aware of circumstances that may impair a specific customer's ability to meet its financial obligations subsequent to the original sale, the Company will record an allowance against amounts due, and thereby reduce the net recognized receivable to the amount the Company reasonably believes will be collected. For all other customers, the Company records allowances for doubtful accounts based primarily on the length of time the receivables are past due based on the terms of the originating transaction, the current business environment and its historical experience. Uncollectible accounts are charged against the allowance for doubtful accounts when all cost effective commercial means of collection have been exhausted.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and cash equivalents, investments in marketable securities, and accounts receivable.

The Company invests its cash equivalents primarily in money market funds. Cash equivalents are maintained with high quality institutions, the composition and maturities of which are regularly monitored by management. The Company had $0.7 million of Federal Deposit Insurance Corporation insured cash and cash equivalents at April 3, 2010. Investments in marketable securities are generally in high-credit quality debt instruments with an active resale market. Such investments are made only in instruments issued or enhanced by high-quality institutions. The Company has not incurred any credit risk losses related to these investments.

The Company's trade accounts receivable are primarily derived from sales to OEMs in the computer industry. The Company performs credit evaluations of its customers' financial condition and limits the amount of credit extended when deemed necessary, but generally requires no collateral. The Company believes that the concentration of credit risk in its trade receivables is moderated by its credit evaluation process, relatively short collection terms, the high level of credit worthiness of its customers (see Note 3), and foreign credit insurance. Reserves are maintained for potential credit losses, and such losses historically have not been significant and have been within management's expectations.

Inventories

Inventories are valued at the lower of actual cost to purchase or manufacture the inventory or net realizable value of the inventory. Cost is determined on an average cost basis which approximates actual cost on a first-in, first-out basis and includes raw materials, labor and manufacturing overhead. At each balance sheet date, the Company evaluates its ending inventory quantities on hand and on order and records a provision for excess quantities and obsolescence. Among other factors, the Company considers historical demand and forecasted demand in relation to the inventory on hand, competitiveness of product offerings, market conditions and product life cycles when determining obsolescence and net realizable value of raw material inventory. Provisions are made to reduce excess or obsolete inventories to their estimated net realizable values. Once established, write-downs are considered permanent adjustments to the cost basis of the excess or obsolete inventories.

Property and Equipment

Property and equipment are recorded at cost and depreciated on a straight-line basis over their estimated useful lives, which generally range from three to seven years. Leasehold improvements are recorded at cost and amortized on a straight-line basis over the shorter of their estimated useful lives or the remaining lease term.

Impairment of Long-Lived Assets

The Company evaluates the recoverability of the carrying value of long-lived assets held and used in its operations for impairment on at least an annual basis or whenever events or changes in circumstances indicate that their net book value may not be recoverable. When such factors and circumstances exist, the Company compares the projected undiscounted future net cash flows associated with the related asset or group of assets over their estimated useful lives against their respective carrying amount. These projected future cash flows may vary significantly over time as a result of increased competition, changes in technology, fluctuations in demand, consolidation of our customers and reductions in average selling prices. If the carrying value is determined not to be recoverable from future operating cash flows, the asset is deemed impaired and an impairment loss is recognized to the extent the carrying value exceeds the estimated fair value of the asset. The fair value of the asset or asset group is based on market value when available, or when unavailable, on discounted expected cash flows.

Warranties

The Company offers warranties generally ranging from one to three years, depending on the product and negotiated terms of the purchase agreements with customers. Such warranties require the Company to repair or replace defective product returned to the Company during the warranty period at no cost to the customer. Warranties are not offered on sales of excess inventory. The Company records an estimate for warranty-related costs at the time of sale based on its historical and estimated product return rates and expected repair or replacement costs (see Note 3). Such costs have historically been consistent between periods and within management's expectations and the provisions established.

Stock-Based Compensation

The Company accounts for equity issuances to non-employees in accordance with ASC Topic 505. All transactions in which goods or services are the consideration received for the issuance of equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable. The measurement date used to determine the fair value of the equity instrument issued is the earlier of the date on which the third-party performance is complete or the date on which it is probable that performance will occur.

In accordance with ASC Topic 718, employee and director stock-based compensation expense recognized during the period is based on the value of the portion of stock-based payment awards that is ultimately expected to vest during the period. Given that stock-based compensation expense recognized in the consolidated statements of operations is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. ASC Topic 718 requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The Company's estimated average forfeiture rates are based on historical forfeiture experience and estimated future forfeitures.

The fair value of common stock option awards to employees and directors is calculated using the Black-Scholes option pricing model. The Black-Scholes model requires subjective assumptions regarding future stock price volatility and expected time to exercise, along with assumptions about the risk-free interest rate and expected dividends, which affect the estimated fair values of the Company's common stock option awards. The expected term of options granted is calculated as the average of the weighted vesting period and the contractual expiration date of the option. This calculation is based on the safe harbor method permitted by the SEC in instances where the vesting and exercise terms of options granted meet certain conditions and where limited historical exercise data is available. Prior to fiscal 2009, the expected volatility was based on the historical volatilities of the common stock of comparable publicly traded companies based on management's belief that the Company had limited historical data regarding the volatility of its stock price on which to base a meaningful estimate of expected volatility. Beginning in fiscal 2009, the expected volatility is based on the historical volatility of the Company's common stock. The risk-free rate selected to value any particular grant is based on the U.S. Treasury rate that corresponds to the expected term of the grant effective as of the date of the grant. The expected dividend assumption is based on the Company's history and management's expectation regarding dividend payouts. Compensation expense for awards with graded vesting schedules is recognized on a straight-line basis over the requisite service period for the last separately vesting portion of the award.

Income Taxes

Under ASC Topic 270, the Company is required to adjust its effective tax rate each quarter to be consistent with the estimated annual effective tax rate. The Company is also required to record the tax impact of certain discrete items, unusual or infrequently occurring, including changes in judgment about valuation allowances and effects of changes in tax laws or rates, in the interim period in which they occur. In addition, jurisdictions with a projected loss for the year or a year-to-date loss where no tax benefit can be recognized are excluded from the estimated annual effective tax rate. The impact of such an exclusion could result in a higher or lower effective tax rate during a particular quarter, based upon the mix and timing of actual earnings versus annual projections.

Deferred tax assets and liabilities are recognized to reflect the estimated future tax effects, calculated at currently effective tax rates, of future deductible or taxable amounts attributable to events that have been recognized on a cumulative basis in the consolidated financial statements. A valuation allowance related to a net deferred tax asset is recorded when it is more likely than not that some portion of the deferred tax asset will not be realized.

ASC Topic 740 prescribes a recognition threshold and measurement requirement for the financial statement recognition of a tax position that has been taken or is expected to be taken on a tax return and also provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. Under ASC Topic 740 the Company may only recognize or continue to recognize tax positions that meet a "more likely than not" threshold.

Research and Development Expenses

Research and development expenditures are expensed in the period incurred.

Collaborative Arrangement

The Company has entered into a collaborative arrangement with a partner in order to develop products using certain of the Company's proprietary technology. Under the arrangement, the development partner was granted a non-exclusive license to specified intellectual property for exclusive use in the development and production of ASIC chipsets for the Company. Both the Company and the development partner provided and continue to provide engineering project management resources at their own expense. The development partner is entitled to non-recurring engineering fees based upon the achievement of development milestones, and to a minimum portion of the Company's purchasing allocations for the component. Expenses incurred and paid to the development partner are included in research and development expense in the accompanying consolidated statements of operations.

Comprehensive Loss

ASC Topic 220 establishes standards for reporting and displaying comprehensive income and its components in the condensed consolidated financial statements. Accumulated other comprehensive loss includes unrealized gains or losses on investments.

Risks and Uncertainties

The Company's operations in the PRC are subject to various political, geographical and economic risks and uncertainties inherent to conducting business in China. These include, but are not limited to, (i) potential changes in economic conditions in the region, (ii) managing a local workforce that may subject the Company to uncertainties or certain regulatory policies, (iii) changes in other policies of the Chinese governmental and regulatory agencies, and (iv) changes in the laws and policies of the U.S. government regarding the conduct of business in foreign countries, generally, or in China, in particular. Additionally, the Chinese government controls the procedures by which its local currency, the Chinese Renminbi ("RMB"), is converted into other currencies and by which dividends may be declared or capital distributed for the purpose of repatriation of earnings and investments. If restrictions in the conversion of RMB or in the repatriation of earnings and investments through dividend and capital distribution restrictions are instituted, the Company's operations and operating results may be negatively impacted. Restricted net assets of our subsidiary in the PRC totaled $2.8 million and $2.7 million at April 3, 2010 and January 2, 2010, respectively.

Foreign Currency Re-measurement

The functional currency of the Company's foreign subsidiary is the U.S. dollar. Local currency financial statements are re-measured into U.S. dollars at the exchange rate in effect as of the balance sheet date for monetary assets and liabilities and the historical exchange rate for nonmonetary assets and liabilities. Expenses are re-measured using the average exchange rate for the period, except items related to nonmonetary assets and liabilities, which are re-measured using historical exchange rates. All re-measurement gains and losses are included in determining net loss.

Net Loss Per Share

Basic net loss per share is calculated by dividing net loss by the weighted-average common shares outstanding during the period. Diluted net loss per share is calculated by dividing the net loss by the weighted-average shares and dilutive potential common shares outstanding during the period. Dilutive potential shares consist of dilutive shares issuable upon the exercise of outstanding stock options and warrants computed using the treasury stock method. In periods of losses, basic and diluted loss per share are the same, as the effect of stock options and warrants on loss per share is anti-dilutive.

New Accounting Pronouncements

In September 2009, the FASB issued Accounting Standards Update ("ASU") 2009-13, *Multiple-Deliverable Revenue Arrangements* ("ASU 2009-13"), which amends the revenue guidance under ASC Topic 605, which describes the accounting for multiple element arrangements. ASU 2009-13 addresses how to determine whether an arrangement involving multiple deliverables contains more than one unit of accounting and how arrangement consideration shall be measured and allocated to the separate units of accounting in the arrangement. ASU 2009-13 is effective on a prospective basis for the Company's fiscal year 2011, with earlier adoption permitted. The Company is currently evaluating the adoption of ASU 2009-13 and the impact that ASU 2009-13 will have on its condensed consolidated financial statements.

In September 2009, the FASB issued ASU 2009-14, *Certain Revenue Arrangements That Include Software Elements* ("ASU 2009-14"), which excludes tangible products containing software components and non-software components that function together to deliver the product's essential functionality from the scope of ASC Topic 985, which describes the accounting for software revenue recognition. ASU 2009-14 is effective on a prospective basis for the Company's fiscal year 2011, with earlier adoption permitted. The Company is currently evaluating the impact that ASU 2009-14 will have on its condensed consolidated financial statements.

In January 2010, the FASB issued ASU 2010-6, *Fair Value Measurements and Disclosures: Improving Disclosures About Fair Value Measurement* ("ASU 2010-6"), which affects the disclosures made about recurring and non-recurring fair value measurements. The Company adopted the expanded disclosure requirements in the quarter ended April 3, 2010.

Note 3—Supplemental Financial Information

Inventories

Inventories consist of the following (in thousands):

	April 3, 2010	January 2, 2010
Raw materials	$ 2,244	$ 997
Work in process	457	342
Finished goods	1,228	893
	$ 3,929	$ 2,232

Warranty Liability

The following table summarizes the activity related to the warranty liability (in thousands):

	Three Months Ended	
	April 3, 2010	April 4, 2009
Beginning balance	$ 240	$ 277
Charged to costs and expenses	40	29
Usage	(32)	(29)
Ending balance	$ 248	$ 277

The warranty liability is included as a component of accrued expenses and other current liabilities in the accompanying condensed consolidated balance sheets.

Facility Relocation Costs

The following table summarizes the activity related to the Company's accrual for facility relocation costs during the three months ended April 3, 2010 and April 4, 2009 (in thousands):

	Three Months Ended	
	April 3, 2010	April 4, 2009
Beginning balance	$ 84	$ 80
Reversal of accrual/reduction of costs	(28)	—
Net payments	(8)	(1)
Ending balance	$ 48	$ 79

In February 2010, a sublessor of a portion of the Company's headquarters facility vacated the space that it had subleased. The Company determined that the space could be used in its operations. As a result, the Company reversed $28,000 of its accrual for facility relocation costs. The resulting expense reduction is included as a component of selling, general and administrative expenses in the accompanying condensed consolidated statement of operations for the three months ended April 3, 2010.

The liability for facility relocation costs is included as a component of accrued expenses and other current liabilities in the accompanying condensed consolidated balance sheets.

Comprehensive Loss

The components of comprehensive loss, net of taxes, consist of the following (in thousands):

	Three Months Ended	
	April 3, 2010	April 4, 2009
Net loss	$ (2,965)	$ (3,847)
Other comprehensive loss:		
Change in net unrealized gain (loss) on investments, net of tax	(35)	32
Total comprehensive loss	$ (3,000)	$ (3,815)

Accumulated other comprehensive loss reflected on the condensed consolidated balance sheets at April 3, 2010 and January 2, 2010, represents accumulated net unrealized losses on investments in marketable securities.

Computation of Net Loss Per Share

Basic and diluted net loss per share is calculated by dividing net loss by the weighted-average common shares outstanding during the period. The following table sets forth the computation of net loss per share (in thousands, except per share data):

	Three Months Ended	
	April 3, 2010	April 4, 2009
Numerator: Net loss	$ (2,965)	$ (3,847)
Denominator: Weighted-average common shares outstanding, basic	20,688	19,855
Net loss per share, basic and diluted	$ (0.14)	$ (0.19)

The following table sets forth potentially dilutive common share equivalents, consisting of shares issuable upon the exercise of outstanding stock options and warrants computed using the treasury stock method, which have been excluded from the diluted net loss per share calculations above as their effect would be anti-dilutive for the periods then ended (in thousands):

	Three Months Ended	
	April 3, 2010	April 4, 2009
Common share equivalents	2,270	121

The above common share equivalents would have been included in the calculation of diluted earnings per share had the Company reported net income for the periods then ended.

Major Customers

Net sales to some of our OEM customers include memory modules that are qualified by us directly with the OEM customer and sold to electronic manufacturing services providers ("EMSs"), for incorporation into products manufactured exclusively for the OEM customer or in some instances, to facilitate credit and logistics. These net sales to EMSs have historically fluctuated period to period as a portion of the total net sales to the OEM customers. Net sales to Hon Hai Precision Industry Co. Ltd., an EMS operating under the trade name Foxconn that purchases memory modules from us for incorporation into products manufactured exclusively for Dell, represented approximately 89% and 67% of net sales to Dell for the three months ended April 3, 2010 and April 4, 2009, respectively. Arrow Electronics, Inc. ("Arrow") is an EMS for DRS Electronics, Inc. ("DRS Electronics"). Substantially all of our products sold to Arrow are incorporated into components manufactured for DRS Electronics. Similarly, Flextronics International Ltd. ("Flextronics") distributes substantially all of the products purchased from us to F5 Networks, Inc ("F5 Networks"). The following table sets forth sales to customers comprising 10% or more of the Company's net sales for the periods presented:

	Three Months Ended	
	April 3, 2010	April 4, 2009
Customer:		
Foxconn (Dell Computer)	37%	33%
Flextronics (F5 Networks)	31%	*%
Arrow Electronics Inc. (DRS Electronics)	16%	21%

* less than 10% of net sales

The Company's accounts receivable are concentrated with three customers at April 3, 2010 representing approximately 41%, 39% and 15% of aggregate gross receivables. A significant reduction in sales to, or the inability to collect receivables from, a significant customer could have a material adverse impact on the Company.

Cash Flow Information

The following table sets forth cash paid (received) for income taxes and interest for the periods presented (in thousands):

	Three Months Ended	
	April 3, 2010	April 4, 2009
Income taxes refunds received	$ —	$ (23)
Interest paid	$ 21	$ 11

Note 4—Fair Value Measurements

The following table details the fair value measurements within the fair value hierarchy of the Company's investments in marketable securities (in thousands):

		Fair Value Measurements at April 3, 2010 Using		
	Fair Value at April 3, 2010	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Available for sale debt securities:				
Obligations of the United States government	$ 998	$ 998	$ —	$ —
Federal agency notes and bonds	501	501	—	—
Commercial paper	2,098	—	2,098	—
Corporate notes and bonds	2,671	—	2,671	—
Auction and variable floating rate notes	906	—	—	906
Total	$ 7,174	$ 1,499	$ 4,769	$ 906

As of January 3, 2010, the Company reclassified its investments in commercial paper and corporate notes and bonds, with a fair value of $2,891,000, from assets measured at fair value using Level 1 inputs to assets measured at fair value using Level 2 inputs. The transfer resulted from solely from management's reassessment of the level of activity in the secondary

market for these investments, which historically has been low due to the short-term nature of the instruments. Management does not believe that the reassessment in any way reflects a change in the actual liquidity or credit quality of these investments. The reassessment was precipitated by a change in custodial institutions in connection with the Company's new revolving credit agreement (see Note 6).

Fair value measurements using Level 3 inputs in the table above relate to the Company's investments in auction rate securities. Level 3 inputs are unobservable inputs used to estimate the fair value of assets or liabilities and are utilized to the extent that observable inputs are not available.

The following table provides a reconciliation of the beginning and ending balances for the Company's assets measured at fair value using Level 3 inputs (in thousands):

	Three Months Ended April 3, 2010
Beginning balance	$ 941
Unrealized loss included in accumulated other comprehensive loss	(35)
Ending balance	$ 906

Note 5—Investments in Marketable Securities

Investments in marketable securities consist of the following at April 3, 2010 (in thousands):

	April 3, 2010		
	Amortized Cost	Net Unrealized Gain (Loss)	Fair Value
Obligations of the United States government	$ 997	$ 1	$ 998
Federal agency notes and bonds	502	(1)	501
Commercial paper	2,098	—	2,098
Corporate notes and bonds	2,667	4	2,671
Auction and variable floating rate notes	1,002	(96)	906
	$ 7,266	$ (92)	$ 7,174

Realized gains and losses on the sale of investments in marketable securities are determined using the specific identification method. Net realized gains recorded during the three months ended April 3, 2010 were not significant.

The following table provides the breakdown of investments in marketable securities with unrealized losses at April 3, 2010 (in thousands):

	April 3, 2010			
	Continuous Unrealized Loss			
	Less than 12 months		12 months or greater	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
Federal agency notes and bonds	$ 501	$ (1)	$ —	$ —
Corporate notes and bonds	844	(1)	—	—
Auction and variable floating rate notes	—	—	906	(96)
	$ 1,345	$ (2)	$ 906	$ (96)

As of April 3, 2010, the Company held four investments that were in an unrealized loss position.

Auction Rate Securities

Disruptions in the credit market continue to adversely affect the liquidity and overall market for auction rate securities. As of April 3, 2010 and January 2, 2010, the Company held two investments in auction rate securities with a total purchase cost of $1.0 million. These two investments represent (i) a Baa1 rated, fully insured debt obligation of a municipality and (ii) an A3 rated debt obligation backed by pools of student loans guaranteed by the U.S. Department of Education. Given the insufficient observable market inputs and related information available, the Company has classified its investments in auction rate securities within Level 3 of the fair value hierarchy (see Note 4).

The Company does not believe that the current illiquidity of its investments in auction rate securities will materially impact its ability to fund its working capital needs, capital expenditures or other business requirements. The Company, however, remains uncertain as to when liquidity will return to the auction rate markets, whether other secondary markets will become available or when the underlying securities may be called by the issuer. Given these and other uncertainties, the Company's investments in auction rate securities have been classified as long-term investments in marketable securities in the accompanying unaudited condensed consolidated balance sheet as of April 3, 2010. The Company has concluded that the estimated gross unrealized losses on these investments, which totaled approximately $96,000 at April 3, 2010, are temporary because (i) the Company believes that the absence of liquidity that has occurred is due to general market conditions, (ii) the auction rate securities continue to be of a relatively high credit quality and interest is paid as due and (iii) the Company has the intent and ability to hold these investments until a recovery in the market occurs.

Other Investments in Marketable Securities

Excluding its auction rate securities, the gross unrealized losses on the Company's other investments in marketable securities totaled approximately $1,000 and $1,000 as of April 3, 2010 and January 2, 2010, respectively, and are generally due to the ongoing uncertainties in the credit and financial markets, as well as changes in interest rates. The fair value of these investments was determined based on Level 1 and Level 2 inputs, consisting of quoted prices from actual market transactions for identical investments. The Company has determined that the unrealized losses on these investments as of April 3, 2010 are temporary in nature. Factors considered in determining whether impairments are other than temporary include (i) the length of time and extent to which fair value has been less than the amortized cost basis, (ii) the financial condition and near-term prospects of the investee and (iii) the Company's intent and ability to hold an investment for a period of time sufficient to allow for any anticipated recovery in market value.

The Company maintains an investment portfolio of various holdings, types and maturities. The Company invests in instruments that meet high quality credit standards, as specified in its investment policy guidelines. These guidelines generally limit the amount of credit exposure to any one issue, issuer or type of instrument. The fair value of the Company's investments in marketable securities could change significantly in the future and the Company may be required to record other-than-temporary impairment charges or additional unrealized losses in future periods.

The following table presents the amortized cost and fair value of the Company's investments in marketable securities classified as available-for-sale at April 3, 2010 by contractual maturity (in thousands):

	April 3, 2010	
	Amortized Cost	Fair Value
Maturity		
Less than one year	$ 6,264	$ 6,268
One to two years	—	—
Greater than two years*	1,002	906
	$ 7,266	$ 7,174

* Comprised of auction rate securities which generally have reset dates of 90 days or less but final contractual maturity dates in excess of 15 years.

Note 6—Credit Agreement

On October 31, 2009, the Company entered into a revolving credit agreement with a financial institution. Under the original terms of the credit agreement, the Company could borrow up to the lesser of (i) 80% of eligible accounts receivable, minus $1.0 million, or (ii) $5.0 million. The revolving credit agreement was amended on March 24, 2010 to allow for increased accounts receivable eligibility and to remove the $1.0 million reduction from the calculated accounts receivable borrowing base. The credit agreement contains an overall sublimit of $2.5 million to collateralize the Company's contingent obligations under letters of credit, foreign exchange contracts and cash management services. Amounts outstanding under the overall sublimit reduce the amount available pursuant to the credit agreement. At April 3, 2010, a letter of credit in the amount of $0.5 million was outstanding. The letter of credit expires on September 30, 2010.

Interest is payable monthly at either (i) prime plus 1.25%, as long as the Company maintains $8.5 million in revolving credit availability plus unrestricted cash on deposit with the financial institution, or (ii) prime plus 2.25%. The minimum monthly interest due is $3,750 minus the aggregate amount of any interest earned by the bank. The credit agreement matures on October 30, 2010, at which time all advances and interest are due and payable.

The Company's previous credit facility, which consisted of a revolving line of credit and a non-revolving equipment line, expired on August 31, 2009 and all borrowings were repaid to the bank. Interest on the credit facility was payable monthly at the greatest of (i) the sum of the prime rate plus 3%, (ii) LIBOR plus 6% or (iii) 8%.

The following table presents details of interest expense related to borrowings on revolving credit lines, along with certain other applicable information (in thousands):

	Three Months Ended	
	April 3, 2010	April 4, 2009
Interest expense	$ 11	$ 3

	April 3, 2010	January 2, 2010
Outstanding borrowings on the revolving line of credit	$ —	$ —
Borrowing availability under the revolving line of credit	$ 3,344	$ —

Obligations under this revolving credit agreement are secured by a first priority lien on the Company's tangible and intangible assets. In connection with the revolving credit agreement, the Company entered into an Intercompany Subordination Agreement, which provided that one of the Company's subsidiaries, Netlist Technology Texas, LP, is an additional obligor on the revolving credit agreement.

The revolving credit agreement subjects the Company to certain affirmative and negative covenants, including financial covenants with respect to the Company's liquidity and profitability and restrictions on the payment of dividends. As of April 3, 2010, the Company was in compliance with its financial covenants.

Note 7—Long-Term Debt

Long-term debt consists of the following (in thousands):

	April 3, 2010	January 2, 2010
Obligations under capital leases	$ 125	$ 159
Less current portion	(101)	(108)
	$ 24	$ 51

Interest expense related to long-term debt is presented in the following table (in thousands):

	Three Months Ended	
	April 3, 2010	April 4, 2009
Interest expense	$ 3	$ 11

Note 8—Income Taxes

The following table sets forth the Company's provision (benefit) for income taxes, along with the corresponding effective tax rates (in thousands, except percentages):

	Three Months Ended	
	April 3, 2010	April 4, 2009
(Benefit) provision for income taxes	$ (727)	$ 18
Effective tax rate	19.7%	(0.50)%

The Company is required to adjust its effective tax rate each quarter to be consistent with the estimated annual effective tax rate. The Company is also required to record the tax impact of certain discrete items, unusual or infrequently occurring, including changes in judgment about valuation allowances and effects of changes in tax laws or rates, in the interim period in which they occur. During the quarter ended April 3, 2010, the Company carried back approximately $1.7 million of gross net operating losses under the Worker, Homeownership, and Business Act and recorded a tax benefit and income tax receivable of approximately $0.7 million. In addition, jurisdictions with a projected loss for the year or a year-to-date loss where no tax benefit can be recognized are excluded from the estimated annual effective tax rate. The impact of such an exclusion could result in a higher or lower effective tax rate during a particular quarter, based upon the mix and timing of actual earnings versus annual projections.

The Company evaluates whether a valuation allowance should be established against its deferred tax assets based on the consideration of all available evidence using a "more likely than not" standard. Due to uncertainty of future utilization, the Company has provided a full valuation allowance as of April 3, 2010 and January 2, 2010. Accordingly, no benefit has been recognized for net deferred tax assets, including net operating losses that cannot be realized currently via carryback to periods of taxable income.

The Company had unrecognized tax benefits at April 3, 2010 and January 2, 2010 of approximately $0.1 million that, if recognized, would affect the Company's annual effective tax rate.

Note 9—Commitments and Contingencies

Litigation

Federal Securities Class Action

Beginning in May 2007, the Company, certain of its officers and directors, and the Company's underwriters were named as defendants in four purported class action shareholder complaints, two of which were filed in the U.S. District Court for the Southern District of New York, and two of which were filed in the U.S. District Court for the Central District of California. These purported class action lawsuits were filed on behalf of persons and entities who purchased or otherwise acquired the Company's common stock pursuant or traceable to the Company's November 30, 2006 initial public offering (the "IPO"). The lawsuits were consolidated into a single action—Belodoff v. Netlist, Inc., Lead Case No. SACV07-677 DOC (MLGx)—which is currently pending in the Central District of California. Lead Plaintiff filed the Consolidated Complaint in November 2007. Defendants filed their motions to dismiss the Consolidated Complaint in January 2008. The motions to dismiss were taken under submission in April 2008 and on May 30, 2008, the court granted the defendants' motions. However, plaintiffs were granted the right to amend their complaint and subsequently filed their First Amended Consolidated Class Action Complaint ("Amended Complaint") in July 2008. The defendants filed motions to dismiss the Amended Complaint in January 2009, and on April 17, 2009, the court granted defendants' motions to dismiss. However, plaintiffs were again granted the right to amend their complaint. Plaintiffs' filed their Second Amended Consolidated Class Action Complaint ("Second Amended Complaint") in May 2009. Generally, the Second Amended Complaint, like the preceding complaints, alleged that the Registration Statement filed by the Company in connection with the IPO contained untrue statements of material fact or omissions of material fact in violation of Sections 11 and 15 of Securities Act of 1933. Defendants filed motions to dismiss the Second Amended Complaint in June 2009. The motions to dismiss were taken under submission in August 2009 and on September 1, 2009, the Court granted the defendants' motions. However, plaintiffs again were granted the right to amend their complaint.

In December 2008, the parties reached a tentative agreement in principle to settle the class action. In February 2010, the parties executed a Stipulation and Agreement of Settlement documenting the essential terms of the proposed settlement, informed the court of their proposed settlement, and drafted a joint motion to submit to the court for preliminary approval of the proposed settlement. Under the settlement agreement presented to the court for approval, plaintiffs and the class will dismiss all claims, with prejudice, in exchange for a cash payment of $2.6 million. The Company's directors' and officers' liability insurers will pay the settlement amount in accordance with the Company's insurance policies.

On April 19, 2010, the court issued an order preliminarily approving the settlement. A final settlement approval hearing is scheduled to be held on September 30, 2010. Despite the proposed agreement to settle this action, the Company believes that the allegations lack merit and, if necessary, intends to vigorously defend all claims asserted. The Company makes no assurances at this time that the court will grant final approval of the proposed settlement terms or that the matter ultimately will be settled.

Patent Claims

In May 2008, the Company initiated discussions with Google, Inc. regarding the Company's claims that Google has infringed on a US patent assigned to the Company relating generally to "rank multiplication" in memory modules. On August 29, 2008, Google filed a declaratory judgment lawsuit against the Company in United States District Court for the Northern District of California, seeking a declaration that Google did not infringe on the Company's patent, and that the Company's patent is invalid. Google is not seeking any monetary damages. On November 18, 2008, the Company filed a counterclaim for infringement of the patent by Google. Claim construction proceedings were held on November 14, 2009, and the Company prevailed on every disputed claim construction issue. Trial is currently set for November 2010.

On December 4, 2009, the Company filed a patent infringement suit against Google in the United States District Court for the Northern District of California, seeking damages and injunctive relief based on Google's infringement of a recently issued patent related to the Company's patent-in-suit in the August 29, 2008 declaratory judgment action filed by Google. On February 11, 2010, Google answered the Company's complaint and has asserted counterclaims against the Company seeking a declaration that the patent is invalid and not infringed, and claiming that the Company committed fraud, negligent misrepresentation and contractual breaches in connection with the setting of standards covered by the patent. The counterclaim seeks unspecified compensatory damages. On April 30, 2010, the parties attended a court ordered settlement conference but the dispute remains unresolved. The Company intends to vigorously pursue its infringement claims against Google and to vigorously defend against Google's claims.

On March 17, 2009, the Company filed a complaint for patent infringement against MetaRAM, Inc. for its infringement of one of the Company's patents. On March 26, 2009, MetaRAM filed a complaint against the Company for patent infringement. Both actions were settled on December 21, 2009. Pursuant to the Settlement Agreement, MetaRAM agreed to no longer sell the accused product at issue in the case filed by the Company, and the parties executed conditional licenses to one another for the respective patents-in-suit in the two actions.

On September 22, 2009, the Company filed a patent infringement lawsuit against Inphi Corporation in the United States District Court for the Central District of California. The suit alleges that Inphi is contributorily infringing and actively inducing the infringement of a US patent assigned to the Company which is directed to memory modules with load isolation and memory domain translation capabilities. The Company is seeking damages and injunctive relief based on Inphi's use of its patented technology. On December 22, 2009, Netlist filed an Amended Complaint asserting claims of patent infringement based on two additional patents concerning load isolation and memory domain translation technologies. Inphi has denied infringement and has asserted that the patents-in-suit are invalid. On April 20, 2010, Inphi filed a request for reexamination of all three patents in suit with the United States Patent and Trademark Office ("PTO"). Shortly thereafter, on April 30, 2010, the PTO rejected Inphi's initial request. On May 7, 2010, Inphi re-filed its request for reexamination of all three patents. The Company intends to vigorously pursue its infringement claims and to vigorously defend against any further claims of invalidity in the PTO as well as the Court.

On November 30, 2009, Inphi Corporation filed a patent infringement lawsuit against the Company in the United States District Court for the Central District of California alleging infringement of two patents related to memory module output buffers. The Company recently answered Inphi's Complaint and intends to vigorously defend against Inphi's claims of infringement.

On March 24, 2010, Ring Technologies Enterprises filed a patent infringement lawsuit in the United States District Court for the Eastern District of Texas against Dell Computer and its suppliers. The suit alleges that the Company and forty-two (42) other defendants infringed on its patent no. 6,879,526. The Company is preparing an answer to Ring Technologies' complaint and intends to vigorously defend against Ring Technologies' claims of infringement.

Trade Secret Claim

On November 18, 2008, the Company filed a claim for trade secret misappropriation against Texas Instruments ("TI") in Santa Clara County Superior Court, based on TI's disclosure of confidential Company materials to the JEDEC standard-setting body. On May 7, 2010, the parties entered into a settlement agreement. The court dismissed the case with prejudice.

Other Contingent Obligations

During its normal course of business, the Company has made certain indemnities, commitments and guarantees under which it may be required to make payments in relation to certain transactions. These include (i) intellectual property indemnities to the Company's customers and licensees in connection with the use, sales and/or license of Company products; (ii) indemnities to vendors and service providers pertaining to claims based on the Company's negligence or willful misconduct; (iii) indemnities involving the accuracy of representations and warranties in certain contracts; (iv) indemnities to directors and officers of the Company to the maximum extent permitted under the laws of the State of Delaware; and (v) certain real estate leases, under which the Company may be required to indemnify property owners for environmental and other liabilities, and other claims arising from the Company's use of the applicable premises. The duration of these indemnities, commitments and guarantees varies and, in certain cases, may be indefinite. The majority of these indemnities, commitments and guarantees do not provide for any limitation of the maximum potential for future payments the Company could be obligated to make. Historically, the Company has not been obligated to make significant payments for these obligations, and no liabilities have been recorded for these indemnities, commitments and guarantees in the accompanying condensed consolidated balance sheets.

Note 10—Stockholders' Equity

Common Stock

On March 24, 2010, the Company sold 4,594,250 shares of common stock in a registered public offering. The shares were sold to the public at a price of $3.85 per share. The Company received net proceeds of $16.3 million, after underwriting discounts and commissions, and estimated expenses payable by the Company.

Common Stock Options

A summary of the Company's common stock option activity as of and for the three months ended April 3, 2010 is presented below (shares in thousands):

	Number of Shares	Weighted-Average Exercise Price
Options outstanding at January 2, 2010	4,298	$ 2.41
Options granted	235	4.44
Options exercised	(56)	1.19
Options cancelled	—	—
Options outstanding at April 3, 2010	4,477	$ 2.54

The intrinsic value of options exercised in the three months ended April 3, 2010 was $0.2 million.

The following table presents details of the assumptions used to calculate the weighted-average grant date fair value of common stock options granted by the Company:

	Three Months Ended April 3, 2010
Expected term (in years)	5.5
Expected volatility	148%
Risk-free interest rate	2.61%
Expected dividends	—
Weighted-average grant date fair value per share	$ 4.10

The Company did not issue options in the period ended April 4, 2009.

At April 3, 2010, the amount of unearned stock-based compensation currently estimated to be expensed from fiscal 2010 through fiscal 2014 related to unvested common stock options is approximately $1.9 million, net of estimated forfeitures. The weighted-average period over which the unearned stock-based compensation is expected to be recognized is approximately 2.6 years. If there are any modifications or cancellations of the underlying unvested common stock options, the Company may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense.

Warrants

A summary of activity with respect to outstanding warrants to purchase shares of the Company's common stock as of and for the three months ended April 3, 2010 is presented below (shares in thousands):

	Number of Shares	Weighted-Average Exercise Price
Warrants outstanding at January 2, 2010	18	$ 1.25
Warrants exercised	(18)	1.25
Warrants outstanding and exercisable at April 3, 2010	—	$ —

Note 11—Segment and Geographic Information

The Company operates in one reportable segment: the design and manufacture of high-performance memory subsystems for the server, high-performance computing and communications markets. The Company evaluates financial performance on a Company-wide basis.

At April 3, 2010 and January 2, 2010, approximately $2.7 million and $3.0 million, respectively, of the Company's net long-lived assets were located in the PRC.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Cautionary Statement

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our Unaudited Condensed Consolidated Financial Statements and the related notes thereto contained in Part I, Item 1 of this Report. The information contained in this Quarterly Report on Form 10-Q is not a complete description of our business or the risks associated with an investment in our common stock. We urge you to carefully review and consider the various disclosures made by us in this Report and in our other reports filed with the Securities and Exchange Commission, or SEC, including our Annual Report on Form 10-K for the fiscal year ended January 2, 2010 and subsequent reports on Form 8-K, which discuss our business in greater detail.

The section entitled "Risk Factors" set forth in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended January 2, 2010 filed with the Securities and Exchange Commission on February 19, 2010, and similar discussions in our other SEC filings, describe some of the important risk factors that may affect our business, results of operations and financial condition. You should carefully consider those risks, in addition to the other information in this Report and in our other filings with the SEC, before deciding to purchase, hold or sell our common stock.

This Report contains forward-looking statements that involve risks, uncertainties, estimates and assumptions. These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to predict. Therefore, our actual results could differ materially and adversely from those expressed in any forward-looking statements as a result of various factors, including but not limited to those identified under the heading "Risk Factors" set forth in Part II, Item 1A of this Report and in our Annual Report on Form 10-K for the year ended January 2, 2010. Except as required by law, we undertake no obligation to revise or update publicly any forward-looking statements for any reason.

Overview

We design, manufacture and sell high-performance, logic-based memory subsystems for the server, storage and communications equipment markets. Our memory subsystems consist of combinations of dynamic random access memory integrated circuits ("DRAM ICs" or "DRAM"), NAND flash memory ("NAND"), application-specific integrated circuits ("ASICs") and other components assembled on printed circuit boards ("PCBs"). We primarily market and sell our products to leading original equipment manufacturer ("OEM") customers. Our solutions are targeted at applications where memory plays a key role in meeting system performance requirements.

In November 2009, we introduced HyperCloud™ DDR3 memory technology. HyperCloud™ utilizes an ASIC chipset that incorporates Netlist patented rank multiplication technology that increases memory capacity and load reduction functionality that increases memory bandwidth. We expect that this achievement will make possible improved levels of performance for memory intensive datacenter applications and workloads, including search engines, social networks/communications, media internet portals, virtualization, and high performance scientific and defense-related computing. HyperCloud™ memory is being evaluated by several of our OEM customers for use in their server products. HyperCloud™ is interoperable with Joint Electronics Devices Engineering Council ("JEDEC") standard DDR3 memory modules. As of April 3, 2010, we have not shipped any production quantities of HyperCloud™.

In February 2010, we announced general availability of NetVault ™, a non-volatile cache memory subsystem targeting Redundant Array of Independent Disks, ("RAID") storage applications. NetVault ™ provides server and storage OEMs a solution for enhanced datacenter fault recovery. Unlike traditional battery-powered fault tolerant cache schemes which rely solely on batteries to power the cache, NetVault ™ utilizes a combination of DRAM for high throughput performance and flash for extended data retention.

Our HyperCloud™ products can be installed in servers without the need for a bios change. As such, their design and anticipated sales launch is not dependent on the design plans or product cycle of our OEM customers. Alternatively, when developing custom modules for an equipment product launch, we engage with our OEM customers from the earliest stages of new product definition, providing us unique insight into their full range of system architecture and performance requirements. This close collaboration has also allowed us to develop a significant level of systems expertise. We leverage a portfolio of proprietary technologies and design techniques, including efficient planar design, alternative packaging techniques and custom semiconductor logic, to deliver memory subsystems with high speed, capacity and signal integrity, small form factor, attractive thermal characteristics and low cost per bit.

Consistent with the concentrated nature of the OEM customer base in our target markets, a small number of large customers have historically accounted for a significant portion of our net sales. Dell, Inc. ("Dell"), Flextronics International Ltd. ("Flextronics") and Arrow Electronics, Inc. ("Arrow") represented approximately 37%, 31% and 16%, respectively, of our net sales for the three months ended April 3, 2010. Dell and Arrow represented approximately 33% and 21%, respectively, of our net sales for the three months ended April 4, 2009. Net sales to some of our OEM customers include memory modules that are qualified by us directly with the OEM customer and sold to electronic manufacturing services providers ("EMSs"), for incorporation into products manufactured exclusively for the OEM customer or in some instances, to facilitate credit and logistics. These net sales to EMSs have historically fluctuated period to period as a portion of the total net sales to the OEM customers. Net sales to Hon Hai Precision Industry Co. Ltd., an EMS operating under the trade name Foxconn that purchases memory modules from us for incorporation into products manufactured exclusively for Dell, represented approximately 89% and 67% of net sales to Dell for the three months ended April 3, 2010 and April 4, 2009, respectively. Arrow is an EMS for DRS Electronics, Inc. ("DRS Electronics"). Substantially all of our products sold to Arrow are incorporated into components manufactured for DRS Electronics. Similarly, Flextronics distributes substantially all of the products purchased from us to F5 Networks, Inc.

Key Business Metrics

The following describes certain line items in our consolidated statements of operations that are important to management's assessment of our financial performance:

Net Sales. Net sales consist primarily of sales of our high performance memory subsystems, net of a provision for estimated returns under our right of return policies, which generally range up to 30 days. We generally do not have long-term sales agreements with our customers. Although OEM customers typically provide us with non-binding forecasts of future product demand over specific periods of time, they generally place orders with us approximately two weeks in advance of scheduled delivery. Selling prices are typically negotiated monthly, based on competitive market conditions and the current price of DRAM ICs and NAND. Purchase orders generally have no cancellation or rescheduling penalty provisions. We often ship our products to our customers' international manufacturing sites. All of our sales to date, however, are denominated in United States ("U.S.") dollars. We also sell excess component inventory of DRAM ICs and NAND to distributors and other users of memory ICs. As compared to previous years, component inventory sales remain a relatively small percentage of net sales as a result of our efforts to diversify both our customer and product line bases. This diversification effort has also allowed us to use components in a wider range of memory subsystems. We expect that component inventory sales will continue to represent a minimal portion of our net sales in future periods.

Cost of Sales. Our cost of sales includes the cost of materials, manufacturing costs, depreciation and amortization of equipment, inventory valuation provisions, stock-based compensation and occupancy costs and other allocated fixed costs. The DRAM ICs and NAND incorporated into our products constitute a significant portion of our cost of sales, and thus our cost of sales will fluctuate based on the current price of DRAM ICs and NAND. We attempt to pass through such DRAM IC and NAND flash memory cost fluctuations to our customers by renegotiating pricing prior to the placement of their purchase orders. However, the sales prices of our memory subsystems can also fluctuate due to competitive situations unrelated to the pricing of DRAM ICs and NAND, which affects gross margins. The gross margin on our sales of excess component DRAM IC and NAND inventory is much lower than the gross margin on our sales of our memory subsystems. As a result, a decrease in excess DRAM IC and NAND inventory sales as a percentage of our overall sales could result in an improved overall gross margin. We assess the valuation of our inventories on a monthly basis and record a provision to cost of sales as necessary to reduce inventories to the lower of cost or net realizable value.

Research and Development. Research and development expense consists primarily of employee and independent contractor compensation and related costs, non-recurring engineering fees, patent filing and protection legal fees, computer-aided design software licenses, reference design development costs, depreciation or rental of evaluation equipment, stock-based compensation, and occupancy and other allocated overhead costs. Also included in research and development expense are the costs of material and overhead related to the production of engineering samples of new products under development or products used solely in the research and development process. Our customers typically do not separately compensate us for design and engineering work involved in developing application-specific products for incorporation into their products. All research and development costs are expensed as incurred. We anticipate that research and development expenditures will increase in future periods as we seek to expand new product opportunities, increase our activities related to new and emerging markets and continue to develop additional proprietary technologies.

Selling, General and Administrative. Selling, general and administrative expenses consist primarily of employee salaries and related costs, stock-based compensation, independent sales representative commissions, professional services, promotional and other selling and marketing expenses, and occupancy and other allocated overhead costs. A significant portion of our selling effort is directed at building relationships with OEMs and other customers and working through the product approval and qualification process with them. Therefore, the cost of material and overhead related to products manufactured for qualification is included in selling expenses. As we continue to service existing and establish new customers, we anticipate that our sales and marketing expenses will increase. For fiscal 2010, we are subject to attestation services requirements with respect to our internal control over financial reporting, the result of which will increase legal and accounting expenses in future periods.

Provision (Benefit) for Income Taxes. We are required to adjust our effective tax rate each quarter to be consistent with the estimated annual effective tax rate. We are also required to record the tax impact of certain discrete items, unusual or infrequently occurring, including changes in judgment about valuation allowances and effects of changes in tax laws or rates, in the interim period in which they occur. In addition, jurisdictions with a projected loss for the year or a year-to-date loss where no tax benefit can be recognized are excluded from the estimated annual effective tax rate. The impact of such an exclusion could result in a higher or lower effective tax rate during a particular quarter, based upon the mix and timing of actual earnings versus annual projections.

We evaluate whether a valuation allowance should be established against our deferred tax assets based on the consideration of all available evidence using a "more likely than not" standard. As of April 3, 2010 and January 2, 2010, we have provided a full valuation allowance and no benefit has been recognized for net operating losses and other deferred tax assets due to uncertainty of future utilization.

Critical Accounting Policies

The preparation of our consolidated financial statements in conformity with accounting principles generally accepted in the U.S. requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of net sales and expenses during the reporting period. By their nature, these estimates and assumptions are subject to an inherent degree of uncertainty. We base our estimates on our historical experience, knowledge of current conditions and our beliefs of what could occur in the future considering available information. We review our estimates on an on-going basis. Actual results may differ from these estimates, which may result in material adverse effects on our operating results and financial position. We believe the following critical accounting policies involve our more significant assumptions and estimates used in the preparation of our consolidated financial statements:

Revenue Recognition. We recognize revenues in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 605. Accordingly, we recognize revenues when there is persuasive evidence that an arrangement, product delivery and acceptance have occurred, the sales price is fixed or determinable, and collectibility of the resulting receivable is reasonably assured.

We generally use customer purchase orders and/or contracts as evidence of an arrangement. Delivery occurs when goods are shipped for customers with FOB Shipping Point terms and upon receipt for customers with FOB Destination terms, at which time title and risk of loss transfer to the customer. Shipping documents are used to verify delivery and customer acceptance. We assess whether the sales price is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund. Customers are generally allowed limited rights of return for up to 30 days, except for sales of excess inventories, which contain no right-of-return privileges. Estimated returns are provided for at the time of sale based on historical experience or specific identification of an event necessitating a reserve. We offer a standard product warranty to our customers and have no other post-shipment obligations. While these sales returns have historically been within our expectations and the provisions established, we cannot guarantee that we will continue to experience similar sales return rates in the future. Any significant increase in product return rates could have a material adverse effect on our operating results for the period or periods in which such returns materialize. We assess collectibility based on the creditworthiness of the customer as determined by credit checks and evaluations, as well as the customer's payment history.

All amounts billed to customers related to shipping and handling are classified as net sales, while all costs incurred by us for shipping and handling are classified as cost of sales.

Fair Value of Financial Instruments. Our financial instruments consist principally of cash and cash equivalents, investments in marketable securities, accounts receivable, accounts payable, accrued expenses and debt instruments. Other than for certain investments in auction rate securities, the fair value of our cash equivalents and investments in marketable securities, other than commercial paper or short-term corporate bonds, is determined based on quoted prices in active markets for identical assets or Level 1 inputs. Because of their short-term nature, commercial paper and short-term corporate bonds are not frequently traded. Although there are observable quotes for these securities, the markets are not considered active. Accordingly, the fair values of these investments are based on Level 2 inputs. We recognize transfers between Levels 1 through 3 of the fair value hierarchy at the beginning of the reporting period. We believe that the carrying values of all other financial instruments approximate their current fair values due to their nature and respective durations.

Allowance for Doubtful Accounts. We perform credit evaluations of our customers' financial condition and limit the amount of credit extended to our customers as deemed necessary, but generally require no collateral. We evaluate the collectibility of accounts receivable based on a combination of factors. In cases where we are aware of circumstances that may impair a specific customer's ability to meet its financial obligations subsequent to the original sale, we will record an allowance against amounts due, and thereby reduce the net recognized receivable to the amount that we reasonably believe will be collected. For all other customers, we record allowances for doubtful accounts based primarily on the length of time the receivables are past due based on the terms of the originating transaction, the current business environment and our historical experience. Uncollectible accounts are charged against the allowance for doubtful accounts when all cost effective commercial means of collection have been exhausted. Generally, our credit losses have been within our expectations and the provisions established. However, we cannot guarantee that we will continue to experience credit loss rates similar to those we have experienced in the past.

Our accounts receivable are highly concentrated among a small number of customers, and a significant change in the liquidity or financial position of one of these customers could have a material adverse effect on the collectability of our accounts receivable, our liquidity and our future operating results.

Inventories. We value our inventories at the lower of the actual cost to purchase or manufacture the inventory or the net realizable value of the inventory. Cost is determined on an average cost basis which approximates actual cost on a first-in, first-out basis and includes raw materials, labor and manufacturing overhead. At each balance sheet date, we evaluate ending inventory quantities on hand and record a provision for excess quantities and obsolescence. Among other factors, we consider historical demand and forecasted demand in relation to the inventory on hand, competitiveness of product offerings, market conditions and product life cycles when determining obsolescence and net realizable value. In addition, we consider changes in the market value of DRAM ICs and NAND in determining the net realizable value of our raw material inventory. Once established, any write downs are considered permanent adjustments to the cost basis of our excess or obsolete inventories.

A significant decrease in demand for our products could result in an increase in the amount of excess inventory quantities on hand. In addition, our estimates of future product demand may prove to be inaccurate, in which case we may have understated or overstated the provision required for excess and obsolete inventory. In the future, if our inventories are determined to be overvalued, we would be required to recognize additional expense in our cost of sales at the time of such determination. Likewise, if our inventories are determined to be undervalued, we may have over-reported our costs of sales in previous periods and would be required to recognize additional gross profit at the time such inventories are sold. In addition, should the market value of DRAM ICs or NAND decrease significantly, we may be required to lower our selling prices to reflect the lower current cost of our raw materials. If such price decreases reduce the net realizable value of our inventories to less than our cost, we would be required to recognize additional expense in our cost of sales in the same period. Although we make every reasonable effort to ensure the accuracy of our forecasts of future product demand, any significant unanticipated changes in demand, technological developments or the market value of DRAM ICs or NAND could have a material effect on the value of our inventories and our reported operating results.

Impairment of Long-Lived Assets. We evaluate the recoverability of the carrying value of long-lived assets held and used in our operations for impairment on at least an annual basis or whenever events or changes in circumstances indicate that their net book value may not be recoverable. When such factors and circumstances exist, we compare the projected undiscounted future net cash flows associated with the related asset or group of assets over their estimated useful lives against their respective carrying amount. These projected future cash flows may vary significantly over time as a result of increased competition, changes in technology, fluctuations in demand, consolidation of our customers and reductions in average selling prices. If the carrying value is determined not to be recoverable from future operating cash flows, the asset is deemed impaired and an impairment loss is recognized to the extent the carrying value exceeds the estimated fair value of the asset. The fair value of the asset or asset group is based on market value when available, or when unavailable, on discounted expected cash flows.

Warranty Reserve. We offer product warranties generally ranging from one to three years, depending on the product and negotiated terms of purchase agreements with our customers. Such warranties require us to repair or replace defective product returned to us during the warranty period at no cost to the customer. Warranties are not offered on sales of excess inventory. Our estimates for warranty-related costs are recorded at the time of sale based on historical and estimated future product return rates and expected repair or replacement costs. While such costs have historically been consistent between periods and within our expectations and the provisions established, unexpected changes in failure rates could have a material adverse impact on us, requiring additional warranty reserves, and adversely affecting our gross profit and gross margins.

Stock-Based Compensation. We account for equity issuances to non-employees in accordance with ASC Topic 505. All transactions in which goods or services are the consideration received for the issuance of equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable. The measurement date used to determine the fair value of the equity instrument issued is the earlier of the date on which the third-party performance is complete or the date on which it is probable that performance will occur.

In accordance with ASC Topic 718, employee and director stock-based compensation expense recognized during the period is based on the value of the portion of stock-based payment awards that is ultimately expected to vest during the period. Given that stock-based compensation expense recognized in the consolidated statements of operations is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. ASC Topic 718 requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Our estimated average forfeiture rates are based on historical forfeiture experience and estimated future forfeitures.

The fair value of common stock option awards to employees and directors is calculated using the Black-Scholes option pricing model. The Black-Scholes model requires subjective assumptions regarding future stock price volatility and expected time to exercise, along with assumptions about the risk-free interest rate and expected dividends, all of which affect the estimated fair values of our common stock option awards. The expected term of options granted is calculated as the average of the weighted vesting period and the contractual expiration date of the option. This calculation is based on the safe harbor method permitted by the SEC in instances where the vesting and exercise terms of options granted meet certain conditions and where limited historical exercise data is available. Prior to fiscal 2009, the expected volatility was based on the historical volatilities of the common stock of comparable publicly traded companies based on our belief that we had limited historical data regarding the volatility of our stock price on which to base a meaningful estimate of expected volatility. Beginning in fiscal 2009, the expected volatility is based on the historical volatility of our common stock. The risk-free rate selected to value any particular grant is based on the U.S. Treasury rate that corresponds to the expected term of the grant effective as of the date of the grant. The expected dividends assumption is based on our history and our expectations regarding dividend payouts. We evaluate the assumptions used to value our common stock option awards on a quarterly basis. If factors change and we employ different assumptions, stock- based compensation expense may differ significantly from what we have recorded in prior periods. Compensation expense for awards with graded vesting schedules is recognized on a straight-line basis over the requisite service period for the last separately vesting portion of the award.

If there are any modifications or cancellations of the underlying vested or unvested stock-based awards, we may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense, or record additional expense for vested stock-based awards. Future stock-based compensation expense and unearned stock- based compensation may increase to the extent that we grant additional common stock options or other stock-based awards.

Income Taxes. Under ASC Topic 270, we are required to adjust our effective tax rate each quarter to be consistent with the estimated annual effective tax rate. We are also required to record the tax impact of certain discrete items, unusual or infrequently occurring, including changes in judgment about valuation allowances and effects of changes in tax laws or rates, in the interim period in which they occur. In addition, jurisdictions with a projected loss for the year or a year-to-date loss where no tax benefit can be recognized are excluded from the estimated annual effective tax rate. The impact of such an exclusion could result in a higher or lower effective tax rate during a particular quarter, based upon the mix and timing of actual earnings versus annual projections.

Deferred tax assets and liabilities are recognized to reflect the estimated future tax effects, calculated at currently effective tax rates, of future deductible or taxable amounts attributable to events that have been recognized on a cumulative basis in the consolidated financial statements. A valuation allowance related to a net deferred tax asset is recorded when it is more likely than not that some portion of the deferred tax asset will not be realized.

ASC Topic 740 prescribes a recognition threshold and measurement requirement for the financial statement recognition of a tax position that has been taken or is expected to be taken on a tax return and also provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. Under ASC Topic 740 we may only recognize or continue to recognize tax positions that meet a “more likely than not” threshold.

The application of tax laws and regulations is subject to legal and factual interpretation, judgment and uncertainty. Tax laws and regulations themselves are subject to change as a result of changes in fiscal policy, changes in legislation, the evolution of regulations and court rulings. Therefore, the actual liability for U.S. or foreign taxes may be materially different from our estimates, which could result in the need to record additional tax liabilities or potentially reverse previously recorded tax liabilities.

Results of Operations

The following table sets forth certain consolidated statements of operations data as a percentage of net sales for the periods indicated:

	Three Months Ended	
	April 3, 2010	April 4, 2009
Net sales	100%	100%
Cost of sales	77	125
Gross profit (loss)	23	(25)
Operating expenses:		
Research and development	38	75
Selling, general and administrative	33	90
Total operating expenses	71	164
Operating loss	(48)	(189)
Other income:		
Interest income, net	—	4
Other income, net	1	8
Total other income, net	1	12
Loss before (benefit) provision for income taxes	(47)	(177)
(Benefit) provision for income taxes	(9)	1
Net loss	(38)%	(178)%

Three Months Ended April 3, 2010 Compared to Three Months Ended April 4, 2009

Net Sales, Cost of Sales and Gross Profit

The following table presents net sales, cost of sales and gross profit for the three months ended April 3, 2010 and April 4, 2009 (in thousands, except percentages):

	Three Months Ended			
	April 3, 2010	April 4, 2009	Change	% Change
Net sales	$ 7,890	$ 2,162	$ 5,728	265%
Cost of sales	6,072	2,699	3,373	125%
Gross profit (loss)	$ 1,818	$ (537)	$ 2,355	439%
Gross margin	23%	(25)%	48%	

Net Sales. The overall increase in our net sales was primarily driven by (i) an increase of $2.1 million in sales of memory modules used in RAID controller subsystems, including sales of NetVault™, (ii) an increase of $1.9 million in sales of memory modules utilized in server applications, and (iii) an increase of $1.2 million in sales of memory modules designed for industrial applications. Net sales of RAID, data center optimization and industrial applications increased as a result of the selection of our memory modules for inclusion in new product platforms. Net sales in all product categories have benefited from a resurgence in technology investment, as general economic conditions have improved. Should economic conditions erode, these expectations may not be realized.

Sales of our component inventory to distributors and other users of memory ICs represented approximately 1.2% and 2.8% of net sales for the three months ended April 3, 2010 and April 4, 2009, respectively. Component inventory sales have decreased as a percentage of net sales as a result of our ability to use the same components across a wider range of memory subsystems.

Gross Profit (Loss) and Gross Margin. Gross profit (loss) for the three months ended April 3, 2010 as compared to the three months ended April 4, 2009 increased due to the 265% increase in net sales between the two periods. The increase in gross margin for the three months ended April 3, 2010 as compared to the three months ended April 4, 2009 is mostly due to the improved ability to absorb manufacturing costs caused by the increase in units manufactured and sold during the recent quarter. The cost savings generated from the improvement in capacity utilization were partially offset by increased DRAM prices.

Research and Development .

The following table presents research and development expenses for the three months ended April 3, 2010 and April 4, 2009 (in thousands, except percentages):

	Three Months Ended			
	April 3, 2010	April 4, 2009	Change	% Change
Research and development	$ 3,008	$ 1,614	$ 1,394	86%

The increase in research and development expense in the three months ended April 3, 2010 as compared to the three months ended April 4, 2009 resulted primarily from increases of (i) $0.7 million in engineering expenses as a result of an increase in non-recurring engineering charges and both internal engineering headcount and outside contractors engaged in new product development activities in the first quarter of 2010, (ii) $0.6 million in legal and professional fees as we continue to increase patent filing and protection activities related to new and emerging markets and (iii) $0.1 million in expenses related to product qualification builds and testing.

Selling, General and Administrative .

The following table presents selling, general and administrative expenses for the three months ended April 3, 2010 and April 4, 2009 (in thousands, except percentages):

	Three Months Ended			
	April 3, 2010	April 4, 2009	Change	% Change
Selling, general and administrative	$ 2,570	$ 1,935	$ 635	33%

The increase in selling, general and administrative expense in the three months ended April 3, 2010 as compared to the three months ended April 4, 2009 resulted primarily from increases of (i) $0.3 million in personnel-related expenses primarily attributable to hiring personnel to support the development of markets for HyperCloud™ and NetVault™, (ii) $0.2 million in product samples and travel costs as a result of activities related to the OEM qualification process for HyperCloud™ and NetVault™, and (iii) $0.1 million in commission expenses due to an increase in sales revenue.

Other Income.

The following table presents other income for the three months ended April 3, 2010 and April 4, 2009 (in thousands, except percentages):

	Three Months Ended			
	April 3, 2010	April 4, 2009	Change	% Change
Interest income, net	$ 1	$ 82	$ (81)	(99)%
Other income, net	67	175	(108)	(62)%
Total other income, net	$ 68	$ 257	$ (189)	(74)%

Net interest income for the three months ended April 3, 2010 was comprised of nominal interest income, offset by nominal interest expense. Net interest income for the three months ended April 4, 2009 was comprised of interest income of approximately $0.1 million, offset by interest expense of approximately $0.03 million. The decrease in interest income in the three months ended April 3, 2010 as compared to the three months ended April 4, 2009 was due to a combination of our lower average cash and investment balances and the decrease in the yield earned on those balances due to lower interest rates. The decrease in interest expense during 2010 as compared to 2009 resulted primarily from our lower average outstanding balances on our line of credit and debt balances during the current year.

Other income, net, for the three months ended April 3, 2010 is primarily comprised of cash proceeds from the early termination of a sublease of our headquarters facility. Other income, net, for the three months ended April 4, 2009 is primarily comprised of gains from the sale of equipment held for sale.

(Benefit) Provision for Income Taxes .

The following table presents the (benefit) provision for income taxes for the three months ended April 3, 2010 and April 4, 2009 (in thousands, except percentages):

	Three Months Ended			
	April 3, 2010	April 4, 2009	Change	% Change
(Benefit) provision for income taxes	$ (727)	$ 18	$ (745)	(4,139)%

On an interim basis, we estimate what our effective tax rate will be in each jurisdiction for the full fiscal year and record a quarterly income tax (benefit) provision in accordance with the anticipated blended annual rate. We are also required to record the tax impact of certain discrete items, unusual or infrequently occurring, including changes in judgment about valuation allowances and effects of changes in tax laws or rates, in the interim period in which they occur. During the quarter ended April 3, 2010, we carried back approximately $1.7 million of gross net operating losses under the Worker, Homeownership, and Business Act and recorded a tax benefit and income tax receivable of approximately $0.7 million. In addition, jurisdictions with a projected loss for the year or a year-to-date loss where no tax benefit can be recognized are excluded from the estimated annual effective tax rate. The impact of such an exclusion could result in a higher or lower effective tax rate during a particular quarter, based upon the mix and timing of actual earnings versus annual projections.

We evaluate whether a valuation allowance should be established against our deferred tax assets based on the consideration of all available evidence using a “more likely than not” standard. Due to uncertainty of future utilization, we have provided a full valuation allowance as of April 3, 2010 and January 2, 2010. Accordingly, no benefit has been recognized for net deferred tax assets, including net operating losses that cannot be realized currently via carryback to periods of taxable income.

Our income tax benefit of $0.7 million for the quarter ended April 3, 2010 is the result of a special carryback of operating losses that was made available through legislative changes. We recorded a provision for income taxes for the quarter ended April 4, 2009 due to state minimum taxes.

Liquidity and Capital Resources

Since our inception, we have financed our operations primarily through issuances of equity and debt securities and cash generated from operations. We have also funded our operations with a revolving line of credit under our bank credit facility, from capitalized lease obligations and from the sale and leaseback of our domestic manufacturing facility.

Working Capital and Cash and Marketable Securities

The following table presents working capital, cash and cash equivalents and investments in marketable securities (in thousands):

	April 3, 2010	January 2, 2010
Working Capital	$ 27,492	$ 13,379
Cash and cash equivalents(1)	$ 19,237	$ 9,942
Short-term marketable securities(1)	6,268	3,949
Long-term marketable securities	906	941
	$ 26,411	$ 14,832

(1) Included in working capital

Our working capital increased in the three months ended April 3, 2010 primarily as a result of our increase in cash, cash equivalents and short-term marketable securities resulting from our public offering of our shares of common stock. Additionally, we experienced increases in certain operating assets, offset by increases in certain operating liabilities resulting from our increase in sales and production ramp up for HyperCloud™ and NetVault™.

Cash Provided and Used in the Three Months Ended April 3, 2010 and April 4, 2009

The following table summarizes our cash flows for the periods indicated (in thousands):

	Three Months Ended	
	April 3, 2010	April 4, 2009
Net cash provided by (used in):		
Operating activities	$ (4,494)	$ (915)
Investing activities	(2,527)	(5,613)
Financing activities	16,316	(123)
Net increase (decrease) in cash and cash equivalents	$ 9,295	$ (6,651)

Operating Activities. Net cash used by operating activities for the three months ended April 3, 2010 was primarily a result of (i) net loss of approximately $3.0 million and (ii) cash provided by changes in operating assets and liabilities of approximately $2.4 million, partially offset by approximately $0.9 million in net non-cash operating expenses, primarily consisting of depreciation and amortization and stock-based compensation expense. Net cash used by operating activities for the three months ended April 4, 2009 was primarily a result of a net loss of approximately $3.8 million, partially offset by (i) approximately $2.2 million in net cash provided by changes in operating assets and liabilities, and (ii) approximately $0.7 million in net non-cash operating expenses, primarily comprising depreciation and amortization, stock-based compensation and gain on disposal of assets.

Accounts receivable increased approximately $1.0 million during the three months ended April 3, 2010 primarily as a result of the increase in our net sales during the period. During the same period, we were successful in collecting cash from sales to our customers substantially in accordance with our standard payment terms with those customers. Inventories increased approximately $1.7 million during the three months ended April 3, 2010 as we prepare for production of our HyperCloud™ and NetVault™ products.

Investing Activities. Net cash used in investing activities for the three months ended April 3, 2010 was primarily the result of purchases of $2.4 million of investments in marketable securities, offset by sales of $0.06 million. Additionally, we acquired $0.2 million in property and equipment. Net cash used in investing activities for the three months ended April 4, 2009 was primarily a result of purchases of additional investments in marketable securities of approximately $10.3 million, partially offset by (i) proceeds received from maturities and sales of certain investments in marketable securities of approximately $4.4 million and (ii) proceeds from the sale of equipment.

Financing Activities. Net cash provided by financing activities for the three months ended April 3, 2010 was a result of the net proceeds of $16.3 million from the sale of 4,594,250 shares of our common stock in a registered public offering. Net cash used in financing activities for the three months ended April 4, 2009 was a result of repayment of approximately $0.1 million on our long term debt.

Capital Resources

On October 31, 2009, we entered into a revolving credit agreement with a financial institution. Under the original terms of the credit agreement, we could borrow up to the lesser of (i) 80% of eligible accounts receivable, minus $1.0 million, or (ii) $5.0 million. The revolving credit agreement was amended on March 24, 2010 to allow for increased accounts receivable eligibility and to remove the $1.0 million reduction from the calculated accounts receivable borrowing base. The credit agreement contains an overall sublimit of $2.5 million to collateralize our contingent obligations under letters of credit, foreign exchange contracts and cash management services. Amounts outstanding under the overall sublimit reduce the

amount available pursuant to the credit agreement. Interest is payable monthly at either (i) prime plus 1.25%, as long as we maintain $8.5 million in revolving credit availability plus unrestricted cash on deposit with the financial institution, or (ii) prime plus 2.25%. The credit agreement matures on October 30, 2010, at which time all advances and interest are due and payable.

The following table presents details of outstanding borrowings and availability under our lines of credit (in thousands):

	April 3, 2010	January 2, 2010
Outstanding borrowings on the revolving line of credit	$ —	$ —
Borrowing availability under the revolving line of credit	$ 3,344	$ —

Obligations under our revolving credit agreement are secured by a first priority lien on our tangible and intangible assets. In connection with the revolving credit agreement, we entered into an Intercompany Subordination Agreement, which provided that Netlist Technology Texas, LP, one of our subsidiaries, is an additional obligor on the revolving credit agreement.

While we are currently in compliance with all financial covenants and expect to maintain compliance for the foreseeable future, we have in the past been in violation of one or more covenants of other credit agreements. We cannot assure you that we will not violate one or more covenants in the future. If we were to be in violation of covenants under our credit agreement, our lender could choose to accelerate payment on all outstanding loan balances. There can be no assurance that we would be able to quickly obtain equivalent or suitable replacement financing in this event. If we were not able to secure alternative sources of funding, such acceleration would have a material adverse impact on our financial condition.

We have in the past utilized equipment leasing arrangements to finance certain capital expenditures. Equipment leases will continue to be a financing alternative that we may pursue in the future.

We believe our existing cash balances, borrowing availability under our bank credit facility, and the cash expected to be generated from operations, will be sufficient to meet our anticipated cash needs for at least the next 12 months. Our future capital requirements will depend on many factors, including our levels of net sales, the timing and extent of expenditures to support research and development activities, the expansion of manufacturing capacity both domestically and internationally and the continued market acceptance of our products. We could be required, or may choose, to seek additional funding through public or private equity or debt financings. In addition, in connection with any future acquisitions, we may require additional funding which may be provided in the form of additional debt or equity financing or a combination thereof. These additional funds may not be available on terms acceptable to us, or at all.

New Accounting Pronouncements

In September 2009, the FASB issued Accounting Standards Update ("ASU") 2009-13, *Multiple-Deliverable Revenue Arrangements* ("ASU 2009-13"), which amends the revenue guidance under ASC Topic 605, which describes the accounting for multiple element arrangements. ASU 2009-13 addresses how to determine whether an arrangement involving multiple deliverables contains more than one unit of accounting and how arrangement consideration shall be measured and allocated to the separate units of accounting in the arrangement. ASU 2009-13 is effective on a prospective basis for the Company's fiscal year 2011, with earlier adoption permitted. We are currently evaluating the adoption of ASU 2009-13 and the impact that ASU 2009-13 will have on our condensed consolidated financial statements.

In September 2009, the FASB issued ASU 2009-14, *Certain Revenue Arrangements That Include Software Elements* ("ASU 2009-14"), which excludes tangible products containing software components and non-software components that function together to deliver the product's essential functionality from the scope of ASC Topic 985, which describes the accounting for software revenue recognition. ASU 2009-14 is effective on a prospective basis for our fiscal year 2011, with earlier adoption permitted. We are currently evaluating the impact that ASU 2009-14 will have on its condensed consolidated financial statements.

In January 2010, the FASB issued ASU 2010-6, *Fair Value Measurements and Disclosures: Improving Disclosures About Fair Value Measurement* ("ASU 2010-6"), which affects the disclosures made about recurring and non-recurring fair value measurements. We adopted the expanded disclosure requirements in the quarter ended April 3, 2010.

Off-Balance Sheet Arrangements

We do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not have any undisclosed borrowings or debt, and we have not entered into any synthetic leases. We are, therefore, not materially exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in such relationships.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As a Smaller Reporting Company, we are not required to make any disclosure pursuant to this Item 3.

Item 4. Controls and Procedures

Not Applicable.

Item 4T. Controls and Procedures

(a) Evaluation of Disclosure Controls and Procedures. We carried out an evaluation, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, ("Exchange Act")) as of the end of our fiscal quarter ended April 3, 2010. Based upon that evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures are effective to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act (i) is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) is accumulated and communicated to our management, including our principal executive officer and principal financial officer as appropriate to allow timely decisions regarding required disclosure.

(b) Change in internal controls over financial reporting. During the fiscal quarter that ended April 3, 2010, there were no changes in our internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

Inherent Limitations on Internal Control

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of simple errors. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

The information set forth in the sections entitled Federal Securities Class Action, Patent Claims and Trade Secret Claim under Note 9 of Notes to Unaudited Condensed Consolidated Financial Statements, included in Part I, Item I of this Report, is incorporated herein by reference.

Item 1A. Risk Factors

As a Smaller Reporting Company, we are not required to make any disclosure pursuant to this Item 1A. Please refer to the Risk Factors set forth in Part I, Item 1A of our Annual Report on Form 10-K for the fiscal year ended January 2, 2010 filed with the Securities and Exchange Commission on February 19, 2010.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Removed and Reserved

None.

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit Number	Description of Document
3.1(1)	Restated Certificate of Incorporation of Netlist, Inc.
3.2(1)	Amended and Restated Bylaws of Netlist, Inc.
10.1(2)	Amendment to Loan Documents entered into as of March 24, 2010, by and between Silicon Valley Bank and Netlist, Inc., a Delaware Corporation.
10.2(2)	Form of Restricted Stock Award issued pursuant to the 2006 Equity Incentive Plan of Netlist, Inc.
10.3(2)*	Design and Production Agreement relating to Register ASIC (the "Production Register Agreement"), dated July 31, 2008, by and between Netlist, Inc. and Toshiba America Electronic Components, Inc. ("Toshiba").
10.4(2)*	Amendment #1 to the Production Register Agreement, dated May 22, 2009, by and between Netlist, Inc. and Toshiba.
10.5(2)*	Amendment #1 to the Production Register Agreement, dated January 28, 2010, by and between Netlist, Inc. and Toshiba.
10.6(2)*	Amendment #2 to the Production Register Agreement, dated March 10, 2010, by and between Netlist, Inc. and Toshiba.
10.7(2)*	Design and Production Agreement relating to ID ASIC (the "Production ID Agreement"), dated July 31, 2008, by and between Netlist, Inc. and Toshiba.
10.8(2)*	Amendment #1 to the Production ID Agreement, dated January 28, 2010, by and between Netlist, Inc. and Toshiba.
10.9(2)*	Amendment #2 to the Production ID Agreement, dated March 10, 2010, by and between Netlist, Inc. and Toshiba.
10.10(2)*	Development and Supply Agreement, dated as of September 10, 2008, by and between Netlist, Inc. and Diablo Technologies, Inc. ("Diablo").
10.11(2)*	Settlement Agreement and Amendment to Development and Supply Agreement, dated January 12, 2010, between Netlist, Inc. and Diablo.
31.1(2)	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as Amended.
31.2(2)	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as Amended.

32(3)	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and furnished herewith pursuant to SEC Release No. 33-8238.

(1) Incorporated by reference to the corresponding exhibit number of the registration statement on Form S-1 of the registrant (No. 333-136735) filed with the Securities and Exchange Commission on October 23, 2006.

(2) Filed herewith.

(3) The information in Exhibit 32 shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act (including this Report), unless Netlist, Inc. specifically incorporates the foregoing information into those documents by reference.

* Confidential treatment has been requested with respect to portions of this exhibit pursuant to Rule 24b-2 of the Securities Exchange Act of 1934 and these confidential portions have been redacted from the filing made herewith. A complete copy of this exhibit, including the redacted terms, has been separately filed with the Securities and Exchange Commission.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: May 17, 2010

NETLIST, INC.
a Delaware corporation
(Registrant)

By: /s/ Chun K. Hong
Chun K. Hong
President, Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

By: /s/ Gail M. Sasaki
Gail M. Sasaki
Vice President and Chief Financial Officer
(Principal Financial Officer)

EXHIBIT INDEX

Exhibit Number	Description of Document
3.1(1)	Restated Certificate of Incorporation of Netlist, Inc.
3.2(1)	Amended and Restated Bylaws of Netlist, Inc.
10.1(2)	Amendment to Loan Documents entered into as of March 24, 2010, by and between Silicon Valley Bank and Netlist, Inc., a Delaware Corporation.
10.2(2)	Form of Restricted Stock Award issued pursuant to the 2006 Equity Incentive Plan of Netlist, Inc.
10.3(2)*	Design and Production Agreement relating to Register ASIC (the "Production Register Agreement"), dated July 31, 2008, by and between Netlist, Inc. and Toshiba America Electronic Components, Inc. ("Toshiba").
10.4(2)*	Amendment #1 to the Production Register Agreement, dated May 22, 2009, by and between Netlist, Inc. and Toshiba.
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(1) Incorporated by reference to the corresponding exhibit number of the registration statement on Form S-1 of the registrant (No. 333-136735) filed with the Securities and Exchange Commission on October 23, 2006.

(2) Filed herewith.

(3) The information in Exhibit 32 shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act (including this Report), unless Netlist, Inc. specifically incorporates the foregoing information into those documents by reference.

* Confidential treatment has been requested with respect to portions of this exhibit pursuant to Rule 24b-2 of the Securities Exchange Act of 1934 and these confidential portions have been redacted from the filing made herewith. A complete copy of this exhibit, including the redacted terms, has been separately filed with the Securities and Exchange Commission.

Exhibit 10.1

AMENDMENT TO LOAN DOCUMENTS

THIS **AMENDMENT TO LOAN DOCUMENTS** (this "Amendment") is entered into as of March 24, 2010, by and between SILICON VALLEY BANK ("Bank" or "Silicon") and NETLIST, INC., a Delaware corporation ("Borrower"). Borrower's chief executive office is located at 51 Discovery, Suite 150, Irvine, CA 92618.

RECITALS

A. Bank and Borrower are parties to that certain Loan and Security Agreement with an Effective Date of October 31, 2009 (as amended, modified, supplemented or restated, the "Loan Agreement") in effect between Bank and Borrower.

B. Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.

C. Borrower has requested that Bank amend the Loan Agreement to: (i) remove the BB Blocked Amount and make certain other conforming modifications in respect thereof, as set forth in Section 2.1 below; and (ii) increase the Concentration Limit, as set forth in Section 2.2 below; all as more fully set forth herein.

D. Bank has agreed to so amend the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

2. Amendments to Loan Documents.

2.1 Removal of the BB Blocked Amount.

(a) Section 2.1.1(a) of the Loan Agreement, which currently reads as follows (italics added):

(a) Availability . Subject to the terms and conditions of this Agreement and to deduction of Reserves (without duplication of the BB Blocked Amount component of the Borrowing Base), Bank shall make Advances not exceeding the Availability Amount. Amounts borrowed hereunder may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein.

hereby is amended and restated in its entirety to read as follows:

(a) Availability . Subject to the terms and conditions of this Agreement and to deduction of Reserves, Bank shall make Advances not exceeding the Availability Amount. Amounts borrowed hereunder may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein.

(b) The definition of "BB Blocked Amount" set forth in Section 13.1 of the Loan Agreement, which definition currently reads as follows (italics added):

*" **BB Blocked Amount** " is defined within the definition of "Borrowing Base".*

hereby is deleted in its entirety.

(c) The definition of "Borrowing Base" set forth in Section 13.1 of the Loan Agreement, which definition currently reads as follows (italics added):

*" **Borrowing Base** " is (a) 80% (the " **A/R Advance Rate** " and also an " **Advance Rate** ") of Eligible Accounts minus (b) the amount of One Million Dollars ($1,000,000) (the " **BB Blocked Amount** "), as determined by Bank from Borrower's most recent Transaction Report; provided, however, that Bank may decrease any one or more of the Advance Rates in its good faith business judgment based on events, conditions, contingencies, or risks which, as determined by Bank, may adversely affect Collateral or Borrower.*

hereby is amended and restated in its entirety to read as follows:

" **Borrowing Base** " is 80% (the " **A/R Advance Rate** " and also an " **Advance Rate** ") of Eligible Accounts, as determined by Bank from Borrower's most recent Transaction Report; provided, however, that Bank may decrease any one or more of the Advance Rates in its good faith business judgment based on events, conditions, contingencies, or risks which, as determined by Bank, may adversely affect Collateral or Borrower.

2.2 Modification of Concentration Limit. Clause (h) of the definition of "Eligible Accounts" set forth in Section 13.1 of the Loan Agreement, which currently reads as follows (italics added):

(h) Accounts of Borrower owing from an Account Debtor, including Affiliates, whose total obligations to Borrower exceed twenty-five percent (25%) (such percentage, the "Concentration Limit") of all Eligible Accounts, to the extent of amounts that exceed that percentage, unless Bank approves in writing;

hereby is amended and restated in its entirety to read as follows:

(h) Accounts of Borrower owing from an Account Debtor, including Affiliates, whose total obligations to Borrower exceed forty percent (40%) (such percentage, the "Concentration Limit") of all Eligible Accounts, to the extent of amounts that exceed that percentage, unless Bank approves in writing;

3. Limitation of Amendments.

3.1 The amendments set forth in **Section 2** , above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.

3.2 This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents (as amended by this Amendment, as applicable) are hereby ratified and confirmed and shall remain in full force and effect.

4. Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:

4.1 Immediately after giving effect to this Amendment, (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date, or except as otherwise previously disclosed in writing by Borrower to Bank), and (b) no Event of Default has occurred and is continuing;

4.2 Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Documents, as amended by this Amendment;

4.3 The organizational documents of Borrower delivered to Bank on the Effective Date remain true, accurate and complete and have not been otherwise amended, supplemented or restated and are and continue to be in full force and effect;

4.4 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Documents, as amended by this Amendment, have been duly authorized;

4.5 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Documents, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

4.6 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Documents, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on either Borrower, except as already has been obtained or made; and

4.7 This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

5. Release by Borrower and Guarantor . Each of Borrower and Guarantor (individually and collectively, "Obligor") hereby agree as follows:

5.1 FOR GOOD AND VALUABLE CONSIDERATION , Obligor hereby forever relieves, releases, and discharges Bank and its present or former employees, officers, directors, agents, representatives, attorneys, and each of them, from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs and expenses, actions and causes of action, of every type, kind, nature, description or character whatsoever, whether known or unknown, suspected or unsuspected, absolute or contingent, arising out of or in any manner whatsoever connected with or related to facts, circumstances, issues, controversies or claims existing or arising from the beginning of time through and including the date of execution of this Amendment (collectively " **Released Claims** "). Without limiting the foregoing, the Released Claims shall include any and all liabilities or claims arising out of or in any manner whatsoever connected with or related to the Loan Documents, the Recitals hereto, any instruments, agreements or documents executed in connection with any of the foregoing or the origination, negotiation, administration, servicing and/or enforcement of any of the foregoing.

5.2 In furtherance of this release, Obligor expressly acknowledges and waives any and all rights under Section 1542 of the California Civil Code, which provides as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."** (Emphasis added.)

5.3 By entering into this release, Obligor recognizes that no facts or representations are ever absolutely certain and it may hereafter discover facts in addition to or different from those which it presently knows or believes to be true, but that it is the intention of Obligor hereby to fully, finally and forever settle and release all matters, disputes and differences, known or unknown, suspected or unsuspected; accordingly, if Obligor should subsequently discover that any fact that it relied upon in entering into this release was untrue, or that any understanding of the facts was incorrect, Obligor shall not be entitled to set aside this release by reason thereof, regardless of any claim of mistake of fact or law or any other circumstances whatsoever. Obligor acknowledges that it is not relying upon and has not relied upon any representation or statement made by Bank with respect to the facts underlying this release or with regard to any of such party's rights or asserted rights.

5.4 This release may be pleaded as a full and complete defense and/or as a cross-complaint or counterclaim against any action, suit, or other proceeding that may be instituted, prosecuted or attempted in breach of this release. Obligor acknowledges that the release contained herein constitutes a material inducement to Bank to enter into this Amendment, and that Bank would not have done so but for Bank's expectation that such release is valid and enforceable in all events.

5.5 Obligor hereby represents and warrants to Bank, and Bank is relying thereon, as follows:

(a) Except as expressly stated in this Amendment, neither Bank nor any agent, employee or representative of Bank has made any statement or representation to Obligor regarding any fact relied upon by Obligor in entering into this Amendment.

(b) Obligor has made such investigation of the facts pertaining to this Amendment and all of the matters appertaining thereto, as it deems necessary.

(c) The terms of this Amendment are contractual and not a mere recital.

(d) This Amendment has been carefully read by Obligor, the contents hereof are known and understood by Obligor, and this Amendment is signed freely, and without duress, by Obligor.

(e) Obligor represents and warrants that it is the sole and lawful owner of all right, title and interest in and to every claim and every other matter which it releases herein, and that it has not heretofore assigned or transferred, or purported to assign or transfer, to any person, firm or entity any claims or other matters herein released. Obligor shall indemnify Bank, defend and hold it harmless from and against all claims based upon or arising in connection with prior assignments or purported assignments or transfers of any claims or matters released herein.

6. Fee. In consideration for Bank entering into this Amendment, Borrower shall pay Bank a fee in the mutually agreed amount of **$2,500.00** , which fee shall be earned in full and payable concurrently with the execution and delivery of this Amendment. Such fee shall be non-refundable and in addition to all interest and other fees payable to Bank under the Loan Documents. Bank is authorized to charge such fee to Borrower's loan account.

7. Bank Expenses. Borrower shall pay to Bank, when due, all Bank Expenses (including reasonable attorneys' fees and expenses), when due, incurred in connection with or pursuant to this Amendment.

8. Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

9. Effectiveness . This Amendment shall be deemed effective upon the due execution and delivery to Bank of this Amendment by each party hereto.

[Remainder of page intentionally left blank; signature page immediately follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

BANK	**BORROWER**
Silicon Valley Bank	NETLIST, INC.
By: */s/ Kurt Miklinski*	By: */s/ Gail Itow*
Name: Kurt Miklinski	Name: Gail Itow
Title: Vice President	Title: Chief Financial Officer

CONSENT

The undersigned hereby expressly agrees to Section 5 of the foregoing Amendment and acknowledges that its consent to the rest of the foregoing Amendment is not required, but the undersigned nevertheless does hereby agree and consent to the entire foregoing Amendment and to the documents and agreements referred to therein and to all future modifications and amendments thereto, and any termination thereof, and to any and all other present and future documents and agreements between or among the foregoing parties. Nothing herein shall in any way limit any of the terms or provisions of the Guaranty, the Guarantor Security Agreement, or any other Loan Documents, executed by the undersigned, all of which are hereby ratified and affirmed.

GUARANTOR:

NETLIST TECHNOLOGY TEXAS LP, a
Texas limited partnership

By: NETLIST, INC., its general partner

By: */s/ Gail Itow*
Name: Gail Itow
Title: Chief Financial Officer

Exhibit 10.2

RESTRICTED STOCK AWARD AGREEMENT

THIS RESTRICTED STOCK AWARD AGREEMENT ("Agreement"), effective as of April 10, 2010 ("Grant Date"), represents the grant of shares of Restricted Stock by Netlist, Inc. (the "Company"), to (the "Participant"), subject to the terms and conditions set forth below and the provisions of the Netlist, Inc. 2006 Equity Incentive Plan, as the same may be amended from time to time (the "Plan").

All capitalized terms shall have the meanings ascribed to them in the Plan, unless specifically set forth otherwise herein. The parties hereto agree as follows:

1. Grant of Restricted Stock. By action of the Committee, the Company hereby grants to the Participant shares of Restricted Stock, subject to the terms and conditions of the Plan and this Agreement.

2. Vesting Period: (a) The shares of Restricted Stock are subject to restrictions which shall be released in installments on the respective dates on which restrictions lapse as set forth below. The shares of Restricted Stock shall be subject to forfeiture and neither the shares nor interest therein may be sold, pledged, transferred or otherwise disposed of prior to the date on which the restrictions lapse as set forth below or as otherwise provided in this Agreement or the Plan. Subject to the other conditions in this Agreement and the Plan, the restrictions on the Restricted Stock will lapse under the following schedule:

Vested Shares	Date on Which Restrictions Lapse/Vesting Date
	09/08/2010
	03/08/2011
	09/08/2011
	03/08/2012
	09/07/2012
	03/08/2013
	09/09/2013
	03/07/2014

(b) Except as set forth in Section 5 below, if the Participant's employment or service to the Company terminates before the last vesting date set forth in Section 2(a) above, all shares of Restricted Stock granted hereby that are unvested as of the date of termination of employment or service to the Company shall be forfeited. For the specified vesting to occur on any vesting date set forth therein, the Participant must be continuously employed by, or providing service to, the Company or any of its Affiliates from the Grant Date through such vesting date.

(c) Except as set forth in Section 8 of the Plan, in no event shall a Participant have any rights to the Shares of Restricted Stock granted hereunder prior to the date such Shares vest pursuant to the vesting set forth in Section 2(a) above.

3. Voting Rights. All shares of Restricted Stock issued hereunder, whether vested or unvested, shall have full voting rights accorded to outstanding shares of Stock.

4. Dividend Rights . (a) Cash Dividends. Subject to the Participant's continued employment or service to the Company, the Participant shall be entitled to receive any cash dividends paid with respect to shares of Restricted Stock granted hereunder. Any such cash dividends shall be distributed to the Participant at the same time cash dividends are paid to holders of Shares, provided that the Participant remains employed on such date.

(b) Non-Cash Dividends. Any stock dividends or other distributions or dividends of property other than cash with respect to shares of Restricted Stock granted hereunder shall be subject to the same forfeiture restrictions and restrictions on transferability as apply to the Restricted Stock with respect to which such property was paid.

5. Termination. (a) Death. In the event a Participant dies while employed by, or when providing service to, the Company or any of its Affiliates, all restrictions on 25% of the total then unvested shares of Restricted Stock will lapse and 25% of the total then unvested shares of Restricted Stock held by such Participant (or his or her Permitted Assignee) shall vest in the estate of such Participant or in any person who acquired such shares of Restricted Stock by bequest or inheritance, or by the Permitted Assignee. References in this Agreement to a Participant shall include any person who acquired shares of Restricted Stock from such Participant by bequest or inheritance.

(b) Disability. In the event a Participant ceases to perform services of any kind (whether as an employee or director) for the Company or any of its Affiliates due to permanent and total disability, all restrictions on 25% of the total then unvested shares of Restricted Stock will lapse and any 25% of the total then unvested shares of Restricted Stock held by such Participant shall immediately vest in the Participant, or his guardian or legal representative, or a Permitted Assignee, as of the first date of permanent and total disability (as determined in the sole discretion of the Committee). For purposes of this Agreement, the term "permanent and total disability" means the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, and the permanence and degree of which shall be supported by medical evidence satisfactory to the Committee. Notwithstanding anything to the contrary set forth herein, the Committee shall determine, in its sole and absolute discretion, (1) whether a Participant has ceased to perform services of any kind due to a permanent and total disability and, if so, (2) the first date of such permanent and total disability.

6. Issuance of Restricted Stock. As soon as practicable after the Grant Date, the Company shall cause to be transferred on the books of the Company, shares registered in the name of the Participant, evidencing the Restricted Stock covered by this Agreement. Until the lapse or release of all restrictions applicable to a grant of Restricted Stock, the share certificates representing such Restricted Stock may be held in custody by the Company or its designee.

7. Administration. This Agreement and the rights of the Participant hereunder are subject to all the terms and conditions of the Plan, as well as to such rules and regulations as the Committee may adopt for administration of the Plan. It is expressly understood that the Committee is authorized to administer, construe, and make all determinations necessary or appropriate to the administration of the Plan, this Agreement and the Certificate, all of which shall be binding upon the Participant and Permitted Assignees. Any inconsistency between the Agreement or the Certificate (on the one hand) and the Plan (on the other hand) shall be resolved in favor of the Plan.

8. Adjustments. The number of Shares of Restricted Stock granted hereby shall be subject to adjustment in accordance with Section 8 of the Plan.

9. Amendment. The Committee may, with the consent of the Participant, at any time or from time to time amend the terms and conditions of this grant of Shares of Restricted Stock. In addition, the Committee may at any time or from time to time amend the terms and conditions of this grant of Shares of Restricted Stock in accordance with the Plan.

10. Notices. Any notice which either party hereto may be required or permitted to give to the other shall be in writing, and may be delivered personally or by mail, postage prepaid, or overnight courier, addressed as follows: if to the Company, at its office at 51 Discovery, Suite 150, Irvine, California 92618, Attn: Chief Financial Officer, or at such other address as the Company by notice to the Participant may designate in writing from time to time; and if to the Participant, at the address reflected on the books and records of the Company or via the Participant's electronic mail account established by the Company. Notices shall be effective upon receipt.

11. Withholding Taxes. (a) The Participant may incur certain liabilities for federal, state or local taxes ("Withholding Taxes") in connection with the grant or vesting of the shares of Restricted Stock hereunder, and the Company may be required by law to withhold such taxes. Unless Participant elects to satisfy his or her Withholding Taxes by an alternative means in accordance with Section 11(b) below, Participant hereby agrees that, the Company shall withhold all applicable Withholding Taxes at the time of vesting of the Restricted Stock by reducing the number of shares issued to Participant by that number of shares which is necessary to satisfy the Withholding Taxes, except as provided under Section 13 hereof. If the number of shares issuable to Participant following satisfaction of the Withholding Taxes includes any fractional shares, Participant agrees that the Company may issue to Participant a cash payment in lieu of such fractional share.

(b) At any time not less than five (5) business days before any Withholding Taxes arise, Participant may notify the Company of Participant's election to pay Participant's Withholding Taxes by wire transfer, check or other means permitted by the Company. In such

case, the Participant shall satisfy his or her tax withholding obligation by paying to the Company on such date as it shall specify an amount that the Company determines is sufficient to satisfy the expected Withholding Taxes by (i) wire transfer to such account as the Company may direct, (ii) delivery of a check payable to the Company, at its office at 51 Discovery, Suite 150, Irvine, California 92618, Attn: Chief Financial Officer, or such other address as the Company may from time to time direct, or (iii) such other means as the Company may establish or permit. Participant agrees and acknowledges that prior to the date the Withholding Taxes arise, the Company will be required to estimate the amount of the Withholding Taxes and accordingly may require the amount paid to the Company under this Section 11(b) to be more than the minimum amount that may actually be due and that, if Participant has not delivered payment of a sufficient amount to the Company to satisfy the Withholding Taxes in full (regardless of whether as a result of the Company underestimating the required payment or Participant failing to timely make the required payment), the additional amount of Withholding Taxes shall be satisfied in the manner specified in Section 11 (a) above.

12. Registration; Legend. The Company may postpone the issuance and delivery of the shares of Restricted Stock granted hereby until (a) the admission of such shares to listing on any stock exchange or exchanges on which shares of the Company of the same class are then listed and (b) the completion of such registration or other qualification of such shares under any state or federal law, rule or regulation as the Company shall determine to be necessary or advisable. The Participant shall make such representations and furnish such information as may, in the opinion of counsel for the Company, be appropriate to permit the Company, in light of the then existence or non-existence with respect to such shares of an effective Registration Statement under the Securities Act of 1933, as amended, to issue the shares in compliance with the provisions of that or any comparable act.

The Company may cause the following or a similar legend to be set forth on each certificate representing shares of Restricted Stock granted hereby unless counsel for the Company is of the opinion as to any such certificate that such legend is unnecessary:

THE TRANSFERABILITY OF THIS CERTIFICATE AND THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE NETLIST, INC. 2006 EQUITY INCENTIVE PLAN AND AN AWARD AGREEMENT ENTERED INTO BY THE REGISTERED OWNER AND NETLIST, INC. COPIES OF SUCH PLAN AND AGREEMENT ARE ON FILE IN THE OFFICES OF NETLIST, INC.

13. Section 83(b) Election. If the Participant makes the election contemplated by Section 83(b) of the Code (a "Section 83 (b) Election") (or any similar provision of federal, state or local law) with respect to the Restricted Stock granted hereunder, the Participant shall provide the Company with a copy of such election within 30 days after the Grant Date (or such earlier date required by law) and otherwise comply with the provisions of this Section 13. The Participant hereby agrees, as a condition precedent to any issuance of Restricted Stock under this Agreement, that on or prior to the date of filing of any Section 83(b) Election with respect to

such Restricted Stock, Participant shall satisfy the Company's Withholding Tax obligations with respect to such Section 83(b) Election by tendering payment to the Company, in readily available funds, of an amount equal to such Withholding Tax obligation (or enter into such other arrangement as shall be acceptable to the Company to satisfy such Withholding Tax obligation).

14. No Tax Advice. Participant hereby acknowledges that the Company has not provided any specific tax advice to Participant in connection with his or her participation in the Plan. Participant understands and acknowledges that the Section 83(b) Election is valid only if made within 30 days after the Grant Date. Participant will consult with his or her own tax advisors with respect to any tax consequences relating to a grant of Restricted Stock, participation in the Plan, and the decision of whether or not to make a Section 83(b) Election.

15. Miscellaneous.

(a) This Agreement shall not confer upon the Participant any right to continuation of employment by, or service to, the Company, nor shall this Agreement interfere in any way with the Company's right to terminate the Participant's employment or service at any time.

(b) Except as expressly set forth herein, the Participant shall have no rights as a stockholder of the Company with respect to the shares of Restricted Stock subject to this Agreement until such time as such shares of Restricted Stock vest in accordance with Section 2 hereof.

(c) This Agreement shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

(d) To the extent not preempted by federal law, this Agreement shall be governed by, and construed in accordance with the laws of the State of Delaware.

(e) The provisions of this Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable.

(f) By accepting this grant of shares of Restricted Stock, the Participant and each person claiming under or through the Participant shall be conclusively deemed to have indicated their acceptance and ratification of, and consent to, any action taken under the Plan by the Company, the Board or the Committee.

(g) The Participant, every person claiming under or through the Participant, and the Company hereby waives to the fullest extent permitted by applicable law any right to a trial by jury with respect to any litigation directly or indirectly arising out of, under, or in connection with the Plan, this Agreement or the Certificate.

(h) The order of precedence as between the Plan or this Agreement, and any written employment or service agreement between Participant and the Company shall be as follows: If there is any inconsistency between (a) the terms of this Agreement (on the one hand) and the terms of the Plan (on the other hand); or (b) any such written employment or service

agreement (on the one hand) and the terms of the Plan (on the other hand), the Plan's terms shall completely supersede and replace the conflicting terms of this Agreement or the written employment or service agreement (as the case may be). If there is any inconsistency between the terms of this Agreement (on the one hand) and the terms of Participant's written employment or service agreement, if any (on the other hand), the terms of this Agreement (as the case may be) shall completely supersede and replace the conflicting terms of the written employment or service agreement unless such written employment or service agreement was approved by the Committee, in which event such written employment or service agreement shall completely supersede and replace the conflicting terms of this Agreement (as the case may be).

16. Exculpation. The shares of Restricted Stock granted hereunder and all documents, agreements, understandings and arrangements relating hereto have been issued on behalf of the Company by officers acting on its behalf and not by any person individually. None of the officers, directors or stockholders of the Company nor the directors, officers or stockholders of any Affiliate of the Company shall have any personal liability hereunder or thereunder. The Participant shall look solely to the assets of the Company for satisfaction of any liability of the Company in respect of the shares of Restricted Stock granted hereunder and all documents, agreements, understanding and arrangements relating hereto and will not seek recourse or commence any action against any of the directors, officers or stockholders of the Company or any of the directors, officers or stockholders of any Affiliate, or any of their personal assets, for the performance or payment of any obligation hereunder or thereunder. The foregoing shall also apply to any future documents, agreements, understandings, arrangements and transactions between the parties hereto with respect to the shares of Restricted Stock granted hereunder.

17. Captions. The captions in this Agreement are for convenience of reference only, and are not intended to narrow, limit or affect the substance or interpretation of the provisions contained herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its duly authorized representative. By your signature below, you accept and agree to abide by the terms of this Agreement and you further agree to be bound by and to comply with all terms and conditions of the Plan. By your signature below, you acknowledge that you have received a copy of the Plan, and understand that you may receive a copy of the Plan as amended and in effect at any time by requesting a copy from the Company's Secretary. Please acknowledge that you received this agreement by signing a copy and returning it to the Company's Chief Financial Officer by April 12, 2010.

NETLIST, INC.

By: _____
Name: Michael S. Oswald
Title: Assistant Secretary

PARTICIPANT

_____
Printed Name:

Exhibit 10.3

CERTAIN INFORMATION (INDICATED BY "[***]") IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

TOSHIBA

Toshiba America Electronic Components, Inc.
2950 Orchard Parkway, San Jose, CA 95131

Design and Production Agreement

Netlist Inc.

This Design and Production Agreement ("DPA") effective July 31, 2008 (the "Effective Date") is between Toshiba America Electronic Components, Inc., with a principal place of business at 19900 MacArthur Boulevard, Suite 400, Irvine, CA 92612 ("TAEC") and Netlist Inc with a place of business at 51 Discovery, Suite 150, Irvine, CA 92618 ("Customer") and sets out the terms and conditions under which TAEC will design the product identified herein for Customer.

1. Project Name

Register ASIC

2. Summary

This DPA is for the development of Register ASIC for Customer. The quote is based on TAEC's initial die size estimation.

3. Design Specification

[***]

4. Schedule

MAJOR PROJECT MILESTONES

Event	Target Date/Completed
Development PO released & Design Initiation	**[***]**
Completion of Feasibility Study	**[***]**
Design Decision	**[***]**
Package selection finalized	**[***]**
Early netlist for "pipecleaning"	**[***]**
Final netlist (functionally correct)	**[***]**
Tapeout — Second Signoff GDSII transfer)	**[***]**
Delivery of Prototypes	**[***]**
System compliance phase — start	**[***]**
System compliance phase — complete	**[***]**
1st Risk Production shipment	**[***]**

Production turnaround time: 16 working weeks

Schedule will be finalized in the SOW upon Design Decision. See Section 13.5.

5. Technology

[***]

6. Package and Die Size Option

Package	Ball Pitch	Body Size	Substrate Layers	Die Size
[***]	**[***]**	**[***]**	**[***]**	**[***]**

7. Internal/External IP

Internal IP :
[***]

External IP :
[***]

8. Price

First	1M pieces: US$ **[***]**	* **[***]**
Next	2M pieces: US$ **[***]**	
Next	2M pieces: US$ **[***]**	
After first	5M pieces: US$ **[***]**	

*Prices for 01Mpcs represent an addition of US$ **[***]** per unit in amortized Total NRE cost. See Section 10.

Changes in die size will affect the price quoted.

Prices do not include and are subject to any applicable sales tax.

9. Non-Recurring Engineering Charges ("NRE")

9.1 Total NRE Charges (not including re-spin charges as set out in Section 9.2): US$ **[***]**

9.2 Additional NRE Charges in the event of Re-spin

Metal Layer Re-spin Charges:	US$ **[***]**
All-Layer Re-spin Charges (base and metal layers):	US$ **[***]**

In the event a re-spin involving only metal layers is required, TAEC will provide a firm quote for additional re-spin NRE charges, which will be calculated on a cost per layer basis including required engineering effort. In the event the implementation of design changes affects all metal layers, including contact and vias, the additional NRE cost will not exceed the Metal Layer Re-spin Charges amount stated above.

In the event an all-layer re-spin is required, the All-Layer Re-spin Charges will apply as stated above.

The charges set forth in this Section 9.2 are based on the assumptions that (1) no Material Changes would be needed and (2) no changes whatsoever to the package design would be required, whether Material Changes or not. If either of these assumptions is incorrect, costs may vary.

9.3 Internal IP Defects/Bugs

Should Internal IP be found to have a Defect/Bug, as defined in the attached SLI Terms and Conditions, TAEC will be responsible for the additional NRE re-spin charges required to repair such Defect/Bug, subject to Section 9.4,

9.4 Customer Design Changes During Re-spin for Internal IP Defects/Bugs

If Customer requests design changes during a re-spin to correct Internal IP Defects/Bugs, a portion of the additional re-spin cost will be shared by Customer.

For a metal re-spin, this cost will be calculated on the basis of the number of layers required for Customer changes and whether those layers are implicated by the Internal IP repairs. If the Customer-requested design changes require the same metal arid via layers as would be necessary for the Internal IP Defect/Bug fix, the cost to Customer will not exceed 50% of the additional re-spin NRE charges. If the Customer-requested changes require additional mask layer changes, the NRE cost associated with the additional layers will be solely the financial responsibility of Customer.

If an all-layer re-spin is required in order to fix Internal IP Defects/Bugs, and Customer requests additional design changes at that time, Customer will not he charged more than 50% of the All-Layer Re-spin Charges.

10. NRE Payment Schedule

Design Decision:	US$ **[***]**
Tape-out:	US$ **[***]**
Delivery of Prototypes:	US$ **[***]**
Amortized NRE:*	US$ **[***]**

* TAEC agrees to charge and Customer agrees to pay US$ **[***]** in NRE amortized over the first **[***]** production units, at the additional price of US$ **[***]** per piece (see Section 8). In the even t that Customer has not paid the total owed sum of US$ **[***]** through the amortized sales process within 15 months of the date of Delivery of Prototypes, then Customer agrees to pay the entire balance owing upon invoice by TAEC. For the avoidance of doubt, Amortized NRE is considered part of NRE for all purposes including Sections 9 and 10 of the attached SLI Terms and Conditions.

- **[***]** Prototypes are included in NRE.
- A prototype lot charge of $ **[***]** is included in the Delivery of Prototypes payment. Prototype lot charge is subject to any applicable sales tax.

11. NRE Services included

Engineering activities

[***]

Manufacturing activities

[***]

*Any additional qualifications requested by Customer beyond the standard Toshiba qualification are not covered by the Total NRE Charges and may incur additional fees.

12. Extra Engineering Samples

1-100 pieces:	**[***]** unit price of US$ **[***]**
101-500 pieces:	**[***]** unit price of US$ **[***]**
501- 1000 pieces:	**[***]** unit price of US$ **[***]**

All extra engineering samples are sold as Prototypes and are subject to, without limitation, Articles 18.2 and 19.1 of the Terms and Conditions.

13. Project Specific Conditions

13.1 **[***]**

13.2 **[***]**

13.3 **[***]**

13.4 **[***]**

13.5 **[***]**

14. General Conditions

14.1 Pricing stated in this DPA is based on Toshiba America Electronic Components Inc. selling production parts directly to Customer.

14.2 Full specifications and responsibilities to be defined and agreed in a SOW. Customer and TAEC will work in good faith to finalize and sign the SOW within thirty (30) days of design initiation.

14.3 Schedule is provisional. Final schedule is still to be agreed.

14.4 TAEC reserves the right to make extra charges up to **[***]** of the total NRE if Customer submits **[***]** Engineering Change Orders (ECOs) or changes to the layout constraints file(s) after the acceptance of final netlist, unless these ECOs/changes are attributed to problems of TAEC implementing the design.

14.5 TAEC may, in its sole discretion, share a copy of this DPA, and any applicable SOW with Toshiba Corporation Semiconductor Company and other Toshiba affiliates, on a need-to-know basis in order to implement or further Customer's project.

14.6 TAEC may, upon written notice to Customer, share Customer's information as it pertains to their design kit, library and user documentation with a supplier of EDA Tools for the sole purpose of resolving any debugging issues that may arise during the term of this Agreement.

14.7 This DPA shall be governed by the attached Terms and Conditions, which are incorporated herein by reference.

14.9 In the event of any conflict between the provisions set forth in this DPA and the Terms and Conditions to which it is attached, the contents of the DPA shall control.

14.10 This Agreement (as defined in the Terms and Conditions) is the entire agreement between the parties and supersedes any prior communications, representations, or agreements as to the subject matter hereof, whether written or oral.

14.11 Any changes to the DPA and/or the Terms and Conditions after the execution of the DPA must be mutually agreed upon in the form of a written amendment signed by both parties.

Toshiba America Electronic Components, Inc.	**NetList Inc.**
/s/ Takeshi Iwamoto Signature	*/s/ James P. Perrott* Signature
Takeshi Iwamoto VP, Customer SoC & Foundry Business Unit, System LSI Printed Name and Title	James P. Perrott, SVP Sales & Marketing Printed Name and Title
8/22/08 Date	8/15/08 Date

Toshiba America Electronic Components, Inc.
Design and Production Agreement Terms and Conditions

These Terms and Conditions set out the terms and conditions under which TAEC will de these terms are attached.

1. DEFINITIONS

1.1 "Agreement" shall refer to the agreement comprising the DPA (as hereinafter defined), the Terms and Conditions, the SOW, and any other addenda specifically noted therein (all as defined herein).

1.2 "CEM " means a contract manufacturer engaged by Customer to purchase Product(s) from TAEC, which are then assembled into products sold to Customer.

1.3 "Customer" means the customer identified on Page 1 of the DPA.

1.4 "Defect/Bug" means a failure of any intellectual property to meet the mutually agreed upon chip level and system level specifications as provided at the time of development. Such failure or nonconformance includes, but is not limited to, the inability of the logic or interface portion of either Internal and External IP to meet mutually agreed upon chip level and system level specifications.

1.5 "Design Initiation" means Customer has placed and TAEC has accepted a Development PO to proceed with Customer's design.

1.6 "Development PO " is the purchase order created by the Customer to signify they have accepted the Specifications and have agreed to proceed with the development of Customer's design.

1.7 "DPA" means the Design And Production Agreement to which these terms and conditions are attached.

1.8 "Effective Date" shall mean the date reflected on the first page of the DPA, its date of execution notwithstanding.

1.9 "External IP" shall mean intellectual property acquired from a third party IP provider by TAEC or Customer for use in Customer's design, which is so identified in the SOW and/or in the DPA.

1.10 "Internal IP " means intellectual property owned and/or provided by TAEC for use in Customer's design, which is so identified in the SOW and/or in the DPA.

1.11 "Mask Work" means a series of related images, however fixed or encoded; having or representing the predetermined, three dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and in which series the relation of the images to one another is that each image represents a pattern of the surface of one form of the resulting semiconductor chip product.

1.12 "Material Changes" means any changes in Customer-provided specification or netlist that (1) lead to an increase in block size or die size of 1% or more; (2) increase the nominal performance of the block or chip or both by 1 % or more; (3) alter the testing requirements after the Second Signoff; (4) in the case of I/O limited designs, lead to any increase in pin out; or (5) in the case of non-I/O limited designs, lead to an increase in pin out of 1 % or more.

1.13 "NRE " means the non-recurring engineering fees charged for specific phases of work as set forth in the DPA.

1.14 "Product" means the resulting product based on the design specified in the DPA and shall be defined by mutually agreed upon specifications embodied in the documents contained within the Customer Part Number File and TAEC published Quality and Reliability Standards

1.15 "Prototype" means pre-production engineering samples of Products, which have been manufactured before the completion of the Prototype Approval Signoff by both parties. Prototypes are provided for evaluation purposes only. Prototypes may also be called "Engineering Samples" or "KS," "ES, " or "HS " for invoicing or other purposes, but other types of reference to a Prototype shall not change the status as the Prototype.

1.16 "Prototype Approval Signoff" shall mean the form signed by the Customer when the Prototype meets the required Specification and the design is suitable for transfer in to production.

1.17 "Risk Production" means TAEC's commencing production of goods before the completion of the Prototype Approval Signoff by both parties.

1.18 "Second Signoff" means the form signed by both parties indicating the design is ready for Tape-out.

1.19 "SOW " means the Statement of Work attached to the DPA, or which is executed separately by the parties if not attached thereto. The parties expressly agree that the SOW may be modified from time to time on their mutual agreement, and that the project schedule and other records of the TAEC Program Manager shall be the record of the parties' modifications to the SOW.

1.20 "Specifications" means the specifications agreed by the parties for the Product and Prototype, as applicable and incorporated into the SOW.

1.21 "System Level Verification " shall mean the performance of the External IP on the silicon in varying Customer application systems as stated on the third party IP provider specification.

1.22 "TAEC " means Toshiba America Electronic Components, Inc.

1.23 "Tape-out" means TAEC has released final database to Japan to begin the prototype fabrication (mask making and wafer fabrication).

1.24 "Terms and Conditions" means these Design and Production Agreement Terms and Conditions.

2. DEVELOPMENT WORK

2.1 Details of the development are set forth in the SOW. Design requirements may be changed by mutual written agreement of the Parties; however, Customer understands and agrees that such changes may result in additional charges.

2.2 The development shall be completed when Customer notifies TAEC that the Prototype received by Customer meets the Specifications, when Customer executes the Prototype Approval Signoff.

2.3 If the Prototypes do not conform to the agreed specification and TAEC agrees that the nonconformance is due to TAEC's error, TAEC will make all commercially-reasonable efforts to expedite delivery of conforming Prototypes.

2.4 If Customer requests any modifications to the Specifications, TAEC agrees to complete the modification as soon as is reasonably practicable after TAEC has agreed to the modification. For the avoidance of doubt, the parties expressly agree that TAEC shall have no obligation to commence a modification unless and until the parties have agreed on adjustments in schedule, costs, or other applicable provisions.

2.5 If TAEC assembles and manufactures any goods at Customer's request before Customer has issued its written approval via Prototype Approval Signoff, Customer understands and agrees that they will be done on a Risk Production order basis, with Customer responsible for all assembly and production costs.

2.6 Products will be tested to the developed test program resulting from the simulation database. Changes to the test program after sample or production initiation may result in production lead-time delays.

2.7 Each delivery of Products shall be initiated by Customer's written or electronic notification that a Purchase Order ("Purchase Order") will be forthcoming. Customer shall send a written Purchase Order to TAEC within five (5) working days of the verbal notice. Each Purchase Order shall identify the Products ordered; indicate the requested quantity and a mutually agreed upon price; and specify the requested delivery date.

2.8 Design initiation shall commence when Customer issues a Purchase Order for the NRE charge. The Purchase Order shall refer to the applicable DPA, and shall include the words: "This Purchase Order represents acceptance of the terms and conditions in the Design And Production Agreement between the issuer and Toshiba America Electronic Components, Inc."

2.9 TAEC shall supply Products to Customer based on production Purchase Orders that support a six (6) month rolling forecast.

3. DEVELOPMENT TERM

[***]

4. COMPENSATION

4.1 **[***]**

4.2 **[***]**

4.3 **[***]**

5. RE-SPIN NRE CHARGES

Re-spin NRE charges will be based on engineering and manufacturing services as well as on the extent of the modification, which may be done as either a metallization or a diffusion change. Metallization changes may be implemented by regenerating the metal and via masks only. Diffusion modifications, on the other hand, require the regeneration of all masks. The extent of the engineering and manufacturing services required for re-design shall be considered in determining total charges for a re-spin of the design which shall be specified in the DPA or an Amendment thereto.

6. ACKNOWLEDGMENT

6.1 TAEC shall process Customer's Purchase Orders submitted in accordance with Article 2.7 within ten (10) working days of TAEC's receipt thereof. Purchase Orders shall only be binding as of the date of TAEC's acknowledgment and acceptance thereof.

6.2 TAEC shall only accept Purchase Orders with requested delivery dates no more than six (6) months from the Purchase Order date. Any requests for a shipment beyond that six-month period shall be reviewed and acknowledged only after the requested delivery date moves within the six (6) month period.

7. PRODUCT LEADTIME

7.1 Prototypes: TAEC will use all commercially reasonable efforts to provide Prototypes within the total turnaround time defined in the appropriate DPA and expressed as working weeks from Tape-out.

7.2 Production: TAEC will use all commercially reasonable efforts to provide production lead-time as defined in the appropriate DPA or other document issued by TAEC, from the date of TAEC's acknowledgment and acceptance of a Purchase Order.

8. SHIPMENT AND DELIVERY

8.1 Shipments shall be F.C.A. shipping point. Risk of loss or damage shall pass from TAEC to Customer upon delivery of the Products to the common carrier for shipment to Customer; title to all Products released hereunder shall pass to Customer upon full payment by Customer therefor.

8.2 Unless otherwise specified by Customer, TAEC shall ship Products according to TAEC's standard method. Freight and insurance will be prepaid by TAEC and invoiced to Customer.

8.3 TAEC shall not be liable for any damages or penalties for delay in delivery, or for failure to give notice of delay when such delay is due to an act of Customer or any cause beyond the reasonable control of TAEC, including, but not limited to, the causes specified in Article 28. FORCE MAJEURE clause herein. For any delay excusable under Article 28, the delivery date shall be deemed extended for the duration of the force majeure event.

9. PAYMENT TERMS

9.1 Customer shall pay to TAEC all amounts due hereunder within thirty (30) days of the date of TAEC's invoice therefor.

9.2 Customer may have a third party distributor or other entity (each, a "Designated Payor") pay the NRE charges on Customer's behalf subject to the following conditions:

a. Customer will so inform TAEC and will give TAEC instructions on to whom and where the NRE invoice(s) should be sent;

b. Upon TAEC's request, Customer will provide reasonable evidence to TAEC of such Designated Payor s agreement to pay the NRE charges;

c. Customer remains primarily liable for the payment of the NRE charges, and understands and agrees that it shall be fully responsible therefor if the Designated Payor fails to pay such charges within thirty (30) days of the date of TAEC's invoice; and

d. The payment of the NRE charges by a Designated Payor shall not affect any of the rights and obligations of the parties hereunder, and such Designated Payor shall not be deemed a third party beneficiary of this Agreement, nor shall the Designated Payor have any rights in or to Products, Prototypes, Mask Works, or any other item relating to the subject matter hereof or any right to place or enforce a lien against TAEC relating to the subject matter of this Agreement, and Customer shall indemnify and hold harmless TAEC from any damages or claims TAEC may suffer as a result of Customer's engagement of a Designated Payor.

9.3 TAEC may withhold or suspend shipment or other performance hereunder, in whole or in part, if Customer or its Designated Payor, as applicable, fails to make any payment in accordance with Article 9.1, or otherwise fails to perform its obligations under these Terms and Conditions.

9.4 TAEC reserves the right to monitor Customer's or the Designated Payor's creditworthiness periodically during the course of the work. If, in TAEC's reasonable opinion, Customer's or the Designated Payor's, creditworthiness declines, TAEC shall so notify Customer or the Designated Payor, and as a condition to the performance of any obligation under this Agreement, TAEC reserves the right in its sole discretion to require Customer or the Designated Payor to provide security for payment of any amounts due under this Agreement, including, but not limited to, opening an irrevocable letter of credit to support Customer's payment obligations hereunder, or such other means as TAEC may determine appropriate.

10. CANCELLATION/DELAY OF DEVELOPMENT:

10.1 In the event that Customer unilaterally delays a design milestone for longer than four (4) weeks beyond the schedule specified in the SOW, TAEC reserves the right to charge Customer up to a total of **[***]** of the Total NRE charge specified in the DPA.

10.2 If Customer wishes to discontinue the project after TAEC has accepted the Development PO from Customer, the Customer or the Designated Payor shall be responsible to pay TAEC for the NRE charges as set forth below ("Cancellation Fee"), unless otherwise agreed in writing between TAEC and the Customer:

Time	Cancellation Fee
[***]	**[***]** % of NRE
[***]	**[***]** % of NRE
[***]	**[***]** % of NRE
[***]	**[***]** % of NRE

10.3 In the event that Customer unilaterally delays a design milestone for longer than **[***]** beyond the schedule specified in the SOW, TAEC reserves the right to deem the design cancelled and assess the Cancellation Fee specified in Section 10.2. In such case, the Agreement will terminate upon payment of the Cancellation Fee.

10.4 For the avoidance of doubt, NRE already invoiced to Customer per the milestones and NRE payment schedule set forth in the DPA ("Paid NRE") shall offset the Cancellation Fee assessed in Sections 10.2 and 10.3 above. To the extent that the Paid NRE exceeds the Cancellation Fee as assessed, TAEC shall not charge an additional Cancellation Fee; however, Paid NRE will not be refunded upon cancellation of the design.

11. CANCELLATION/RESCHEDULE OF PRODUCTION ORDERS

11.1 Requests for cancellation must be made in writing, and the following terms shall apply unless otherwise agreed in writing between TAEC and the Customer. Cancellation fees will be assessed based on the length of time from the date a written notice is received by TAEC to the first scheduled shipment date.

Days from scheduled shipment	Cancellation Fees
0 - 30 days	**[***]**
31- 60 days	**[***]**
61- 90 days	**[***]**
91-120 days	**[***]**

11.2 Re-schedule requests must be made in writing sixty (60) days before the original delivery date. Any order may be re-scheduled only once. Requests to delay shipments may not exceed ninety (90) days from the original committed delivery date. The re-scheduled order may not be canceled or further modified, and Customer will be liable for full payment of the selling price.

Days before Shipment	Terms
Within next 60 days	**[***]**
Within 60-120 days	**[***]**
Over 120 days	**[***]**

12. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP

12.1 Customer retains all right, title and interest in and to all proprietary rights, including without limitation, patent, copyright, trade secrets, mask work rights, in and to: (i) all designs and design features of the Products, and (ii) all patterns, drawings, and other data concerning the Products' design features including, but not limited to, the Products' database, and (iii) all Mask Work produced by TAEC for the manufacturing of Products.

12.2 Notwithstanding the above provision, TAEC retains all right, title and interest in and to its processes and all patent, trade secret, and other intellectual property rights therein, and any associated technology and know-how. For the purposes of this Agreement, "processes" shall mean TAEC's manufacturing processes, including, but not limited to the process control monitor contained in the Mask Work. TAEC reserves the right to perform similar work for its other customers.

12.3 Both parties understand that any and all Mask Works produced by TAEC for the manufacturing of the Products contain both parties' Confidential Information (as hereinafter defined), and that such Mask Works shall not be used in any manner except as necessary for the performance of this Agreement.

12.4 The party who desires to assert its Mask Work rights against any third party for infringement (the "Asserting Party") shall give prior written notice to the other party to allow such other party to decide whether or not to participate in such dispute. If the other party decides not to participate, it shall provide all commercially reasonable assistance to the Asserting Party in connection with such dispute, at the Asserting Party's expense.

12.5 If an invention is made solely by the employees of either party in connection with the development of the Prototype or Products, all right, title, and interest in and to such items shall belong solely to the party whose employees made such invention. If an invention is jointly made by the employees of both Customer and TAEC, Customer and TAEC shall jointly own all right, title, and interest thereto. Each party shall be entitled to use and exploit such jointly owned invention and intellectual property rights without notice or accounting to the other party.

13. MASK WORKS REGISTRATION

13.1 If Customer desires to register the Mask Work for the Products under the Semiconductor Chip Protection Act of 1984 (the "Act"), Customer shall make registration by itself; however, Customer shall include TAEC's name in such registration. Customer shall have sole responsibility for obtaining registrations for the Mask Work. Upon Customer's request, TAEC agrees to supply Customer or its designee with any reasonable identifying material required for deposit under the Act in order to register a Mask Work in the names of Customer and TAEC. All expenses and charges for registration and upkeep on Mask Work shall be borne by Customer.

13.2 Customer shall use its best efforts to comply with all semiconductor protection laws and applicable regulations in connection with such application. If possible, Customer shall expressly identify in the "nature of contribution" column of the U.S. mask work registration form (and applicable columns of the application form of other countries) that the portion of the Mask Work for the Products and any intellectual property rights including Mask Work related thereto remain the sole and exclusive property of TAEC.

13.3 Customer shall furnish TAEC with a copy of the application form of Mask Work for TAEC's prior to filing, and shall give TAEC reasonable time and opportunity to suggest changes and edits.

14. MASK WORK NOTICE

Upon written request by Customer, and subject to packaging constraints, TAEC will place a Mask Work notice on the outside package of the Product which shall consist of the letter M in a circle and the names of Customer and TAEC.

15. BUSINESS RELATIONSHIPS

15.1 Except as may be specifically provided in this Agreement, no right or license either expressed or implied is granted to either party under any patent, patent application or any other intellectual property right as a result of this Design Agreement. The rights and obligations of the parties to these Terms and Conditions are limited to those expressly set forth herein.

15.2 This Design Agreement is not intended to constitute or create a joint venture, partnership or formal business entity of any kind. Customer and TAEC shall be independent contractors and neither party shall act as the agent for or partner of the other party without prior written agreement.

15.3 Nothing in these terms and conditions shall give either party the right to use the other's name, trademark or logo except where specifically authorized in writing by such other party.

15.4 Customer understands and agrees that a CEM's purchases and other information relating to its business relationship with TAEC are confidential information that TAEC may not disclose without the CEM's express permission (the "CEM Information"). Consequently, if Customer requests TAEC to provide such CEM Information, TAEC shall do so only if:

a. Customer provides to TAEC proof of the CEM's permission; or

b. Customer defends, indemnifies, and holds TAEC harmless from and against any and all claims and damages that TAEC may suffer as a result of such disclosure of CEM Information.

16. SUBCONTRACTING

16.1 TAEC may subcontract all or part of the development of the Products to Toshiba Corporation or one or more of TAEC's affiliates or subcontractors, provided that each such subcontracting party agrees in writing to comply with provisions of these terms and conditions.

16.2 Customer may subcontract all or part of its obligations hereunder with respect to the Products to one of its affiliates or subcontractors (each, a "Permitted Party"),

provided that (a) each such Permitted Party agrees in writing to comply with provisions of these terms and conditions, (b) the Permitted Party is not a semiconductor competitor to TAEC, and (c) Customer has given TAEC permission to share information with such Permitted Party as may be required for Permitted Party to carry out its duties.

17. CONFIDENTIAL INFORMATION

17.1 "Confidential Information" as used in this Agreement will mean any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, and formulae related to the current, future and proposed products and services of each of the parties and/or its customers and/or vendors, including, without limitation, information concerning product or process research and development, design details and specifications, engineering, financial data, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans.

17.2 The parties agree that Confidential Information exchanged by them under this Agreement shall be protected by the provisions of the Nondisclosure Agreement ("NDA") signed between them, and made effective as of , mutatis mutandis.

17.3 Notwithstanding the expiration or termination of the NDA, the provisions of this Article 17 shall remain in effect for a period of ten (10) years from the date of this Agreement.

18. WARRANTY

18.1 Customer acknowledges and agrees that the success of the development of the custom product contemplated by this Agreement cannot be assured. TAEC gives no representation or warranty that it will be successful in developing a design for such custom product or that the development will progress according to the milestones set forth in the Statement of Work. TAEC will under no circumstances be liable for any damages arising from its failure to develop a design for such custom product or for failing to meet the milestones set forth in the SOW. Any expenditures or commitments by Customer in anticipation of TAEC's success in developing such custom product or meeting the milestones set forth in the SOW will be at Customer's sole risk and expense.

18.2 PROTOTYPES/RISK PRODUCTION-NO WARRANTY CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY PROTOTYPE AND/OR RISK PRODUCTION GOODS DELIVERED HEREUNDER ARE DELIVERED ON AN "AS IS " BASIS WITH ALL FAULTS AND WITH NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED.

18.3 PRODUCT WARRANTY

a. TAEC warrants that:

i] for a period of one (1) year from the date of the delivery of each Product, the Product shall: (a) conform to the Specifications; (b) be free from defects in material or workmanship under normal use and service; and

ii] at the time of delivery, the Products will be free and clear of all liens, encumbrances, and other claims except for TAEC's reservation of a security interest in the Products prior to receipt of payment in full therefor.

b. TAEC's responsibility and the sole and exclusive remedy of Customer under this warranty is, at TAEC's option, to repair, replace, or credit Customer's account for any defective Products which are returned by Customer during the applicable warranty period set forth above in sub-Article 18.3a.i], provided that: (a) Customer promptly notifies TAEC in writing with a detailed description of any alleged deficiencies upon discovery by Customer that such Products fail to conform to the specifications; (b) such Products are returned to TAEC, F.C.A. TAEC's plant; and (c) TAEC's examination of such Products establishes to TAEC's satisfaction that such alleged deficiencies actually existed and were not caused by Customer's misuse, neglect, alteration, improper installation, repair, or improper testing of the Product(s).

c. TAEC SHALL WARRANT EXTERNAL IP SOLELY TO THE EXTENT SET FORTH IN THE APPLICABLE SOW. IF THE SOW IS SILENT ON WARRANTY, VERIFICATION, TESTING OR MAINTENANCE OF THE EXTERNAL IP, CUSTOMER UNDERSTANDS AND AGREES THAT TAEC SHALL NOT WARRANT ANY EXTERNAL IP, EXPRESSLY OR IMPLIEDLY, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

18.4 FOR THE AVOIDANCE OF DOUBT, THE PARTIES EXPRESSLY AGREE THAT THE WARRANTIES SET FORTH IN THIS ARTICLE SHALL NOT APPLY TO (i) ANY EXTERNAL IP, AND (ii) NON-CONFORMANCE CAUSED BY (A) IMPROPER USE, INSTALLATION, MISUSE, NEGLECT, MODIFICATION, ALTERATION, REPAIR, OR IMPROPER TESTING OF THE PROTOTYPES OR PRODUCTS BY CUSTOMER OR ANY PARTY; (B) THE PROTOTYPES OR PRODUCTS HAVING BEEN SUBJECTED TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS; OR (C) INTERFERENCE FROM APPLICATIONS, SOFTWARE, OR OTHER PRODUCTS PROVIDED BY THIRD PARTIES.

18.5 EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE, TAEC DISCLAIMS AND CUSTOMER WAIVES ALL OTHER WARRANTIES OR LIABILITIES OF TAEC, EXPRESS, IMPLIED, OR ARISING OUT OF COMMON LAW OR COURSE OF DEALING, RELATING TO TAEC's

PERFORMANCE HEREUNDER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY IS FOR THE SOLE BENEFIT OF CUSTOMER AND NOT FOR ANY THIRD PARTY.

19. PROTOTYPES/RISK PRODUCTION

19.1 Customer acknowledges that any Prototype will be provided for evaluation purposes only and not for any other purposes and shall not be offered to any of its customers, directly or indirectly, for purposes other than evaluation. Customer shall defend, indemnify, and hold TAEC and its affiliates harmless from and against all damages, obligations, causes of action, suits, or injuries of any kind arising from or in relation to Customer's use or other disposition of the Products in violation of this Agreement and/or Customer's supply of the Prototype to any of its customers.

19.2 Customer acknowledges that Risk Production goods are provided prior to Prototype Approval Signoff. Customer agrees to defend, indemnify, and hold TAEC and its affiliates harmless from and against all damages, obligations, causes of action, suits, or injuries of any kind arising from or in relation to Customer's supply of the Risk Production goods to any of its customers.

20. PRODUCT APPLICATION

20.1 This design is intended for general commercial applications such as but not limited to telecommunications, information technology equipment, computer equipment, office equipment, test and measurement instrumentation, or domestic appliances. The design is not intended for use in, nor is it intended to be incorporated into the Product for use in, nor will TAEC knowingly sell such items for use in equipment which requires extraordinarily high quality or reliability, and/or in equipment which may involve life threatening, life support, life sustaining, or life critical applications, including, but not limited to such uses as atomic energy controls, airplane or spaceship instrumentation, traffic signals, biomedical or medical instrumentation, combustion control, offensive weapon systems, or safety devices.

20.2 TAEC DOES NOT ACCEPT, AND HEREBY DISCLAIMS, LIABILITY FOR ANY DAMAGES, WHICH MAY ARISE FROM THE USE OF TAEC PRODUCTS USED IN SUCH EQUIPMENT OR APPLICATION AS SET FORTH HEREINABOVE. CUSTOMER SHALL DEFEND, INDEMNIFY, AND HOLD TAEC FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, PROCEEDINGS, COSTS, LOSSES, DAMAGES, AND EXPENSES OF EVERY KIND AND NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH USE OF PRODUCTS IN ANY SUCH EQUIPMENT OR APPLICATION.

21. INSPECTION

Customer shall inspect Products at its own expense in accordance with the inspection standard agreed upon by the parties. Unless Customer provides TAEC with written notice of rejection within thirty (30) days after TAEC's delivery of the Products to the carrier, together with sufficient evidence of the cause thereof, Products shall be deemed finally and irrevocably accepted. If TAEC receives notice of rejection within that thirty (30) days, then TAEC shall, at its option, repair or replace the defective Products or credit Customer's account, if TAEC has breached its warranty under Article 18.

22. ISSUANCE OF RETURN MATERIAL AUTHORIZATION NUMBER

22.1 All Products which Customer returns to TAEC must be accompanied by a Return Material Authorization (RMA) number. Unless further verification is required by TAEC, TAEC shall provide Customer with an RMA number within three (3) working days of Customer's request for return of the nonconforming Product to TAEC.

22.2 If it is determined that the failure is electrical, mechanical, or of any other nature requiring further verification by TAEC, Customer shall return to TAEC an agreed upon number of data-logged samples of the Product lot, whereupon TAEC shall issue a Failure Analysis (FA) number. Customer may, at its option, suspend the processing of invoices through Customer's accounting system for such nonconforming Product, pending resolution of the investigation. TAEC shall analyze the samples and report its findings to Customer within thirty (30) days after receipt of the samples and shall advise Customer of a schedule to complete the failure analysis and take corrective action.

22.3 An RMA shall be issued within three (3) working days following verification of the failure, if, after testing, the sample has been found to be nonconforming. Upon mutual agreement, TAEC shall replace, repair, or credit the purchase price of any Product which has been found to be nonconforming. If the returned Product is subsequently determined by Customer and TAEC to be in conformance, Customer shall immediately complete payment.

22.4 Transportation charges for Products returned from Customer to TAEC or from TAEC to Customer under this Article shall be at TAEC's expense, provided that Customer shall reimburse TAEC for any transportation charges paid by TAEC for returned Products which are subsequently found to be conforming.

23. MATERIAL AVAILABILITY

23.1 TAEC shall give Customer reasonable advance notice of its intent to discontinue the manufacture of those Products included in this Agreement. Such notice shall be no less than twelve (12) months in advance of the last order date. Customer shall have a twelve (12) month order placement period and must take receipt of the Products within eighteen (18) months of notification of the discontinuance.

23.2 After receipt of such notice of discontinuance, Customer may determine its Life Time Buy (LTB) quantity under the following conditions: (a) the quantity shall be by mutual agreement and (b) the price shall be negotiated at the time TAEC gives notice of the discontinuance.

24. LIABILITY

TAEC WILL UNDER NO CIRCUMSTANCES BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, SECONDARY, PUNITIVE OR EXEMPLARY LOSS OR DAMAGES OR ECONOMIC LOSS ARISING OUT OF OR RELATING TO THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT FOR ANY REASON WHATSOEVER REGARDLESS OF THE FORM OF ACTION, EVEN IF TAEC HAD BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGES OCCURRING AND EVEN IF AN EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSES. TAEC SHALL NOT BE LIABLE FOR ANY DAMAGES OR CLAIMS ARISING MORE THAN ONE (1) YEAR PRIOR TO THE INSTITUTION OF A LEGAL PROCEEDING THEREON. IN NO EVENT WILL TAEC's LIABILITY TO CUSTOMER FOR ANY ACTION OR CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO TAEC FOR THE PROTOTYPES OR PRODUCTS THAT ARE THE SUBJECT OF SUCH CLAIM.

25. INTELLECTUAL PROPERTY RIGHTS INDEMNIFICATION

25.1 Subject to the provisions set forth hereinafter and in Article 26. NON-INFRINGEMENT OF RIGHTS clause herein, TAEC shall defend, indemnify, and hold Customer harmless from and against all damages, obligations, causes of action, suits, or injuries of any kind arising from any actual or claimed infringement of United States, Canada, Mexico, Japan and European Community patents, mask work rights, or copyrights with respect to TAEC's design or TAEC's manufacturing of the Prototypes or Products; provided that:

a. Customer shall promptly notify TAEC in writing of any claim of infringement; and

b. TAEC shall have sole control of both the defense of any action on such claim and all negotiations for its settlement or compromise; and

c. Customer shall provide all reasonably necessary authority, information, and assistance to TAEC and its counsel for the defense of such claim.

25.2 Notwithstanding the foregoing, TAEC shall have no liability or obligation to Customer with respect to any intellectual property results infringement or claims thereof based on:

a. TAEC's compliance with designs, plans, specifications, or other information provided by Customer;

b. Use of the Prototypes or Products in combination with devices or products not purchased hereunder where the Products would not in themselves be infringing;

c. Use of the Prototypes or Products in an application or environment for which such Products were not designed or contemplated;

d. Modifications or additions to Prototypes or Products by Customer;

e. Any claims of infringement of a patent in which Customer, or any affiliate or customer of Customer, has an interest or a license; or

f. Should the owner of such intellectual property rights wish to grant a license to Customer with respect to a claim of patent infringement when the claimant declines to offer a license to TAEC but insists upon dealing only with Customer, notwithstanding TAEC's good faith efforts to resolve the claim.

25.3 If any Product is held to constitute an infringement or its use is enjoined, TAEC, at its option and at its own expense, may:

a. Procure for Customer the right to continue using such Product royalty-free; or

b. Replace such Product to Customer's reasonable satisfaction with non-infringing product of equivalent quality and performance; or

c. If (a) and/or (b) above are impracticable, accept the return of such Product for credit, allowing for a reasonable deduction for depreciation.

26. NON-INFRINGEMENT OF RIGHTS

Customer represents and warrants that the circuit design and other information furnished by Customer to TAEC, with respect to the design portion of the Prototypes or Products does not infringe any copyright, trade secret, United States, Canada, Mexico, Japan and European Community patent or other intellectual property right of any third party. Customer shall defend, indemnify and hold harmless TAEC against any claims, damages, and expense (including attorney fees), arising out of or in connection with Customer's breach of the foregoing representation and warranty.

27. TERMINATION

27.1 This Agreement will become effective on the Effective Date and will remain in full force and effect for a period of three (3) years from the Effective Date, unless terminated pursuant to this Article 27.

27.2 Either party may terminate any development or Purchase Order, effective upon written notice to the other party should any of the following events occur:

a. The other party files a voluntary petition in bankruptcy;

b. The other party is adjudicated bankrupt;

c. The other party makes an assignment for the benefit of its creditors;

d. A court assumes jurisdiction of the assets of the other party under any bankruptcy; or

e. A party is unable to pay its debts as they become due.

27.3 Either party shall have the right to terminate any development or Purchase Order for breach of a material term or condition of this Agreement, if such breach continues for a period of thirty (30) days after written notice thereof to the other.

27.4 If Customer defaults in the payment of any sum due under this Agreement and does not cure such default within thirty (30) days of written notice thereof from TAEC, then TAEC shall, without further notice, have the immediate right to repossess and remove the Product. Customer's obligation to pay all charges which shall have accrued and compensation, if any, which covers the actual costs incurred by TAEC as a result of such termination, shall survive any termination of this Agreement.

28. FORCE MAJEURE

Neither party shall be responsible or liable in any way for failure or delay in performing its obligations under these terms and conditions, other than obligations to make payment, when such failure or delay is directly or indirectly due to an act of God, war, threat of war, war-like conditions, hostilities, sanctions, mobilization, blockade, embargo, detention, revolution, riot, looting, striking, lockout, accident, fire, explosion, flood, inability to obtain fuel, power, raw materials, labor, container or transportation facilities, breakage of machinery or apparatus, government order or regulations, or any other cause beyond its reasonable control.

29. GOVERNMENT INTERVENTION

TAEC reserves the right to adjust prices or quantities to equitably compensate for increases in tariffs or similar charges, or for other government actions resulting in curtailment, prevention, or taxation of imports. Unless otherwise required by law, all prices will be quoted and billed exclusive of Federal, state, and local excise, sales, and similar taxes, but inclusive of import duties.

30. EXPORT REGULATIONS

This Agreement involves products and/or technical data that may be controlled under the U.S. Export Administration Regulations and that may be subject to the approval of the United States Department of Commerce prior to export. Any export or re-export by either

party, directly or indirectly in contravention of the U.S. Export Administration Regulations, is prohibited.

31. GENERAL

31.1 Neither party shall assign its rights and obligations under this Agreement without the prior written consent of the other party, except that TAEC may assign the performance of any of its obligations, including the manufacture of Prototypes or Products, to Toshiba Corporation or its affiliates.

31.2 These Terms and Conditions shall be interpreted and governed by the laws of the State of California without regard for its conflicts of laws principles, regardless of where any action may be brought. The parties agree to submit to the exclusive jurisdiction of the state and federal courts of the State of California. The parties expressly agree that the UN Convention for the International Sale of Goods shall not apply hereto.

31.3 All modifications to this Agreement must be in writing and signed by both parties. Failure or delay of either party to exercise any right or remedy hereunder shall not constitute a waiver of rights or remedies under this Agreement.

31.4 This Agreement is the exclusive statement of the Terms and Conditions between the parties with respect to the matters set forth herein, and supersedes all other prior or contemporaneous agreements, negotiations, representations, tender documents, and proposals, written and oral. Any additional or conflicting provisions contained in Customer's purchase order, or any purchase order acknowledgment issued by TAEC shall not apply.

31.5 If any provision of this Agreement is held unenforceable or inoperative by any court of competent jurisdiction, either in whole or in part, the remaining provisions shall be given full force and effect to the extent not inconsistent with the original terms of this Agreement.

31.6 Any notice given hereunder shall be sent in writing to the other party's business address set forth on the cover page hereof, or to such other party and address as such part shall have designated most recently in writing. Notices directed to TAEC shall be sent "Attention: Legal Department."

31.7 This Agreement may be executed in several identical counterparts, each of which when executed by the parties hereto and delivered shall be an original, but all of which together shall constitute a single instrument.

31.8 Articles 9, 12, 13, 15, 17, 19, 20, 24, 25, 26, 30 and 31 shall survive the termination or expiration of this Agreement.

Exhibit 10.4

CERTAIN INFORMATION (INDICATED BY "[***]") IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

TOSHIBA

Toshiba America Electronic Components, Inc.
2950 Orchard Parkway, San Jose, CA 95131

Design and Production Agreement

Amendment #1

Netlist Inc.

This Design and Production Agreement Amendment effective May 22, 2009 (the "Effective Date") is between Toshiba America Electronic Components, Inc., with a principal place of business at 19900 MacArthur Boulevard, Suite 400, Irvine, CA 92612 ("TAEC") and Netlist Inc. with a place of business at 51 Discovery, Suite 150 Irvine, CA 92618 ("Customer") and sets out the terms and conditions under which TAEC will design the product identified herein for Customer.

1. Project Name

Register ASIC

2. Summary

This Amendment #1 to the Register ASIC Design and Production Agreement, dated July 31, 2008, (TAEC#27N1242613) is hereby amended to remove the Major Project Milestones in section 4. Schedule and replace with the following Major Project Milestones as follows:

4. Schedule

Major Project Milestones

Event	Target Date/Completed
Development PO Released	**[***]**
Preliminary Feasibility Study	**[***]**
Design Decision	**[***]**
Design Initiation	**[***]**
Package Selection Finalized	**[***]**
Early Netlist for Pipecleaning	**[***]**
Final Netlist (functionally correct)	**[***]**
Tape Out — Second Sign off (GDSII transfer)	**[***]**
Delivery of prototypes	**[***]**
System compliance phase - start	**[***]**
System compliance phase - complete	**[***]**
1st Risk Production shipment	**[***]**

Except as modified herein, all other terms and conditions of the Design and Production Agreement shall remain in full force and effect per their terms.

Toshiba America Electronic Components, Inc.	**NetList Inc.**
/s/ Takeshi Iwamoto Signature	*/s/ James P. Perrott* Signature
Takeshi Iwamoto VP, Customer SoC & Foundry Business Unit Printed Name and Title	James P. Perrott, SVP Sales & Marketing Printed Name and Title
5-22-09 Date	5-22-09 Date

Exhibit 10.5

CERTAIN INFORMATION (INDICATED BY "[***]") IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

TOSHIBA

Toshiba America Electronic Components, Inc.
2950 Orchard Parkway, San Jose, CA 95131

Design and Production Agreement

Amendment #1

Netlist Inc.

This Amendment #1 ("Amendment") to the Register ASIC Design and Production Agreement, dated July 31, 2008, (TAEC#27N1242613) ("Agreement") is between Toshiba America Electronic Components, Inc., with a principal place of business at 19900 MacArthur Boulevard, Suite 400, Irvine, CA 92612 ("TAEC") and Netlist Inc. with a place of business at 51 Discovery, Suite 150 Irvine, CA 92618 ("Customer") and sets out the terms and conditions under which TAEC will design the product identified herein for Customer. This Amendment is effective as of the date finally executed below ("Effective Date").

1. Project Name

Register ASIC

2. New Schedule

The parties agree to delete the contents of Section 4 of the Agreement, Schedule, and replace it with the following:

Major Project Milestones

Event	Target Date/Completed
Development PO Released	**[***]**
Preliminary Feasibility Study	**[***]**
Design Decision	**[***]**
Design Initiation	**[***]**
Package Selection Finalized	**[***]**
Early RTL for Pipecleaning	**[***]**
Final RTL (functionally correct)	**[***]**
Tapeout — Second Signoff (GDSII transfer)	**[***]**
Delivery of Prototypes	TBD
System compliance phase - start	TBD
System compliance phase - complete	TBD
1st Risk Production shipment	TBD

Production turnaround time: 16 working weeks.

Schedule is provisional.

3. New Package and Die Size Option

The parties agree to delete the contents of Section 6 of the Agreement, Package and Die Size Option, and replace it with the following:

Package	Ball Pitch	Body Size	Substrate Layers	Die Size
[***]	**[***]**	**[***]**	**[***]**	**[***]**

4. New Price

The parties agree to delete the contents of Section 8 of the Agreement, Price, and replace it with the following:

First	1M pieces:	US$ **[***]**	* **[***]**
Next	2M pieces:	US$ **[***]**	
Next	2M pieces:	US$ **[***]**	
After first	5M pieces:	US$ **[***]**	

* Prices for first 1 Mpcs represent an addition of US$ **[***]** per unit in amortized Total NRE cost. See Section 10.

Changes in die size will affect the price quoted.

The prices quoted herein for mass production are based on the assumption of adequate yield. TAEC reserves the right to adjust pricing based on mutual agreement in the event that adequate yield figures, in TAEC's reasonable opinion, are not achieved by the start of mass production despite reasonable commercial efforts by both parties. TAEC will provide Netlist with timely data such that Netlist can reasonably assess yield.

Prices do not include and are subject to any applicable sales tax.

5. New Engineering Sample and Risk Production Pricing

The parties agree to delete Section 13.3 of the Agreement. The parties agree to delete the contents of Section 12 of the Agreement, Extra Engineering Samples, and replace it with the following:

All extra engineering samples and Risk Production parts shall be sold at US$ **[***]** each (2X the unit price of US **[***]**).

All extra engineering samples are sold as Prototypes and are subject to, without limitation, Articles 18.2 and 19.1 of the Design and Production Agreement Terms and Conditions ("Terms and Conditions"). All Risk Production parts are subject to, without limitation, Articles 18.2 and 19.2 of the Terms and Conditions. TAEC reserves the right in its sole discretion to determine whether to accept extra engineering sample or Risk Production orders.

6. Additional Non-Recurring Engineering Charges and Payment Schedule

Customer agrees to pay additional non-recurring engineering charges of US$ **[***]** ("Additional NRE") to TAEC for design support. The Additional NRE will be due and payable as follows:

1. US$ **[***]** upon Tapeout.

2. US$ **[***]** upon Delivery of Prototypes together with test logs showing successful completion of the mutually agreed-upon tests.

For the avoidance of doubt, the Additional NRE payable under this Amendment is in addition to and does not replace the NRE payable under the Agreement.

7. Cancellation

7.1 If Customer wishes to discontinue the project after execution of this Amendment, then in addition to the provisions set Forth in Section 10 of the Terms and Conditions, the Customer shall be responsible to pay TAEC for the NRE charges as set forth below ("Additional Cancellation Fee"), unless otherwise agreed in writing between TAEC and the Customer:

Time	Additional Cancellation Fee
[***]	**[***]** % of Additional NRE
[***]	**[***]** % of Additional NRE
[***]	**[***]** % of Additional NRE

7.2 For the avoidance of doubt, NRE already invoiced to Customer per the milestones and NRE payment schedule set forth herein and in the DPA ("Paid NRE") shall offset the Additional Cancellation Fee assessed in Article 7.1 above. To the extent that the Paid NRE exceeds the Additional Cancellation Fee and the Cancellation Fee set forth in Section 10 of the Terms and Conditions of the Agreement, TAEC shall not charge further Additional Cancellation Fee; however, Paid NRE will not be refunded upon cancellation of the design.

8. Additional Terms

8.1 **[***]**

Except as modified herein, all other terms and conditions of the Agreement shall remain in full force and effect per their terms.

Toshiba America Electronic Components, Inc.	**NetList Inc.**
/s/ Takeshi Iwamoto Signature	*/s/ Gail Itow* Signature
Takeshi Iwamoto VP, Customer SoC & Foundry Business Unit Printed Name and Title	Gail Itow, CFO Printed Name and Title
1-28-10 Date	1-28-10 Date

Exhibit 10.6

CERTAIN INFORMATION (INDICATED BY "[***]") IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

TOSHIBA

Toshiba America Electronic Components, Inc.
2950 Orchard Parkway, San Jose, CA 95131

Design and Production Agreement

Amendment #2

Netlist Inc.

This Amendment #2 ("Amendment #2") to the Register ASIC Design and Production Agreement, dated July 31, 2008, as amended (TAEC#27N1242613) ("Agreement") is between Toshiba America Electronic Components, Inc., with a principal place of business at 19900 MacArthur Boulevard, Suite 400, Irvine, CA 92612 ("TAEC") and Netlist Inc. with a place of business at 51 Discovery, Suite 150 Irvine, CA 92618 ("Customer") and sets out the terms and conditions under which TAEC will design the product identified herein for Customer, This Amendment is effective as of the date finally executed below ("Effective Date").

1. Project Name

Register ASIC

2. New Schedule

The parties agree to delete the contents of Section 4 of the Agreement, Schedule, and replace it with the following

Major Project Milestones

Event	Target Date/Completed
Development PO Released	**[***]**
Preliminary Feasibility Study	**[***]**
Design Decision	**[***]**
Design Initiation	**[***]**
Package Selection Finalized	**[***]**
Early RTL for Pipecleaning	**[***]**
Final RTL (functionally correct)	**[***]**
Tapeout — Second Signoff (GDSII transfer)	**[***]**
Delivery of Prototypes	TBD
System compliance phase — start	TBD
System compliance phase — complete	TBD
1 st Risk Production shipment	TBD

Production turnaround time: 16 working weeks.

Schedule is provisional.

3. New Internal/External IP

The parties agree to delete the contents of Section 7 of the Agreement, Internal/External IP and replace it with the following:

Internal IP :
[***]

External IP :
[***]

4. Addition to Section 9, Non-Recurring Engineering Charges ("NRE")

The parties agree to add the following provision to Section 9 of the Agreement, Non-Recurring

Engineering Charges ("NRE"):

9.5 External IP Defects/Bugs

[***]

5. Additional Features Non-Recurring Engineering Charges and Payment Schedule

5.1 Customer agrees to pay non-recurring engineering charges ("Additional Features NRE") to TAEC for support of design changes. Support includes:

[***]

5.2 The Additional Features WE will be calculated according to the resources expended by TAEC. Which will be charged at the rate of US$ **[***]** per full-time-equivalent person per week. TAEC will provide a weekly update to Customer regarding resources expended.

TAEC estimates that the Additional Features NRE for this Register design will be US$ **[***]** or **[***]** . This estimate is subject to change.

5.3 The Additional Features NRE will be payable as fellows:

1. US$ **[***]** (**[***]** % of estimated Additional Features NRE) upon tapeout **[***]** whichever is earlier.

2. The balance (total person-weeks actually expended, less US$ **[***]**), upon Delivery of Prototypes together with test lugs showing successful completion of the Toshiba Testing as defined in the Product Testing Agreement between the parties.

For the avoidance of doubt, the Additional Features NM: payable under this Amendment #2 is in addition to and does not replace the NRE payable under the Agreement and/or Amendment #1.

6. Cancellation

6.1 If Customer wishes to discontinue the project set forth in this Amendment #2 prior to tapeout, then Customer shall pay TAEC US$ **[***]** ("Additional Features Cancellation

Fee"). In addition, TALC reserves the right to invoice Customer for any resources expended by TAEC prior to cancellation in excess of 14.88 person-weeks. The Additional Features Cancellation Fee shall be offset by any amount of the Additional Features NRE already paid to TAEC by Customer.

6.2 In the event that Customer unilaterally fails to provide information, data, or approvals necessary for TAEC to proceed with the project for a period of **[***]** from TAEC's initial request for such information, data, or approvals, TAEC reserves the right to deem the project set forth in this Amendment #2 cancelled and assess the Additional Features Cancellation Fee.

Except as modified herein, all other terms and conditions of the Agreement shall remain in full force and effect per their terms.

Toshiba America Electronic Components, Inc.	**NetList Inc.**
/s/ Takeshi Iwamoto Signature	*/s/ Gail Itow* Signature
	Gail Itow, CFO Printed Name and Title
Takeshi Iwamoto VP, Customer SoC & Foundry Business Unit Printed Name and Title	3/5/10 Date
3/10/10 Date	

Exhibit 10.7

CERTAIN INFORMATION (INDICATED BY "[***]") IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

TOSHIBA

Toshiba America Electronic Components, Inc.
2950 Orchard Parkway, San Jose, CA 95131

Design and Production Agreement

Netlist Inc.

This Design and Production Agreement ("DPA") effective July 31, 2008 (the "Effective Date") is between Toshiba America Electronic Components, Inc., with a principal place of business at 19900 MacArthur Boulevard, Suite 400, Irvine, CA 92612 ("TAEC") and Netlist Inc with a place of business at 51 Discovery, Suite 150, Irvine, CA 92618 ("Customer") and sets out the terms and conditions under which TAEC will design the product identified herein for Customer.

1. Project Name

ID ASIC

2. Summary

This DPA is for the development of ID ASIC for Customer. The quote is based on TAEC's initial die size estimation.

3. Design Specification

[***]

4. Schedule

MAJOR PROJECT MILESTONES

Event	Target Date/Completed
Development PO released & Design Initiation	**[***]**
Completion of Feasibility Study	**[***]**
Design Decision	**[***]**
Package selection finalized	**[***]**
Early netlist for "pipecleaning"	**[***]**
Final netlist (functionally correct)	**[***]**
Tapeout — Second Signoff GDSII transfer)	**[***]**
Delivery of Prototypes	**[***]**
System compliance phase - start	**[***]**
System compliance phase - complete	**[***]**
1st Risk Production shipment	**[***]**

Production turnaround time: 16 working weeks

Schedule will be finalized in the SOW upon Design Decision. See Section 13.5.

5. Technology

[***]

6. Package and Die Size Option

Package	Ball Pitch	Body Size	Substrate Layers	Die Size
[***]	**[***]**	**[***]**	**[***]**	**[***]**

7. Internal/External IP

Internal IP :
[***]

External IP :
[***]

8. Price

First	10M pieces: US$ **[***]**
Next	20M pieces: US$ **[***]**
Next	20M pieces: US$ **[***]**
After first	50M pieces: US$ **[***]**

Changes in die size will affect the price quoted.

Prices do not include and are subject to any applicable sales tax.

9. Non-Recurring Engineering Charges ("NRE")

9.1 Total NRE Charges (not including re-spin charges as set out in Section 9.2): US$ **[***]**

9.2 Additional NRE Charges in the event of Re-spin

Metal Layer Re-spin Charges:	US$ **[***]**
All-Layer Re-spin Charges (base and metal layers):	US$ **[***]**

In the event a re-spin involving only metal layers is required, TAEC will provide a firm quote for additional re-spin NRE charges, which will be calculated on a cost per layer basis including required engineering effort. In the event the implementation of design changes affects all metal layers, including contact and vias, the additional NRE cost will not exceed the Metal Layer Re-spin Charges amount stated above.

In the event an all-layer re-spin is required, the All-Layer Re-spin Charges will apply as stated above.

The charges set forth in this Section 9.2 are based on the assumptions that (1) no Material Changes would be needed and (2) no changes whatsoever to the package design would be required, whether Material Changes or not. If either of these assumptions is incorrect, costs may vary.

9.3 Internal IP Defects/Bugs

Should Internal IP be found to have a Defect/Bug, as defined in the attached SLI Terms and Conditions, TAEC will be responsible for the additional NRE re-spin charges required to repair such Defect/Bug, subject to Section 9.4,

9.4 Customer Design Changes During Re-spin for Internal IP Defects/Bugs

If Customer requests design changes during a re-spin to correct Internal IP Defects/Bugs, a portion of the additional re-spin cost will be shared by Customer.

For a metal re-spin, this cost will be calculated on the basis of the number of layers required for Customer changes and whether those layers are implicated by the Internal IP repairs. If the Customer-requested design changes require the same metal arid via layers as would be necessary for the Internal IP Defect/Bug fix, the cost to Customer will not exceed 50% of the additional re-spin NRE charges. If the Customer-requested changes require additional mask layer changes, the NRE cost associated with the additional layers will be solely the financial responsibility of Customer.

If an all-layer re-spin is required in order to fix Internal IP Defects/Bugs, and Customer requests additional design changes at that time, Customer will not he charged more than 50% of the All-Layer Re-spin Charges.

10. NRE Payment Schedule

Decision: US$[***]
Tape-out: US$ **[***]**
Delivery of Prototypes: US$ **[***]**

- **[***]** Prototypes are included in NRE.

- A prototype lot charge of $ **[***]** is included in the Delivery of Prototypes payment. Prototype lot charge is subject to any applicable sales tax.

11. NRE Services included

Engineering activities

[***]

Manufacturing activities

[***]

*Any additional qualifications requested by Customer beyond the standard Toshiba qualification are not covered by the Total NRE Charges and may incur additional fees.

12. Extra Engineering Samples

1-100 pieces:	**[***]** unit price of US$[***]
101-500 pieces:	**[***]** unit price of US$ **[***]**
501- 1000 pieces:	**[***]** unit price of US$ **[***]**

All extra engineering samples are sold as Prototypes and are subject to, without limitation, Articles 18.2 and 19.1 of the Terms and Conditions.

13. Project Specific Conditions

13.1 **[***]**

13.2 **[***]**

13.3 **[***]**

13.4 **[***]**

13.5 **[***]**

14. General Conditions

14.1 Pricing stated in this DPA is based on Toshiba America Electronic Components Inc. selling production parts directly to Customer.

14.2 Full specifications and responsibilities to be defined and agreed in a SOW. Customer and TAEC will work in good faith to finalize and sign the SOW within thirty (30) days of design initiation.

14.3 Schedule is provisional. Final schedule is still to be agreed.

14.4 TAEC reserves the right to make extra charges up to a maximum of **[***]** % of the total NRE if Customer submits more than **[***]** Engineering Change Orders (ECOs) or changes to the layout constraints file(s) after the acceptance of final netlist, unless these ECOs/changes are attributed to problems of TAEC implementing the design.

14.5 TAEC may, in its sole discretion, share a copy of this DPA, and any applicable SOW with Toshiba Corporation Semiconductor Company and other Toshiba affiliates, on a need-to-know basis in order to implement or further Customer’s project.

14.6 TAEC may, upon written notice to Customer, share Customer's information as it pertains to their design kit, library and user documentation with a supplier of EDA Tools for the sole purpose of resolving any debugging issues that may arise during the term of this Agreement.

14.7 This DPA shall be governed by the attached Terms and Conditions, which are incorporated herein by reference.

14.9 In the event of any conflict between the provisions set forth in this DPA and the Terms and Conditions to which it is attached, the contents of the DPA shall control.

14.10 This Agreement (as defined in the Terms and Conditions) is the entire agreement between the parties and supersedes any prior communications, representations, or agreements as to the subject matter hereof, whether written or oral.

14.11 Any changes to the DPA and/or the Terms and Conditions after the execution of the DPA must be mutually agreed upon in the form of a written amendment signed by both parties.

Toshiba America Electronic Components, Inc.

/s/ Takeshi Iwamoto
Signature

Takeshi Iwamoto VP, Customer SoC & Foundry Business Unit, Systems LSI
Printed Name and Title

8/22/08
Date

NetList Inc.

/s/ James P. Perrott
Signature

James Perrott, SVP Sales & Marketing
Printed Name and Title

8/15/08
Date

Toshiba America Electronic Components, Inc.
Design and Production Agreement Terms and Conditions

These Terms and Conditions set out the terms and conditions under which TAEC will de these terms are attached.

1. DEFINITIONS

1.1 "Agreement" shall refer to the agreement comprising the DPA (as hereinafter defined), the Terms and Conditions, the SOW, and any other addenda specifically noted therein (all as defined herein).

1.2 "CEM " means a contract manufacturer engaged by Customer to purchase Product(s) from TAEC, which are then assembled into products sold to Customer.

1.3 "Customer" means the customer identified on Page 1 of the DPA.

1.4 "Defect/Bug" means a failure of any intellectual property to meet the mutually agreed upon chip level and system level specifications as provided at the time of development. Such failure or nonconformance includes, but is not limited to, the inability of the logic or interface portion of either Internal and External IP to meet mutually agreed upon chip level and system level specifications.

1.5 "Design Initiation" means Customer has placed and TAEC has accepted a Development PO to proceed with Customer's design.

1.6 "Development PO " is the purchase order created by the Customer to signify they have accepted the Specifications and have agreed to proceed with the development of Customer's design.

1.7 "DPA" means the Design And Production Agreement to which these terms and conditions are attached.

1.8 "Effective Date" shall mean the date reflected on the first page of the DPA, its date of execution notwithstanding.

1.9 "External IP" shall mean intellectual property acquired from a third party IP provider by TAEC or Customer for use in Customer's design, which is so identified in the SOW and/or in the DPA.

1.10 "Internal IP " means intellectual property owned and/or provided by TAEC for use in Customer's design, which is so identified in the SOW and/or in the DPA.

1.11 "Mask Work" means a series of related images, however fixed or encoded; having or representing the predetermined, three dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and in which series the relation of the images to one another is that each image represents a pattern of the surface of one form of the resulting semiconductor chip product.

1.12 "Material Changes" means any changes in Customer-provided specification or netlist that (1) lead to an increase in block size or die size of 1% or more; (2) increase the nominal performance of the block or chip or both by 1 % or more; (3) alter the testing requirements after the Second Signoff; (4) in the case of I/O limited designs, lead to any increase in pin out; or (5) in the case of non-I/O limited designs, lead to an increase in pin out of 1 % or more.

1.13 "NRE " means the non-recurring engineering fees charged for specific phases of work as set forth in the DPA.

1.14 "Product" means the resulting product based on the design specified in the DPA and shall be defined by mutually agreed upon specifications embodied in the documents contained within the Customer Part Number File and TAEC published Quality and Reliability Standards

1.15 "Prototype" means pre-production engineering samples of Products, which have been manufactured before the completion of the Prototype Approval Signoff by both parties. Prototypes are provided for evaluation purposes only. Prototypes may also be called "Engineering Samples" or "KS," "ES, " or "HS " for invoicing or other purposes, but other types of reference to a Prototype shall not change the status as the Prototype.

1.16 "Prototype Approval Signoff" shall mean the form signed by the Customer when the Prototype meets the required Specification and the design is suitable for transfer in to production.

1.17 "Risk Production" means TAEC's commencing production of goods before the completion of the Prototype Approval Signoff by both parties.

1.18 "Second Signoff" means the form signed by both parties indicating the design is ready for Tape-out.

1.19 "SOW " means the Statement of Work attached to the DPA, or which is executed separately by the parties if not attached thereto. The parties expressly agree that the SOW may be modified from time to time on their mutual agreement, and that the project schedule and other records of the TAEC Program Manager shall be the record of the parties' modifications to the SOW.

1.20 "Specifications" means the specifications agreed by the parties for the Product and Prototype, as applicable and incorporated into the SOW.

1.21 "System Level Verification " shall mean the performance of the External IP on the silicon in varying Customer application systems as stated on the third party IP provider specification.

1.22 "TAEC " means Toshiba America Electronic Components, Inc.

1.23 "Tape-out" means TAEC has released final database to Japan to begin the prototype fabrication (mask making and wafer fabrication).

1.24 "Terms and Conditions" means these Design and Production Agreement Terms and Conditions.

2. DEVELOPMENT WORK

2.1 Details of the development are set forth in the SOW. Design requirements may be changed by mutual written agreement of the Parties; however, Customer understands and agrees that such changes may result in additional charges.

2.2 The development shall be completed when Customer notifies TAEC that the Prototype received by Customer meets the Specifications, when Customer executes the Prototype Approval Signoff.

2.3 If the Prototypes do not conform to the agreed specification and TAEC agrees that the nonconformance is due to TAEC's error, TAEC will make all commercially-reasonable efforts to expedite delivery of conforming Prototypes.

2.4 If Customer requests any modifications to the Specifications, TAEC agrees to complete the modification as soon as is reasonably practicable after TAEC has agreed to the modification. For the avoidance of doubt, the parties expressly agree that TAEC shall have no obligation to commence a modification unless and until the parties have agreed on adjustments in schedule, costs, or other applicable provisions.

2.5 If TAEC assembles and manufactures any goods at Customer's request before Customer has issued its written approval via Prototype Approval Signoff, Customer understands and agrees that they will be done on a Risk Production order basis, with Customer responsible for all assembly and production costs.

2.6 Products will be tested to the developed test program resulting from the simulation database. Changes to the test program after sample or production initiation may result in production lead-time delays.

2.7 Each delivery of Products shall be initiated by Customer's written or electronic notification that a Purchase Order ("Purchase Order") will be forthcoming. Customer shall send a written Purchase Order to TAEC within five (5) working days of the verbal notice. Each Purchase Order shall identify the Products ordered; indicate the requested quantity and a mutually agreed upon price; and specify the requested delivery date.

2.8 Design initiation shall commence when Customer issues a Purchase Order for the NRE charge. The Purchase Order shall refer to the applicable DPA, and shall include the words: "This Purchase Order represents acceptance of the terms and conditions in the Design And Production Agreement between the issuer and Toshiba America Electronic Components, Inc."

2.9 TAEC shall supply Products to Customer based on production Purchase Orders that support a six (6) month rolling forecast.

3. DEVELOPMENT TERM

[***]

4. COMPENSATION

4.1 **[***]**

4.2 **[***]**

4.3 **[***]**

5. RE-SPIN NRE CHARGES

Re-spin NRE charges will be based on engineering and manufacturing services as well as on the extent of the modification, which may be done as either a metallization or a diffusion change. Metallization changes may be implemented by regenerating the metal and via masks only. Diffusion modifications, on the other hand, require the regeneration of all masks. The extent of the engineering and manufacturing services required for re-design shall be considered in determining total charges for a re-spin of the design which shall be specified in the DPA or an Amendment thereto.

6. ACKNOWLEDGMENT

6.1 TAEC shall process Customer's Purchase Orders submitted in accordance with Article 2.7 within ten (10) working days of TAEC's receipt thereof. Purchase Orders shall only be binding as of the date of TAEC's acknowledgment and acceptance thereof.

6.2 TAEC shall only accept Purchase Orders with requested delivery dates no more than six (6) months from the Purchase Order date. Any requests for a shipment beyond that six-month period shall be reviewed and acknowledged only after the requested delivery date moves within the six (6) month period.

7. PRODUCT LEADTIME

7.1 Prototypes: TAEC will use all commercially reasonable efforts to provide Prototypes within the total turnaround time defined in the appropriate DPA and expressed as working weeks from Tape-out.

7.2 Production: TAEC will use all commercially reasonable efforts to provide production lead-time as defined in the appropriate DPA or other document issued by TAEC, from the date of TAEC's acknowledgment and acceptance of a Purchase Order.

8. SHIPMENT AND DELIVERY

8.1 Shipments shall be F.C.A. shipping point. Risk of loss or damage shall pass from TAEC to Customer upon delivery of the Products to the common carrier for shipment to Customer; title to all Products released hereunder shall pass to Customer upon full payment by Customer therefor.

8.2 Unless otherwise specified by Customer, TAEC shall ship Products according to TAEC's standard method. Freight and insurance will be prepaid by TAEC and invoiced to Customer.

8.3 TAEC shall not be liable for any damages or penalties for delay in delivery, or for failure to give notice of delay when such delay is due to an act of Customer or any cause beyond the reasonable control of TAEC, including, but not limited to, the causes specified in Article 28. FORCE MAJEURE clause herein. For any delay excusable under Article 28, the delivery date shall be deemed extended for the duration of the force majeure event.

9. PAYMENT TERMS

9.1 Customer shall pay to TAEC all amounts due hereunder within thirty (30) days of the date of TAEC's invoice therefor.

9.2 Customer may have a third party distributor or other entity (each, a "Designated Payor") pay the NRE charges on Customer's behalf subject to the following conditions:

a. Customer will so inform TAEC and will give TAEC instructions on to whom and where the NRE invoice(s) should be sent;

b. Upon TAEC's request, Customer will provide reasonable evidence to TAEC of such Designated Payor s agreement to pay the NRE charges;

c. Customer remains primarily liable for the payment of the NRE charges, and understands and agrees that it shall be fully responsible therefor if the Designated Payor fails to pay such charges within thirty (30) days of the date of TAEC's invoice; and

d. The payment of the NRE charges by a Designated Payor shall not affect any of the rights and obligations of the parties hereunder, and such Designated Payor shall not be deemed a third party beneficiary of this Agreement, nor shall the Designated Payor have any rights in or to Products, Prototypes, Mask Works, or any other item relating to the subject matter hereof or any right to place or enforce a lien against TAEC relating to the subject matter of this Agreement, and Customer shall indemnify and hold harmless TAEC from any damages or claims TAEC may suffer as a result of Customer's engagement of a Designated Payor.

9.3 TAEC may withhold or suspend shipment or other performance hereunder, in whole or in part, if Customer or its Designated Payor, as applicable, fails to make any payment in accordance with Article 9.1, or otherwise fails to perform its obligations under these Terms and Conditions.

9.4 TAEC reserves the right to monitor Customer's or the Designated Payor's creditworthiness periodically during the course of the work. If, in TAEC's reasonable opinion, Customer's or the Designated Payor's, creditworthiness declines, TAEC shall so notify Customer or the Designated Payor, and as a condition to the performance of any obligation under this Agreement, TAEC reserves the right in its sole discretion to require Customer or the Designated Payor to provide security for payment of any amounts due under this Agreement, including, but not limited to, opening an irrevocable letter of credit to support Customer's payment obligations hereunder, or such other means as TAEC may determine appropriate.

10. CANCELLATION/DELAY OF DEVELOPMENT:

10.1 In the event that Customer unilaterally delays a design milestone for longer than four (4) weeks beyond the schedule specified in the SOW, TAEC reserves the right to charge Customer up to a total of **[***]** of the Total NRE charge specified in the DPA.

10.2 If Customer wishes to discontinue the project after TAEC has accepted the Development PO from Customer, the Customer or the Designated Payor shall be responsible to pay TAEC for the NRE charges as set forth below ("Cancellation Fee"), unless otherwise agreed in writing between TAEC and the Customer:

Time	Cancellation Fee
[***]	**[***]** % of NRE
[***]	**[***]** % of NRE
[***]	**[***]** % of NRE
[***]	**[***]** % of NRE

10.3 In the event that Customer unilaterally delays a design milestone for longer than **[***]** beyond the schedule specified in the SOW, TAEC reserves the right to deem the design cancelled and assess the Cancellation Fee specified in Section 10.2. In such case, the Agreement will terminate upon payment of the Cancellation Fee.

10.4 For the avoidance of doubt, NRE already invoiced to Customer per the milestones and NRE payment schedule set forth in the DPA ("Paid NRE") shall offset the Cancellation Fee assessed in Sections 10.2 and 10.3 above. To the extent that the Paid NRE exceeds the Cancellation Fee as assessed, TAEC shall not charge an additional Cancellation Fee; however, Paid NRE will not be refunded upon cancellation of the design.

11. CANCELLATION/RESCHEDULE OF PRODUCTION ORDERS

11.1 Requests for cancellation must be made in writing, and the following terms shall apply unless otherwise agreed in writing between TAEC and the Customer. Cancellation fees will be assessed based on the length of time from the date a written notice is received by TAEC to the first scheduled shipment date.

Days from scheduled shipment	Cancellation Fees
0 - 30 days	**[***]**
31- 60 days	**[***]**
61- 90 days	**[***]**
91-120 days	**[***]**

11.2 Re-schedule requests must be made in writing sixty (60) days before the original delivery date. Any order may be re-scheduled only once. Requests to delay shipments may not exceed ninety (90) days from the original committed delivery date. The re-scheduled order may not be canceled or further modified, and Customer will be liable for full payment of the selling price.

Days before Shipment	Terms
Within next 60 days	**[***]**
Within 60-120 days	**[***]**
Over 120 days	**[***]**

12. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP

12.1 Customer retains all right, title and interest in and to all proprietary rights, including without limitation, patent, copyright, trade secrets, mask work rights, in and to: (i) all designs and design features of the Products, and (ii) all patterns, drawings, and other data concerning the Products' design features including, but not limited to, the Products' database, and (iii) all Mask Work produced by TAEC for the manufacturing of Products.

12.2 Notwithstanding the above provision, TAEC retains all right, title and interest in and to its processes and all patent, trade secret, and other intellectual property rights therein, and any associated technology and know-how. For the purposes of this Agreement, "processes" shall mean TAEC's manufacturing processes, including, but not limited to the process control monitor contained in the Mask Work. TAEC reserves the right to perform similar work for its other customers.

12.3 Both parties understand that any and all Mask Works produced by TAEC for the manufacturing of the Products contain both parties' Confidential Information (as hereinafter defined), and that such Mask Works shall not be used in any manner except as necessary for the performance of this Agreement.

12.4 The party who desires to assert its Mask Work rights against any third party for infringement (the "Asserting Party") shall give prior written notice to the other party to allow such other party to decide whether or not to participate in such dispute. If the other party decides not to participate, it shall provide all commercially reasonable assistance to the Asserting Party in connection with such dispute, at the Asserting Party's expense.

12.5 If an invention is made solely by the employees of either party in connection with the development of the Prototype or Products, all right, title, and interest in and to such items shall belong solely to the party whose employees made such invention. If an invention is jointly made by the employees of both Customer and TAEC, Customer and TAEC shall jointly own all right, title, and interest thereto. Each party shall be entitled to use and exploit such jointly owned invention and intellectual property rights without notice or accounting to the other party.

13. MASK WORKS REGISTRATION

13.1 If Customer desires to register the Mask Work for the Products under the Semiconductor Chip Protection Act of 1984 (the "Act"), Customer shall make registration by itself; however, Customer shall include TAEC's name in such registration. Customer shall have sole responsibility for obtaining registrations for the Mask Work. Upon Customer's request, TAEC agrees to supply Customer or its designee with any reasonable identifying material required for deposit under the Act in order to register a Mask Work in the names of Customer and TAEC. All expenses and charges for registration and upkeep on Mask Work shall be borne by Customer.

13.2 Customer shall use its best efforts to comply with all semiconductor protection laws and applicable regulations in connection with such application. If possible, Customer shall expressly identify in the "nature of contribution" column of the U.S. mask work registration form (and applicable columns of the application form of other countries) that the portion of the Mask Work for the Products and any intellectual property rights including Mask Work related thereto remain the sole and exclusive property of TAEC.

13.3 Customer shall furnish TAEC with a copy of the application form of Mask Work for TAEC's prior to filing, and shall give TAEC reasonable time and opportunity to suggest changes and edits.

14. MASK WORK NOTICE

Upon written request by Customer, and subject to packaging constraints, TAEC will place a Mask Work notice on the outside package of the Product which shall consist of the letter M in a circle and the names of Customer and TAEC.

15. BUSINESS RELATIONSHIPS

15.1 Except as may be specifically provided in this Agreement, no right or license either expressed or implied is granted to either party under any patent, patent application or any other intellectual property right as a result of this Design Agreement. The rights and obligations of the parties to these Terms and Conditions are limited to those expressly set forth herein.

15.2 This Design Agreement is not intended to constitute or create a joint venture, partnership or formal business entity of any kind. Customer and TAEC shall be independent contractors and neither party shall act as the agent for or partner of the other party without prior written agreement.

15.3 Nothing in these terms and conditions shall give either party the right to use the other's name, trademark or logo except where specifically authorized in writing by such other party.

15.4 Customer understands and agrees that a CEM's purchases and other information relating to its business relationship with TAEC are confidential information that TAEC may not disclose without the CEM's express permission (the "CEM Information"). Consequently, if Customer requests TAEC to provide such CEM Information, TAEC shall do so only if:

a. Customer provides to TAEC proof of the CEM's permission; or

b. Customer defends, indemnifies, and holds TAEC harmless from and against any and all claims and damages that TAEC may suffer as a result of such disclosure of CEM Information.

16. SUBCONTRACTING

16.1 TAEC may subcontract all or part of the development of the Products to Toshiba Corporation or one or more of TAEC's affiliates or subcontractors, provided that each such subcontracting party agrees in writing to comply with provisions of these terms and conditions.

16.2 Customer may subcontract all or part of its obligations hereunder with respect to the Products to one of its affiliates or subcontractors (each, a "Permitted Party"),

provided that (a) each such Permitted Party agrees in writing to comply with provisions of these terms and conditions, (b) the Permitted Party is not a semiconductor competitor to TAEC, and (c) Customer has given TAEC permission to share information with such Permitted Party as may be required for Permitted Party to carry out its duties.

17. CONFIDENTIAL INFORMATION

17.1 "Confidential Information" as used in this Agreement will mean any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, and formulae related to the current, future and proposed products and services of each of the parties and/or its customers and/or vendors, including, without limitation, information concerning product or process research and development, design details and specifications, engineering, financial data, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans.

17.2 The parties agree that Confidential Information exchanged by them under this Agreement shall be protected by the provisions of the Nondisclosure Agreement ("NDA") signed between them, and made effective as of , mutatis mutandis.

17.3 Notwithstanding the expiration or termination of the NDA, the provisions of this Article 17 shall remain in effect for a period of ten (10) years from the date of this Agreement.

18. WARRANTY

18.1 Customer acknowledges and agrees that the success of the development of the custom product contemplated by this Agreement cannot be assured. TAEC gives no representation or warranty that it will be successful in developing a design for such custom product or that the development will progress according to the milestones set forth in the Statement of Work. TAEC will under no circumstances be liable for any damages arising from its failure to develop a design for such custom product or for failing to meet the milestones set forth in the SOW. Any expenditures or commitments by Customer in anticipation of TAEC's success in developing such custom product or meeting the milestones set forth in the SOW will be at Customer's sole risk and expense.

18.2 PROTOTYPES/RISK PRODUCTION-NO WARRANTY CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY PROTOTYPE AND/OR RISK PRODUCTION GOODS DELIVERED HEREUNDER ARE DELIVERED ON AN "AS IS " BASIS WITH ALL FAULTS AND WITH NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED.

18.3 PRODUCT WARRANTY

a. TAEC warrants that:

i] for a period of one (1) year from the date of the delivery of each Product, the Product shall: (a) conform to the Specifications; (b) be free from defects in material or workmanship under normal use and service; and

ii] at the time of delivery, the Products will be free and clear of all liens, encumbrances, and other claims except for TAEC's reservation of a security interest in the Products prior to receipt of payment in full therefor.

b. TAEC's responsibility and the sole and exclusive remedy of Customer under this warranty is, at TAEC's option, to repair, replace, or credit Customer's account for any defective Products which are returned by Customer during the applicable warranty period set forth above in sub-Article 18.3a.i], provided that: (a) Customer promptly notifies TAEC in writing with a detailed description of any alleged deficiencies upon discovery by Customer that such Products fail to conform to the specifications; (b) such Products are returned to TAEC, F.C.A. TAEC's plant; and (c) TAEC's examination of such Products establishes to TAEC's satisfaction that such alleged deficiencies actually existed and were not caused by Customer's misuse, neglect, alteration, improper installation, repair, or improper testing of the Product(s).

c. TAEC SHALL WARRANT EXTERNAL IP SOLELY TO THE EXTENT SET FORTH IN THE APPLICABLE SOW. IF THE SOW IS SILENT ON WARRANTY, VERIFICATION, TESTING OR MAINTENANCE OF THE EXTERNAL IP, CUSTOMER UNDERSTANDS AND AGREES THAT TAEC SHALL NOT WARRANT ANY EXTERNAL IP, EXPRESSLY OR IMPLIEDLY, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

18.4 FOR THE AVOIDANCE OF DOUBT, THE PARTIES EXPRESSLY AGREE THAT THE WARRANTIES SET FORTH IN THIS ARTICLE SHALL NOT APPLY TO (i) ANY EXTERNAL IP, AND (ii) NON-CONFORMANCE CAUSED BY (A) IMPROPER USE, INSTALLATION, MISUSE, NEGLECT, MODIFICATION, ALTERATION, REPAIR, OR IMPROPER TESTING OF THE PROTOTYPES OR PRODUCTS BY CUSTOMER OR ANY PARTY; (B) THE PROTOTYPES OR PRODUCTS HAVING BEEN SUBJECTED TO UNUSUAL PHYSICAL OR ELECTRICAL STRESS; OR (C) INTERFERENCE FROM APPLICATIONS, SOFTWARE, OR OTHER PRODUCTS PROVIDED BY THIRD PARTIES.

18.5 EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE, TAEC DISCLAIMS AND CUSTOMER WAIVES ALL OTHER WARRANTIES OR LIABILITIES OF TAEC, EXPRESS, IMPLIED, OR ARISING OUT OF COMMON LAW OR COURSE OF DEALING, RELATING TO TAEC's

PERFORMANCE HEREUNDER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY IS FOR THE SOLE BENEFIT OF CUSTOMER AND NOT FOR ANY THIRD PARTY.

19. PROTOTYPES/RISK PRODUCTION

19.1 Customer acknowledges that any Prototype will be provided for evaluation purposes only and not for any other purposes and shall not be offered to any of its customers, directly or indirectly, for purposes other than evaluation. Customer shall defend, indemnify, and hold TAEC and its affiliates harmless from and against all damages, obligations, causes of action, suits, or injuries of any kind arising from or in relation to Customer's use or other disposition of the Products in violation of this Agreement and/or Customer's supply of the Prototype to any of its customers.

19.2 Customer acknowledges that Risk Production goods are provided prior to Prototype Approval Signoff. Customer agrees to defend, indemnify, and hold TAEC and its affiliates harmless from and against all damages, obligations, causes of action, suits, or injuries of any kind arising from or in relation to Customer's supply of the Risk Production goods to any of its customers.

20. PRODUCT APPLICATION

20.1 This design is intended for general commercial applications such as but not limited to telecommunications, information technology equipment, computer equipment, office equipment, test and measurement instrumentation, or domestic appliances. The design is not intended for use in, nor is it intended to be incorporated into the Product for use in, nor will TAEC knowingly sell such items for use in equipment which requires extraordinarily high quality or reliability, and/or in equipment which may involve life threatening, life support, life sustaining, or life critical applications, including, but not limited to such uses as atomic energy controls, airplane or spaceship instrumentation, traffic signals, biomedical or medical instrumentation, combustion control, offensive weapon systems, or safety devices.

20.2 TAEC DOES NOT ACCEPT, AND HEREBY DISCLAIMS, LIABILITY FOR ANY DAMAGES, WHICH MAY ARISE FROM THE USE OF TAEC PRODUCTS USED IN SUCH EQUIPMENT OR APPLICATION AS SET FORTH HEREINABOVE. CUSTOMER SHALL DEFEND, INDEMNIFY, AND HOLD TAEC FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, PROCEEDINGS, COSTS, LOSSES, DAMAGES, AND EXPENSES OF EVERY KIND AND NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH USE OF PRODUCTS IN ANY SUCH EQUIPMENT OR APPLICATION.

21. INSPECTION

Customer shall inspect Products at its own expense in accordance with the inspection standard agreed upon by the parties. Unless Customer provides TAEC with written notice of rejection within thirty (30) days after TAEC's delivery of the Products to the carrier, together with sufficient evidence of the cause thereof, Products shall be deemed finally and irrevocably accepted. If TAEC receives notice of rejection within that thirty (30) days, then TAEC shall, at its option, repair or replace the defective Products or credit Customer's account, if TAEC has breached its warranty under Article 18.

22. ISSUANCE OF RETURN MATERIAL AUTHORIZATION NUMBER

22.1 All Products which Customer returns to TAEC must be accompanied by a Return Material Authorization (RMA) number. Unless further verification is required by TAEC, TAEC shall provide Customer with an RMA number within three (3) working days of Customer's request for return of the nonconforming Product to TAEC.

22.2 If it is determined that the failure is electrical, mechanical, or of any other nature requiring further verification by TAEC, Customer shall return to TAEC an agreed upon number of data-logged samples of the Product lot, whereupon TAEC shall issue a Failure Analysis (FA) number. Customer may, at its option, suspend the processing of invoices through Customer's accounting system for such nonconforming Product, pending resolution of the investigation. TAEC shall analyze the samples and report its findings to Customer within thirty (30) days after receipt of the samples and shall advise Customer of a schedule to complete the failure analysis and take corrective action.

22.3 An RMA shall be issued within three (3) working days following verification of the failure, if, after testing, the sample has been found to be nonconforming. Upon mutual agreement, TAEC shall replace, repair, or credit the purchase price of any Product which has been found to be nonconforming. If the returned Product is subsequently determined by Customer and TAEC to be in conformance, Customer shall immediately complete payment.

22.4 Transportation charges for Products returned from Customer to TAEC or from TAEC to Customer under this Article shall be at TAEC's expense, provided that Customer shall reimburse TAEC for any transportation charges paid by TAEC for returned Products which are subsequently found to be conforming.

23. MATERIAL AVAILABILITY

23.1 TAEC shall give Customer reasonable advance notice of its intent to discontinue the manufacture of those Products included in this Agreement. Such notice shall be no less than twelve (12) months in advance of the last order date. Customer shall have a twelve (12) month order placement period and must take receipt of the Products within eighteen (18) months of notification of the discontinuance.

23.2 After receipt of such notice of discontinuance, Customer may determine its Life Time Buy (LTB) quantity under the following conditions: (a) the quantity shall be by mutual agreement and (b) the price shall be negotiated at the time TAEC gives notice of the discontinuance.

24. LIABILITY

TAEC WILL UNDER NO CIRCUMSTANCES BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, SECONDARY, PUNITIVE OR EXEMPLARY LOSS OR DAMAGES OR ECONOMIC LOSS ARISING OUT OF OR RELATING TO THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT FOR ANY REASON WHATSOEVER REGARDLESS OF THE FORM OF ACTION, EVEN IF TAEC HAD BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSS OR DAMAGES OCCURRING AND EVEN IF AN EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSES. TAEC SHALL NOT BE LIABLE FOR ANY DAMAGES OR CLAIMS ARISING MORE THAN ONE (1) YEAR PRIOR TO THE INSTITUTION OF A LEGAL PROCEEDING THEREON. IN NO EVENT WILL TAEC's LIABILITY TO CUSTOMER FOR ANY ACTION OR CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO TAEC FOR THE PROTOTYPES OR PRODUCTS THAT ARE THE SUBJECT OF SUCH CLAIM.

25. INTELLECTUAL PROPERTY RIGHTS INDEMNIFICATION

25.1 Subject to the provisions set forth hereinafter and in Article 26. NON-INFRINGEMENT OF RIGHTS clause herein, TAEC shall defend, indemnify, and hold Customer harmless from and against all damages, obligations, causes of action, suits, or injuries of any kind arising from any actual or claimed infringement of United States, Canada, Mexico, Japan and European Community patents, mask work rights, or copyrights with respect to TAEC's design or TAEC's manufacturing of the Prototypes or Products; provided that:

a. Customer shall promptly notify TAEC in writing of any claim of infringement; and

b. TAEC shall have sole control of both the defense of any action on such claim and all negotiations for its settlement or compromise; and

c. Customer shall provide all reasonably necessary authority, information, and assistance to TAEC and its counsel for the defense of such claim.

25.2 Notwithstanding the foregoing, TAEC shall have no liability or obligation to Customer with respect to any intellectual property results infringement or claims thereof based on:

a. TAEC's compliance with designs, plans, specifications, or other information provided by Customer;

b. Use of the Prototypes or Products in combination with devices or products not purchased hereunder where the Products would not in themselves be infringing;

c. Use of the Prototypes or Products in an application or environment for which such Products were not designed or contemplated;

d. Modifications or additions to Prototypes or Products by Customer;

e. Any claims of infringement of a patent in which Customer, or any affiliate or customer of Customer, has an interest or a license; or

f. Should the owner of such intellectual property rights wish to grant a license to Customer with respect to a claim of patent infringement when the claimant declines to offer a license to TAEC but insists upon dealing only with Customer, notwithstanding TAEC's good faith efforts to resolve the claim.

25.3 If any Product is held to constitute an infringement or its use is enjoined, TAEC, at its option and at its own expense, may:

a. Procure for Customer the right to continue using such Product royalty-free; or

b. Replace such Product to Customer's reasonable satisfaction with non-infringing product of equivalent quality and performance; or

c. If (a) and/or (b) above are impracticable, accept the return of such Product for credit, allowing for a reasonable deduction for depreciation.

26. NON-INFRINGEMENT OF RIGHTS

Customer represents and warrants that the circuit design and other information furnished by Customer to TAEC, with respect to the design portion of the Prototypes or Products does not infringe any copyright, trade secret, United States, Canada, Mexico, Japan and European Community patent or other intellectual property right of any third party. Customer shall defend, indemnify and hold harmless TAEC against any claims, damages, and expense (including attorney fees), arising out of or in connection with Customer's breach of the foregoing representation and warranty.

27. TERMINATION

27.1 This Agreement will become effective on the Effective Date and will remain in full force and effect for a period of three (3) years from the Effective Date, unless terminated pursuant to this Article 27.

27.2 Either party may terminate any development or Purchase Order, effective upon written notice to the other party should any of the following events occur:

a. The other party files a voluntary petition in bankruptcy;

b. The other party is adjudicated bankrupt;

c. The other party makes an assignment for the benefit of its creditors;

d. A court assumes jurisdiction of the assets of the other party under any bankruptcy; or

e. A party is unable to pay its debts as they become due.

27.3 Either party shall have the right to terminate any development or Purchase Order for breach of a material term or condition of this Agreement, if such breach continues for a period of thirty (30) days after written notice thereof to the other.

27.4 If Customer defaults in the payment of any sum due under this Agreement and does not cure such default within thirty (30) days of written notice thereof from TAEC, then TAEC shall, without further notice, have the immediate right to repossess and remove the Product. Customer's obligation to pay all charges which shall have accrued and compensation, if any, which covers the actual costs incurred by TAEC as a result of such termination, shall survive any termination of this Agreement.

28. FORCE MAJEURE

Neither party shall be responsible or liable in any way for failure or delay in performing its obligations under these terms and conditions, other than obligations to make payment, when such failure or delay is directly or indirectly due to an act of God, war, threat of war, war-like conditions, hostilities, sanctions, mobilization, blockade, embargo, detention, revolution, riot, looting, striking, lockout, accident, fire, explosion, flood, inability to obtain fuel, power, raw materials, labor, container or transportation facilities, breakage of machinery or apparatus, government order or regulations, or any other cause beyond its reasonable control.

29. GOVERNMENT INTERVENTION

TAEC reserves the right to adjust prices or quantities to equitably compensate for increases in tariffs or similar charges, or for other government actions resulting in curtailment, prevention, or taxation of imports. Unless otherwise required by law, all prices will be quoted and billed exclusive of Federal, state, and local excise, sales, and similar taxes, but inclusive of import duties.

30. EXPORT REGULATIONS

This Agreement involves products and/or technical data that may be controlled under the U.S. Export Administration Regulations and that may be subject to the approval of the United States Department of Commerce prior to export. Any export or re-export by either

party, directly or indirectly in contravention of the U.S. Export Administration Regulations, is prohibited.

31. GENERAL

31.1 Neither party shall assign its rights and obligations under this Agreement without the prior written consent of the other party, except that TAEC may assign the performance of any of its obligations, including the manufacture of Prototypes or Products, to Toshiba Corporation or its affiliates.

31.2 These Terms and Conditions shall be interpreted and governed by the laws of the State of California without regard for its conflicts of laws principles, regardless of where any action may be brought. The parties agree to submit to the exclusive jurisdiction of the state and federal courts of the State of California. The parties expressly agree that the UN Convention for the International Sale of Goods shall not apply hereto.

31.3 All modifications to this Agreement must be in writing and signed by both parties. Failure or delay of either party to exercise any right or remedy hereunder shall not constitute a waiver of rights or remedies under this Agreement.

31.4 This Agreement is the exclusive statement of the Terms and Conditions between the parties with respect to the matters set forth herein, and supersedes all other prior or contemporaneous agreements, negotiations, representations, tender documents, and proposals, written and oral. Any additional or conflicting provisions contained in Customer's purchase order, or any purchase order acknowledgment issued by TAEC shall not apply.

31.5 If any provision of this Agreement is held unenforceable or inoperative by any court of competent jurisdiction, either in whole or in part, the remaining provisions shall be given full force and effect to the extent not inconsistent with the original terms of this Agreement.

31.6 Any notice given hereunder shall be sent in writing to the other party's business address set forth on the cover page hereof, or to such other party and address as such part shall have designated most recently in writing. Notices directed to TAEC shall be sent "Attention: Legal Department."

31.7 This Agreement may be executed in several identical counterparts, each of which when executed by the parties hereto and delivered shall be an original, but all of which together shall constitute a single instrument.

31.8 Articles 9, 12, 13, 15, 17, 19, 20, 24, 25, 26, 30 and 31 shall survive the termination or expiration of this Agreement.

Exhibit 10.8

CERTAIN INFORMATION (INDICATED BY "[***]") IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

Toshiba America Electronic Components, Inc.
2950 Orchard Parkway, San Jose, CA 95131

TOSHIBA

Design and Production Agreement
Amendment #1
Netlist Inc.

This Amendment #1 ("Amendment") to the ID ASIC Design and Production Agreement, dated July 31, 2008 (TAEC#'51N12402I25) ("Agreement") is between Toshiba America Electronic Components, Inc., with a principal place of business at 19900 MacArthur Boulevard, Suite 400, Irvine, CA 92612 ("TAEC") and Netlist Inc. with a place of business at 51 Discovery, Suite 150 Irvine, CA 92618 ("Customer") and sets out the terms and conditions under which TAEC will design the product identified herein for Customer. This Amendment is effective as of the date finally executed below ("Effective Date").

1. Project Name

ID ASIC

2. New Schedule

The parties agree to delete the contents of Section 4 of the Agreement, Schedule, and replace it with the following:

Major Project Milestones

Event	Target Date/Completed
Development PO Released	**[***]**
Preliminary Feasibility Study	**[***]**
Design Decision	**[***]**
Design Initiation	**[***]**
Package Selection Finalized	**[***]**
Early Database for Pipecleaning	**[***]**
Final Database (functionally correct)	**[***]**
Tapeout - Second Signoff (GDSII transfer)	**[***]**
Delivery of Prototypes	TBD
System compliance phase - start	TBD
System compliance phase - complete	TBD
1 st Risk Production shipment	TBD

Production turnaround time: 16 working weeks.

Schedule is provisional.

3. New Package and Die Size Option

The parties agree to delete the contents of Section 6 of the Agreement, Package and Die Size Option, and replace it with the following:

[***]

Package	Ball Pitch	Body Size	Substrate Layers	Die Size
[***]	**[***]**	**[***]**	**[***]**	**[***]**

4. New Price

The parties agree to delete the contents of Section 8 of the Agreement, Price, and replace it with the following:

First	10M pieces:	US$ **[***]**
Next	20M pieces:	US$ **[***]**
Next	20M pieces:	US$ **[***]**
After first	50M pieces:	US$ **[***]**

Changes in die size will affect the price quoted.

The prices quoted herein for mass production are based on the assumption of adequate yield. TAEC reserves the right to adjust pricing based on mutual agreement in the event that adequate yield figures, in TAEC's reasonable opinion, are not achieved by the start of mass production despite reasonable commercial efforts by both parties. TAEC will provide Netlist with timely data such that Netlist can reasonably assess yield.

Prices do not include and are subject to any applicable sales tax.

5. New Engineering Sample and Risk Production Pricing

The parties agree to delete Section 13.3 of the Agreement. The parties agree to delete the contents of Section 12 of the Agreement, Extra Engineering Samples, and replace it with the following:

All extra engineering samples and Risk Production parts shall be sold at US$ **[***]** each (2X the unit price of US$ **[***]**).

All extra engineering samples are sold as Prototypes and are subject to, without limitation, Articles 18.2 and 19.1 of the Design and Production Agreement Terms and Conditions ("Terms and Conditions"). All Risk Production parts are subject to, without limitation, Articles 18.2 and 19.2 of the Terms and Conditions. TAEC

reserves the right in its sole discretion to determine whether to accept extra engineering sample or Risk Production orders.

6. Additional Non-Recurring Engineering Charges and Payment Schedule

Customer agrees to pay additional non-recurring engineering charges of US$ **[***]** ("Additional NRE") to TAEC for package and design support. The Additional NRE will be due and payable as follows.

1. US$ **[***]** upon Tapeout.

2. US$ **[***]** upon Delivery of Prototypes together with test logs showing successful completion of the mutually agreed-upon tests.

For the avoidance of doubt, the Additional NRE payable under this Amendment is in addition to and does not replace the NRE payable under the Agreement.

7. Cancellation

7.1 If Customer wishes to discontinue the project after execution of this Amendment, then in addition to the provisions set forth in Section 10 of the Terms and Conditions, the Customer shall be responsible to pay TAEC for the NRE charges as set forth below ("Additional Cancellation Fee"), unless otherwise agreed in writing between TAEC and the Customer:

Time	Additional Cancellation Fee
[***]	**[***]** % of Additional NRE
[***]	**[***]** % of Additional NRE
[***]	**[***]** % of Additional NRE

7.2 For the avoidance of doubt, NRE already invoiced to Customer per the milestones and NRE payment schedule set forth herein and in the DPA ("Paid NRE") shall offset the Additional Cancellation Fee assessed in Article 7.1 above. To the extent that the Paid NRE exceeds the Additional Cancellation Fee and the Cancellation Fee set forth in Section 10 of the Terms and Conditions, TAEC shall not charge further Additional Cancellation Fee; however, Paid NRE will not be refunded upon cancellation of the design.

8. Additional Terms

8.1 **[***]**

Except as modified herein, all other terms and conditions of the Agreement shall remain in full force and effect per their terms.

Toshiba America Electronic Components, Inc.	**Netlist Inc.**
/s/ Takeshi Iwamoto *Signature*	*/s/ Gail Itow* *Signature*
Takeshi Iwamoto VP, Customer SoC & Foundry Business Unit *Printed name and title*	Gail Itow, CFO *Printed name and title*
1-28-10 *Date*	1-28-10 *Date*

CERTAIN INFORMATION (INDICATED BY "[***]") IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

Toshiba America Electronic Components, Inc.
2950 Orchard Parkway, San Jose, CA 95131

TOSHIBA

Design and Production Agreement
Amendment #2
Netlist Inc .

This Amendment #2 (''Amendment #2") to the ID ASIC Design and Production Agreement, dated July 31, 2008, as amended (TAEC# 51N12402125) ("Agreement") is between Toshiba America Electronic Components, Inc., with a principal place of business at 19900 MacArthur Boulevard, Suite 400, Irvine, CA 92612 ("TAEC") and Netlist Inc., with a place of business at 51 Discovery, Suite 150 Irvine, CA 92618 ("Customer") and sets out the terms and conditions under which TAEC will design the product identified herein for Customer. This Amendment is effective as of the date finally executed below ("Effective Date").

1. Project Name

ID ASIC

2. New Schedule

The parties agree to delete the contents of Section 4 of the Agreement, Schedule, and replace it with the following:

Major Project Milestones .

Event	Target Date/Completed
Development PO Released	**[***]**
Preliminary Feasibility Study	**[***]**
Design Decision	**[***]**
Design Initiation	**[***]**
Package Selection Finalized	**[***]**
Early RTL for Pipecleaning	**[***]**
Final RTL (functionally correct)	**[***]**
Tapeout - Second Signoff (GDSII transfer)	**[***]**
Delivery of Prototypes	TBD
System compliance phase - start	TBD
System compliance phase - complete	TBD
1 st Risk Production shipment	TBD

Production turnaround time: 16 working weeks.

Schedule is provisional.

3. New Internal/External IP

The parties agree to delete the contents of Section 7 of the Agreement, Internal/External IP, and replace it with the following:

Internal IP:

[***]

External IP:
[***]

4. Additional Features Non-Recurring Engineering Charges and Payment Schedule:

4.1 Customer agrees to pay non-recurring engineering charges ("Additional Features NRE") to TAEC for support of the following design changes:

[***]

4.2 The Additional Features NRE will he calculated according to the resources expended by TAEC, which will be charged at the rate of US$ **[***]** per full-time-equivalent person per week. TAEC will provide a weekly update to Customer regarding resources expended.

TAEC estimates that the Additional Features NRE for this ID design will be US$ **[***]** , or thirty-two (32) person-weeks. This estimate is subject to change.

4.3 The Additional Features NRE will be payable as follows:

1. US$ **[***]** (**[***]** % of estimated Additional Features NRE) upon tapeout or **[***]** , whichever is earlier.

2. The balance (total person-weeks actually expended, less US$ **[***]**) upon Delivery of Prototypes together with test logs showing successful completion of the Toshiba Testing as defined in the Product Testing Agreement between the parties.

For the avoidance of doubt, the Additional Features. NRE payable under this Amendment #2 is in addition to and does not replace the NRE payable under the Agreement and/or Amendment #1.

5. Cancellation

5.1 If Customer wishes to discontinue the project set forth in this Amendment #2 prior to tapeout, then Customer shall pay TAEC US$ **[***]** (“Additional Features Cancellation Fee”), In addition, TAEC reserves the right to invoice Customer for any resources expended by TAEC prior to cancellation in excess of 19 person-weeks. The Additional Features Cancellation Fee shall be offset by any amount of the Additional Features NRE already paid to TAEC by Customer.

5.2 In the event that Customer unilaterally fails to provide information, data, or approvals necessary for TAEC to proceed with the project for a period of **[***]** from TAEC’s initial request for such information, data, or approvals, TAEC reserves the right to deem the project set forth in this Amendment #2 cancelled and assess the Additional Features Cancellation Fee.

Except as modified herein, all Other terms and conditions of the. Agreement shall remain in lull force and effect pet their terms

Toshiba American Electronic Components, Inc.	Netlist Inc,
/s/ Takeshi Iwamoto	*/s/ Gail Itow*
Signature	*Signature*
Takeshi Iwamoto VP, Customer SoC Foundry Business Unit	Gail Itow, CFO
Printed name and title	*Printed name and title*
3/10/10	3/5/10
Date	*Date*

Exhibit 10.10

CERTAIN INFORMATION (INDICATED BY "[***]") IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

MKT-DSA-VTB-001

Diablo Technologies, Inc.
Development And Supply Agreement

This Development and Supply Agreement (" Agreement ") is made this 10th day of September 2008 (" Effective Date ") between Diablo Technologies, Inc,, a Canadian corporation having a principal place of business at 290 St. Joseph, Suite 200, Gatineau, Quebec J8Y 3Y3 (" Diablo ") and Netlist, Inc., a Delaware corporation having a principal place of business at 51 Discovery, Irvine, CA 92618 (" Netlist ").

RECITALS

Whereas, Netlist desires to have certain products designed and manufactured by Diablo for sale to Netlist; and Diablo has the capability of designing and manufacturing such products and desires to do so for sale to Netlist.

Now, therefore, in consideration of the promises and the mutual agreements hereinafter set forth, and intending to be legally bound, the parties hereto agree as follows:

AGREEMENT

1. **Definitions** . The following terms shall have the meanings set forth below.

" Confidential Information " of a party shall mean any information disclosed by that party to the other pursuant to this Agreement which is in written, graphic, machine readable or other tangible form and is marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature. Confidential Information may also include oral information disclosed by one party to the other pursuant to this Agreement, provided that such information is designated as confidential at the time of disclosure and is reduced to writing by the disclosing party within a reasonable time (not to exceed thirty (30) days) after its oral disclosure, and such writing is marked in a manner to indicate its confidential nature and delivered to the receiving party.

" Cost " shall mean Diablo's full standard cost basis including without limitation any applicable license royalties.

" Intellectual Property Rights " shall mean all intellectual property rights including, but not limited to, patents, copyrights, authors' rights, trademarks, tradenames, know-how and trade secrets, irrespective of whether such rights arise under U.S. or international intellectual property, unfair competition or trade secret laws.

" Inventory " shall mean raw materials and supplies necessary for the manufacture of Products pursuant to this Agreement.

" Market Share " shall mean the number of Netlist Chipsets shipped, invoiced or sold by Netlist to any third party.

" Netlist Technology " shall mean Netlist's patented and trade secret-protected Rank Multiplication/Load Rank Multiplication technology ("DxD/LRD"), including without limitation its "know-how" and database design technology, developed prior to the Effective Date and provided to Diablo.

" Netlist Chipset " shall mean a DDR3 proprietary chip set solution consisting of a DDR3 standard register (with DxD/LRD physically enabled) and set of isolation devices utilizing the Netlist Technology for use in Netlist RDIMM products implemented in OEM server systems developed under this Agreement in accordance with the Specification.

" Diablo Standard Register " or " Register " shall mean a DDR3 industry standard register derivative of Netlist Chipset with either or both of DxD/LRD functionality physically disabled.

" Products " shall include both Netlist Chipset and Diablo Standard Register.

" Specifications " shall mean the logic diagram, schematics, test requirements and definition, plots, and electric related requirements and "know-how" and revised or modified to produce the initial prototypes, and, to the extent necessary, modifications thereto, to produce the Product set forth in Exhibit A.

2. Development and Design.

(a) **Development and Design** . Netlist agrees to pay a NRE (Non-Recurring Engineering) Payment (set forth in Exhibit D) to Diablo for the design and development of the Netlist Chipset and the delivery of the initial prototypes, all meeting the Specifications, as defined in the Statement of Work set forth in Exhibit A ("SOW") and on the dates specified in the NRE Payment Schedule. Diablo shall use its commercially reasonable efforts to design and develop the Product as defined in the SOW and to meet the Development Schedule (set forth in Exhibit B). Netlist agrees to promptly respond to inquiries, make personnel available to discuss any changes or concerns of Diablo and to generally cooperate in assisting Diablo in the design and development of the Product.

(b) **Changes** . Netlist may, at any time during the term of this Agreement, request changes to the Specification and any other functional or performance specifications agreed to between Diablo and Netlist. Such request shall be submitted by Netlist to Diablo in writing. Diablo will then estimate, using industry established reasonable and customary rates, the amount of work necessary, the additional development time and cost that would be incurred, and shall request Netlist's approval of such additional cost and development time. Upon written receipt of such approval, implementation of such changes will proceed. The Specification, Development Schedule, NRE Payment Schedule and Production Price will be updated in writing and signed by both parties to reflect any such changes.

(c) **Engineering Resources** . Each party will designate a project manager in the SOW who shall act as that party's liaison and administrator of the project provided pursuant to the SOW. Diablo hereby agrees to submit to the Netlist project manager the names and other pertinent information requested by Netlist prior to utilization of any personnel of Diablo. Netlist reserves the right to interview Diablo's personnel prior to such utilization. Netlist reserves the right to request the reasonable replacement of any of Diablo's personnel assigned to this project,

and Diablo shall as soon as possible consider such request and may remove same and secure replacement(s) reasonably acceptable to Netlist.

(d) **Joint Tasks** .

[***]

(e) **License** .

[***]

3. Manufacture and Supply of Products.

(a) **Agreement to Manufacture** . Diablo agrees to make commercially reasonable efforts, pursuant to purchase orders or changes to purchase orders issued by Netlist and accepted

in writing by Diablo (" Purchase Orders "), to procure Inventory, components and other supplies and to manufacture, test, assemble, and deliver the Netlist Chipset pursuant to the Specifications for each device of the Netlist Chipset and to deliver such Netlist Chipset to a location designated by Netlist. Except as set forth herein, this Agreement shall not constitute a requirements contract and Netlist shall not be obligated to order Products from Diablo.

[***]

(c) **Purchase Orders** . All orders for Netlist Chipset shall be submitted to Diablo in writing by mail, email or facsimile to the address set forth on the signature page to this Agreement, and shall conform to the binding Forecasts in accordance with Section 3(b). Netlist shall submit such Purchase Orders to Diablo at least ninety (90) days prior to the date of requested delivery (" Delivery Date ").

(d) **Terms and Conditions** . Any additional or different terms or conditions in any communication by Netlist (whether in a purchase order or otherwise) are hereby rejected and shall be null and void, irrespective of the means of Netlist's acceptance. Diablo's failure to object to any additional or different provisions proposed by Netlist shall not constitute a waiver of these terms and conditions, nor constitute acceptance of any such Netlist's terms and conditions. All orders or contracts must be approved and accepted by Diablo at its principal place of business. The terms and conditions of this Agreement shall be applicable whether or not they are attached to or enclosed with the Products sold hereunder.

(e) **Market Share Commitment** . **[***]**

(i) A **[***]** for the Netlist Chipsets will be allocated to Diablo if Diablo delivers working engineering samples of the Product no later than **[***]** and production worthy devices no later than **[***]** . This minimum Market Share commitment will apply to the first year of production and will be maintained at least, but not necessarily limited to, **[***]** Market Share thereafter for the life of the Products provided that Diablo maintains a commercially reasonable continuity of supply sufficient to meet Netlist's Forecasts.

(ii) A **[***]** for the Netlist Chipsets will be allocated to Diablo if Diablo delivers working engineering samples of the Product no later than **[***]** and production worthy devices no later than **[***]** . This minimum Market Share commitment will apply to the first year of production and will he maintained thereafter for the life of the Products provided that Diablo maintains a commercially reasonable continuity of supply sufficient to meet Netlist's Forecasts.

(iii) The **[***]** listed in (ii) above shall be reduced by **[***]** for every 2 months of delay in delivering production worthy devices of the Netlist Chipset to Netlist. Should Diablo be unable to deliver production worthy devices of the Netlist Chipset by **[***]** Netlist will have no further obligations to Diablo, whether to purchase Netlist Chipset or to make any payments beyond the second payment under Exhibit D .

(iv) The parties hereby agree that the above Market Share commitments are contingent upon Netlist receiving qualification status on a major leading platform at one (1) OEM (IBM, RP, or Dell) for RDIMM(s) using the Netlist Chipset and Diablo's ability to maintain or reduce sell prices as outlined below in Exhibit C. If Netlist is not able to secure a major leading platform at one OEM and if Diablo delivers production devices of the Netlist Chipset by **[***]** Netlist will commit to purchase **[***]** of the Products from Diablo over a period of one year.

(v) Audit . Netlist will maintain complete and accurate records for not less than three (3) years after this Agreement expires or is terminated. Diablo may audit Netlist's records in accordance with this Section; provided that a nationally recognized accounting firm retained by Diablo ("Auditor") will have access to such records solely for the purposes of confirming that Netlist has fulfilled its obligations under Sections (i) - (iv) above.

4. Product Shipment and Inspection.

(a) **Shipments** . Shipment will be F.O.B. Diablo's factory, at which time risk of loss and title will pass to Netlist. All freight, insurance and other shipping expenses, as well as any special packing expenses not included in the original price quotation for the Products will be paid by Netlist. The carrier shall be deemed Netlist's agent, and any claims for damages in shipment must be filed with the carrier. Diablo is authorized to designate a carrier pursuant to Diablo's standard shipping practices unless otherwise specified in writing by Netlist.

(b) **Product Inspection and Acceptance** . The Products delivered by Diablo will be inspected and tested as required by Netlist within thirty (30) days of receipt (the " Acceptance Period "). If Products are found to be defective in material or workmanship and/or fail to meet the Specifications, Netlist may reject such Products during the Acceptance Period. Products not rejected during the Acceptance Period will be deemed accepted. Netlist may return rejected Products pursuant to Section 10(c).

5. Payment Terms, Additional Costs and Price Changes.

(a) **Payment Terms** . Payment for any products, services or other costs to be paid by Netlist hereunder are due forty-five (45) days from the date of invoice for Products delivered to Netlist and shall be made in lawful U.S. currency. Any amounts not paid when due will accrue interest at the rate of 1 1/2% per month, or the maximum amount allowed by law, if lower. In the event that any payment is more than forty-five (45) days late, Diablo shall have the right to suspend performance until all payments are made current.

(b) **Additional Costs** .

(i) **Duties and Taxes** . All prices quoted are exclusive of federal, state and local excise, sales, use and similar duties and taxes, and Netlist shall be responsible for all such items.

(ii) **Expediting Charges** . Netlist shall be responsible for any expediting charges reasonably necessary because of a change in Netlist's requirements. Diablo shall obtain approval from Netlist for expediting charges prior to incurring any such charge.

(c) **Price** . The initial maximum average selling price for Products is set forth on Exhibit C hereto; which shall be subject to final order acknowledgment from Diablo at the time a Purchase Order is placed. Netlist and Diablo will agree to quarterly pricing sixty (60) days prior to the beginning of each quarter. The price guidelines set forth in Exhibit C will be the basis for establishing quarterly pricing such that the original metrics used to define this price structure remains reasonably intact. The average selling price is contingent upon Diablo receiving the minimum Market Share defined in Section 3e above, and maintaining market competitive selling prices to Netlist.

6. Marketing and Other Obligations

[***]

(b) **Joint Promotion and Marketing** .

(i) Netlist and Diablo will engage in a joint marketing effort providing introductions of each other to their respective customers. Netlist shall use best commercial efforts, in order to meet Netlist market share obligations to Diablo, by promoting, where possible, the use of Netlist products utilizing Diablo based products. Both parties shall provide appropriate recognition of the other party's contributions.

(ii) Joint Press Release . **[***]**

(iii) **[***]**

7. Intellectual Property Rights.

(a) **[***]**

(b) **[***]**

8. Confidential Information.

(a) **Nondisclosure and Nonuse** . Each party shall treat as confidential all Confidential Information of the other party, shall not use such Confidential Information except as set forth in this Agreement, and shall use reasonable efforts not to disclose such Confidential Information to any third party. Without limiting the foregoing, each of the parties shall use at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance to prevent the disclosure of Confidential Information disclosed to it by the other party under this Agreement. Each party shall disclose Confidential Information of the other party only to its directors, officers, employees, and consultants who are required to have such information in order for such party to carry out the transactions contemplated by this Agreement and who have signed nondisclosure agreements protecting the Confidential Information on substantially the same terms as this Agreement. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information. For purposes of clarification, the Netlist Technology is the Confidential Information of Netlist and may not be used for any purpose other than as set forth in this Agreement, including without limitation use of such Netlist Technology to develop a chip competitive to the Netlist Chipset.

(b) **Exceptions** . Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other which the receiving party can prove (i) was in the public domain at the time it was disclosed or has entered the public domain

through no fault of the receiving party; (ii) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the receiving party without any use of the Confidential Information, as demonstrated by files created at the time of such independent development; (v) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice of such court order or requirement to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

(c) **Return of Confidential Information** . Upon expiration or termination of this Agreement and at the request of either party, the other party shall promptly return all Confidential Information of the other party.

(d) **Remedies** . Any breach of the restrictions contained in this Section is a breach of this Agreement which may cause irreparable harm to the nonbreaching party. Any such breach shall entitle the nonbreaching party to injunctive relief in addition to all legal remedies.

Confidentiality of Agreement . Each party shall be entitled to disclose the existence of this Agreement, but agrees that the terms and conditions of this Agreement shall be treated as Confidential Information and shall not be disclosed to any third party; provided, however, that each party may disclose the terms and conditions of this Agreement: (i) as required by any court or other governmental body; (ii) as otherwise required by law; (iii) to legal counsel of the parties; (iv) in confidence, to accountants, banks, and financing sources and their advisors; (v) in connection with the enforcement of this Agreement or rights under this Agreement or (vi) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction.

9. Indemnification.

(a) **Indemnification by Diablo** . Diablo agrees, at its own expense, to defend or at its option to settle any claim or action brought against Netlist on the issue of infringement of any patent, copyright, trademark, trade secret, mask work right or other intellectual property right of any third party by the Products as used or distributed within the scope of this Agreement, and to indemnify Netlist against any and all damages and costs, including legal fees, that a court awards against Netlist under any such claim or action; provided that Netlist provides Diablo with (i) prompt written notice of such claim or action, (ii) sole control and authority over the defense or settlement of such claim or action and (iii) proper and full information and reasonable assistance to defend and/or settle any such claim or action.

(i) **Injunctions** . In the event that any Product is, or in the Diablo's sole opinion is likely to be, enjoined due to the type of infringement described in Section (a) above, Diablo, at its option and expense, may either (i) modify the Netlist Chipset so that they become non-infringing, (ii) replace the Netlist Chipset with functionally equivalent non-infringing Products reasonably acceptable to Netlist or, if the foregoing alternatives are not reasonably available to Diablo, (iii) accept return of the Products and refund to Netlist the purchase price of the Products and portion of the NRE payment which shall be reduced over a four (4) year period under a straight line depreciation.

(ii) **Exceptions**. Diablo will have no liability to the extent that any such claim is based on the Netlist Technology or would have been avoided but for (i) use or combination of the Netlist Chipset with any other products not provided by Diablo or (ii) modification of the Netlist Chipset after delivery by Diablo, unless such use, combination and/or modification is authorized in advance in writing by Diablo.

(b) **Indemnification by Netlist**. Netlist agrees, at its own expense, to defend or at its option to settle any claim or action brought against Diablo on the issue of infringement of any patent, copyright, trademark, trade secret, mask work right or other intellectual property right of any third party by the Netlist Technology as used or distributed within the scope of this Agreement, and to indemnify Diablo against any and all damages and costs, including legal fees, that a court awards against Netlist under any such claim or action; provided that Diablo provides Netlist with (i) prompt written notice of such claim or action, (ii) sole control and authority over the defense or settlement of such claim or action and (iii) proper and full information and reasonable assistance to defend and/or settle any such claim or action.

(c) **Limitation**. THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATION OF EACH PARTY AND THE EXCLUSIVE REMEDY OF NETLIST, WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRETS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCTS OR NETLIST TECHNOLOGY.

(d) **Mutual Indemnity**. The parties will indemnify each other against actions, liabilities, loss, damages and expenses resulting from injury or death of any person or loss of or damage to any tangible real or tangible personal property to the extent that such injury, death, loss or damage is proximately caused by the indemnifying party's negligent act or omission or intentional misconduct or that of its agents, employees or subcontractors in connection with the performance of its obligations under this Agreement, provided that the indemnifying party has been notified in writing as soon as practicable of any such claim. The indemnifying party will have the sole right to control the defense of all such claims and in no event will the indemnified party settle any claim without the indemnifying party's prior written approval.

(e) **No Other Liability**. IN NO EVENT SHALL DIABLO, ITS SUPPLIERS OR NETLIST BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, DATA OR BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE). EXCEPT FOR LIABILITY INDER SECTIONS 8 and 9(a), NEITHER PARTIES TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCTS PURCHASED BY NETLIST HEREUNDER SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID BY NETLIST FOR SUCH PRODUCTS. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF DIABLO OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH

DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10. Warranty and Disclaimer.

(a) **Warranty** . Diablo warrants that, for a period of twelve (12) months from the date of shipment of the Products from Diablo (the " Warranty Period "), the Products will conform to the Specification in effect as of the date of manufacture. Diablo SPECIFICALLY DISCLAIMS ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) WHICH MAY RESULT FROM THE USE OF PRODUCTS PURCHASED HEREUNDER. This limited warranty extends only to Netlist as original purchaser unless otherwise agreed upon in writing by Diablo.

(b) **Exclusions** . The foregoing warranty shall not apply if the defective Products (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by Diablo, (ii) has been repaired or altered by persons other than Diablo, (iii) has not been installed, operated, repaired and maintained in accordance with the documentation or (iv) is attributable to the Netlist Technology. In addition, the foregoing warranty shall not apply to Product (i) marked or identified as "sample," (ii) loaned or provided to Netlist at no cost, or (iii) which are sold "as is."

(c) **Remedies** . If during the Warranty Period or Acceptance Period: (i) Diablo is notified promptly in writing upon discovery of any defect in the Products, including a detailed description of such alleged defect, (ii) such Products are returned, transportation charges prepaid, to Diablo's designated manufacturing facility in accordance with Diablo's then-current return procedures, as set forth by Diablo from time to time, and (iii) Diablo's inspections and tests determine that the Products are indeed defective and the Products have not been subjected to any of the conditions set forth in this Section, then, as Netlist's sole remedy and Diablo's sole obligation under the foregoing warranty, Diablo will replace without charge the defective Products at the earliest commercially reasonable time. Any Products that have been replaced under this warranty shall have the same warranty coverage as outlined in 10 (a) above.

(d) **Disclaimer** . EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, DIABLO MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ANY PRODUCTS PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

11. Term and Termination.

(a) **Term** . This Agreement shall become effective on the Effective Date of this Agreement and shall continue for a period of three years (" Initial Term "). This Agreement shall be extended automatically at the end of the initial term or subsequent terms for an additional one (1) year terms, unless terminated in accordance with this Agreement.

(b) **Termination for Cause** . Either party may terminate this Agreement at any time (i) if the other party breaches any term hereof and fails to cure such breach within sixty (60) days after notice of such breach or (ii) if the other party shall be or becomes insolvent, or if either party makes an assignment for the benefit of creditors, or if there are instituted by or against either party proceedings in bankruptcy or under any insolvency or similar law or for reorganization, receivership or dissolution which proceeding is not dismissed within ninety (90) days.

(c) **Termination for Technical Reasons** . In the event that after exercising commercially reasonable efforts, Diablo is unable to deliver production worthy Netlist Chipsets due to technical changes created or requested by Netlist, after the establishment of this agreement, either Netlist or Diablo shall have the right to terminate this agreement.

(d) **Obligations Upon Termination** . The termination or expiration of this Agreement shall in no way relieve either party from its obligations to pay the other any sums accrued hereunder prior to such termination or expiration.

(e) **Survival of Certain Provisions** . Notwithstanding anything to the contrary in this Agreement, the following sections shall survive termination of this Agreement: 1, 2e, 5, 7, 8, 9, 10, 11(d), 12 and 13.

12. **Standby Manufacturing Rights** . At Netlist's expense, Diablo agrees to deposit into a third party escrow account, pursuant to the terms of an Escrow Agreement (which shall be mutually agreed by the parties), all engineering drawings, manufacture documents and instructions and other written materials (including lists of suppliers and their addresses), including database tapes necessary to enable Netlist to manufacture, assemble, test and/or maintain the Products (" Escrow Materials "); which Escrow Materials shall be the Confidential Information of Diablo. Such Escrow Agreement shall be executed within thirty (30) days after the Effective Date and shall authorize the release of the Escrow Materials to Netlist solely for use in accordance with the terms and conditions of this Agreement in the event of a Release Condition as described and to be negotiated in the Escrow Agreement.

13. **Miscellaneous.**

(a) **Amendments and Waivers** . Any term of this Agreement may be amended or waived only with the prior written consent of the parties or their respective successors and assigns, in a document signed in ink by authorized representatives of the parties. Any amendment or waiver made in accordance with this Section shall be binding upon the parties and their respective successors and assigns.

(b) **Successors and Assigns** . The rights and obligations of each party under this Agreement shall not be assignable without the prior written consent of the other party and any attempt to assign them without that consent will be void. Notwithstanding the foregoing, either party may assign, upon written notice to the other, both the rights and obligations of this Agreement to the surviving corporation in any merger or consolidation to which it is a party or to any person who acquires all or substantially all of its capital stock or assets. Any purported

transfer, assignment or delegation in, violation of the foregoing will be null and void and of no force or effect.

(c) **Governing Law; Attorney Fees and Costs** . This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

(d) **Titles and Subtitles** . The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(e) **Notices** . Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, or forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice.

(f) **Severability** . If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(g) **Entire Agreement** . This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

(h) **Independent Contractors** . The relationship of Diablo and Netlist established by this Agreement is that of independent contractors, and nothing contained in this Agreement will be construed (i) to give either party the power to direct and control the day-to-day activities of the other, (ii) to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or (iii) to allow either party to create or assume any obligation on behalf of the other for any purpose whatsoever.

(i) **Force Majeure** . If the performance of this Agreement or any obligations hereunder is prevented, restricted or interfered with by reason of fire or other casualty or accident, strikes or labor disputes, war or other violence, any law, order, proclamation, regulation, ordinance, demand or requirement of any government agency, or any other act or condition beyond the reasonable control of the parties hereto, the party so affected upon giving prompt notice to the other parties shall be excused from such performance during such prevention, restriction or interference.

(j) **Export Control** . Netlist acknowledges and agrees that the Products purchased under this Agreement may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Netlist warrants that it will not export or re-export any products purchased, or SoftWare licensed, under this Agreement into any country in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

(k) **Counterparts** . This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

Netlist, Inc.

By: */s/ James P. Perrott*
Name: James P. Perrott
Title: SVP Sales & Marketing

Diablo Technologies, Inc.

By: */s/ Ricardo Badalone*
Name: Ricardo Badalone
Title: C.E.O.

[SIGNATURE PAGE TO
DEVELOPMENT AND SUPPLY AGREEMENT]

Exhibit A

Statement of Work See

SOW Document Number MKT-SOW-VTB-001

Exhibit B

Development Schedule

See SOW Document Number MKT-SOW-VTB-001

Exhibit C

Production Price Schedule

Netlist Chipset	2009		2010		2011		2012	
[***]	US$	**[***]**	US$	**[***]**	US$	**[***]**	US$	**[***]**
[***]	US$	**[***]**	US$	**[***]**	US$	**[***]**	US$	**[***]**

Exhibit D

NRE Payment Schedule

Milestone	Payment ($)
Specification sign-off of the Product	$ **[***]**
Tape-out of Product	$ **[***]**
Engineering sample shipment of Product	$ **[***]**
Production status of Product	$ **[***]**
Total NRE Payment:	$ **[***]**

Exhibit 10.11

CERTAIN INFORMATION (INDICATED BY "[***]") IN THIS EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTIONS.

Settlement Agreement and Amendment to
Development And Supply Agreement

This Settlement Parchment and Amendment to the Development and Supply Agreement (" Amendment ") is made this 12 th day of January 2010 (" Amendment Effective Date ") between Diablo Technologies, Inc., a Canadian corporation having a principal place of business at 290 St. Joseph, Suite 200, Gatineau, Quebec J8Y 3Y3 (" Diablo ") and Netlist, Inc., a Delaware corporation having a principal place of business at 51 Discovery, Irvine, CA 92618 (" Netlist ").

R E C I T A L S

Whereas, Netlist entered into a Development and Supply Agreement with Diablo to have certain products designed and manufactured by Diablo on September 10, 2008 (" Agreement "); and

Whereas, in the course of performing this Agreement, the parties have had disputes regarding the obligations and performance under this Agreement, including the breaches thereof;

WHEREAS, the parties have agreed to compromise, settle and resolve all past disputes, liabilities and obligations between them concerning or regarding the alleged breaches of the Agreement;

WHEREAS, the parties agree that the settlement and amendments embodied in this Agreement are made in good faith and shall not constitute an admission of liability or other admission against interest by any party hereto.

Now, therefore, in consideration of the promises and the mutual agreements hereinafter set forth, and intending to be legally bound, the parties hereto agree as follows:

A G R E E M E N T S

1. Purchase and Payment Obligations . Within five (5) business days of the Amendment Effective Date, Netlist shall:

(a) **[***]**

(b) **[***]**

(c) Provide to Diablo a delivery schedule for all devices between now and September 2010;

(d) Agree to provide Diablo a budget of $ **[***]** US dollars for each Netlist Chipset qualification in each Netlist density configuration added to the plan of record. Diablo shall use these funds solely to 1) purchase DIMMs from Netlist and 2) to purchase Netlist customer target systems for in-system validation of the Netlist Chipset.

(e) Agree to jointly initiate a cost benefit analysis for development of a **[***]** . Should this analysis conclude a development is necessary, Netlist shall initiate said development.

(f) Receive from Diablo the items requested below or a plan including a schedule to address the items requested below

[***]

2. Release and Covenant Not to Sue .

(i) Diablo hereby fully releases and forever discharges Netlist, and its respective past, present and future officers, directors, representatives, employees, agents, principals, shareholders, attorneys, assigns, predecessors, successors, affiliates, and subsidiaries, from any and all claims, causes of action, debts, liabilities, rights to damages, collection, reimbursement, costs, expenses, attorneys' fees, and rights to injunctive relief, known or unknown, relating to any alleged breach of this Agreement, by such party prior to the Amendment Effective Date, including but not limited to any allegation by Diablo that Netlist made improper use of any Diablo Confidential Information or any other technology encompassed within Diablo's Intellectual Property Rights.

(ii) Diablo further covenants and agrees that it will not assert any claim or take any action against Netlist or any customer or business partner of Netlist, or claim that Netlist is not entitled to ship products using chips procured from other suppliers, now or in the future, based on Netlist's marketing or sale of products that utilize chips procured from companies other than Diablo, only with respect to the followings claims: 1) any claim

that Netlist or any customer or business partner of Netlist is using any Confidential Information of Diablo, provided that Netlist and Netlist's customers and business partners undertake reasonable precautions to maintain the confidentiality of Diablo's Confidential Information; 2) any claim for patent infringement based on an invention arising as a consequence of work performed under this Agreement; or 3) that Netlist or its customers or business partners are otherwise using technology developed by Diablo as a consequence of worked performed under this Agreement. Diablo hereby expressly waives and releases any rights it may have at law or in equity to take any legal action or other action as described in this paragraph against Netlist, its customers or its business partners. The term "business partner" as used in this paragraph refers to third parties working with Netlist in connection with Netlist products, and such third parties are only entitled to the protections of this paragraph to the extent of their work with Netlist.

(iii) Diablo acknowledges that there is a risk that subsequent to the execution of this Amendment, it may discover, incur or suffer facts and/or claims which were unknown or unanticipated at the time this Amendment is executed. Diablo acknowledges and agrees that by reason of the releases and covenants contained herein, it is assuming the risk of such unknown facts and/or claims and agrees that this Amendment applies thereto. In connection therewith, Diablo expressly waives the benefits of Section 1542 of the California Civil Code, which section provides as follows, and any laws of similar affect applicable in any jurisdiction:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

(iv) Release and Covenant Not to Sue by Netlist

Netlist hereby fully releases, forever discharges and covenants not to sue Diablo and its respective past, present and future officers, directors, representatives, employees, agents, principals, shareholders, attorneys, assigns, predecessors, successors, affiliates, and subsidiaries, from any and all claims, causes of action, debts, liabilities, rights to damages, collection, reimbursement, costs, expenses, attorneys' fees, and rights to injunctive relief, known or unknown, relating to any alleged breach of this Agreement by such party prior to the Amendment Effective Date.

(v) The foregoing Releases and Covenants Not to Sue are not intended to and do not alter or affect the obligations of either Netlist or Diablo with respect to the Agreement or this Amendment, including but not limited to Diablo's obligations to provide an escrow deposit or to indemnify Netlist pursuant to the terms of the Agreement.

A M E N D M E N T S

9. Market Share Commitment . The following Section 3(e) is hereby amended in its entirety to read as follows:

"3(e) Market Share Commitment . Netlist shall allocate to Diablo the following percentages of Netlist Market Share for the Netlist Chipsets unless Netlist Product using Netlist Chipsets supplied by Diablo do not successfully complete required third party qualification. Netlist shall not bias third party qualifications against Netlist Product using Diablo supplied Netlist Chipsets.

"Netlist Market Share": shall mean the number of Netlist Chipsets shipped, invoiced or sold, as part of a qualified memory module using Diablo supplied Netlist Chipsets or separately as individual components, by Netlist to any third party.

The Market Share Commitment shall not be capped at the minimum percentages indicated below. Netlist shall cooperate and disclose the status of and any feedback (whether positive or negative) to Diablo in connection with Netlists's qualification with any customers of the Netlist Chipset.

Netlist agrees not to renegotiate the purchase price of the Products to achieve or maintain this percentage:

(i) 1 st 6 Months of Netlist Production: **[***]** ; Between 6 th and 18 th months of Netlist Production: **[***]** ; After 18 month of Netlist Production: **[***]** .

(ii) In addition, all quantities of Netlist Chipsets set forth in any Purchase Order issued by Netlist to Diablo and confirmed by Diablo in accordance with this Agreement, but which Diablo is completely unable to fulfill, shall be deemed to have been allocated to Diablo.

(iii) Audit . Netlist will maintain complete and accurate records for not less than three (3) years after this Agreement expires or is terminated. Diablo may audit Netlist's records in accordance with this Section, twice per year, at its expense; provided that a nationally recognized accounting firm retained by Diablo (" Auditor ") will pursuant to a confidentiality agreement have access to such records solely for the purposes of confirming that Netlist has fulfilled its obligations under Section (i) above.

(iv) If qualification requirements change in the 12 months following signing this Amendment, Netlist will give Diablo notice as soon as possible to allow Diablo to propose a remedy. During this period, if the product does not meet the customer requirements, Netlist shall make commercially reasonable efforts to maintain Diablo's market share by increasing shipments to other customers.

9.1 Guaranteed Minimum Allocation

Notwithstanding section 3(e), Netlist shall allocate to Diablo a minimum of **[***]** % of the Netlist total annual consumption of **[***]** provided however such allocation shall be limited to a maximum of 100% of the Netlist Market Share.

10. Production Incentive .

[***]

11. Term . Section 11(a) is hereby amended in its entirety to read as follows:

"(a) **Term** . This Agreement shall become effective on the Effective Date of this Agreement and shall continue for a period of three (3) years (" Initial Term "). This Agreement shall be extended automatically at the end of the initial term or subsequent terms for an additional one (1) year term, unless terminated in accordance with this Agreement or unless either party notifies the other party in writing of its intent not to renew at least ninety (90) days prior to the expiration of the Initial Term or subsequent term."

16. Section II (e) shall be amended to include:

The obligations of Diablo under Section 2 of this Amendment will survive, in accordance with the terms hereof, the term and termination of this Agreement, and will remain in full force and effect regardless of the cause of any termination and be binding on any successors or assigns.

G E N E R A L

17. Except as set forth herein, all terms and conditions of the Agreement shall remain in full force and effect. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment shall have the same meaning as set forth in the Agreement. This Amendment, together with the Agreement, constitute the entire agreement of the parties with respect to the subject matter hereof, and supersedes any other agreements, promises, representations or discussions, written or oral, concerning such subject matter.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment effective as of the Amendment Effective Date.

Netlist, Inc.

By: */s/ Chun K. Hong*
Name: Chun K. Hong
Title: President, CEO

Diablo Technologies, Inc.

By: */s/ Richard Badalone*
Name: Richard Badalone
Title: President, CEO

EXHIBIT 31.1

CERTIFICATION PURSUANT TO RULE 13A-14(A) AND RULE 15D-14(A) OF THE SECURITIES EXCHANGE ACT AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Chun K. Hong, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Netlist, Inc., a Delaware corporation (the "Registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and we have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles:

c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

May 17, 2010

/s/ Chun K. Hong
Chun K. Hong
President, Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION PURSUANT TO RULE 13A-14(A) AND RULE 15D-14(A) OF THE SECURITIES EXCHANGE ACT AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Gail M. Sasaki, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Netlist, Inc., a Delaware corporation (the "Registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the Registrant and we have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles:

c) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

May 17, 2010

/s/ Gail M. Sasaki
Gail M. Sasaki
Vice President and Chief Financial Officer
(Principal Financial Officer)

Exhibit 32

CERTIFICATIONS PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Netlist, Inc., a Delaware corporation ("Netlist") for the quarter ended April 3, 2010 (the "Report"), Chun K. Hong, president, chief executive officer and chairman of the board of Netlist, and Gail M. Sasaki, vice president and chief financial officer of Netlist, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to his or her knowledge:

(1) the Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Netlist, Inc.

May 17, 2010

/s/ Chun K. Hong
Chun K. Hong
President, Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

May 17, 2010

/s/ Gail M. Sasaki
Gail M. Sasaki
Vice President and Chief Financial Officer
(Principal Financial Officer)